

COUNCIL POLICY

Title	Investigations Policy
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Category	Strategic
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1. Policy Purpose

- (1) The purpose of this policy is to outline how Central Highlands Regional Council (council) deals with suspected conduct breaches of councillors referred to council by the Assessor to be dealt with, as required by section 150AE of the *Local Government Act 2009* (Qld).
- (2) This policy is consistent with the State Government example investigation policy.

2. Definitions

To assist with interpretation, the following definitions apply:

the Act	means the <i>Local Government Act 2009</i> (Qld)
the Regulation	means the Local Government Regulation 2012 (Qld)
Assessor	means the Independent Assessor appointed under section 150CV of the Act
Behavioural standard	means a standard of behaviour for councillors set out in the Code of Conduct for Councillors in Queensland approved under section 150E of the Act
CEO	means the person appointed as Chief Executive Officer of council under section 194 of the Act or any person acting in that position
Complainant	means the person or entity who made the complaint of conduct breach which is the subject of the Referral Notice
Conduct	includes failing to act; and a conspiracy, or attempt, to engage in conduct as set out in section 150C of the Act
Conduct Breach	as defined in section 150K of the Act
Corrupt Conduct	as defined in section 15 of the <i>Crime and Corruption Act 2001</i> (Qld)
Council	means Central Highlands Regional Council
Councillors	means the elected mayor and councillors of council
Councillor Conduct Register	means the register required to be kept by council pursuant to section 150DX and 150DY of the Act
Investigation Report	a report about the Investigation prepared under this policy (section 150C of the Act)

Investigator	means the person appointed by the CEO under this policy to carry out the investigation of the suspected conduct breach of a councillor or mayor
Mayor	means the elected mayor of council, also referred to as a councillor, with additional responsibilities as outlined in section 12(4) of the Act
Misconduct	means conduct as defined in section 150L of the Act
Natural Justice	means the principles set out in section 8.2 of this policy
Referral Notice	means a notice of referral under section 150AC of the Act by the Assessor to council of suspected conduct breach for investigation by council
Statement of Preliminary Findings	means a document, in the form of Form 3 Investigation Statement of Preliminary Findings Template, provided by the Investigator to the subject councillor setting out the allegations, the relevant facts, a summary of evidence and preliminary findings of the Investigator
Standing Committee	means the Decisions about Conduct Breach Standing Committee of Council
Subject councillor	means the councillor or mayor who is the subject of the Referral Notice
Summary Report	means a summary of the full Investigation Report in the form of Form 2 – Investigation Summary Report Template, prepared as required under section 150AFA of the Act
Tribunal	means the Councillor Conduct Tribunal established under section 150DK of the Act
Unsuitable Meeting Conduct	means conduct as defined in 150H of the Act

3. Related Legislation

- *Local Government Act 2009* (Qld)
- *Local Government Regulation 2012* (Qld)
- *Crime and Corruption Act 2001* (Qld)
- *Public Interest Disclosure Act 2010* (Qld)
- *Public Sector Ethics Act 1994* (Qld)

4. Related Documents

- Standing Orders and Meeting Procedures Policy (CHRCP 0055)
- Code of Conduct for Councillors in Queensland
- General Complaints Management Policy (CHRCP 0003)
- Information Management Policy (CHRCP 0004)
- Information Privacy Administrative Policy (ICT014)
- Public Interest Disclosure (Whistleblowers) Policy (CHRCP 0039)
- Procurement Policy (CHRCP 0022)
- Form 1 – Investigation & Recommendation Report template
- Form 2 – Investigation Summary Report template
- Form 3 – Investigation Statement of Preliminary Findings template

5. Policy Statement

- (1) Chapter 5A of the Act prescribes the councillor conduct management system. Section 150CT of the Act establishes an Independent Assessor (the Assessor) to carry out functions including the preliminary assessment, dismissal, referral, or investigation of complaints about councillor conduct.

