



**Burwood**  
Inc.1874

## **CONFLICT OF INTEREST POLICY**

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Purpose .....	3
Scope .....	3
What is a Conflict of Interest? .....	3
What is a pecuniary interest? .....	3
(Section 442 Local Government Act).....	3
Who has a pecuniary interest?.....	3
(Section 443 Local Government Act).....	3
What is a non-pecuniary conflict of interest? .....	4
Checklist for identifying a Conflict of Interest.....	4
What is the situation?.....	5
What perceptions could others have? .....	5
Should I seek help? .....	6
Club Membership.....	6
Have I recognised the type of interest? .....	6
Checklist for Identifying a Pecuniary Interest.....	7
Can I now make a decision? .....	7
Some Examples of Pecuniary and Non-pecuniary Interest.....	8
Managing Non-pecuniary Conflicts of Interest.....	8
Procedure for Disclosing Conflicts of Interest.....	9
Disclose the Conflict of Interest .....	9
Council Officers .....	9
Councillors .....	9
When a Written Declaration is not Immediately Practicable .....	10
Confidentiality .....	10
Other Conflict Matters .....	11
Political Donations Exceeding \$1,000 .....	11
Other Business or Employment.....	11
Personal dealings with Council .....	11
Review .....	12
Related Information/Glossary.....	12
Other Policies and Information.....	12
Contact .....	12
Appendix 1 .....	13

## **Purpose**

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To assist persons in determining if they have a conflict of interest in performing their public duties. It also complements the Code of Conduct in relation to conflicts of interest information.

## **Scope**

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Applies to Councillors, administrators, Council Officers, independent conduct reviewers, members of Council Committees including the Conduct Review Committee/Reviewer and delegates of the Council. It is the personal responsibility of Council Officials to comply with the Conflicts of Interest Policy and regularly review their personal circumstances with this in mind.

## **What is a Conflict of Interest?**

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A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

You must avoid or appropriately manage any conflicts of interest. The onus is on you to identify a conflict of interest and take the appropriate action to manage the conflict in favour of your public duty.

Any conflict of interest must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.

There are two types of Conflict of Interest, namely Pecuniary and Non-Pecuniary.

Non-declaration of a pecuniary interest is a breach of the *Local Government Act 1993* and the Code of Conduct which could result in an investigation by Chief Executive, Office of Local Government, who can take action and/or recommend disciplinary action. The Chief Executive may refer a complaint to the Ombudsman, Independent Commission Against Corruption or the Director of Public Prosecutions.

Non-declaration of a non-pecuniary interest is a breach of the Code of Conduct which could result in an investigation by the Internal Ombudsman if the breach is by a staff member or subject to review by a Conduct Review Committee/Reviewer if the breach is by a Councillor.

### ***What is a pecuniary interest?***

*(Section 442 Local Government Act 1993)*

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter.

### ***Who has a pecuniary interest?***

*(Section 443 Local Government Act 1993)*

1. A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
  - a. the person
  - b. the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person
  - c. a company or other body, of which the person, or a nominee, partner or employer of the person, is a member

However, a person is not taken to have a pecuniary interest in a matter as referred to in (b) and (c) above:

- a. if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body
- b. just because the person is a member of, or is employed by, a Council or a statutory body or is employed by the Crown
- c. just because the person is a member of, or a delegate of a Council to, a company
- d. other body that has a pecuniary interest in a matter, so long as the person has no beneficial interest in any shares of the company or body

A relative as referred to in 1(b) above means:

- i. the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child or the person's spouse or de facto partner
- ii. the spouse or de facto partner of the person or of a person referred to in paragraph (1)

It is not necessary to be able to identify or quantify the benefit or loss that might either directly or indirectly be attributable to you as a consequence of the relationship.

Money does not have to change hands – the benefit could be an increase in the value of property or other material interest.

#### **What is a non-pecuniary conflict of interest?**

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships or involvement in sporting, social or cultural activities. They include a tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

The political views of a Councillor do not constitute a private interest.

Please refer to the Code of Conduct for more prescriptive definitions about the Conflict of Interest.

### Checklist for identifying a Conflict of Interest

Answering the following questions will assist you in determining if you have a conflict of interest.

