

POLICY NO LG03 COUNCILLORS CODE OF CONDUCT POLICY

DEPARTMENT:	Governance
RESPONSIBLE OFFICER:	General Manager
LINK TO STRATEGIC PLAN: be visionary and accountable leaders who advocate and represent the views of our community in a transparent way.
STATUTORY AUTHORITY:	Local Government Act 1993 Local Government (General) Regulations 2005
OBJECTIVE:	<p>This Code of Conduct sets out the standards of behaviour expected of the councillors of the Break O'Day Council, with respect to all aspects of their role.</p> <p>As leaders in the community, councillors acknowledge the importance of high standards of behaviour in maintaining good governance. Good governance supports each councillor's primary goal of acting in the best interests of the community.</p> <p>Councillors therefore agree to conduct themselves in accordance with the standards of behaviour set out in the Code of Conduct.</p> <p>This Code of Conduct incorporates the Model Code of Conduct made by Order of the Minister responsible for local government.</p>
POLICY INFORMATION:	<p>Adopted 19 March 2012 – Minute No 03/12.15.4.069</p> <p>Amended 21 August 2014 – Minute No 08/14.15.6.256</p> <p>Amended 16 May 2016 – Minute No 05/16.16.3.131</p> <p>Amended 27 June 2016 – Minute No 06/16.16.3.162</p> <p>Amended 18 March 2019 – Minute No 03/19.16.3.60</p> <p>Amended 20 February 2023 – Minute No 02/23.17.7.045</p>

POLICY

MODEL CODE OF CONDUCT

PART 1 - Decision Making

1. A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.
2. A councillor must make decisions free from personal bias or prejudgement.
3. In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.
4. A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

PART 2 - Conflict of Interests that are Not Pecuniary

1. When carrying out his or her public duty, a councillor must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that he or she may have.
2. A councillor must act openly and honestly in the public interest.
3. A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.
4. A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived conflict of interest.
5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.
6. A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –
 - (a) declare the conflict of interest and the nature of the interest before discussion on the matter begins; and
 - (b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.
7. This Part does not apply in relation to a pecuniary interest.

PART 3 - Use of Office

1. The actions of a councillor must not bring the Council or the office of councillor into disrepute.
2. A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.
3. In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a councillor must not expect nor request, expressly or implicitly, preferential treatment for himself or herself or any other person or body.

PART 4 - Use of Resources

1. A councillor must use Council resources appropriately in the course of his or her public duties.
2. A councillor must not use Council resources for private purposes except as provided by Council policies and procedures.
3. A councillor must not allow the misuse of Council resources by any other person or body.

PART 5 - Use of Information

1. A councillor must only access or use Council information needed to perform his or her role and not for personal reasons or non-official purposes.
2. A councillor must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

PART 6 - Gifts and Benefits

1. A councillor may accept an offer of a gift or benefit if it directly relates to the carrying out of the councillor's public duties and is appropriate in the circumstances and is not in contravention of any relevant legislation.
2. A councillor must avoid situations in which a reasonable person would consider that any person or body, through the provisions of gifts or benefits of any kind, is securing (or attempting to secure) influence or a favour from the councillor or the Council.

PART 7 - Relationships with Community, Councillors and Council Employees

1. A councillor –
 - (a) must treat all persons fairly; and
 - (b) must not cause any reasonable person offence or embarrassment; and
 - (c) must not bully or harass any person.
2. A councillor must listen to, and respect, the views of other councillors in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.
4. A councillor must not contact or issue instructions to any of the Council's contractors or tenderers, without appropriate authorisation.
5. A councillor must not contact an employee of the Council in relation to Council matters unless authorised by the General Manager of the Council.

