

## Ku-ring-gai Council

### Gifts and Benefits Policy

#### 1. Purpose

Sometimes people who deal with Ku-ring-gai Council wish to express appreciation for service or assistance given by a Council Official or wish to demonstrate good faith in a business relationship by the giving of some form of gift or benefit.

In some circumstances the giving of a gift or benefit has the potential to compromise a person by creating a sense of obligation and thereby affecting impartiality. This is of particular significance for Councillors and for staff who have approval, regulatory or purchasing roles.

The purpose of this policy is to establish guidelines for dealing with gifts and benefits and establish transparent processes so that the integrity and independence of the individual and the Council is not compromised.

**This policy applies to all Council Officials of Ku-ring-gai Council as defined in this Policy.**

This policy does not deal with political donations and gifts that are dealt with under the *Environmental Planning and Assessment Act 1979*.

The policy operates in addition to all other obligations under the *Local Government Act 1993* (the Act), any other legislation, or relevant codes and policies regarding the disclosure of any interests.

#### 2. Objectives

The objectives of this policy are to:

- explain gifts and benefits, including token gifts and benefits and gifts and benefits of value
- provide clear guidelines on how to deal with gifts and benefits

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- ensure that Council Officials understand and meet their obligations under Council's *Code of Conduct* and *Conflict of Interests Policy* so as not to be compromised or appear to be compromised because of a gift or benefit
- demonstrate to anyone who may wish to offer a gift or benefit that the matter will be dealt with in an open and transparent manner.

### 3. Definitions

In this policy:

*council official* includes Councillors, members of staff, administrators appointed under section 256 of the Act, members of Council committees, conduct reviewers and delegates of Council

*delegate of Council* means a person or body, and the individual members of that body, to whom a function of Council is delegated

*gift or benefit* means any product or service (including hospitality) voluntarily provided to a Council Official, as further explained in this policy, at no charge or at a discounted charge or free of any other consideration as a consequence of the recipient's role as a Council Official. It includes gifts or benefits received by family or associates of a Council Official. It includes any circumstance where there was no opportunity given to refuse the gift or benefit. It does not include a political donation or gift that is dealt with under the *Environmental Planning and Assessment Act 1979*

*staff* means all employees of Ku-ring-gai Council (full time, part time, temporary or casual). It also includes, for the purposes of this policy only, all volunteers and contractors (who principally provide their labour)

*you* and *your* refers to Council Officials of Ku-ring-gai Council.

### 4. Code of Conduct

Gifts and benefits are dealt with in clause 8 of the *Code of Conduct (Personal Benefit)*. This Policy expands on the provisions of the Code and establishes a procedure for disclosing and, where necessary, surrendering certain gifts and benefits.

Clause 8.3 of the *Code of Conduct* states that you must not:

- *seek or accept a bribe or other improper inducement*
- *seek gifts or benefits of any kind*

- *accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty*
- *accept any gift or benefit of more than token value*
- *accept an offer of money, regardless of the amount.*

Clause 8.4 of the *Code of Conduct* states:

*Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.*

As a consequence of the *Code of Conduct* there are:

- certain gifts and benefits that are of token value that may be accepted and retained
- gifts and benefits of more than token value that are required to be disclosed and surrendered
- gifts and benefits, irrespective of their value, that are required to be disclosed and surrendered.

## 5. Dealing with offers of a gift or benefit

You must always consider the purpose and value of the gift or benefit before making a decision to accept it. Ask yourself:

***“Why is the person offering me this gift or benefit? If I accept this gift or benefit how will it be perceived by a reasonable person?”***

In addition to what is required under the *Code of Conduct* (clause 8.3) you must not:

- use your position to improperly influence others so as to receive a gift or benefit
- use your position to improperly influence others so as to obtain a gift or benefit for someone else
- accept anything from a potential supplier when you are involved or in assessing or deciding on quotes, expressions of interest or tenders
- accept anything from an applicant to Council when you are involved in assessing or deciding on their application.

You must decline any gift or benefit if:

- it would create a sense of obligation on your part to the person offering it
- it could be reasonably perceived by an impartial observer that there may be a sense of obligation to the person offering it.

An impartial observer's perception of a gift or benefit and any resulting sense of obligation may be influenced by:

- the scale, extravagance or value of the gift or benefit
- the frequency of occurrence of the giving of the gift or benefit
- the degree of openness surrounding the giving of the gift or benefit.

Where you are uncertain what action to take regarding the offer of a gift or benefit you should use the decision making guide (**Attachment A**) to help you decide.

In deciding whether to accept a gift or benefit consideration should be given to whether refusal of the gift or benefit in the circumstances could be discourteous or cause offence to the person offering the gift or benefit. Care should be taken in handling circumstances where there are cultural differences. In some circumstances it is recognised that declining a gift may be difficult, inappropriate or offensive.

