

Councillor Gift Policy

Policy Endorsement:	Council		
Policy Superseded by this Policy:	Gifts, Benefits and Hospitality Policy (still applies to staff)		
Directorate:	Corporate Services		
Responsible Officer:	Manager Governance		
Policy Type:	Legislative		
File Number:	A7322052	Version No:	001
1st Adopted by Council	12 April 2021 Minute No. 129	Last Adopted by Council:	12 April 2021 Minute No. 129
Review Period:	Every four years	Next Review:	March 2025

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1. PURPOSE

This policy commits Greater Dandenong City Councillors to act with integrity, honesty and transparency when performing their civic duties and while attending any events or functions as Council representatives. It recognises that the Greater Dandenong community's confidence in the integrity of Council results from being open and accountable and acknowledges that the acceptance of gifts, in whatever form, can create perceptions that could challenge the integrity and intent of a both a giver and receiver of such gifts.

This policy:

- (a) ensures that Councillors have clear guidance as to when offers of gifts, benefits or hospitality may be accepted or when they must be declined;
- (b) provides guidance to Councillors on the ethical considerations and procedures involved in the decline, acceptance and declaration of gifts, benefits or hospitality offered to them in the performance of their duties; and
- (c) ensures Councillors have the necessary information to be accountable for their actions and make ethical decisions that can withstand audit processes and public scrutiny.

2. BACKGROUND

The *Local Government Act 2020* provides a legislative framework for councils to be accountable to their local communities in the performance of functions, in the exercise of powers and duties and in the use of resources.

Section 138 of the *Local Government Act 2020* states that Council must adopt a Councillor Gift Policy within the period of six months after 24 October 2020. The Councillor Gift Policy must include:

- (a) procedures for the maintenance of a gift register; and
- (b) any other matters prescribed by the regulations.

It is common for Councillors to be offered gifts or hospitality as a thank you for good service, a job well done or fostering new or long-standing working relationships. However, it is important that the gesture of giving gifts or providing hospitality is not perceived to be, or results in, a form of unethical behaviour or one which may lead to an actual or perceived conflict of interest in a Council matter.

3. SCOPE

This policy applies to all gifts, benefits or hospitality offered to Councillors from external sources regardless of whether the gift is accepted or declined. It also applies where the benefit has been issued in the context of a 'loan'.

This policy excludes gifts, benefits or hospitality awarded to Councillors through rewards and recognition programs both internally and from external bodies.

Council's Councillor Code of Conduct and Conflicts of Interest Policy includes detailed information relating to identifying and disclosing a conflict of interest and this policy should be read in conjunction with those documents.

4. DEFINITIONS

Unless otherwise specified within this policy, the following words and phrases are defined to mean the following in terms of this policy.

Benefit	Something which is believed to be of value to the receiver, such as preferential treatment, privileged access at an event, access to confidential information, personal services or any type of favour/advantage offered. Examples of benefits could include, but are not limited to, a promise of a new job, access to loyalty programs, gym memberships or access to discounts that others are not privy to.
Bribe	Money or other inducement given or promised made with the intention to influence the judgment or conduct of a Councillor. Bribery and/or attempted bribery of a public official is a criminal offence.
Ceremonial Gift	A gift received as part of the culture and practices of communities and government usually provided when conducting business with official delegates or representatives from another organisation or community. A Councillor receiving a ceremonial gift is doing so on behalf of Council and must provide the gift back to Council to register it.
Conflict of Interest	<p>Division 2 of the <i>Local Government Act 2020</i> requires Councillors to declare general or material conflicts of interest.</p> <p>A conflict of interest is a conflict between a Councillor's public duty to act in the best interest of the Council and their private interests (financial or non-financial). A conflict exists whether it is:</p> <ul style="list-style-type: none">• Real – it currently exists;• Potential – it may arise, given the circumstances.• Perceived – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person's performance of their Council duties, now or in the future.
Gift	<p>Under section 3 of the <i>Local Government Act 2020</i>, a gift is defined as any disposition of property otherwise by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including:</p> <ol style="list-style-type: none">(a) the provision of a service (other than volunteer labour); and(b) the payment of an amount in respect of a guarantee; and(c) the making of a payment or contribution at a fundraising function. <p>To support this definition, a gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor as a result of their role in Council. A gift is given voluntarily without payment or compensation and is meant to convey a feeling of goodwill on behalf of the giver where there is no expectation of favours or repayment in return. Examples of gifts include, but are not limited to, wine, gift vouchers, jewellery, clothing, door or raffle prizes if that individual has not paid to attend, chocolates, desk calendars, personal and other services (such as painting or repairs), commemorative objects or hampers.</p>

Door and raffle prizes received at functions or conferences are not considered a gift if the individual has personally paid for their attendance or where the individual has personally paid for the raffle ticket.