PART 8 - Representation

1. When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.
2. A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.
3. A councillor must not speak on behalf of the Council unless specifically authorised or delegated by the Mayor or Lord Mayor.
4. A councillor must clearly indicate when he or she is putting forward his or her personal views.
5. A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.
6. A councillor must show respect when expressing personal views publicly.
7. The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

8. When representing the Council on external bodies, a councillor must strive to understand the basis of the appointment and be aware of the ethical and legal responsibilities attached to such an appointment.

PART 9 - Variation of Code of Conduct

1. Any variation of this model code of conduct is to be in accordance with section 28T of the Act.

SUPPLEMENTARY INFORMATION TO ACCOMPANY THE MODEL CODE OF CONDUCT

1. INTRODUCTION

Purpose of Code of Conduct

This Code of Conduct sets out the standards of behaviour of the councillors of the Break O'Day Council, with respect to all aspects of their role.

As leaders in the community, councillors acknowledge the importance of high standards of behaviour in maintaining good governance. Good governance supports each councillor's primary goal of acting in the best interests of the community.

Councillors therefore agree to conduct themselves in accordance with the standards of behaviour set out in the Code of Conduct.

This Code of Conduct incorporates the Model Code of Conduct made by Order of the Minister responsible for local government.

Application of Code of Conduct

This Code of Conduct applies to a Councillor whenever he or she:

- conducts Council business, whether at or outside a meeting;
- conducts the business of his or her office (which may be that of Mayor, Deputy Mayor or Councillor); or
- acts as a representative of the Council.

A complaint of failure to comply with the provisions of the Code of Conduct may be made where the Councillor fails to meet the standard of conduct specified in the Code of Conduct.

Section 28S of the Local Government Act 1993 - Contents of model code of conduct

- (1) The model code of conduct as made, amended or substituted under [section 28R](#) must be consistent with this Act and is to provide for the following matters:
 - (a) what constitutes a conflict of interest for a councillor and the procedure to be followed if a councillor has a conflict of interest;
 - (b) the proper and improper use by a councillor of his or her office with the council;
 - (c) the proper and improper use by a councillor of council resources;
 - (d) the proper and improper use by a councillor of information obtained in his or her office with the council;
 - (e) the right of a councillor to receive gifts and benefits and the procedure to be followed by a councillor when receiving gifts and benefits in the situations specified in the model code of conduct;

- (f) the appropriate or inappropriate behaviour of a councillor in his or her relationships with the community, other councillors and council employees;
- (g) the proper and improper manner in which a councillor represents himself or herself as a councillor, and represents the council, to the community;
- (h) any prescribed matter.

Principles of Good Governance

By adopting this Code of Conduct, Councillors commit to the overarching principles of good governance by being:

Accountable – *Explain, and be answerable for, the consequences of decisions made on behalf of the community.*

Transparent – *Ensure decision making processes can be clearly followed and understood by the community.*

Law-abiding – *Ensure decisions are consistent with relevant legislation or common law, and within the powers of Local Government.*

Responsive – *Represent and serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.*

Equitable and Inclusive – *Provide all groups with the opportunity to participate in the decision making process and treat all groups equally.*

Participatory – *Ensure that anyone affected by or interested in a decision has the opportunity to participate in the process for making that decision.*

Effective and efficient – *Implement decisions and follow processes that make the best use of the available people, resources and time, to ensure the best possible results for the community.*

Consensus oriented – *Take into account the different views and interests in the community, to reach a majority position on what is in the best interests of the whole community, and how it can be achieved.*

2. LEGISLATION

The code of conduct framework is legislated under the *Local Government Act 1993* (the Act). The Act is available to view via the Tasmanian Legislation Website at www.thelaw.tas.gov.au and should be read in conjunction with this policy.

Code of Conduct

Tasmanian councillors are required to comply with the provisions of the Council's Code of Conduct while performing the functions and exercising the powers of his or her office with the council.

The Code of Conduct incorporates the Model Code of Conduct (made by order of the Minister responsible for local government) and may include permitted variations included as attached schedules to the Model Code of Conduct.

S.28V Making a Code of Conduct Complaint

- (1) A person may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's code of conduct.