- (2) If, after undertaking a preliminary assessment on a councillor conduct matter, the Assessor reasonably suspects a councillor has engaged in a conduct breach, the Assessor may decide, under section 150SD(4)(a) or 150W(b) of the Act, to refer a suspected conduct breach to be dealt with by council.
- (3) Pursuant to section 150AEA of the Act, council may decide not to start or to discontinue the Investigation if:
 - a) the complaint is withdrawn by the complainant;
 - b) the complainant consents to the matter being withdrawn, for example, the matter has been resolved and it is unnecessary for council to investigate the matter;
 - c) the complainant refuses to cooperate by providing additional information during the investigation phase;
 - d) not enough information is available to proceed; and/or
 - e) the office of the subject councillor becomes vacant for any reason, for example, the person has resigned or was not re-elected and is no longer a councillor.
- (4) If a decision is not made under section 150AEA of the Act, council must investigate the subject councillor's suspected conduct breach in accordance with this policy (as required under section 150AF of the Act).

6. Scope

In Scope

- (1) This policy applies to investigations and determinations by council about a suspected conduct breach of a councillor, including a mayor, which has been referred by the Assessor.
- (2) This policy:
 - a) includes a procedure for investigating the suspected conduct breaches of councillors at Addendum 1 – Investigation Standards;
 - b) states the circumstances in which another entity may investigate the conduct;
 - c) is consistent with the principles of natural justice;
 - d) includes the requirement for council to prepare a report about each investigation (using Form 1 – Investigation and Recommendation Report Template and Form 2 – Investigation Summary Report template); and
 - e) requires a notice about the outcome of an investigation be provided to the Assessor, subject councillor and complainant and includes a procedure about when council may decide, under section 150AEA of the Act, not to start, or to discontinue, an investigation.
- (3) This policy requires council:
 - a) to give the subject councillor information about the suspected conduct breach, including details about the evidence of the suspected conduct breach;
 - b) to give the subject councillor a notice if an investigation is not started or is discontinued;

- c) for conduct the subject of a complaint – to give the complainant, if the contact details of the complainant are known, a notice if an investigation is not started or is discontinued;
- d) to give the subject councillor the preliminary findings of the investigation before preparing an Investigation Report about the investigation consistent with Form 3 – Investigation Statement of Preliminary Findings template;
- e) to allow the subject councillor to give evidence or a written submission to council about the suspected conduct breach and preliminary findings;
- f) to consider any evidence and written submission given by the subject councillor in preparing the Investigation Report; and
- g) to include in the Investigation Report:
 - (i) if evidence is given by the subject councillor - a summary of the evidence; and
 - (ii) if the subject councillor gives a written submission - a full copy of the written submission.

Out of Scope

- (4) This policy does not:
 - a) relate to more serious councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions; or
 - b) deal with unsuitable meeting conduct, or any conduct undertaken in a personal capacity by a councillor, for example, a sitting councillor campaigning for re-election or attending a private social function.

7. Confidentiality

- (1) Matters relating to the investigation of suspected conduct breach of a councillor are confidential to council during the investigation period, except:
 - a) to give the subject councillor information about the suspected conduct breach, including details about the evidence of the suspected conduct breach;
 - b) to give the subject councillor the preliminary findings of the investigation before preparing an Investigation Report about the investigation;
 - c) to give the subject councillor a notice if an investigation is not started or is discontinued;
 - d) for conduct the subject of a complaint – to give the complainant (if contact details are known), and the Assessor, a notice if an investigation is not started or is discontinued;
 - e) to disclose to auditors and legal advisors of council; and
 - f) as legally obliged to be disclosed under the *Right to Information Act 2009*.
- (2) However, once the suspected conduct breach is investigated and an Investigation Report is received, pursuant to section 150AFA of the Act, a Summary Report must be made publicly available, before any discussion is undertaken by council.
- (3) The published Summary Report must not contain:

