# COUNCIL POLICY

## Gifts and Benefits

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| **Policy Number:** | PO150 | | |
| **Strategic Plan Objective:** | 5. Responsible Governance and Leadership | | |
| **Policy Owner:** | Chief Executive Officer | **Record Number:** | 16/14911[v5] |
| **Responsible Officer:** | Governance Officer | **Minute Reference:** | 206/2024 (14/08/2024 |
| **Date Adopted:** | 18/08/2024 | **Next Review Date:** | August 2028 |

## 1. POLICY OBJECTIVES

Yorke Peninsula Council (Council) is committed to acting in the best interests of the community and upholding the principles of honesty, integrity and transparency; all key components of good governance.

This policy aims to distinguish between Gifts and Benefits that can be reasonably accepted and those that must be refused, and sets out processes to ensure that all Gifts and Benefits are managed in a transparent and accountable fashion.

## 2. SCOPE

This policy applies to all Elected Members and Employees when exercising and/or performing official functions and duties in all situations, including those outside of normal business hours.

## 3. DEFINITIONS

Refer to Attachment 1.

## 4. POLICY STATEMENT

Employees and Elected Members must not accept any Gifts or Benefits that may be construed as a bribe to provide, coerce or extract information to gain an advantage, either directly or indirectly, for themselves or a Designated Person or Entity.

Gifts and Benefits provided to Designated Persons or Entities will be treated as a Gift or Benefit received by the Elected Member or Employee and must comply with this Policy.

Elected Members and Employees must not:

1. Seek Gifts or Benefits of any kind;
2. Accept any Gift or Benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation on their part or influence them in carrying out their public duty;

3. Accept any Gift or Benefit from any person or organisation who is in, or who seeks to be in, any contractual relationship with Council;
4. Accept any Gift or Benefit from any person or organisation involved in a Council tendering or procurement process, either recent or ongoing;
5. Accept cash of any value.

Elected Members and Employees may accept hospitality provided in the context of performing their duties, including free or subsidised meals, beverages, or refreshments where there is no possibility of the attendance being construed as creating a sense of obligation, an advantage to the provider of the hospitality or an influence. The acceptable instances include:

1. The discussion of official business;
2. Council work related events such as training, education sessions, workshops and conferences;
3. Council functions or events;
4. Social functions organised by groups such as Council committees and community organisations;
5. Invitations to and attendance at local social, cultural or sporting events;
6. Local Government/Government functions and/or events.

Hospitality must not be accepted from any person(s) involved in a current tender process with Council.

### 4.1. Employees

Before accepting a Gift or Benefit, Employees must notify and receive permission to accept the Gift or Benefit from their direct Manager/Supervisor. Any notification or permission must be made in writing and retained in Council's records management system.

### 4.2. Gifts and Benefits Registers

Details of Gifts and Benefits must be recorded within the appropriate Council Gifts and Benefits Register – R034 Employee Gifts and Benefits Register or R033 Elected Member Gifts and Benefits Register – which are maintained and updated quarterly by Council's CEO.

R033 Elected Members Gifts and Benefits Register is in addition to and does not replace R003 Elected Members Allowances and Benefits Register.

Once registered in the suitable Gifts and Benefits Register, the Gift or Benefit can be retained subject to the requirements of this policy and applicable Behavioural Standards.

Gifts and Benefits Registers are available on Council's website (www.yorke.sa.gov.au).

### 4.3. Gifts and Benefits Value

The value of a Gift or Benefit is to be determined as accurately as possible by considering the details of the Gift or Benefit.

It is important to note that the value of separate Gifts and Benefits received from the same source accumulates throughout the financial year, as set out below.

If two (2) or more separate Gifts or Benefits are received by an Elected Member or Employee from the same source during a financial year, the separate Gifts and/or

Benefits are to be treated as one (1) Gift or Benefit received by the Elected Member or Employee.

Where an Elected Member or Employee issues two (2) or more separate transactions in a financial year to a party in return for use of that party's property, whether or not being the same property, are to be treated as one (1) value.

The accumulated value of a Gift or Benefit determines the acceptance process as provided for in 4.3.1 and 4.3.2 of this policy.

#### 4.3.1. Gifts and Benefits $10 - $50 in value

Where Elected Members or Employees receive a Gift or Benefit between $10 - $50 in value, details of this Gift or Benefit must be recorded in the appropriate Gifts and Benefits Register.

#### 4.3.2. Gifts and Benefits exceeding $50 in value

Where Elected Members or Employees receive a Gift or Benefit exceeding $50 value, the Employee must notify the CEO in writing and provide details of the Gift or Benefit to be recorded into the appropriate Gifts and Benefits Register for a determination which may include:

- Gift or Benefit to be retained by Council and distributed as directed by the CEO (which may include the Employee retaining the Gift or Benefit); or
- An auction and/or raffle with proceeds donated to a registered charity as determined by the CEO, with local Charities taking priority.