- (2) A person may make a complaint against more than one councillor in relation to the contravention by the councillors of the relevant council's code of conduct if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged contravention of the code of conduct.
- (3) A complaint is to –
 - (a) be in writing; and
 - (b) state the name and address of the complainant; and
 - (c) state the name of each councillor against whom the complaint is made; and
 - (d) state the provision of the relevant code of conduct that the councillor has allegedly contravened; and
 - (e) contain details of the behaviour of each councillor that constitutes the alleged contravention; and
 - (f) be lodged with the general manager of the relevant council within 6 months after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and
 - (fa) be accompanied by a statutory declaration, signed by the complainant or by each complainant, verifying the accuracy of the information contained in the complaint; and
 - (fb) contain details of all efforts made by the complainant to resolve the issue that is the subject of the complaint; and
 - (g) be accompanied by any prescribed fee.
- (4) If the subject matter of a complaint by its nature consists of a series of separate incidents that, taken together, form the subject matter, the period referred to in [subsection \(3\)\(f\)](#) runs from the most recent of the incidents mentioned in the complaint.
- (5) A complaint may not be made by more than 2 complainants jointly.

S.28X. Amendment of Code of Conduct Complaint

- (1) A complainant, in writing provided to the general manager or the Code of Conduct Panel, may amend a code of conduct complaint at any time before the Code of Conduct Panel commences an investigation into the complaint.
- (2) If the Code of Conduct Panel has commenced its investigation into a code of conduct complaint, a complainant may not amend the complaint.
- (3) If a notice amending a code of conduct complaint is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the amendment.
- (4) On becoming aware of an amendment to a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the amendment:
 - (a) the general manager, unless the complainant provided the amendment to the general manager;
 - (b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

S.28ZB. Dismissal of Code of Conduct Complaint on Initial Assessment

- (1) The chairperson of the Code of Conduct Panel, on an initial assessment, may dismiss the code of conduct complaint, or part of it, if he or she considers that –
 - (a) the complaint or part is frivolous, vexatious or trivial; or
 - (ab) the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint; or

- (b) the complaint or part does not substantially relate to a contravention of the code of conduct of the relevant council; or
 - (c) the complainant has made the complaint or part in contravention of –
 - (i) a determination of the chairperson made under [subsection \(2\)](#) ; or
 - (ii) a determination of the Code of Conduct Panel made under [section 28ZI\(3\)](#) .
- (2) If the chairperson of the Code of Conduct Panel dismisses the code of conduct complaint or part of it on the basis that it is frivolous, vexatious or trivial, the chairperson, in the notice provided under [section 28ZA\(3\)](#) , may direct the complainant not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

28ZE. Conduct of investigations generally

- (1) In the investigation of a code of conduct complaint, the Code of Conduct Panel –
 - (a) is to conduct the investigation with as little formality, and as expeditiously, as is reasonably practicable in the particular circumstances; and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate; and
 - (c) must observe the rules of natural justice; and
 - (d) may regulate its own procedure.
- (2) In the investigation of a code of conduct complaint, the Code of Conduct Panel may –
 - (a) determine what evidence is required to enable it to determine the complaint; and
 - (b) subject to [subsection \(3\)](#) , determine the manner in which it will accept evidence from the complainant, the councillor against whom the complaint is made and any witnesses.
- (3) In an investigation of a code of conduct complaint, the Code of Conduct Panel may accept evidence given orally on oath or affirmation or by written submissions and documents provided in, or annexed to, a statutory declaration.
- (4) At any time during an investigation of a code of conduct complaint, the Code of Conduct Panel, in writing, may request the complainant, the councillor against whom the complaint is made, a witness or the relevant council to provide information and documents, or further information and documents (including information, and documents containing information, of a kind referred to in [section 338A](#)), that the Panel considers may be relevant to the determination of the complaint.
- (5) A person who has been requested under [subsection \(4\)](#) to provide information and documents, or further information and documents, is to do so within –
 - (a) the period specified in the request; or
 - (b) such longer period as the Code of Conduct Panel, before the expiration of the period specified in the request, may allow.
- (5A) A person who has been requested under [subsection \(4\)](#) to provide any information or document is to provide a statutory declaration verifying the accuracy of that information or document.
- (6) If a council or a councillor in response to a request under [subsection \(4\)](#) provides to the Code of Conduct Panel information, or a document containing information, of a kind referred to in [section 338A](#) , a member of the Code of Conduct Panel must not disclose that information or document to any person except as otherwise allowed by [sections 28ZJ](#) and [28ZK](#) .

339. Improper use of information

- (2A) A person must not make improper use of any information acquired by the person in relation to a code of conduct investigation.
Penalty: Fine not exceeding 50 penalty units.

Code of Conduct Complaint Lodgement Fee

The code of conduct complaint lodgement fee is prescribed under Schedule 3 (Fees) of the *Local Government (General) Regulations 2015*. The lodgement fee is 50 fee units (\$85.00 in 2022/2023).

3. FURTHER ASSISTANCE

Councillor Dispute Resolution

Councillors commit to developing strong and positive working relationships and working effectively together at all times.

Prior to commencing a formal code of conduct complaint, the Councillors who are parties to any disagreement should endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to act in the best interests of the community.

A Council's internal dispute resolution process should be the first step that is taken when there is a dispute between Councillors.

A Councillor who is party to any disagreement should request the Mayor or the General Manager to assist that Councillor in resolving the disagreement informally.

If the informal assistance does not resolve the disagreement, the General Manager may, with the consent of the parties involved, choose to appoint an external mediator to assist in the resolution of the disagreement. If an external mediator is appointed, Councillors who are party to the disagreement must strive to cooperate with the mediator and use their best endeavours to assist the mediator and participate in the mediation arranged.

Where a matter cannot be resolved through internal processes, the next step may be to lodge a formal code of conduct complaint.

Councillors should only invoke the provisions of the Code of Conduct in good faith, where it is perceived that another Councillor has not complied with the provisions or intent of the Code of Conduct.

Complaints under the *Local Government Act 1993*

The Director of Local Government is responsible for the investigation of complaints regarding alleged breaches of the Act.

Any person can make a complaint to the Director, via the Local Government Division (contact details below), in accordance with section 339E of the Act, where it is genuinely believed that a Council, Councillor or General Manager may have committed an offence under the Act or failed to comply with the requirements of the Act.

To make a complaint, it is recommended that you first contact the Local Government Division to discuss whether the matter is something that the Division can assist with.

Public Interest Disclosure

Any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources or substantial risk to public health or safety or to the environment should be reported in accordance with the *Public Interest Disclosures Act 2002*. Disclosures may be made to the Tasmanian Ombudsman or the Tasmanian Integrity Commission.

4. MONITORING AND REVIEW

This Policy will be reviewed every four (4) years following a Council Election in line with Legislation and the Council's Policy Framework or earlier in the event of major changes to legislation or related policies, procedures of if deemed necessary by the Mayor and the General Manager.

5. KEY CONTACTS

Department of Premier and Cabinet's Local Government Division
Executive Building, 15 Murray Street, HOBART TAS 7000
GPO Box 123, HOBART TAS 7001
Phone: (03) 6232 7022 Fax: (03) 6232 5685
Email: localgovernment@dpac.tas.gov.au
Web: www.dpac.tas.gov.au/divisions/local_government

Local Government Association of Tasmania
326 Macquarie Street, HOBART TAS 7000
GPO Box 1521, HOBART TAS 7001
Phone: (03) 6146 3740
Email: reception@lgat.tas.gov.au
Web: www.lgat.tas.gov.au

The Tasmanian Integrity Commission
Surrey House, Level 2, 199 Macquarie Street, HOBART TAS 7000
GPO Box 822, HOBART TAS 7001
Phone: 1300 720 289
Email: contact@integrity.tas.gov.au
Web: www.integrity.tas.gov.au

Ombudsman Tasmania
NAB House, Level 6, 86 Collins Street, HOBART TAS 7000
GPO Box 960, HOBART TAS 7001
Phone: 1800 001 170
Email: ombudsman@ombudsman.tas.gov.au
Web: www.ombudsman.tas.gov.au

Complaint form

Local Government Code of Conduct

Instructions for Use

This form is for making a complaint under your council's Local Government Code of Conduct.

This form has been provided to ensure that you include all the information required under the *Local Government Act 1993* in your complaint. You will need to complete all the sections in this form.

To make a valid complaint, you will need to:

- ☐ Complete this form or otherwise put your complaint in writing as described below;
- ☐ Provide a statutory declaration, signed by each person making the complaint, verifying the accuracy of the information contained in the complaint. The approved Statutory Declaration form, and requirements for completing it, are available at www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/making_a_code_of_conduct_complaint
- ☐ Lodge the complaint and statutory declaration with the general manager of your council within six months of the councillor or councillors committing the alleged breach; and
- ☐ Pay the fee for lodging a complaint to the relevant council. The fee for 2022-23 is \$85.

You do not have to use this form. If you choose not to use this form, your complaint will need to:

- Be in writing;
- State your name and address and the name and address of any other complainants;
- State the name of each councillor you are making the complaint against;
- State which provision/s of the relevant code of conduct each councillor has allegedly breached;
- Detail the behavior of each councillor that you allege breached the Code;
- Details what efforts you have made to resolve the complaint with the relevant councillor;
- Be accompanied by a statutory declaration, and the required fee, and be lodged with the general manager of your council, as outlined above.

Complaint form

Local Government Code of Conduct

CONTACT DETAILS (of person making the complaint)	
Name:	Telephone (mobile):
Address (Residential):	Telephone (work):
Address (Postal):	Telephone (home):
Email address:	Preferred mode of contact:
SUMMARY OF COMPLAINT	
Name of Councillor who you believe has breached the Code of Conduct:	
Provisions of the Code of Conduct that you believe have been breached:	
Date(s) of incident(s):	
Location(s) of incident(s):	

Complaint form

Local Government Code of Conduct

DETAILS OF THE COMPLAINT (further information may be attached)**WITNESSES (include anyone with knowledge of what happened)****HAVE YOU PREVIOUSLY MADE A CODE OF CONDUCT COMPLAINT ABOUT THIS MATTER?**YES ☐ NO ☐

If yes, when did you make the complaint?

Local Government Code of Conduct
PanelGPO Box 123 Hobart
TAST: 6232
7013E:
lgconduct@dpac.tas.gov.au19/20287
March 2022

Complaint form

Local Government Code of Conduct

HAVE YOU MADE ANY EFFORTS TO RESOLVE THE COMPLAINT WITH THE RESPONDENT COUNCILLOR?	
(NOTE: THIS SECTION IS COMPULSORY. FAILURE TO ADEQUATELY COMPLETE IT MAY RESULT IN THE COMPLAINT BEING RETURNED TO YOU)	
<p>YES <input type="checkbox"/></p> <p>Briefly describe the efforts that you have made (NOTE: YOU MUST COMPLETE THIS SECTION):</p> 	<p>NO <input type="checkbox"/></p> <p>Include a brief statement explaining why you have not made any efforts to resolve the issue with the respondent councillor:</p>
DESIRED OUTCOME OF COMPLAINT	
<p>Please explain what you would like to happen as a result of lodging this complaint:</p> 	
PLEASE SIGN AND DATE	
<p>SIGNATURE:</p> 	
<p>Date:</p> 	

New Councillor Code of Conduct Framework – Flowchart –Local Government Amendment (Code of Conduct) Act 2015