Care should be taken where food or drink has been received (particularly if it has not been commercially produced, packaged and appropriately stored) and where its origin or suitability for consumption maybe uncertain.

Where you decide to decline a gift or benefit (except where it is a bribe, see clause 10) you should politely thank the person for the offer. You should also explain what your obligations are under this policy and the importance of impartiality and perceptions.

Staff should always seek advice from their supervisor, manager, director, or the General Manager in any instances where a gift or benefit appears to be generous in the circumstances. You should also seek advice where the gift or benefit was received in circumstances where you were not given the opportunity to decline it and if you had that opportunity you would have declined it.

## **6. What is not a gift or benefit for the purposes of this policy?**

For the purpose of this policy, a gift or benefit is not:

- any product or service that genuinely has no connection to your role as a Council Official
- any product or service that is given to a Council Official by the Council or another Council Official (except a contractor) as an award, any other form of recognition or to celebrate an occasion

- any discounted product or service if the discount is reasonable and generally available or capable of being negotiated by others not connected with the Council and acceptance of the product or service will not compromise the Council or be seen to compromise the Council
- any discounted product or service if the discount is offered to staff generally (such as through a staff social club) and the arrangements will not compromise the Council or be seen to compromise the Council and the arrangements have the approval of the General Manager
- any product or service received in relation to your membership of any industrial or professional organisation, club or other association or body
- any product or service received by your relative or associate from someone connected to Council if you genuinely did not know about it
- a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation
- any sponsorship arrangement that is dealt with in accordance with Council's *Sponsorship Policy*.

## **7. What are token gifts and benefits? What are gifts and benefits of value?**

Something that you are given that is of small value in gratitude for something done or to demonstrate good faith in a business relationship is likely to be a token gift or benefit for the purposes of this policy.

Generally speaking, token gifts and benefits include (*clause 8.1 Code of Conduct*):

- (a) *free or subsidised meals, beverages or refreshments provided in conjunction with:*
  - i) *the discussion of official business*
  - ii) *council work related events such as training, education sessions, workshops*
  - iii) *conferences*
  - iv) *council functions or events*
  - v) *social functions organised by groups, such as council committees and community organisations.*
- (b) *invitations to and attendance at local social, cultural or sporting events*
- (c) *gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)*
- (d) *ties, scarves, coasters, tie pins, diaries, chocolates or flowers.*

Gifts and benefits that have more than a token value are gifts and benefits of value. They include, but are not limited to (*clause 8.2 Code of Conduct*):

*tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.*

**There are no specific monetary thresholds for determining what is or is not a gift or benefit of more than token value.**

**It is a matter for each individual to determine whether or not a gift or benefit is of more than token value having regard to this Policy.**

**Providing that the gift or benefit does not fall within clause 8 of this policy a token gift or benefit can be accepted and does not have to be disclosed.**

However, if you receive a token gift or benefit you may complete a disclosure form if you consider it to be appropriate in the circumstances for openness and transparency.

## **8. What must be disclosed?**

Sometimes gifts or benefits are offered in such a way that it is difficult to refuse them, they are provided without the opportunity to decline them or they are provided in a manner that makes it difficult to return them. Some offers of gifts or benefits must be declined.

**For the purposes of this policy, the following must always be disclosed:**

- **any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value, and any offers of same that have been declined**
- **any gift or benefit of more than token value as explained in clause 7 and any offers of same that have been declined**
- **any gift of money or anything readily exchanged/cashed in for money, regardless of the value, and any offers of same that have been declined.**

The following are examples of what usually is a gift or benefit that needs to be disclosed (the list is not exhaustive):

- an expensive present received by you in appreciation of service to a customer of Council
- an expensive present received by your partner from someone connected to Council
- a restaurant meal with alcohol provided by a consultant to Council

- an invitation to a sporting event with hospitality in a private room from a property developer or contractor who does or might work in the Ku-ring-gai local government area
- an invitation to a Christmas party hosted by a supplier or potential supplier to Council
- a free interstate trip to view a potential suppliers product
- any prize received in a raffle, competition or other game of chance in circumstances where you are engaging in your Council role, unless conducted by a registered charity or other non-profit group at a public event and drawn at that event
- preferential treatment, such as queue jumping, given by someone connected to Council
- contributions to a loyalty program from someone connected to Council, such as frequent flyer points
- a product or service received by an individual through a purchase incentive scheme operated by a supplier to Council, i.e. something given for free if something else is bought (not including bulk discounts provided to Council)
- a product or a service received from someone connected with the Council at a price that is less than that generally charged to the public.

**It is a matter for each individual to determine whether or not a gift or benefit is required to be disclosed having regard to this Policy.**

## **9. Gifts and Benefits Register, Disclosures and Surrenders**

Disclosures must be made in accordance with clause 8 of this Policy.