Souvenirs received from a company when attending a seminar or conference for which a fee was paid such as pens, workbooks, ties and promotional items are not perceived as gifts under this policy.

Small gestures of kindness from members of the community such as cut flowers from a garden, homemade or home-grown goods are not considered gifts under this policy.

Gift Disclosure
Threshold

Section 3 of the *Local Government Act 2020* states the gift disclosure threshold at \$500 or a higher amount or value prescribed by the regulations. If multiple gifts are received from one person or organisation, they must be treated as a single gift with an aggregate value.

Hospitality

The friendly reception and entertainment of guests with the provision of food or beverages, which may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation. Hospitality is offered to convey goodwill on behalf of the giver where there is no expectation of favours or repayment in return. Hospitality is considered a gift if it is common courtesy, reasonable and is attended in an official Council capacity.

Hospitality that exceeds common courtesy and reasonableness would include, but is not limited to:

- a fine dining lunch or dinner at a restaurant paid for by another person or organisation or held on its premises; or
- an offer to pay for a working lunch at a café; or
- an offer of a free spot on a golf weekend on the Mornington Peninsula.

Hospitality that **does not** exceed common courtesy and reasonableness would include, but is not limited to:

- sandwiches and pastries over a lunchtime meeting; or
- a cup of coffee and biscuits at another organisation; or
- a cup of coffee at a café.

Loan

Something granted for temporary use on the condition of it being returned. A loan includes significant resources, equipment, assets or similar, which the recipient has not received in the context of it being required to perform their duties with Council. An example of a loan includes, but is not limited to, the use of a vehicle (which is not issued in accordance with Council's policies and processes). Loans of money or funds are not allowed to be accepted under any circumstances.

Personal Services

Could include any service that is provided from any person or business including, but not limited to, any trade services such as plumbing or painting, medical services, real estate services, consultancy services, legal services, building services or architectural services.

5. POLICY

5.1 ACCEPTING A GIFT, BENEFIT OR HOSPITALITY

A gift, benefit or hospitality may be accepted for cultural, protocol or business relationship purposes (subject to the restrictions noted in this policy) or where it has been offered in an honorarium form unless the value warrants it being considered a conflict of interest (see Conflict of Interest Section 5.2).

If offered a gift, benefit or hospitality, Councillors must always consider whether or not it is appropriate and reasonable to accept the offer. Issues to consider when accepting a gift, benefit or hospitality include why the offer was made and the public perception of the acceptance. Please also refer to the Gift Test below for further information to determine whether a gift could cause a conflict of interest or a perceived conflict of interest.

Councillors who are unsure about accepting a gift or hospitality should seek advice from the Manager, Governance.

5.2 DECLINING A PROHIBITED GIFT, BENEFIT OR HOSPITALITY

Any gift that could bring a Councillor's integrity or that of the Council into disrepute must be declined. Councillors must decline the following gift offers:

GIFTS OVER THE GIFT DISCLOSURE THRESHOLD AND ANONYMOUS GIFTS

Councillors must decline any gift, benefit or hospitality that is equal to or exceeds the gift disclosure threshold unless they know the name and address of the person offering the gift. Section 137 of the *Local Government Act 2020* states that:

1. Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless:
 - (a) the name and address of the person making the gift are known to the Councillor; or
 - (b) at the time when the gift is made:
 - (i) the Councillor is given the name and address of the person making the gift; and
 - (ii) the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.
2. If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.
3. In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.

GIFTS THAT CAUSE CONFLICTS OF INTEREST

Councillors must decline any gift, benefit or hospitality which warrants it being considered a conflict of interest (either real, potential or perceived).

