



POLICY REGISTER

Subject: Bribes, Gifts and Benefits

	<i>Current</i>	<i>Previous</i>	<i>Prior</i>	<i>Prior</i>
Minute No:	219	171	820	814
Meeting Date:	13/11/2006	09/02/2004	08/07/2002	17/06/2002

Review Date: October 2008

POLICY

Introduction

The policy and guidelines aim to set limits and provide guidance on dealing with bribes, gifts and benefits offered to council officials.

Terms

The term “you” used in this policy conduct refers to Council officials.

The code of conduct defines council official as “includes councillors, members of staff of council and delegates of council. A delegate of council is a person or body to whom a function of council is delegated”.

This policy applies to all those persons covered by the Code of Conduct including Council’s contractors, consultants, volunteers and members and community representatives of advisory and Section 355 Committees who are involved in Council’s advisory or decision making process or who are seen to be representatives of Council.

For the purposes of this policy, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation (Code of Conduct).

Overview

Bribes

Bribes should never be accepted. A person offered a bribe should refuse it and report the incident as soon as possible to their supervisor. Council will take steps to report the matter to ICAC and the police immediately.

Gifts and benefits

You must not:

- ◆ seek or accept a bribe or other improper inducement
- ◆ by virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value.

You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:

- act in a particular way (including making a particular decision)
- fail to act in a particular circumstance
- otherwise deviate from the proper exercise of your official duties.

You may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on your part (Code of Conduct).

It is Council's preferred position that:

- gifts and benefits not be offered to Council officials
- gifts and benefits are not to be solicited
- gifts and benefits should be actively discouraged by Council officials
- people doing business with Council should understand that they do not need to give gifts or benefits to Council officials to get high quality service (Council policy Business ethics B45/1 provides further information).

Gifts and benefits fall into two categories, those that are more than nominal value and those of nominal value (see definitions below).

For the purposes of this policy "nominal value" is described as goods and/or services which have nominal value (i.e. less than \$10).

Nominal value

Some examples of gifts and benefits having nominal value are cheap marketing trinkets or corporate mementos and may include the following:

- Inexpensive pens and pencils
- Notepads
- Key rings
- Diaries
- Computer mouse pads

More than nominal value

Some examples of gifts and benefits having more than nominal value include:

- Tickets to sporting events or other entertainment
- Access to private spectator box at sporting events or other entertainment
- Goods and items donated to Council and employee functions
- Accepting hospitality at corporate sponsored sporting events such as golf days
- Meals or hospitality of other than “nominal” value
- Discounted products for personal use
- Use of facilities such as gyms and holiday homes
- Free or discounted travel
- Free “training excursions”
- Alcohol
- Clothes
- Obtaining fly-buys, frequent flyer points etc as a consequence of Council transactions.
- Lucky door prizes or competition prizes
- Money
- A new job or a promotion
- Preferential treatment, such as queue jumping
- Access to confidential information
- Sports team sponsorship by a supplier (refer to Council’s Sponsorship Policy)

BRIBES

1. Council officials must not offer or seek a bribe.

Receiving a bribe is an offence under both the common law and NSW legislation.

The common law offence of bribery is defined as receiving or offering any undue reward by, or to, any person in public office in order to influence his or her behaviour in that office, and to incline that person to act contrary to the known rules of honesty and integrity.

Comment: Any Council official offered a bribe should immediately report to their supervisor or the Mayor (in the case of Councillors). Council will then refer the matter to the ICAC and the Police

GIFTS AND BENEFITS

2. **Council officials must not solicit gifts and benefits or, as a general rule, accept gifts or benefits of more than nominal value. Offers of money, regardless of the amount, must never be accepted.**
3. **Council officials must actively discourage the giving of gifts where it can be anticipated they will be offered. For example, unless it would create offence (such as in sister-city exchanges), a council official who expects to be offered a gift for speaking at an engagement as a council official should notify the hosts that the offer of a gift is not necessary.**
4. **Council officials who are offered a gift or benefit, or who are given a gift or benefit against their will, are required to report the incident in writing to their supervisors (Councillors should report details to the Mayor). This information will be recorded in a publicly available gifts register against the name of the recipient.**

