

# *Burwood Council*

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## ORDINARY MEETING

Notice is hereby given that a meeting of the Council of Burwood will be held in the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Tuesday 26 September 2017 at 6.00pm to consider the matters contained in the attached Agenda.

Michael McMahon  
**GENERAL MANAGER**

### Our Mission

**Burwood Council will create a quality lifestyle for its citizens  
by promoting harmony and excellence in the delivery of its services**

## CONFLICT OF INTERESTS

**What is a "Conflict of Interests"** - A conflict of interests can be of two types:

**Pecuniary** - 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 does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Non-pecuniary** – are private or personal interests the Council official has that do not amount to a pecuniary interest as defined in the Local Government Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

**Who has a Pecuniary Interest?** - A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- The 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.

**No Interest in the Matter** - However, a person is not taken to have a pecuniary interest in a matter:

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

N.B. "Relative", in relation to a person means any of the following:

- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - A person does not breach the Act if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

### What interests do not have to be disclosed (S 448 Act)?

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,
- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- (e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not),
- (f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,
- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
  - (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
  - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,
- (h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,

- (i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,
- (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
  - (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,
  - (ii) security for damage to footpaths or roads,
  - (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
- (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 448 of the Local Government Act.

**Non-pecuniary Interests** - Must be disclosed in meetings.

If you are a Council official, other than a member of staff of Council and you have disclosed that a significant non-pecuniary conflict of interests 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, of 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 apply.

If you determine that a non-pecuniary conflict of interests 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.

**Disclosures to be Recorded** - A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee must be recorded in the minutes of the meeting.

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# AGENDA

FOR AN ORDINARY MEETING OF BURWOOD COUNCIL  
TO BE HELD ON TUESDAY 26 SEPTEMBER 2017 IN THE COUNCIL CHAMBERS, 1-17 ELSIE STREET,  
BURWOOD COMMENCING AT 6.00 PM.

I DECLARE THE MEETING OPENED AT (READ BY MAYOR)

(ITEM 57/17) COUNCILLOR OATH/AFFIRMATION OF OFFICE .....PAGE 6

ACKNOWLEDGEMENT OF COUNTRY (READ BY MAYOR)

*"I would like to acknowledge the Wangal people who are the Traditional Custodian of this Land. I would also like to pay respect to the Elders both past and present of the Wangal Nation and extend that respect to other Aboriginals present".*

PRAYER (READ BY MAYOR) *"Lord, we humbly beseech thee to vouchsafe thy blessing on this Council, direct and prosper its deliberations for the advancement of this area and the true welfare of its people."*

TAPE RECORDING OF MEETING (READ BY MAYOR)

*"Members of the Public are advised that Meetings of Council and Council Committees are audio recorded for the purpose of assisting with the preparation of Minutes.*

*The tape recordings will be subject to the provisions of the Government Information (Public Access) Act 2009 (GIPA).*

*Tapes are destroyed two (2) months after the date of the recording"*

APOLOGIES/LEAVE OF ABSENCES

DECLARATIONS OF INTERESTS BY COUNCILLORS

OPEN FORUM ACKNOWLEDGMENT (READ BY MAYOR)

*The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made. Speakers should refrain from providing personal information unless it is necessary to the subject being discussed, particularly where the personal information relates to persons not present at the meeting*

OPEN FORUM COMMENCES

CONFIRMATION OF MINUTES

**Recommendation**

That the Minutes of the following Meeting of Burwood Council:

A. Council Meeting held on 25 July 2017

copies of which were previously circulated to all Councillors be and hereby confirmed as a true and correct record of the proceedings of that meeting.

**ADDRESS BY THE PUBLIC ON AGENDA ITEMS ACKNOWLEDGMENT (READ BY MAYOR)**

*The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made.*

**ADDRESS BY THE PUBLIC ON AGENDA ITEMS COMMENCES**

**MAYORAL MINUTES**

**GENERAL BUSINESS**

(ITEM 58/17) ELECTION OF DEPUTY MAYOR - SECTION 231 (3) OF THE LOCAL GOVERNMENT ACT 1993..... 7

**INFORMATION ITEMS**

(ITEM IN26/17) COUNCIL/COMMITTEE MEETINGS AND COUNCILLOR BRIEFING SESSIONS SCHEDULE FOR 2017 ..... 13

**QUESTIONS WITHOUT NOTICE**

*Councillors are requested to submit any Questions Without Notice in writing.*

**(ITEM 57/17) COUNCILLOR OATH/AFFIRMATION OF OFFICE**

File No: 17/34782

REPORT BY GENERAL MANAGER

**Summary**

Section 233A of the *Local Government Act 1993* (the Act) requires that a person elected to be a Councillor is required to take an oath of office or make an affirmation of office at or before the first meeting of Council after the Councillor is elected.

