

1.0 AUTHORITY

Local Government Act 2020, section 138.
Local Government (Governance and Integrity) Regulations 2020.

2.0 INTENT

The purpose of this policy is to achieve compliance with section 138 of the *Local Government Act 2020* ensuring transparency and the principles of good governance and accountability are practiced by Councillors when responding to offers of gifts, benefits and hospitality.

The Policy is to support Councillors to avoid conflicts of interest and maintain high levels of integrity and public trust.

3.0 SCOPE

This policy applies to all Councillors of the Mornington Peninsula Shire Council.

4.0 POLICY STATEMENT

4.1 Overarching Principles

The Mornington Peninsula Shire Council (the Council) is committed to and will uphold the following principles in applying this policy:

4.1.1 Impartiality - Councillors have a duty to place the public interest above their private interests when carrying out their official functions. They will not accept gifts, benefits or hospitality that could raise a reasonable perception of, or actual, bias or preferential treatment. Councillors do not accept offers from those about whom they are likely to make business decisions.

4.1.2 Accountability - Councillors are accountable for:

- declaring all non-token offers of gifts, benefits and hospitality;
- declining non-token offers of gifts, benefits and hospitality, or where an exception applies under this policy, seeking approval to accept the offer; and
- the responsible provision of gifts, benefits and hospitality.

4.1.3 Integrity: Councillors strive to earn and sustain public trust through providing or responding to offers of gifts, benefits and hospitality in a manner that is consistent with community expectations. Councillors will refuse any offer that may lead to an actual, perceived or potential conflict of interest.

4.1.4 Risk-based approach: The Council, through its policies, processes and audit committee, will ensure gifts, benefits and hospitality risks are appropriately assessed and managed.

4.2 Consistent with the Minimum Accountabilities

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The Victorian Public Sector Commission has set binding minimum accountabilities for the appropriate management of gifts, benefits and hospitality. The Council's policy is also consistent with the Department of Environment, Land, Water and Planning's (DWELP) published model policy on Gifts, benefits and hospitality – responding to gift offers.

4.2 Legislation

Local Government Act 2020

Definitions

disposition of property means any conveyance, transfer, assignment, settlement, delivery, payment, gift or other alienation of property including—

- a) the allotment of shares in a company;
- b) the creation of a trust in property;
- c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property;
- e) the exercise by a person of a general power of appointment of property in favour of any other person;
- f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

gift means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- 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;

gift disclosure threshold means \$500 or a higher amount or value prescribed by the regulations;

Section 127 General Conflict of Interest

- (1) Subject to Section 129, a relevant person has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.

Section 128 Material Conflict of interest

- (1) Subject to section 129, a relevant person has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. Section 128 states an affected person includes a person from whom the relevant person has received a disclosable gift.

A disclosable gift means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of this subsection, the prescribed amount, received from a person in the 5 years preceding the decision on the matter –



(a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or

(b) if the gift was, or gifts were or will be, required to be disclosed as an election campaign donation-

But does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

Section 135 Summary of Personal Interests

The Chief Executive Officer must prepare a summary of the personal interests information disclosed. The summary must include:

- a) Town or suburb, but not the address or street number of the land that is the place of residence of a person as disclosed in the personal interests return*
- b) Matters prescribed by the regulations*
- c) Exclude matters required by the regulations*
- d) Be prepared in accordance with the regulations.*

Local Government (Governance and Integrity) Regulations 2020

A personal interests return must include the details of any gift received by the specified person, the value of which equals or exceeds \$500 or the threshold amount fixed by the Secretary, including gifts in the form of goods or services and multiple gifts that together equal or exceed that amount, which was received at any time since the specified person lodged the preceding initial or biannual personal interests return including:

- A description of the gift;*
- The monetary value of the gift;*
- The name of the person who gave the gift*
- If the gift was given on behalf of another person or body, the name of that person or body.*

Standards of Conduct

- (1) Treatment of others*
- (2) Performing the role of Councillor*
- (3) Compliance with Good Governance Measures*
- (4) Councillor must not discredit or mislead Council or public*
- (5) Standards do not limit robust debate*

4.3 Gifts, benefits and hospitality

Gifts, benefits and hospitality should not be accepted where possible.

Councillors should not solicit, demand or request gifts, including business card raffles at events or receive any personal benefit by virtue of their position.



When deciding whether to accept an offer, Councillors should first consider if the offer could prejudicially influence or be perceived to influence them in the performance of their public duties or lead to reputational damage. The more valuable the offer, the more likely that a conflict of interest or reputational risk exists.

To avoid a conflict of interest, acceptance of any gifts, benefits or hospitality in these situations must be declined.

If Councillors attend functions or events in a personal capacity, it should be clearly stated their attendance is not in an official capacity. No identification badge should be worn that indicates the person is a Councillor. Councillors are to ensure that attendance at private functions does not have potential implications for Council's reputation or image or cause an actual or perceived conflict of interest. There is no requirement to declare this in the gift register unless the gift could be perceived to influence the Councillor in their public duties.