- a) Any names of, or any information that could reasonably be expected to result in identifying, the complainant or any other person, other than the subject councillor;
 - b) Any other information council is entitled or required to keep confidential under a law.
- (4) Once the investigation has been completed and an Investigation Report has been provided to council, the matter will be placed on the council meeting agenda and the Investigation Report and any recommendation of the Investigator may be debated in the council meeting, which may be in a closed session under section 254J(j) of the Regulation. However, the Summary Report is not treated as confidential as it must be publicly available and attached to the agenda papers that are circulated before the meeting.
- (5) A final decision by resolution of council must take place when the decision is made about whether the subject councillor engaged in a conduct breach and if so any decision about orders that are made under section 150AH of the Act.
- (6) When deciding what action to take, council may consider:
- a) any previous conduct breach of the subject councillor; and
 - b) any allegation made in the investigation that was admitted or not challenged; and council is reasonably satisfied is true.
- (7) If a decision is not consistent with the recommendation of the Investigation Report, the reasons for the decision must be stated in the meeting minutes. The minutes must give sufficient information to demonstrate the logic that has been applied to justify the decision not to follow the recommendation of the Investigation Report.
- (8) The full Investigation Report must be made publicly available in accordance with clause 14.1 of this policy and subject to the requirements of clause 14.2.

8. Natural Justice

- (1) Any investigation of suspected conduct breach of a councillor must be carried out in accordance with the principles of natural justice, otherwise known as procedural fairness.
- (2) Natural justice, or procedural fairness, refers to three key principles:
- a) That the subject councillor has a chance to have their say before adverse formal findings are made and before any adverse action is taken (a fair hearing);
 - b) That the Investigator should be objective and impartial (absence of bias); and
 - c) That any actions taken, or decisions made are based on evidence (not on suspicion or speculation).
- (3) The subject councillor must receive information about the suspected conduct breach, including:
- a) The preliminary findings of the investigation before the preparation of an Investigation Report about the investigation outcome; and
 - b) A notice if an investigation is not started or is discontinued including the reasons for the decision.
- (4) Council must:
- a) Allow the subject councillor to give evidence or a written submission to council about the suspected conduct breach and preliminary findings;

- b) Consider the evidence or written statement from the subject councillor in preparing the Investigation Report; and
 - c) If evidence is given by the subject councillor, include a summary of the evidence and, if a written submission is provided, include a copy of the written submission, in the Investigation Report.
- (5) An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.
- (6) A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.
- (7) Investigation will be conducted on the basis that when a matter is referred, it is suspected, and not yet proven.

9. Standard of proof

- (1) The civil standard of proof is applied by the Investigator when determining whether the subject councillor has engaged in a conduct breach.
- (2) The civil standard of proof is 'on the balance of probabilities', which means the weighing up and comparison of the likelihood of the existence of competing facts or conclusions.
- (3) An allegation is sustained 'on the balance of probabilities' if, based on the evidence, the Investigator and/or council, is reasonably satisfied that its existence is more probable than not.

10. Timeline

- (1) The councillor conduct framework must be effective and efficient. The Investigator will make all reasonable endeavours to complete the Investigation and provide an Investigation Report within eight weeks of commencing the investigation, after the receipt of the Referral Notice from the Assessor.
- (2) If the Investigator is of the opinion that it may take longer than eight weeks to complete the investigation, the matter should be raised with the CEO to seek an extension of time. Delay in procuring an investigator to undertake the investigation should be avoided by council.

11. Expenses

- (1) Council must pay the expenses associated with the investigation of suspected conduct breach of a councillor including any costs of:
 - a) An independent Investigator engaged on behalf of council;
 - b) Travel where the Investigator needed to travel to undertake the investigation, or to interview witnesses; and
 - c) Obtaining legal or expert advice.
- (2) Council may order the subject councillor to reimburse council for all or some of the costs arising from a sustained conduct breach. These costs would usually only relate to obtaining legal or expert advice and reasonable costs for the Investigator engaged to undertake the investigation. Any costs incurred by complainants, or the subject councillor, will not be met by council. Where possible, costs should be kept to a reasonable rate

taking into consideration the costs for more serious matters dealt with by, for example, the Tribunal or other jurisdictions who deal with conduct matters.

12. Councillor Conduct Register

- (1) The CEO must ensure decisions and any orders under section 50AH of the Act made about a conduct breach by a councillor or any decision to not start, or to discontinue an investigation or suspected conduct breach under section 150AEA of the Act, are entered into the relevant Councillor Conduct Register.