The Oath/Affirmation of Office is made before the General Manager of Council and is recorded in Council's official minutes.

A Councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office in accordance with the Act is not entitled to attend a meeting as a Councillor (other than the first meeting of the Council after the Councillor is elected to the office or a meeting at which the Councillor takes the oath or makes the affirmation) until the Councillor has taken the oath or made the affirmation.

Any absence of a Councillor from an ordinary meeting of the council that the Councillor is not entitled to attend because of this section is taken to be an absence without prior leave of the Council.

Failure to take an oath of office or make an affirmation of office does not affect the validity of anything done by a Councillor in the exercise of the Councillor's functions.

**Conclusion**

Councillors will now be required to take oath of office or make an affirmation of office before the Council Meeting and the General Manager. The oath as prescribed by the *Local Government Act 1993* is as follows:

*Oath I [name of Councillor] swear that I will undertake the duties of the office of Councillor in the best interests of the people of the Burwood Local Government Area and the Burwood Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.*

*Affirmation I [name of Councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people of the Burwood Local Government area and Burwood Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.*

**Recommendation(s)**

That the General Manager record in the minutes of Council as true record that all Councillors have taken the oath or affirmation.

**Attachments**

There are no attachments for this report.

## **(ITEM 58/17) ELECTION OF DEPUTY MAYOR - SECTION 231 (3) OF THE LOCAL GOVERNMENT ACT 1993**

File No: 17/34611

REPORT BY GENERAL MANAGER

### **Summary**

This report outlines the process and options for the election of a Burwood Council Deputy Mayor.

### **Background**

Under the *Local Government Act 1993* (the Act), following an ordinary local government election and the election of the Mayor, Council may decide to nominate a Deputy Mayor from amongst the councillors.

Historically, Burwood Council has elected a Deputy Mayor on a yearly basis, each September.

The Deputy Mayor may under Section 231(3) of the Act exercise any function of the Mayor for the following reasons:

- at the request of the Mayor
- if the Mayor is prevented by illness, absence or otherwise from exercising the function
- if there is a casual vacancy in the office of the Mayor

Where Council does not elect a Deputy Mayor, in the event that the Mayor is prevented by illness, absence or otherwise from exercising his/her role, the elected body can elect a Deputy Mayor at a later stage. In the event the Deputy Mayor is prevented by illness, absence or otherwise from exercising his/her role the elected body can elect another Councillor to act as the Deputy Mayor.

### **Nomination Process**

The General Manager is the Returning Officer for the election of the Deputy Mayor.

Nominations must be in writing, signed by two or more Councillors (one of whom may be the nominee). The person nominated must indicate his or her consent to the nomination in writing.

Nominations must be given to the General Manager before or at the Council Meeting. The General Manager will announce the names of the nominees at the meeting.

If there is only one nominee, then that nominee will be declared elected. If there is more than one nominee, an election will be necessary and Council will need to resolve the method of voting.

### **Voting Options**

The methods of voting available are:

- Ordinary ballot
- Open ballot
- Preferential ballot



The three methods of voting are described briefly in the attachment to this report.

### **Recommendation(s)**

1. That Council resolve to appoint a Deputy Mayor.

2. That Council elect a Deputy Mayor by open ballot, if more than a single nomination is received, or appoint a single nominee as Deputy Mayor.

**Attachments**

<a href="#">1</a> 	Election of Deputy Mayor by Councillors - Schedule 7 Local Government (General) Regulations	3 Pages
<a href="#">2</a> 	Deputy Mayor Nomination Form	1 Page



## ATTACHMENT 1

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### ITEM 58/17 Election of Deputy Mayor - Section 231 (3) of the Local Government Act 1993.DOC Election of Deputy Mayor by Councillors - Schedule 7 Local Government (General) Regulations

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#### LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - SCHEDULE 7

#### SCHEDULE 7 – Election of mayor by councillors

(Clause 394)

#### PART 1 - PRELIMINARY

##### 1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

##### 2 Nomination

1. A councillor may be nominated without notice for election as mayor or deputy mayor.
2. The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
3. The nomination is to be delivered or sent to the returning officer.
4. The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

##### 3 Election

1. If only one councillor is nominated, that councillor is elected.
2. If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
3. The election is to be held at the council meeting at which the council resolves on the method of voting.
4. In this clause:

"**ballot**" has its normal meaning of secret ballot.

"**open voting**" means voting by a show of hands or similar means.

#### PART 2 - ORDINARY BALLOT OR OPEN VOTING

##### 4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

##### 5 Marking of ballot-papers

1. If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
2. The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.
3. An informal ballot-paper must be rejected at the count.