In all cases, Councillors must record the details of gifts, benefits and hospitality over \$50 in the Gift Register maintained by the Governance Unit whether they are accepted or declined (other than declined token gifts). Councillors may record gifts, benefits and hospitality valued at \$50 or less in the Gift Register.

The business reason for accepting the gift, benefit or hospitality must be recorded in the Gift Register with sufficient detail to link the acceptance to the work of the Councillor and the benefit to the Council.

4.3.1 The GIFT Test

The GIFT test (developed by the Victorian State Services Commission) is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

| | | |
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| G | Giver | Who is providing the gift, benefit or hospitality and what is their relationship to me? Does my role require me to select suppliers, 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 decisions or actions? Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or a valuable non-token offer? 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? |



| | | |
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| | | How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think? |
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4.4 Nominal Gifts

Gifts of nominal value may be accepted by Councillors provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift. The following should be used as a guide for Councillors in determining whether to accept nominal gifts. Such gifts may be accepted only when the following have been considered:

- such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- acceptance would not cause any potential, perceived or actual compromise or conflict of interest;
- the gift does not have a significant monetary value (as a guide, less than \$50); or
- the gift is not offered on a regular basis such that it would lead to a perception of obligation or preferential service.

Where gifts of a nominal value are offered often by the same person or organisation, the cumulative value of the items or the perception that they may influence the recipient, may result in the items becoming no longer of a nominal value.

4.5 Official Gifts

Individuals may be involved in social, cultural or community events where official gifts are presented or exchanged. In such circumstances, where it would appear not to be polite or appropriate to decline the offer, it is reasonable for official representatives of Council to accept official gifts on behalf of Council.

All official gifts received are to be reported to the Mayor and recorded in the Gift Register.

The gift will be considered the property of Council, and where suitable, the gift will be displayed in an appropriate and secure location for public viewing.

Details of all official gifts are to be placed in Council's Asset Register.

4.6 Gifts of Appreciation

Individuals must not seek a gift or benefit in appreciation of services rendered. Acceptable alternatives might include an email, letter or card of thanks as this is less likely to result in a situation that compromises either party.

Where an individual accepts a gift of appreciation it should not exceed the nominal value. Gifts of appreciation that would generally be considered of nominal value might include a bouquet of flowers, a box of chocolates or a bottle of reasonably priced alcohol.

4.7 Monetary gifts

The offer of monetary gifts (of any amount) must never be accepted.

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4.8 Hospitality

Councillors, in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events.

Where hospitality provides an opportunity to undertake business of a common purpose, it may be appropriate to accept such invitations.

Reasonable hospitality received by the person at an event or function the person attended in an official capacity as a Councillor is not considered a conflict of interest under the *Local Government Act 2020*. This does not negate the need for that hospitality to be placed in Council's Gift Register if over the nominal value.

Official capacity is that the Mayor or Councillor receives the invitation in the name of Mayor [name] or Councillor [name] and the invitation is received by the Council Office or via the Councillor's official email.

In some circumstances a Councillor may attend the event if the Councillor either fully reimburses the organisation for the full cost of the hospitality or if the Councillor personally pays for their own attendance.

If acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor, or could be perceived as a conflict of interest, the offer of hospitality must be declined.

Details of hospitality received that is valued at more than \$50 must be recorded in the Gift Register.

4.9 Provision of gifts, benefits and hospitality

Gifts, benefits and hospitality may be provided to welcome guests, facilitate the development of business relationships, further the Council's business outcomes and to celebrate achievements.

When deciding whether to provide gifts, benefits or hospitality or the type of gift, benefit or hospitality to provide, Councillors must ensure:

- any gift, benefits or hospitality is provided for a business reason in that it furthers the conduct of official business or other legitimate Council goals;
- any costs are proportionate to the benefits obtained for the Council and would be considered reasonable in terms of community expectations; and
- it does not raise an actual or perceived conflict of interest.

Any provision of gifts, benefits and hospitality must be approved in writing by the Mayor or the Chief Executive Officer.

4.10 Disposal of Gifts

If a gift, benefit or hospitality is accepted, a Councillor may choose to hand it back to Council. The gift then becomes the property of Council and the Chief Executive Officer will dispose of it in line with the relevant policy having regard to the item type.



4.11 Gift Register

The Governance Unit maintains the Gifts Register for all gift declarations. Gifts accepted or declined over \$50 will be included in the register. The Register contains:

- 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, handed to the council, etc.);
- gifts declined; and
- gifts offers from suppliers (irregular approaches from suppliers).

In accordance with Council's Public Transparency Policy, the Gifts Register will be available on Council's website.

The Head of Governance & Legal is to monitor the Gifts Register and report 6 monthly to the Executive Team on any identified systematic pattern of gifts offered and accepted. A report is to be presented annually to the Audit & Risk Committee.

4.12 Breaches of this Policy

As stipulated in the Councillor Code of Conduct, Councillors must ensure they comply with legislative policies adopted by Council.

Should a breach of this policy be identified, or a failure to avoid, wherever possible, or identify, declare and manage a conflict of interest related to gifts, benefits and hospitality, further action consistent with the Councillor Code of Conduct may be taken.

5.0 ASSOCIATED DOCUMENTS

- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- Public Transparency Policy
- *Councillor Code of Conduct 2017(to be updated to 2021 should the new draft Code of Conduct be adopted)*
- Councillor Gift Declaration Form
- Councillor Gift Register

6.0 DEFINITIONS

Act means *Local Government Act 2020*.

Benefit means something which is believed to be of value to the receiver, for example, access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services or vacation trips.



Conflict of interest

Conflicts may be:

Actual: There is a real conflict between a Councillor's public duties and private interests.

Potential: A Councillor has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.

Perceived: The public or a third party could reasonably form the view that a Councillor's private interests could improperly influence their decisions or actions, now or in the future.

| | |
|-------------------------------|--|
| Gift | Is an item, travel, hospitality, entertainment or other token of appreciation to express thanks such as flowers, chocolates, alcohol or services such as painting and repairs. |
| Hospitality | Is a meal or service which is offered and is not viewed as being connected to official Council business or part of a meal accepted at a conference or seminar. |
| Monetary Gifts | Defined as cash, cheques, money orders, traveller's cheques, direct deposits, gift vouchers or items which can easily be converted to cash. |
| Nominal Value | Is an item with a face or estimated value of less than \$50. |
| Official Gifts | Are gifts presented to Councillors and include gifts received from organisation or corporations that are bestowing a corporate gift (plaques, plates, vases, trophies, artwork) or souvenirs. |
| Reasonable Hospitality | A meal or service provided by a non-for-profit organisation to a Councillor who attends a function or event in an official capacity. |
| Sponsorship | Are items which are identified as part of a formal written sponsorship agreement between the Mornington Peninsula Shire Council and a third party. |
| Token Gift | Any gifts of nominal value and infrequently received. These gifts may include low-priced promotional items, souvenirs or corporate gifts such as pens, mugs, single bottles of reasonably priced alcohol, free or subsidised meals of a modest nature, invitations to appropriate corporate or social functions organised by community groups or organisations, door prizes at conferences, trade shows etc. |

7.0 POLICY OWNER

The Policy is endorsed and approved by the Council. The Head of Governance and Legal is responsible for overseeing the application and review of this Councillor Gift Policy.

8.0 DOCUMENT CONTROLS

Council will review this policy biannually or in line with legislative updates.

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This declaration form supports the Morrington Peninsula Shire's Councillor Gifts, Benefits and Hospitality Policy. Councillors must declare all gifts, benefits and hospitality (whether accepted or declined) within 14 days of the offer being made.

Fields marked in green will be published on the Council's public register.

| Individual to complete | |
|--|--|
| 1. Declaration date | |
| 2. Name of Councillor who received the offer | |
| Details of the gift, benefit or hospitality | |
| 3. Date offered | |
| 4. Describe the gift, benefit or hospitality offered | |
| 5. Estimated or actual value | |
| 6. Name of person and position making the offer | |
| 7. Name and type of organisation making the offer Name published only if the offer is accepted Type published instead of name of organisation for declined offers | |
| 8. Is the person or organisation making the offer a business associate of the organisation (Yes / No)? | |
| 9. If yes , describe the relationship between them and the organisation If no , describe the relationship between you and the person or organisation making the offer; for example, a personal relationship | |
| 10. Would accepting the offer create an actual, potential or perceived conflict of interest (Yes / No)? If yes , then the offer must be declined in accordance with the minimum accountabilities | |



| Individual to complete | |
|--|------------------------------|
| <p>11. Would accepting the offer bring you, the organisation or the public sector into disrepute (Yes / No)?</p> <p>If yes, then the offer must be declined in accordance with the minimum accountabilities</p> | |
| <p>12. Is there a legitimate business benefit to the organisation, public sector or State for accepting the offer? (Yes / No)</p> <p>For example:</p> <ul style="list-style-type: none">a) Was it offered during the course of your official duties?b) Does it relate to your official responsibilities?c) Does it have a benefit to the organisation, public sector or State? <p>If no, then the offer must be declined</p> <p>If yes, then the business benefit must be detailed, in accordance with the minimum accountabilities</p> | |
| <p>13. Is the offer an official or ceremonial gift provided when conducting business with official delegates or representatives from:</p> <ul style="list-style-type: none">a) another organisation;b) the community; orc) a foreign government? (Yes / No) <p>If yes, please provide details</p> | |
| <p>14. I accepted the offer YES / NO</p> <p>Please circle answer</p> | <p>Signature</p> <p>Date</p> |
| <p>15. If yes, how was the gift disposed of:</p> <ul style="list-style-type: none">a) Kept by recipientb) Handed to the Chief Executive Officerc) Refusedd) Donated to a third party | |

This form is to be forwarded to Governance at governanceteam@mornpen.vic.gov.au.