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NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Policy Name: Gifts, Benefits & Donations Policy
 Policy Owner: People & Culture Business Partner
 Originated Date: June 2015 – Min. No: 155/15
 Amended Date/s: August 2018
 Review Date: This Policy should be reviewed as required, but at least every four years following the conduct of Local Government elections.
 Applicable Legislation: *Local Government Act 1993 (TAS)*
Local Government (General) Regulations 2015
 Publication Sources: 15/013 - Human Resources Policies & Procedures
 02/03/01/01 – Human Resources – Employee
 Infonet / Documents / HR – Policies
 Works Depot, Childcare Facility & Pool Locations

1. AUTHORITY & APPLICATION:

Commented [SD1]: To ensure consistency with HR Policy suite

This Policy should be considered in the context of the following policies and procedures:

- Employee Code of Conduct
- Issue Resolution
- Performance Management
- Workplace Behaviour

Definitions

Benefit – a non-tangible item which is believed to be of value to the receiver and/or which may constitute preferential treatment for the receiver.

Bribe – a gift or benefit given specifically for the purpose of winning favours or to influence the decision or behaviour of a Council Official to benefit someone or something.

Conflict of Interest – any situation in which an individual or corporation (either private or government) is in a position to exploit a professional or Official’s capacity in some way for their personal or corporate benefit.

Council - Northern Midlands Council.

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Council Official – a person who carries out work in any capacity for Council, including: Mayor, Councillors, Council employees (including employees engaged through an employment agency, apprentices and trainees), Council Committee members, Volunteers and Contractors and Sub-Contractors.

Cumulative Gift – a series of gifts of nominal value from the same person or organisation over a specified period of time, which may have an aggregate value that is significant.

Employee - a person who carries out work for Council as an employee of Council.

General Manager - the General Manager of Council as appointed under section 61 of the *Local Government Act 1993 (TAS)*.

Gift – usually a tangible item provided at no charge. Gifts may include but are not limited to items such as: cash, property (real or otherwise), goods and services, alcohol, clothes, products, invitations to social functions and tickets to sporting, theatre or music events.

Gifts, Benefits and Donations Declaration Form – a form to be completed, when a Council Official receives a gift, benefit or donation of a non-token nature, equal to or above the nominal limit or receives a series of token gifts or benefits (cumulative gifts).

Gifts, Benefits and Donations Register – a register maintained by Council which contains a list of all declared gifts, benefits and donations.

Gift of Gratitude - a gift offered to an individual or department in appreciation of performing specific tasks or for exemplary performance of duties. Gifts given to employees at Official functions may be considered an example of gifts of gratitude.

Gift of Influence – a gift that is given with the intention of the recipient receiving favourable treatment in the future.

Industrial Instrument – an instrument recognised under the *Fair Work Act 2009* that has legal application with respect to minimum entitlements to those employees covered within its scope (e.g. Award or Enterprise Agreement).

Manager/Supervisor - a person at the workplace who is appointed to a position that has management/supervisory responsibilities for others or their appropriately nominated or authorised delegate.

Nominal Value – is the monetary limit of the value of gifts or benefits that may be accepted (i.e. total value of gift or benefit received). A gift or benefit is of nominal value when it has no significant or lasting value.

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Non-Token – items that are of a more individual nature, with a value equal to or above the nominal value limit.

Policy - this Policy including the Authority and Application.

Public Perception – the perception of a fair-minded person in possession of the facts.

Significant Value – a gift or benefit that has a value above the nominal value limit.

Token – often mass produced (i.e. pens, calendars, ties or items with a company logo on them), offered in business situations to individuals. Usually have a value under the nominal value limit.

Workplace - a place where work is carried out for Council.

Training

Council will provide all persons covered by this Policy with the appropriate training, so they are made aware of their responsibilities and obligations under the Policy.

Amendment

Council retains the sole discretion to reasonably vary, terminate or replace this Policy from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.

Interpretation of Policy

The singular includes the plural and vice versa.

A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacement or re-enactments of any of them.

A reference to a Policy or procedure means any approved policies or procedures of Council unless otherwise stated.

'Including' and similar expressions are not words of limitation.

A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

Examples used in this Policy are for illustrative purposes only and are not intended to be exhaustive.

Unless expressly provided for, this Policy is not in any way incorporated as part of any enterprise agreement and does not form part of any employee's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Policy to the extent of any inconsistency.

It is not intended that this Policy impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of applicable laws. Any obligation, direction, instruction or responsibility imposed by this Policy must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant applicable laws, operational and personal circumstances.

Questions relating to the interpretation, application or enforcement of this Policy should be directed to the person's manager/supervisor or the People & Culture Business Partner.

Reporting of Breaches

Persons covered under the paragraph 'Coverage' must reasonably report breaches of this Policy.

For breaches by:

- A Council Official (other than the General Manager) the report must go to the reporting person's applicable manager/supervisor
- the General Manager the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor) and

as otherwise required or permitted by applicable laws.

Breach of this Policy

Persons covered under the paragraph 'Coverage' who breach this Policy may (as is appropriate) be subject to appropriate disciplinary action in accordance with the Disciplinary Policy and Procedure or removal from the workplace or termination of services (contractors and sub-contractors).

2. PURPOSE:

The purpose of this Policy is to provide a framework and guidelines for Council Officials when in receipt of gifts, benefits or donations during the course of their position at the Northern

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Midlands Council.

Commented [SD2]: New text

This Policy will also outline the obligations and responsibilities of Council Officials when dealing with offers of gifts, benefits or donations and assist Council Officials in making an appropriate judgement in relation to the same. This is to minimise Council Officials being placed in a situation where they may feel vulnerable or where community confidence in the impartiality and integrity of Council may be in questioned.

3. COVERAGE:

This Policy applies to all gifts, benefits and donations offered to or received by Council Officials in their role as officers of the Council.

4. GUIDELINES:

In a private context gifts, benefits and donations are usually unsolicited and when given, are meant to convey gratitude in the donor. Gifts given in this context are not the focus of this Policy.

Commented [SD3]: New text

Gifts and benefits may also be offered to individuals during the course of business relationships. Such gifts and benefits are often given for commercial purposes and the receiver may feel obligated to accept the gift or benefit. Gifts and benefits given in the course of business relationships is the focus of this Policy.

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General

Council Officials must at all times and in all circumstances be seen to be fair, impartial and unbiased.

Council Officials must not take advantage of their local government position to solicit gifts or benefits or to secure an unreasonable personal profit or advantage.

People doing business with the Council should be encouraged to understand that they do not need to give gifts or benefits to Council Officials to receive high quality service.

From time to time Council Officials may be offered gifts or benefits. In some circumstances gifts and benefits may be accepted. Token gifts of nominal value may generally be received. However, non – token gifts of a significant value, as a general rule, should not be accepted.

Council Officials should at all times be aware of the broader picture in which an offer of a gift, benefit or donation is being made. For example, Council Officials should consider whether the donor is involved in or may be seeking to enter into a business relationship with Council.

Commented [SD5]: New text

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Council Officials must avoid situations that suggest that a person or body, through the provision of gifts, benefits or donations is attempting to secure favourable treatment from Council.

When deciding whether to accept or decline a gift or benefit, consideration should be given to both the value of the gift or benefit and also the intention behind the giving of the gift or benefit being offered.

Acceptable Gifts and Benefits & Token Nominal Value

Gifts or benefits of a token nature at or below nominal value may generally be accepted by Council Officials without disclosing details to a manager/supervisor, General Manager or Mayor and without recording the details of the gift or benefit on the Gifts, Benefits and Donations Declaration Form or Register.

That said, Council Officials who receive more than the specified number of token gifts of a nominal value from the same person or organisation, in a specified period must disclose this in the Gifts, Benefits and Donations Register.

Gifts or benefits of a token nature that do not create the appearance of a conflict of interest include:

- Items with a company logo on them, ties, scarves, coasters, diaries, chocolates, flowers
- Books given to individuals in recognition of exceptional work done
- Gifts of single bottles of reasonably priced alcohol in recognition of exceptional work done
- Free or subsidised meals of a modest nature and/or beverages provided infrequently (and or reciprocally) that have been arranged for or in connection with the discussion of official business
- Free meals of a modest nature and or beverages provided to Council Officials who formally represent Council at work related events
- Invitations to approved social functions organised by groups such as Council Committees and community organisations

For the purpose of this Policy the current nominal value limit is \$50.00.

Commented [SD6]: Included in the body of text rather than in a schedule at the end

Council Officials who receive more than three nominal gifts of a token nature from the same person or organisation, in a six-month period must disclose this in the Gifts, Benefits and Donations Register.

Commented [SD7]: New text

If a Council Official has any doubt if a gift or benefit is token or of nominal value they should discuss it with their manager/supervisor, the General Manager or Mayor.

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Non-Acceptable Gifts and Benefits

Accepting gifts of money is prohibited.

Council Officials should generally not accept gifts or benefits that appear to be non-token in nature or more than the nominal value of \$50.00.

Some examples of gifts or benefits of a non-token nature include:

- Free or discounted travel
- Use of holiday homes
- Tickets to major sporting events
- Corporate hospitality at a corporate facility or sporting venue
- Free training excursions
- Access to confidential information
- Discounted products for personal use
- Goods and services provided via a determination in a Will

At times a gift of a non-token nature may be given from one authority to another. Such gifts are often provided to a host authority. These gifts may be given as an expression of gratitude without obligation on the receiver to respond. The gratitude usually extends to the work of several people in the authority and therefore the gift is considered to be for the authority, not a particular individual.

If a gift or benefit of a non-token nature or above the nominal value is offered and cannot reasonably be refused (as this action may cause embarrassment or offence), the gift or benefit must be declared on a Gifts, Benefits and Donations Declaration Form, as well as recorded on Council's Gift, Benefits & Donations Register.

Commented [SD8]: Added new text

If a Council Official refuses a gift or benefit because they believe that the gift was a deliberate attempt to receive 'special treatment', then such instances are to be reported to a manager/supervisor, the General Manager or Mayor.

Actual or Perceived effect of the Gift or Benefit

Where it is suspected that a gift or benefit has been offered for the purpose of influencing the behaviour of someone acting in their official capacity, the gift or benefit must be declined, and the matter should be reported immediately to the relevant manager/supervisor, General Manager or Mayor.

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Bribes

Council Officials must not offer or seek a bribe. A person offered a bribe should refuse it and report the incident as soon as possible to their manager/supervisor, General Manager or the Mayor. Council will take the appropriate steps to report the matter to the Police.

Receiving a bribe is an offence under both common law and Tasmanian Legislation.

Council Officials must take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits of a non-token nature or gifts or benefits above the nominal value. For the purpose of this Policy, immediate family members include parents, spouses, children and siblings.

5. RECORDS – GIFTS, BENEFITS AND DONATIONS REGISTER:

Council Officials, who receive more than the specified number of token gifts or benefits near the nominal value limit from the same person or organisation, (cumulative gift) must disclose this on a Gifts, Benefits and Donations Declaration Form and also on the same named Register.

If an Official of the Council receives a non-token gift, benefit or donation in circumstances where it cannot reasonably be refused or returned, the receipt of the gift, benefit or donation should be disclosed, and the details recorded on the Gifts, Benefits and Donations Declaration Form and in the Gifts, Benefits and Donations Register. Whilst it is not a requirement for the Register to be made public, for transparency reasons, Council has elected to make this available for public inspection as and when requested.

Commented [SD9]: New text in line with the regulations released August 2018

The content of the Register will be monitored and reviewed by the General Manager on a quarterly basis.

6. DISPOSAL OF GIFTS:

In some instances, gifts are accepted by Council Officials as it may not be appropriate to refuse the same. For example, it is protocol and an accepted practice for some nationalities and religions to offer gifts. Similarly, a gift or benefit could not be reasonably refused where it was likely to cause embarrassment or offence to the person offering the gift. The other option is when a gift is received anonymously, without any return address. Further, if a gift, benefit or donation of significant value is provided to a Council Official through a Will, where the relationship between the giver and recipient was essentially a Council related business relationship.

Commented [SD10]: Reworded and added the part about some nationalities and religions

In these cases, a manager/supervisor, the General Manager or Mayor will determine whether

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



a gift or benefit of a non-token nature should be disposed of. The options for disposal of such gifts, benefits of donations include:

- Surrendering the gift to Council for retention
- Distributing the gift or benefit amongst a selection of Council officials - where a reasonable person would agree that the allocation was appropriate
- Donating the gift to an appropriate charity.

Attachment 1: Gifts, Benefits & Donations Declaration Form

Council Official (Recipient) Name:	
Department (if applicable):	
Date gift, benefit or donation received:	
Description of the gift, benefit or donation:	
Estimated monetary value of the gift, benefit or donation:	
Name of the donor:	
Donor's organisational name (if known):	
Where was the gift, benefit or donation offered? (i.e. at a function, over the counter, through the mail, at a meeting):	
Recipients relationship to the donor:	
Should the gift/benefit/donation be accepted or declined:	
If the gift/benefit/donation is accepted, should it be retained by the Council Official or by the organisation:	
If the gift/benefit/donation is retained by the organisation should it be disposed of:	
Council Official's Signature:	
Printed name of Council Official:	
Date:	
Manager and/or General Manager comments:	
Manager and/or General Manager's Name and Signature:	
Office Use Only	
Date details recorded on Gifts, Benefits & Donations Register:	
Office Official's Signature	