Comment: Refer to procedure set out in the guidelines

5. **If the Council official's refusal is ignored, or for other reasons a gift of more than nominal value cannot reasonably be returned, the gift is to be regarded as the property of the Council.**

Comment: Gifts or benefits should be handed to the General Manager

6. **Gifts or benefits of nominal value can be accepted without disclosure. However, nominal gifts given frequently or more than two times or ten dollars in dollar value must be declared in the gifts register.**

Comment: Some gifts or benefits, of nominal value, can be accepted. Refer to items listed in guidelines.

7. **You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.**
8. **You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.**
9. **Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. (required to be included in the disclosure of interests' returns – section 449).**

- 10. In some instances, a gift or benefit may be accepted if it is received in the course of Council officials duties and relates to the work of the Council, or has public benefit. All such items must become the property of the Council.**

Comment: An example of a gift or benefit relating to the work of the Council is a book on a relevant topic. Such gifts become the property of the Council.

- 11. In some cases, it is considered appropriate that the General Manager (and the General Manager's partner) accept hospitality of a community group when representing the Council.**

Comment: Many community groups invite the General Manager and the General Manager's partner to events held by the community organisation. Such events include annual changeover dinners and/or special events where the General Manager is called upon to act in an official capacity. It is considered that the General Manager is properly fulfilling a community expectation.

- 12. In some cases, it may be appropriate to accept modest hospitality simultaneously available to colleagues or associates who share a common purpose or task.**

Comment: It is appropriate to accept tea, coffee and biscuits when same are offered as common courtesy and would be offered to most visitors. A modest lunch offered to a working group or committee falls under this category.

- 13. In cases where hospitality of more than nominal value is offered and it is considered a necessary part of Council business, Council will pay for the hospitality.**

Comment: When attending Council business Council officials may be asked to accept hospitality as part of the working arrangements. In these cases Council officials should pay for their own hospitality and seek reimbursement from Council.

- 14. Meals and other functions offered in connection with conferences, seminars etc which are available to colleagues or associates who share a common purpose or task and are offered as part of the conference package are acceptable.**

Comment: This provision would not apply in the case of competitions, prize giveaways etc. Any gift or benefit obtained in this manner must be declared in the gift register.

Improper and undue influence

- 15. You must not take advantage of your position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.**

- 16. You must not take advantage (or seek to take advantage) of your status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for yourself or for any other person or body.**

General

17. **In some cases, it may be appropriate for Council officials to accept special offers unconnected to their official duties.**

Comment: Acceptance of Frequent Flyer points by Council officials awarded as a result of travel undertaken for private purposes and paid for by the Council official as private expenses is acceptable. However, frequent flyer points, fly-buys etc awarded because of Council business and paid for by the Council is not acceptable. Refer to guidelines.

18. **Council will maintain a gifts and benefits register**

Comment: Details are set out in the guidelines

Guidelines

Bribes

What to do if you receive an offer of a bribe.

1. If you think you have been offered a bribe, your supervisor (or appropriate senior officer) must inform senior management immediately. If your supervisor (or appropriate senior officer) does not do this, you should inform senior management yourself.
2. If you have been offered a bribe, the ICAC and the Police must be notified immediately. This will ordinarily be done by the Council. However, if this action is not taken expeditiously the employee may do so themselves

Gifts and Benefits

What to do if you receive an offer of a gift or benefit of more than nominal value, even those rejected.

1. Report the matter to your supervisor immediately (Councillors to Mayor or General Manager)
2. Complete details in writing (Form 1 attached can be used). Details should include
 - Date, time and place of the incident
 - Name of person to whom gift or benefit was offered
 - Name of person (and organisation) who offered gift or benefit and contact details (if known)
 - Response to the offer
 - Other relevant details
 - Signature of the writer and date

Gifts Register

Council will maintain a gifts and benefits register. The register will contain the following information.