Section 128 (4) of the *Local Government Act 2020* states that a material (financial or non-financial) conflict of interest arises in respect of a matter if a Councillor has received a disclosable gift from an affected person. This means any gift, benefit or hospitality:

- valued at \$500 or more; or
- accumulated to \$500 or more from one source, over a five year period.

This does not include the value of any reasonable hospitality received by a Councillor at an event or function attended in an official capacity and/or in performing their duties.

MONEY OR EQUIVALENT

Councillors must decline any gift of money (including gift cards) or anything easily or readily changed or converted into money (e.g., shares). Any offers of money in any form must be reported to the Manager Governance. Any bequests to Councillors resulting from their position with Council cannot be accepted and arrangements will be made to donate the bequest to a charitable institution in the name of the donor or returned to the immediate family.

REWARD PROGRAMS

Councillors must not collect rewards for personal use via rewards programs for any Council related transactions including, but not limited to, *Frequent Flyers* or *Fly Buys*. This also relates to reimbursement for any claims incurred in accordance with the Council Expenses, Support and Accountability Policy.

Where there is any doubt as to whether a gift, benefit or hospitality should be accepted, such offers should be politely declined. To reduce the possibility of causing offence, Councillors are encouraged to make reference to this policy and the importance of transparent and ethical behaviours.

5.3 REGULATORY, PROCUREMENT AND TENDER PROCESSES

When any regulatory, procurement or tender process is underway (which includes, but is not limited to, planning permit applications, infringement appeals, recruitment, nominations, tender panel evaluations or licensing), Councillors must not accept any gifts, benefits or hospitality during any such process by any external person or organisation involved in that process.

The Mayor and Chief Executive Officer must be notified of any irregular approaches by external suppliers of good or services outside of any process times. Councillors must not visit a current supplier's premises without invitation and if not on official Council business.

5.4 BRIBERY

A Councillor who receives an offer of a gift, benefit or hospitality that constitutes, or may be construed to be, an attempted bribe must refuse that offer and:

- immediately notify the Chief Executive Officer and lodge a Gift Declaration Form so that their refusal can be properly recorded and audited;
- report the matter to the Chief Executive Officer, Council's Public Interest Disclosures Coordinator or Manager Governance. (Details of Council's Protected Disclosures Coordinator are available on Council's website.) Any corrupt or criminal conduct will be reported to Victoria Police or the Independent Broad-Based Anti-Corruption Commission.

A Councillor who believes another person within Council may have solicited or been offered a bribe which has not been reported must notify the Chief Executive Officer or report the matter as a public interest disclosure in accordance with Council's Public Interest Disclosures Procedure.

5.5 CULTURAL/OFFICIAL GIFTS

On occasions, Councillors may be involved in social, cultural or community events where significant gifts of appreciation or goodwill are offered to Council. In circumstances where it would appear to be impolite or inappropriate to decline the offer, it is reasonable for Councillors acting in an official capacity to accept such gifts on behalf of Council.

All cultural/official gifts accepted on behalf of Council are to be tabled at a Council Meeting and recorded in Council's Gift Register (a Gift Declaration Form will need to be completed by whoever received the gift). The gift will be considered the property of the Greater Dandenong City Council and Council will endeavour to ensure the gift is used with the intent in which it was given.

5.6 EXEMPTIONS

Councillors may accept the following gifts and benefits that are considered exempt from this policy.

- promotional products including, but not limited to, pens, diaries, mugs, ties, show bags that are given as part of a conference, seminar, workshop considered an official function/event attended as part of the performance of their role.
- light meals or refreshments provided as part of a conference, seminar or workshop considered an official function/event attended as part of the performance of their role.
- door and raffle prizes at functions or conferences where the individual has personally paid for their attendance or respectively where the individual has paid for the raffle ticket.
- simple gestures of appreciation from residents such as cut flowers, home-made or home-grown goods.

If any doubt exists about exempt gifts, a Gift Declaration Form can be completed and submitted to the Governance Unit.

5.7 THE G.I.F.T TEST

The following table 'The Gift Test' was developed by the Victorian State Services Commission and is an example of what to think about when deciding to accept or decline a gift, benefit or hospitality.

G	Giver	Who is providing the gift, benefit or hospitality and what is their relationship to me? Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?
I	Influence	Are they seeking to gain an advantage or influence my decision or actions? Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy, a token of appreciation or highly valuable? Does its timing coincide with a decision I am about to make?
F	Favour	Are they seeking a favour in return for the gift, benefit or hospitality? Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?
T	Trust	Would accepting the gift, benefit or hospitality diminish public trust? How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?

A flowchart has also been provided in Appendix 1 that provides a consideration process to follow when offered a gift, benefit or hospitality.

5.8 RECORDING GIFTS, BENEFITS AND HOSPITALITY

Any gift, benefit and hospitality, regardless of value, which is offered by an external person or organisation, whether accepted or declined, must be reported to the Governance Unit using the Gift Declaration Form (Appendix 2) which is also available on Council's Intranet or from the Governance Unit.

A Gift Declaration Form must be completed and returned to the Governance Unit within 14 days of the offering of the gift, benefit or hospitality whether it was received or declined.

In line with Council's Public Transparency Policy, a copy of the Councillor Gifts Register is available for inspection upon request.

5.9 CORPORATE GIFTS

In some cases, it is appropriate for Councillors to provide corporate gifts to individuals or organisations on behalf of Council. A limited range of inexpensive corporate gifts is available through the Executive Assistant to the Mayor and Councillors who receives approval for the management of these gifts from the Manager Governance.

6. RESPONSE TO THE OVERARCHING GOVERNANCE PRINCIPLES OF THE LOCAL GOVERNMENT ACT 2020

Section 9 of the *Local Government Act 2020* (the Act) states that Council must, in the performance of its role, give effect to the overarching governance principles. This policy gives effect to these principles by:

- complying with the relevant law (section 9(a) of the Act);
- giving priority to achieving the best outcomes for the municipality, including future generations (section 9b of the Act). This policy ensures that in relation to the receipt of gifts, Councillors are compliant, act with integrity and act in the best interests of Council and the community;
- considering the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks (section 9(c) of the Act). While this policy has no impact on the economic and social sustainability of the municipal district, it has considered climate change and sustainability in its preparation (see section 9 of this policy);
- pursuing innovation and continuous improvement (section 9(e) of the Act). This policy has provision for evaluation, monitoring and review (see section 11 of this policy);
- collaborating with other councils, governments and statutory bodies (section 9(f) of the Act). A number of other council and best practice model policies were consulted in developing this policy along with state integrity body reviews and reports as referenced in section 12 of this policy; and
- ensuring the transparency of Council decisions, actions and information through the enactment of this policy (section 9(i) of the Act).

In giving effect to the overarching governance principles, a Council must also take into account the community engagement principles (section 56 of the Act), the public transparency principles (section 58 of the Act), the strategic planning principles (section 89 of the Act), the financial management principles (section 101 of the Act), and the service performance principles (section 106 of the Act).

While it is crucial that Council decisions are transparent and open to scrutiny, there is no specific legislative requirement for this particular internal and administrative policy to be subjected to a community engagement process. This policy operates in conjunction with Council's Public Transparency Policy and Conflicts of Interest Policy. It has no financial impact on Council and the resources required to manage and administer it are allocated from existing resource budgets.

7. VICTORIAN HUMAN RIGHTS AND RESPONSIBILITIES CHARTER 2006 – COMPATIBILITY STATEMENT

The *Victorian Charter of Human Rights and Responsibilities Act 2006* has been considered in relation to whether any human right under the Charter is restricted or interfered with in any way by enacting any part of this policy. It is considered that this policy is consistent with the rights outlined in the Charter.

8. RESPONSE TO THE GENDER EQUALITY ACT 2020

The *Gender Equality Act 2020* has been considered in the preparation of this policy. No particular groups that are based on gender are considered to be impacted either positively or negatively by this policy.

9. CONSIDERATION OF CLIMATE CHANGE AND SUSTAINABILITY

Council's Declaration on a Climate and Ecological Emergency, Council's Climate Change Emergency Strategy 2020-2030 and the requirements of the *Local Government Act 2020* in relation to the overarching governance principle on climate change and sustainability have been considered in the preparation of this policy but are not relevant to its contents. The policy is purely administrative in nature and Councillors have been provided access to electronic formats of both the policy and the Gift Declaration Form so that hard copies are not required.

10. RESPONSIBILITIES

10.1 DISCLOSURE OBLIGATIONS OF COUNCILLORS

The *Local Government Act 2020* dictates the disclosure requirements for Councillors in relation to the receipt of any gifts, benefits and/or hospitality as follows:

- a Councillor must disclose any gift valued at \$500 or more in their biannual personal interest return - regulation 9 of the *Local Government (Governance and Integrity Regulations 2020)*;
- a Councillor who has a conflict of interest as a result of receiving a gift or gifts from a person must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules – section 128 of the *Local Government Act 2020* and this policy;
- a Councillor must include any gifts above the gift disclosure threshold that are election campaign donations in an election campaign donation return (unless the gift was made in a private capacity for personal use) – section 306 of the *Local Government Act 2020*;
- a Councillor must complete a Gift Declaration Form (Appendix 2) for any gift offered, whether it was accepted or declined, for inclusion in the Councillor Gifts Register – section 138 of the *Local Government Act 2020*.

10.2 COUNCILLOR GIFTS REGISTER

The Governance Unit will maintain the Councillor Gifts Register for all gift declarations made by Councillors. Governance will alert any Councillor when any aggregate amounts become close to the gift disclosure threshold.

All gifts accepted or declined will be included in the Register. The Register will also contain:

- a description of the gift and its estimated value;
- the name of the gift giver;
- what was done with the gift (was it retained by the Councillor, provided to Council, declined);
- gift offers from suppliers (irregular approaches from suppliers) when advised.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice council business transactions or breach privacy considerations.

11. REPORTING, MONITORING AND REVIEW

This policy incorporates all the recommendations from the Independent Broad-Based Anti-Corruption Commission's (IBAC's) *Local Government Integrity Frameworks Review, March 2019*. The recommendations of this review were further endorsed by IBAC's *Managing Corruption Risks Associated with Conflicts of Interest in the Victorian Public Sector, October 2019*.

A self-assessment in line with these reviews (or any other further relevant reviews undertaken by integrity bodies) will be undertaken two years after policy adoption and reported to the Audit and Risk Committee.

This policy is also consistent with the Department of Environment, Land, Water and Planning *Model Policy on Gifts, Benefits and Hospitality, June 2019*.

The Councillor Gifts Register will be monitored by the Manager Governance to identify any systemic patterns of gifts offered and accepted and will ensure that Councillors are regularly made aware of their obligations under this policy through awareness activities and reporting mechanisms. The Councillor Gifts Register will be reported quarterly to the Mayor and Chief Executive Officer and annually to the Audit and Risk Committee.

12. REFERENCES AND RELATED DOCUMENTS

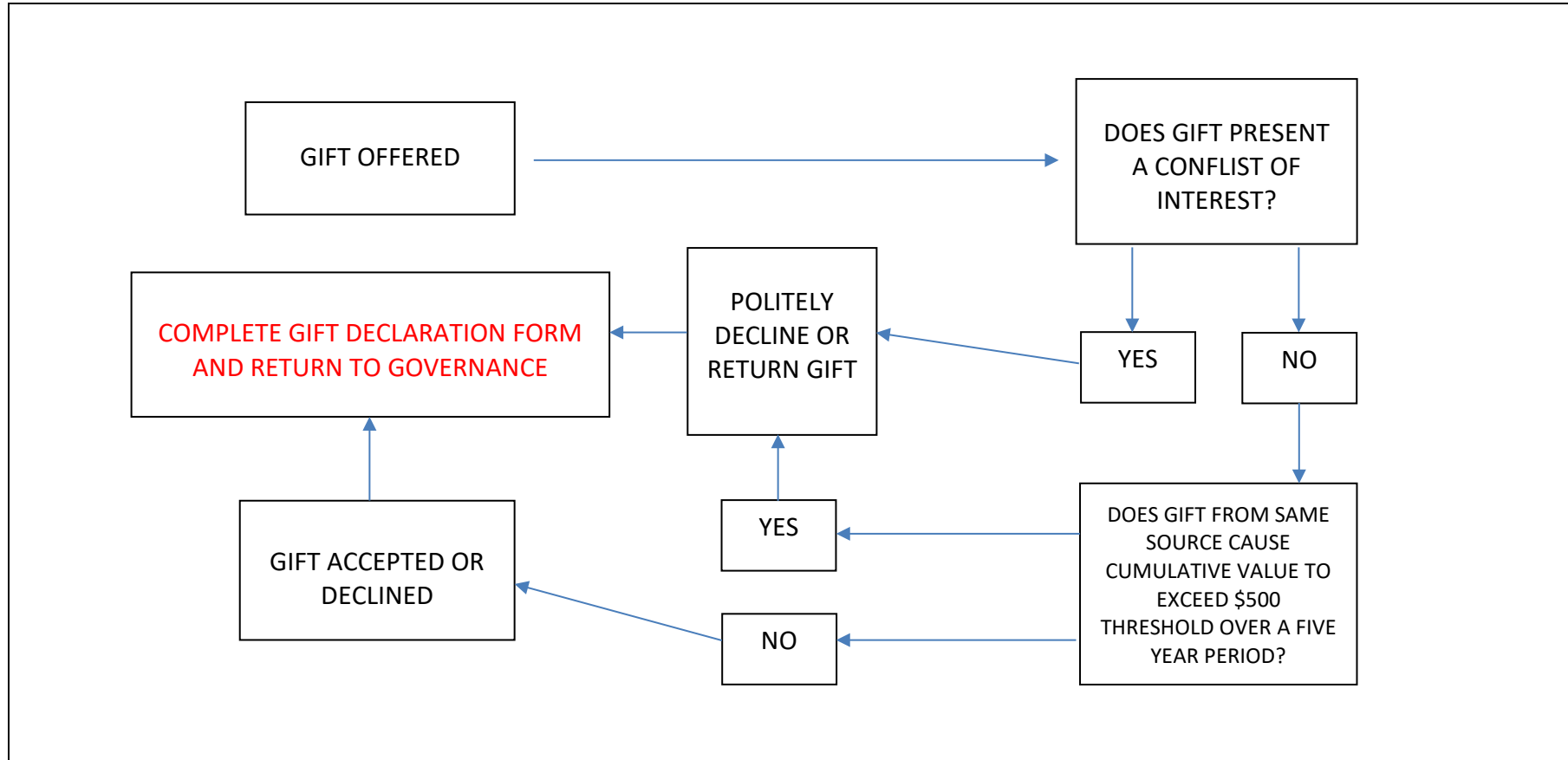
Legislation and References

- *Charter of Human Rights and Responsibilities Act 2006*
- *Crimes Act 1958*
- *Gender Equity Act 2020*
- GIFT and HOST Tests – Victorian Public Sector Commission, 2016
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- Local Government Integrity Frameworks Review – Independent Broad-Based Anti-Corruption Commission, March 2019
- *Managing Corruption Risks Associated with Conflicts of Interest in the Victorian Public Sector – Independent Broad-Based Anti-Corruption Commission, October 2019*
- *Model Policies for Agencies and Boards – Gifts, Benefits and Hospitality – Department of Environment, Land, Water and Planning, June 2019*
- *Privacy and Data Protection Act 2014*

Related Council and Other Policies, Procedures, Strategies, Protocols, Guidelines

- Greater Dandenong City Council Conflicts of Interest Policy
- Greater Dandenong City Council Expenses, Support and Accountability Policy
- Greater Dandenong City Council Councillor Code of Conduct
- Greater Dandenong City Council Fraud and Corruption Prevention and Control Policy and Procedure
- Greater Dandenong City Council Privacy and Personal Information Policy
- Greater Dandenong City Council Procurement Policy
- Greater Dandenong City Council Public Interest Disclosures Procedure
- Greater Dandenong City Council Public Transparency Policy

13. APPENDIX 1 – FLOW CHART FOR CONSIDERING AN OFFERED GIFT



14. APPENDIX 2 – GIFT DECLARATION FORM



GIFT DECLARATION FORM (COUNCILLORS)

The information contained on this form will be included in the Councillor Gifts Register. The Register is available for public inspection upon request.

GIFT DETAILS

Name of receiver: _____

Date gift, benefit or hospitality (gift) offered: _____

Date gift received (if different): _____

Name of individual or organisations offering gift:

Nature of gift - please provide a brief description:

Approximate value of gift (best estimate): _____

DISPOSAL OF GIFT

Please advise if the gift was accepted, accepted and then returned, accepted and donated to a person or an organisation, declined or provided to Council for its archives - please be specific.

Completed by: _____

Signature: _____

Date received by Governance: _____