#### What is the situation?

	Yes	No
▪ Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?		
▪ Could there be benefits for me in the future that could cast doubt on my objectivity?		
▪ Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?		
▪ Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of the proposed decision or action?		
▪ Do I or a relative, friend or associate of theirs stand to gain or lose financially in some covert or unexpected way?		
▪ Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?		
▪ Have I contributed in a private capacity in anyway to the matter that Council is dealing with?		
▪ Have I made any promises or commitments in relation to the matter?		
▪ Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?		
▪ Could this situation have an influence on any future employment opportunities outside my current official duties?		
▪ Could there be any other benefits or factors that could cast doubts on my objectivity?		
▪ Do I still have any doubts about my proposed decision or action?		
▪ Does a relative own a business providing services to Burwood Council?		
<i>Note: Audit Office uses their data access ASIC ATO to compare supplier director names/staff names etc.</i>		

#### What perceptions could others have?

	Yes	No
▪ What assessment would a reasonable and informed person make of the circumstances?		
▪ Could my involvement in this matter cast doubt on my integrity or on Council's integrity?		
▪ If I saw someone else doing this, would I suspect that they might have a Conflict of Interest?		
▪ If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement and any association or connection?		
▪ Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others?		

**Should I seek help?**

	Yes	No
▪ Am I confident of my ability to act impartially and in the public interest?		
▪ Do I feel a need to seek advice or discuss the matter with an objective party?		
▪ Does this person know more about these things than I do?		
▪ Is all the relevant information available to ensure a proper assessment?		
▪ Do I know what Council's code of conduct requires in relation to Conflicts of Interest?		
▪ Do I need to discuss any issues regarding this matter with my supervisor?		
▪ Do I understand the possible penalties that may apply if I proceed with an action or decision with an unresolved Conflict of Interest?		

*Remember – seeking and following advice by suitably qualified persons is evidence of good faith but does not transfer the responsibility from the individual to decide whether or not they have a Conflict of Interest.*

**Club Membership, Associations, Affiliations, Religious Institutions**

Councillors and Council Officers who are members of clubs, associations, affiliation and religious institutions should seriously consider whether their membership/association could give rise to conflicts of interest in Council matters that may affect the club, association, religious institutions etc.

The greater your involvement with the club, association, religious institutions the greater likelihood of a real or perceived conflict of interest. Factors that should be considered include:

- whether or not you hold any positions of office in the club, association, religious institution
- whether or not you take on the role of an office holder even though you do not formally hold a position at the club, association, religious institution
- whether or not you previously held significant positions in the club, or are likely to in future
- how much fundraising or organising you do for the club, association, religious institution
- how much time you spend at the club, association, religious institution
- how involved your spouse, children, and others close to you are with the club, association, religious institution etc

**Have I recognised the type of interest?**

An important step is to recognise whether or not the interest is a pecuniary interest. As there can be legal consequences, public officials should not rely on their own opinion, but should seek independent legal advice if there is any doubt. The following checklist for identifying a Pecuniary Interest will help you determine whether you may be dealing with a pecuniary interest.

### Checklist for Identifying a Pecuniary Interest

*The purpose of this checklist is to provide a checklist that you can use to identify whether you have a pecuniary or non-pecuniary Conflict of Interest.*

As soon as a Pecuniary Interest of an associate/relative as per Section 443 of the Act is recognised, you must treat it as if it was your own Pecuniary Interest. Using the checklist below may be useful.

	Yes	No
▪ Does the matter fall within the legislated definition of a pecuniary interest?		
▪ Is there a realistic expectation that I will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?		
▪ Will the matter affect my earning capacity or financial situation?		
▪ Will it have an impact on the value of any shares or property that I own?		
▪ Do I have a second job or private business that may be affected by the matter?		
▪ Do I have any debts owing to a person who will be affected by the matter?		
▪ Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by the matter?		
▪ Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?		
▪ By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?		

### Can I now make a decision?

	Yes	No
▪ Have I assessed whether I need to obtain appropriate independent legal and other impartial advice?		
▪ Am I comfortable with my decision to seek (or not seek) advice, and with advice that I have been given?		
▪ If I disagree with any advice given, am I able to state a defensible case to those who made the assessment?		
▪ Can I determine what is the best option to ensure impartiality, fairness and protect the public interest?		
▪ Does this option ensure openness and transparency in my proposed decision or action?		
▪ Have I identified and documented the facts and circumstances governing my evaluation of, and decision on, how I should handle the situation?		
▪ Does my decision allow me to act and be seen to act in a fair, impartial and objective manner?		

## Some Examples of Pecuniary and Non-pecuniary Interest

<b>Pecuniary interests</b> - involve an actual or potential financial gain or loss, or other material benefits or costs.	<b>Non-pecuniary interests</b> - do not have a financial or other material component. (They may arise from personal or family relationships or involvement in sporting, social or cultural activities.)
You have shares in a family business which tenders for a contract with Council.	Your child is a star player in a local sporting group which submits a grant application to Council.
Your spouse owns a company in which you have no direct interest, which tenders for a contract with Council.	One of your regular fishing buddies has submitted a tender with Council and asks you to keep an eye on its progress.
You have a second job with a company which tenders for a contract with Council.	An old enemy from schooldays who used to bully you is an applicant for a job with Council.
You own property adjacent to a block of land which is the subject of an application to Council for redevelopment.	You are the president of a local amateur operatic society which seeks sponsorship from Council.
You have a private business which may lose custom to a rival concern which has lodged an application with Council for permission to set up new premises near your private business.	Your children's nearby school will be affected by a new development. The development proposal has been lodged for approval with Council.
Your spouse is an applicant for a job with Council.	You are active in a voluntary organisation and in your spare time you draw up plans for an extension to its premises. These plans are lodged for approval with Council.

Whether the interest is pecuniary or non-pecuniary, in all above circumstances, you will have a conflict of interest if your public duties require you to become involved in any decision or action regarding the matter.

## Managing Non-pecuniary Conflicts of Interest

How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.

As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest but it involves:

- a. a relationship between a Council Official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or the person's spouse, de facto partner or other person living in the same household
- b. other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c. an affiliation between the Council Official and an organisation, sporting body, club, corporation or association that is particularly strong

If you are a Council Official, other than a Council Officer, and you have disclosed that a significant non-pecuniary conflict of interest exists, you must manage it in one of two ways:

- a. remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council Official
- b. have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451(2) of the Act applies.



If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

If you are a Council Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with your manager.

A Councillor who has disclosed that a significant non-pecuniary conflict of interest exists may participate in a decision to delegate Council's decision-making role to a Council Officer, or appoint another person or body to make the decision in accordance with the law. This applies whether or not Council would be deprived of a quorum if one or more Councillors were to manage their conflict of interest by not voting on a matter.

## **Procedure for Disclosing Conflicts of Interest**

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### **Disclose the Conflict of Interest**

To maintain openness and transparency in disclosing conflicts of interest you should observe the following steps:

#### **Council Officers**

1. The Council Officer is required to complete the Staff Declaration at Appendix 1 prior to commencing work on a particular item.
2. The Council Officer is to complete the first three columns of the Staff Declaration Sheet.
3. The form should then be forwarded to your immediate Supervisor for attention.
4. The Supervisor must complete the comments section of the Staff Declaration Sheet.
5. The Supervisor may seek advice from the relevant Deputy General Manager or the General Manager if unsure how to determine the conflict of interest.
6. The Supervisor must forward the Staff Declaration Sheet to the Governance Co-ordinator once approved.
7. The Governance Co-ordinator will then be responsible for:
  - Providing a copy of the Staff Declaration to Organisation Development for placing on the Council Officer's Personnel File
  - Placing the Staff Declaration Sheet in the Register
8. The Supervisor is responsible for notifying the Council Officer of the approval of their declaration.

#### **Councillors**

A Councillor who has a conflict of interest in any matter before Council and who is present at a meeting of Council at which the matter is being considered must disclose the nature of the interest at the beginning of the meeting at Agenda Item 'Declarations of Interest'. Disclosures are to be made verbally at Council and Committee Meetings.

If any Councillor declares a Pecuniary Interest in any matter, the Councillor must not be present at, or in sight of, the meeting of the Council:

1. at any time during which the matter is being considered or discussed by the Council

2. at any time during which the Council is voting on any question in relation to the matter

Councillors who aren't permitted to take part in a discussion because of a pecuniary interest cannot escape this by addressing the meeting as a 'resident' or 'ratepayer'. The Act states that a Councillor must not be present at or in the sight of the meeting of Council at any time during which the matter (for which the Councillor has declared a pecuniary interest) is being considered, discussed or voted on. This has been interpreted as excluding Councillors in both their official capacity and as a member of the public.

### ***Disclosures to be Recorded - Councillors***

A disclosure made at a meeting of Council and the reasons for the disclosure must be recorded in the minutes of the meeting.

All disclosures are also recorded in Council's Declaration of Interest at Council Meetings on Agenda Items Register. The Register is available for viewing on Council's website.

### ***When a Written Declaration is not Immediately Practicable***

There may be times when you are in a situation that does not allow you to disclose your conflict of interest in writing before taking action. For example, you may be in a meeting where, without prior warning, a matter is introduced in which you may recognise that you have a conflict of interest. In such instances you should observe the following steps.

#### ***Step 1- Both Councillors and Council Officers***

- Verbally disclose your interest
- Ensure that this disclosure is recorded in the minutes of the meeting
- Record this disclosure in your own meeting notes
- Remove yourself from the meeting while the matter is discussed, or even have the meeting stopped or postponed

#### ***Step 2 – For Council Officers***

- Although the disclosure may have been recorded in the minutes of the meeting, you should still complete a Declaration of Interest Sheet and forward it to your Supervisor as referred to in steps 1-3 above at Disclose the Conflict of Interest.
- Report the Conflict of Interest to your Supervisor and ensure that a statement is made by you and your Supervisor that the conflict of interest declaration has been appropriately made and how you have opted to manage it. Managing any conflict of interest rests with the staff member who has a real or perceived conflict.

### **Confidentiality**

The Register of Conflicts of Interest for Council Officers is kept by Governance. Access to the public may be given in accordance with the *Government Information (Public Access) Act 2009*. Deputy General Managers, Managers and Supervisors need to be mindful of the confidential nature of details recorded on the Declaration of Interest Sheet and to prevent unauthorised access to this information it would be prudent not to make copies of the Declarations.

The Register of Conflicts of Interest for Councillors is available to the public for inspection and is available on the website.

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## Other Conflict Matters

### Political Donations Exceeding \$1,000

Councillors should note that matters before Council involving political or campaign donors may give rise to non-pecuniary conflict of interests.

Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, Councillors should have reasonable knowledge of contributions received by them or their “official agent” (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.

Where a Councillor or the Councillor’s “official agent” has received “political contributions” or “political donations”, as the case may be, within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign:

- a. from a political or campaign donor or related entity in the previous four years and
- b. where the political or campaign donor or related entity has a matter before Council

Then the Councillor must declare a non-pecuniary conflict of interest, disclose the nature of the interest, and remove the source of the conflict, have no involvement in the matter, by absenting themselves from and not taking part in any debate or voting on the issue.

Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a Councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such a conflict is significant and take the appropriate action to manage them.

If a Councillor has received a donation below \$1,000 that Councillor is not prevented from participating in a decision to delegate Council’s decision-making role to Council staff or appointing another person or body to make the decision.

### Other Business or Employment

(Section 353 of the *Local Government Act 1993*)

Council Officers must not engage, for remuneration, in private employment or contract work outside the service of Council that:

- relates to the business of the Council
- might conflict with your Council duties

Council Officers must notify and seek the approval of the General Manager in writing for secondary employment. Refer Council’s Secondary Employment Guidelines.

Council Officers must ensure that any outside employment or business engaged in, will not:

- a. conflict with official duties
- b. involve using confidential information or Council resources obtained through your work with the Council
- c. require you to work while on Council duty
- d. discredit or disadvantage the Council

### Personal dealings with Council

You may have reason to deal with your Council in your personal capacity (for example, as a ratepayer, recipient of a Council service or applicant for a consent granted by Council). You must not expect or request preferential treatment in relation to any matter in which you have a private

interest due to your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

## **Review**

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To be reviewed every four years.

## **Related Information/Glossary**

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- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *Public Interest Disclosures Act 1994*

## **Other Policies and Information**

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- Identifying and Managing Conflicts of Interest in the Public Sector (ICAC Brochure)
- Public Interest Disclosures - Internal Reporting Policy
- Code of Conduct and Procedure for the Administration of the Code of Conduct
- Secondary Employment Guidelines
- Code of Meeting Practice

## **Contact**

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Governance Co-ordinator on 9911 9910

Appendix 1



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 Phone: 9911-9911 - Fax: 9911-9900 Email: council@burwood.nsw.gov.au  
 Website: www.burwood.nsw.gov.au

**STAFF DECLARATIONS OF PECUNIARY INTEREST & NON-PECUNIARY INTEREST SHEET**

Date	Name & Job Title	Nature of Interest and Your Signature	Comments by Supervisor	Supervisor Signature & Date

**Declaration to be forwarded to Governance Co-ordinator.**