The details of all disclosures must be entered into the Gifts and Benefits Register by completion of a ***Gifts and Benefits Disclosure Form (Attachment B)***.

The disclosure form must be completed within seven (7) days of receiving the offer or receiving the gift or benefit. If you received the offer or the gift or benefit when you are outside of the Ku-ring-gai local government area, you must complete the form within seven (7) days of your return.

If you receive a gift or benefit that could be distributed amongst other staff or it is intended for more than just yourself it is your responsibility to complete a disclosure form on behalf of those staff.

**Also, to the extent that it is practical, the following gifts and benefits must be surrendered to the General Manager (the General Manager to the Mayor):**

- **any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value**
- **any gift or benefit of more than token value**

- **any gift of money or anything readily exchanged/cashed in for money, regardless of the value**
- **any gift or benefit that was accepted by you on behalf of the Council.**

The General Manager (or Mayor) will review all entries in the Gifts and Benefits Register and determine any action that may be considered appropriate in relation to any entry, including any action that maybe required if the offer of the gift or benefit appears to be a bribe.

Such action may include:

- the giving of advice or counselling
- removal of staff from a particular decision making, regulatory or purchasing role
- taking action to return the gift or benefit
- donating the gift or benefit to a charity or other non-profit organisation
- retaining the gift or benefit as property of Council
- retaining the gift or benefit pending consideration of the matter by a relevant investigative authority.

The Gifts and Benefits Register is available for public inspection.

## **10. Bribes**

A bribe is any form of gift or benefit made with the direct intent to influence your behaviour and public duty and to act other than with honesty and integrity. It may be money or anything else. It is a crime to offer, seek or accept a bribe.

If you think you have been offered a bribe or otherwise believe that an offer made to you was intended to influence your behaviour you must reject the offer and end the conversation. You must then make a record of what has happened and report it to your supervisor, manager, director or the General Manager for report to the Independent Commission Against Corruption (ICAC).

## **11. Implementation**

The implementation of this policy is the responsibility of the General Manager.

Initial and refresher training will be given in this policy. The policy will be reinforced at critical times such as prior to Christmas. If at any time you are uncertain about your responsibilities you may discuss the matter confidentially with the Internal Ombudsman.

Council has a *Statement of Business Ethics*. This statement provides ethical guidance to individuals, organisations and companies that are in, or proposing to be in, a business relationship with Council. It sets out the standards of ethical behaviour that will be followed by staff and what is expected from others in all Council business dealings. The statement is made available in all circumstances where Council deals with suppliers of goods and services. The statement makes reference to this *Gifts and Benefits Policy*.

## **12. Breaches of this policy**

The obligation to comply with this policy rests with each individual Council Official.

Staff who believe that that this policy has been breached are encouraged to discuss the matter with their immediate supervisor or manager. Should you be dissatisfied with the outcome of the discussion and subsequent action you should raise the matter with your director or the General Manager.

Councillors and Council Officials other than staff should raise any concerns with the General Manager. Any concerns about the General Manager should be raised with the Mayor.

The General Manager or Mayor as appropriate will investigate any report received and take such action as is considered necessary.

Breaches of this policy may result in:

- counselling
- censure motions for Councillors
- loss of reputation
- disciplinary action, including dismissal
- criminal investigation
- criminal charges.

A serious breach of this policy may amount to corrupt conduct or maladministration. Should you be concerned at any time that reprisal action may be taken against you for reporting a serious breach then you might consider making a protected disclosure. A protected disclosure allows you to report corrupt conduct, maladministration or serious and substantial waste of public money and be protected from any reprisal action. Further information is available in the *Internal Reporting Policy - Protected Disclosures*.

### **13. Associated Documents**

#### Codes and Policies

*Code of Conduct*  
*Conflict of Interests Policy*  
*Internal Reporting Policy - Protected Disclosures*  
*Purchasing Policy and Procedures Manual*  
*Sponsorship Policy*  
*Statement of Business Ethics*

#### External References

*Department of Local Government, Guidelines for the Model Code of Conduct for Local Councils in NSW, October 2008*  
*NSW Ombudsman Good Conduct and Administrative Practice Guidelines (2<sup>nd</sup> edition), May 2006*  
*NSW Ombudsman, Public Sector Agencies Fact Sheet no. 7, Gifts and Benefits, March 2004*  
*Independent Commission Against Corruption, Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials, June 1999*  
*Independent Commission Against Corruption, Managing Gifts and Benefits in the Public Sector, Toolkit, June 2006*  
*Independent Commission Against Corruption, Report on attempts to improperly influence a Ku-ring-gai Council officer, February 2009*

**ATTACHMENT A**

**Gifts and benefits decision making guide**

- **Is the gift or benefit one of money or readily exchanged/cashed in for money?**
  - Yes – refuse offer and report to the General Manager
  - No – lower risk, you could consider:
  
- **Is it more than a token gift or benefit?**
  - Yes – refuse offer and report to the General Manager
  - No – lower risk, you could consider:
  
- **Could the gift or benefit create a sense of obligation on your part or maybe perceived to be intended or likely to influence you in carrying out your public duty**
  - Yes – refuse offer and report to the General Manager
  - No – lower risk, you could consider:
  
- **Will you or the Council be making important decisions regarding the giver in the near future?**
  - Yes – refuse offer and report to the General Manager
  - No – lower risk, you could consider accepting the gift or benefit.

**ATTACHMENT B**

<b>Ku-ring-gai Council GIFTS AND BENEFITS REGISTER Gifts and Benefits Disclosure Form</b>			
See over page for additional information. To the General Manager, Ku-ring-gai Council, in accordance with the <i>Gifts and Benefits Policy</i> , I disclose the following: (✓ whichever is appropriate in 1, 2 or 3):			
<b>1. An offer of a gift or benefit that has been declined that is required to be disclosed being:</b>			
<input type="checkbox"/>	a gift or benefit that may create a sense of obligation on my part or maybe perceived to be intended or likely to influence the carrying out of my public duty, regardless of the value		
<input type="checkbox"/>	a gift or benefit of more than token value		
<input type="checkbox"/>	money or anything readily exchanged/cashed in for money, regardless of the value		
<b>2. A gift or benefit that has been received and is required to be surrendered being:</b>			
<input type="checkbox"/>	a gift or benefit that may create a sense of obligation on my part or maybe perceived to be intended or likely to influence the carrying out of my public duty, regardless of the value		
<input type="checkbox"/>	a gift or benefit of more than token value		
<input type="checkbox"/>	money or something readily exchanged/cashed in for money, regardless of the value		
<input type="checkbox"/>	a gift or benefit received on behalf of the Council		
<b>3. Other gift or benefit being:</b>			
<input type="checkbox"/>	a gift or benefit that has been received that is required to be surrendered however it is impractical to surrender for the reasons stated in the comments below		
<input type="checkbox"/>	a gift or benefit that has been received and retained that I wish to disclose voluntarily		
<b>Personal details</b>			
Name of Council Official			
Staff department and position			
<b>Gift or benefit details</b>			
Gift or benefit received by (✓ as appropriate)	myself <input type="checkbox"/>	or	my relative/associate <input type="checkbox"/>
Name of relative/associate (if applicable)		Relationship to self	
Gift or benefit received from (name and address of person and organisation/company providing the gift or benefit, and ABN if not an individual)			
Description of gift or benefit			
Date/s gift or benefit received		Estimated retail value incl gst	\$
Comments in relation to this disclosure			
<b>Signatures and action</b>			
I declare the above to be true and correct	Signature of Council Official	Date	_/_/___
Noted by Director (staff disclosure)	Signature of Director	Date	_/_/___
Noted by General Manager	Signature of General Manager	Date	_/_/___
Action by General Manager (if applicable)			

**Ku-ring-gai Council**  
**GIFTS AND BENEFITS REGISTER**  
**Gifts and Benefits Disclosure Form**

**Additional Information**

This form is for use by Council Officials in conjunction with the *Gifts and Benefits Policy*. See the Policy for a complete explanation of your obligations. For guidance some extracts from the Policy are set out below.

You must complete this form within seven (7) days of receiving the gift or benefit or the offer of the gift or benefit. If you receive the gift or benefit or the offer when you are outside of the Ku-ring-gai local government area you must complete the form with seven (7) days of return to the area.

The completed form is to be referred to the General Manager and, to the extent that it is practical, you must provide to the General Manager any gift or benefit that is required to be surrendered.

Staff are to have the form noted by their Director before referral to the General Manager.

Completed forms become part of the Gifts and Benefits Register which maybe accessed by anyone.

**Extract from Clause 8 of the Policy - What must be disclosed?**

the following must always be disclosed:

- any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value, and any offers of same that have been declined
- any gift or benefit of more than token value as explained in clause 7 and any offers of same that have been declined
- any gift of money or anything readily exchanged/cashed in for money, regardless of the value, and any offers of same that have been declined.

**Extract from Clause 9 of the Policy - Gifts and Benefits Register, Disclosures and Surrenders**

to the extent that it is practical, the following gifts and benefits must be surrendered to the General Manager (the General Manager to the Mayor):

- any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value
- any gift or benefit of more than token value
- any gift of money or anything readily exchanged/cashed in for money, regardless of the value
- any gift or benefit that was accepted by you on behalf of the Council.