## ATTACHMENT 1

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### ITEM 58/17 Election of Deputy Mayor - Section 231 (3) of the Local Government Act 1993.DOC Election of Deputy Mayor by Councillors - Schedule 7 Local Government (General) Regulations

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#### 6 Count-2 candidates

1. If there are only 2 candidates, the candidate with the higher number of votes is elected.
2. If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

#### 7 Count-3 or more candidates

1. If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
2. If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
3. If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.
4. A further vote is to be taken of the 2 remaining candidates.
5. Clause 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
6. If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

### PART 3 - PREFERENTIAL BALLOT

#### 8 Application of Part

This Part applies if the election proceeds by preferential ballot.

#### 9 Ballot-papers and voting

1. The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the numbers "1", "2" and so on against the various names so as to indicate the order of their preference for all the candidates.
2. The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
3. An informal ballot-paper must be rejected at the count.

#### 10 Count

1. If a candidate has an absolute majority of first preference votes, that candidate is elected.
2. If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
3. A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
4. In this clause, "**absolute majority**", in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

#### 11 Tied candidates

1. If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal-the candidate whose name is first

## ATTACHMENT 1

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### ITEM 58/17 Election of Deputy Mayor - Section 231 (3) of the Local Government Act 1993.DOC Election of Deputy Mayor by Councillors - Schedule 7 Local Government (General) Regulations

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chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.

2. If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes-the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

#### **PART 4 - GENERAL**

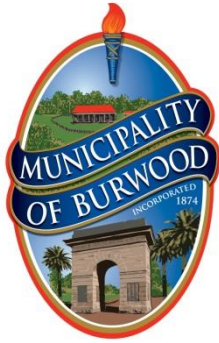
##### **12 Choosing by lot**

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

##### **13 Result**

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is:

- a. to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- b. to be delivered or sent to the Director-General and to the Secretary of the Local Government and Shires Association of New South Wales.



# Burwood Council

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To be delivered to the General Manager

## NOMINATION FORM FOR ELECTION OF DEPUTY MAYOR

We the undersigned nominate:

\_\_\_\_\_

For election to the position of Deputy Mayor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

### CONSENT BY NOMINEE

I agree to the nomination for the election of Deputy Mayor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Dated

## **(ITEM IN26/17) COUNCIL/COMMITTEE MEETINGS AND COUNCILLOR BRIEFING SESSIONS SCHEDULE FOR 2017**

File No: 17/34635

REPORT BY GENERAL MANAGER

### **Summary**

To inform the new Council of the 2017 Schedule for Council Meetings, Building and Development Committee Meetings and Councillor Briefing Sessions.

### **Background**

Under Section 365 of the *Local Government Act 1993*, Council is required to meet at least 10 times during any year, with each meeting to be held in a different month. To date for the 2017 Calendar Year six Council Meetings have been held.

The purpose of the Councillors Briefings is to keep Councillors informed of changes to legislation, to hold training on Council policies and procedures and to workshop and/or have input into Council strategies. The sessions are held in line with Council's Councillor Induction, Briefings and Workshop Policy. It should be noted that briefing sessions, induction sessions and workshops are informal gatherings and are not to be used for detailed or advanced discussion where agreement is reached and/or a (de-facto) decision is made. These sessions are not open to the Public.

Council's adopted Code of Meeting Practice states that Building and Development Committee Meetings are held on the second Tuesday of each month and Council Meetings are held on the fourth Tuesday of each month.

The 2017 Schedule was adopted by the outgoing Council on 22 November 2016. The remainder of meetings for 2017 are as follows:

### **COUNCIL/COMMITTEE MEETING SCHEDULE FOR 2017**

<b>Date</b>	<b>Building &amp; Development Committee</b>	<b>Council</b>
19 September 2017		<b>x</b>
10 October 2017	<b>x</b>	
24 October 2017		<b>x</b>
14 November 2017	<b>x</b>	
28 November 2017		<b>x</b>
4-6 December 2017 – LGNSW Annual Conference		
12 December 2017		<b>x</b>

Councillor Briefing Sessions are conducted every two months, on a Tuesday commencing at 5.00 pm prior to the Council Meeting and concluding at 6.00pm. Councillors are invited via email which will include a summary of the items to be discussed and any relevant documentation.

### **COUNCILLOR BRIEFING AND INDUCTION SCHEDULE FOR 2017**

<b>Date</b>
21 September 2017 6pm-8pm
27 September 2017 6pm-8pm
24 October 2017 5pm-6pm
12 December 2017 5pm-6pm

If there are no items for discussion, the meeting may not be conducted or alternately times and dates may be altered, if required. The Mayor and General Manager will make that decision after consultation.

**No Decision – Information Item Only**

**Attachments**

There are no attachments for this report.