- The name of the recipient
- The name of the person who offered the gift and their organisation
- The decision taken in relation to the gift
- The signature of the recipient's supervisor, appropriate senior officer or the Mayor

It will be used to record all gifts and benefits that are received that are above a nominal value.

Bribes

Additional guides

- ICAC Document "Gifts, Benefits or Just Plain Bribes?"
- Council's Code of Conduct
- Council's Business Ethics Policy B45/1

Guidance notes

Personal Benefit

Council officials, at some stage in their career may be offered a gift or benefit in the course of their work. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if council officials accept a gift or benefit. Once such a gift is accepted, a council official can be compromised. Individuals attempting to corrupt council officials often start with small inducements that appear to have no improper motive behind them.

Corruptly receiving a gift or benefit is an offence under both the common law and NSW legislation. The offence extends to the offering or seeking of a gift or benefit.

Examples

□ Case studies/examples provided in ICAC publication – Gifts, Benefits or Just Plain Bribes?

Example 1: Gifts, benefits and hospitality

A regular supplier offers the council's purchasing officer a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier would be compromised if he or she accepts the offer.

Planning and building staff are regularly offered alcohol, food, tickets to major sporting events and free lunches by developers, builders, project managers and suppliers. Staff sometimes accept these gifts without declaring them and argue that they are in return for providing good service and are an accepted way of "doing business". Again, this will be perceived to have compromised the impartiality of the staff concerned.

In this situation staff should, in the first instance, refuse any gift offered. If staff feel obliged to accept gifts, then they should declare the gift and have it recorded in council's gift register. Council may then determine how these gifts are dealt with and could, for example, donate specific items to charity.

Example 2: Acceptance of gifts and bribery

A local council employee is involved in a series of inspections on a building site. During the inspections, the developer offers the employee numerous gifts including alcohol and a present for the employee's new born child. The employee accepts the gifts as he feels they are offered as unconditional and genuine tokens of appreciation for his work, especially as the inspection involved a number of lengthy tasks.

The employee believes he is not compromised by the gifts and eventually makes a recommendation that is not in the developer's interests. After the recommendation is made, the developer complains to the council about the employee accepting the gifts.

Although the employee accepts the gifts in good faith, he nevertheless places himself in a vulnerable position. While each of the gifts is of modest value, when viewed in total, the value of the gifts seems quite substantial. The developer is able to manipulate the situation to allege the employee has accepted bribes.

The employee's acceptance of the gifts could also be used as circumstantial evidence of bribery. The employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.

Example 3: Acceptance of gifts and influence

A council's information technology manager attends two meetings with potential suppliers. During the first meeting the suppliers serve tea, coffee and biscuits. The second meeting is held at a restaurant and the suppliers pay for the manager's three course meal.

Both of the meetings arguably provide the manager's council with a benefit, namely the opportunity to discuss the supplier's products. Despite this, a contrast can be drawn between the meetings.

In the first, the refreshments are only modest in nature and consequently do not create the impression that an attempt is being made to gain the manager's favour.

In the second, the nature of the lunch creates the impression that an attempt is being made to compromise the manager's impartiality. The damage of this perception far outweighs any benefit associated with the manager's attendance.

A hypothetical case study on the acceptance of gifts is provided in Chapter 4 of the ICAC Practical Guide to Corruption Prevention Manual and is a useful exercise to consider using in conjunction with training programs.

MUSWELLBROOK SHIRE COUNCIL
BRIBES, GIFTS AND BENEFITS
REGISTER FORM

DATE OF INCIDENT:

TIME OF INCIDENT:

PLACE OF INCIDENT:

NAME OF RECIPIENT:

NAME OF DONATOR:

RESPONSE:

.....
.....
DESCRIPTION OF GIFT:

APPROXIMATE VALUE OF GIFT:

OTHER RELEVANT DETAILS:
(Including action taken)

.....
.....
SIGNATURE OF WRITER:

DATE:

WITNESSED:

DATE: