

18 April 2023

Mr Matthew Healey  
Director of Local Government  
Office of Local Government  
Department of Premier and Cabinet  
GPO Box 123 HOBART TAS 7001

Dear Matt,

**Addressing councillor misconduct**

The Break O'Day Council at its meeting on 17 April 2023 finalised its consideration of the recently released discussion paper and would like to take the opportunity to make the following submission on the matter and the Options suggested.

**Option 1. Amendment to the Board of Inquiry provisions of the Local Government Act 1993, to enable a Board to be established to investigate misconduct of individual councillors;**

The discussion paper details the following:

*Advantages of this option include:*

- *Power for the Minister for Local Government to initiate an investigation in the interests of the community;*
- *Its operation as an extension to prospective and existing regulatory frameworks, including robust evidence gathering powers, and a requirement, in effect, that the process be conducted with less formality than court proceedings;*
- *That the Board's costs are recoverable from a council.*

*Disadvantages include:*

- *The perceived or actual risk of politicised decision-making by a Minister for Local Government;*
- *Perceived or actual risk associated with the significant discretion in the appointment of persons to a Board.*

(Discussion paper – Addressing councillor misconduct, page 10)

The Council notes that the Minister currently has significant powers under the *Local Government Act 1993* in relation to suspension or dismissal of Councillors and the making of orders and the issuing of Directions. The risk of politicised decision making by the Minister already exists, the Council does not see that as a real risk or disadvantage under this Option. After all, this is about establishing a Board to undertake the investigation and consider the conduct of the Councillor(s) which creates an arms-length situation from the Minister.

The Council believes that this Option provides a good solution where the misconduct of the Councillor is not as clearly evident as it might be in some cases. Natural justice would apply through this process ensuring a fair hearing would occur, it would be necessary for the Councillor(s) in question to be able to have legal representation present if they chose.

**Option 2. Empowering the Director of Local Government to seek dismissal or extended suspension of a councillor under the Model Code of Conduct by application to the Code of Conduct Panel or, possibly in future, the Tasmanian Civil and Administrative Tribunal (TASCAT).**

The discussion paper details the following:

*Advantages of this option may include:*

- *It's generally non-political nature;*
- *Its operation as an extension to prospective and existing regulatory frameworks; and*
- *Inaccessibility to vexatious complainants.*

*Disadvantages may include:*

- *Reliance upon the judgement of a government statutory officer and tribunal;*
- *Risk of the adverse public perception or politicisation of a government statutory officer and tribunal;*
- *Limited role of the Minister for Local Government; and*
- *Prospects of judicial or administrative review leading to delayed outcomes.*

(Discussion paper – Addressing councillor misconduct, page 13)

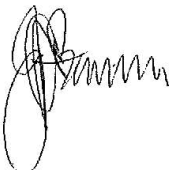
The Council notes that this Option empowers the Director of Local Government to refer alleged serious misconduct matters to the Tasmanian Civil and Administrative Tribunal (TASCAT) or the Code of Conduct Panel if the powers don't shift to TASCAT in the future. This option would be exercised if the Director is satisfied matters are of sufficient severity. The Council believes that this 'test' of being satisfied needs to be further developed to provide guidance and reduce the reliance on the judgement of a government statutory officer which is identified as a disadvantage.

For example, if the misconduct is of sufficient severity it may very well be that some other form of legal proceedings may be occurring in relation to the matter. The key question then relates to the form of legal proceedings, it would be fair to limit this to criminal proceedings and exclude civil proceedings. Taking note of the precept of 'innocent until proven guilty', it may be that some form of suspension may be in order in the interim whilst the proceedings are pending, depending on the nature of the situation, until finalisation of the criminal proceedings. This Option would then be triggered at the end if the Councillor is found guilty as the charge has been proven and effectively it is a fait accompli.

The Council believes that this Option provides a good solution where the misconduct of the Councillor is clearly evident and has been proven to have occurred. Natural justice has already been provided through the court process and the Councillor in question had the option to have legal representation present.

Thank you for the opportunity to make this Submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be "John Brown", written in a cursive style.

John Brown  
GENERAL MANAGER