In the event that any item for raffle/auction has no tickets sold or bids received, the item will be distributed/donated at the discretion of the CEO, in consultation with the Mayor.

The CEO's determination must be recorded into the appropriate Gifts and Benefits Register.

### 4.4. Refusal

If doubt exists, Gifts and Benefits are to be refused.

In some situations when Gifts and Benefits are offered, refusal may cause offence. If this is the case, Employees will refer the matter to the appropriate Director, or if the appropriate Director is not available, to the CEO.

In the case of the CEO, the matter should be referred to the Mayor.

In the case of Elected Members, the matter should be referred to the CEO.

Where a Gift or Benefit is refused, the CEO may determine that it is appropriate to write to the person(s) offering the Gift or Benefit to inform them of this policy and request that no further Gifts or Benefits be offered.

## 5. COMPLAINTS

Complaints about Elected Member behaviour under this policy must be in writing to the Mayor in accordance with Council's Council Member Behavioural Management Policy (PO203) and provide all available evidence to support the allegation(s).

Complaints about the Mayor's behaviour under this policy must be in writing to the CEO in accordance with Council's Council Member Behavioural Management Policy (PO203) and provide all available evidence to support the allegation(s).

Complaints about Employee behaviour will be managed in accordance with Council's Public Interest Disclosure Policy (PO171).

Complaints about this Policy can be made in writing to the Governance Officer. These complaints will be managed in accordance with Council's Complaints Policy (PO147).

## 6. REVIEW

This policy will be reviewed every four (4) years and as deemed necessary in consideration of any changes to legislation and relevant standards, codes, guidelines and audit findings.

## 7. TRAINING

Council is committed to supporting Elected Members and Employees in complying with this policy.

This policy will be provided to Elected Members and Employees during induction and training needs will be reviewed annually, during individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

## 8. RECORDS

Records shall be maintained as required by Council's Records Management Policy (PO063) and relevant legislation.

## 9. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS

PO014 Employee Behavioural Standards Policy

PO091 Risk Management Policy

PO026 Diversity, Equity and Fair Treatment Policy

PO171 Public Interest Disclosure Policy

PO037 Internal Review of a Council Decision Policy

PO146 Support Disciplinary and Performance Management Policy

PO147 Complaints Policy

PO148 Fraud, Corruption, Misconduct and Maladministration Prevention Policy

PO203 Council Member Behavioural Management Policy

PR152 Public Interest Disclosure Procedure

PR168 Diversity, Equity and Fair Treatment Procedure

R003 Elected Members Allowances and Benefits Register

R034 Employee Gifts and Benefits Register

R033 Elected Members Gifts and Benefits Register

## 10. REFERENCES AND LEGISLATION

Criminal Law Consolidation Act 1935

Freedom of Information Act 1991

Independent Commissioner Against Corruption Act 2012

Local Government Act 1999

Ombudsman Act 1972

Public Interest Disclosure Act 2018

Public Finance and Audit Act 1987

## 11. COUNCIL DELEGATION

Any applicable delegations are available on Councils website via the Delegations register via https://yorke.sa.gov.au/about-us/forms-plans-and-publications/registers/

## 12. VERSION HISTORY

| Version No | Issue Date | Description of Change |
|---|---|---|
| 1 | 14/08/2013 | New Policy |
| 2 | 14/05/2014 | Full Revision. |
| 3 | 08/11/2017 | Full Revision. |
| 4 | 09/09/2020 | Full Revision. |
| 5 | 14/08/2024 | Full Revision. Clarification around Council's Gifts and Benefits Registers and the accumulative value of Gifts and Benefits when received from the same source. Additional definitions to explain a Designated Person or Entity. |

## ATTACHMENT 1: DEFINITIONS

| Term/Reference | Definition |
|---|---|
| Designated Person or Entity | Means:<br>a) A member of the Employee's or Elected Member's family; or<br>b) A family company of the Employee or Elected Member; or<br>c) A trustee of a family trust of the Member. |
| Employees | All personnel undertaking tasks/duties for and/or on behalf of Council, including persons employed directly by the Council in a full time, part-time or casual basis under an employment contract, volunteers, contractors, agency personnel and work experience placements. Does not mean Elected Members. |
| Family | Means:<br>a) A spouse or domestic partner of the Employee of Elected Member; and<br>b) A child or stepchild of the member. |
| Family Company | Means a proprietary company:<br>a) In which the Employee or Elected Member, or member of their family, is a shareholder; and<br>b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company. |
| Family Trust | Means a trust (other than a testamentary trust):<br>a) of which the Employee or Elected Member or a member of their family is a beneficiary; and<br>b) which is established or administered wholly or substantially in the interests of the Employee or Elected Member or a member of their family, or any such persons together. |
| Gifts or Benefits | Includes but is not limited to lunches, dinners, tickets to concerts or sporting events, bottles of wine or spirits, vouchers, accommodation, information or any item which may be interpreted or considered as payment or an expression of gratitude for a service provided, or to enhance/build a relationship which may be considered advantageous to the person providing the Gift or Benefit. |