13. Procedures for the Investigation

13.1 Assessor's Referral

- (1) Council will receive a Referral Notice from the Assessor about the suspected conduct breach of a councillor. The referral will include details of the alleged conduct and any complaint received about the alleged conduct, state why the Assessor reasonably suspects that the subject councillor has engaged in a conduct breach and include information about the facts and circumstances that form the basis of the Assessor's reasonable suspicion.
- (2) Council must deal with the matter and the investigation must be conducted in a way that is consistent with this policy.
- (3) The Assessor must also give a notice to the subject councillor that states the subject councillor's conduct has been referred to council to deal with, and a copy of the Referral Notice must be attached.

13.2 Receipt of Assessor's Referral

- (1) On receipt of the Referral Notice about the suspected conduct breach of a councillor from the Assessor, council's CEO will forward a copy of that Referral Notice to the mayor and all councillors, including the subject councillor, as a confidential document.
- (2) The subject councillor and the complainant, if the complainant is a councillor, have a declarable conflict of interest and should manage it in a way that is consistent with the requirements of council's Standing Orders and Meeting Procedures Policy.

13.3 When council may decide not to start, or to discontinue, an investigation

- (1) On receipt of the Referral Notice from the Assessor, the CEO will manage the investigation unless it is delegated.
- (2) The CEO will assess the Referral Notice and, if there exist circumstances suggesting that the matter should not be considered, not started, or discontinuing an investigation under section 150AEA of the Act, the matter will be placed on the agenda for the next council meeting (or at a meeting of the Standing Committee if circumstances so require).
- (3) Council (or Standing Committee) may decide by resolution not to start, or discontinue, the Investigation of a suspected conduct breach. The resolution must state the decision and the reasons for the decision.
- (4) The only circumstances in which council can decide not to start or to discontinue an Investigation are under section 150AEA of the Act.
- (5) If council decides not to start, or to discontinue, an investigation, the CEO will give notice to the Assessor, the complainant (if conduct details known) and the subject councillor.

- (6) The matters not started or discontinued must be reported in the annual report (including the reasons) and recorded in the Councillor Conduct Register – see section 150EB(2) of Act.

13.4 Council investigating the suspected conduct breach of a councillor

- (1) Unless council makes a decision under clause 13.3 to not commence or to discontinue an Investigation, the CEO will manage the investigation of suspected conduct breach by engaging a suitably qualified person (either internal or external to council) to undertake the investigation and provide an Investigation Report for council to consider.
- (2) Once an Investigator has been selected to undertake an investigation, that Investigator will follow the investigation standards of council (see Addendum 1 – Investigation Standards).
- (3) The CEO is authorised by council to expend money as reasonably needed to engage an external investigator in accordance with the council’s Procurement Policy.
- (4) If the Investigator obtains information which indicates the subject councillor may have engaged in misconduct:
 - a) The Investigator must cease the investigation and advise the CEO and the CEO will advise the mayor and councillors; and
 - b) The CEO will then provide an information notice to the Assessor giving the details of the suspected misconduct; and
 - c) No further action will be taken in relation to the Investigation unless otherwise directed by the Assessor.
- (5) If the Investigator obtains information that indicates the subject councillor may have engaged in corrupt conduct:
 - a) The Investigator must cease the investigation and advise the CEO, and the CEO will advise the mayor and councillors; and
 - b) The CEO will then provide an information notice addressed to both the Assessor and the Crime and Corruption Commission giving details of the suspected corrupt conduct; and
 - c) No further action will be taken in relation to the Investigation unless otherwise directed by the Assessor.
- (6) If the Investigator or the CEO become aware during the Investigation that any of the conditions in section 150EAE apply, the matter will be referred to council for decision in accordance with clause 13.3 of this policy.

13.5 Completion of Investigation

Findings and Recommendations

- (1) The Investigator must prepare and deliver to the subject councillor a Statement of Preliminary Findings and allow the subject councillor to give evidence or a written statement about the suspected conduct breach and preliminary findings before the preparation of the Investigation Report.
- (2) The Investigator must consider any evidence or written submissions given by the subject councillor in preparing the Investigation Report and include a summary of the evidence and a full copy of any written submission in the Investigation Report.

Investigation Report

- (3) Once the investigation is finalised, the Investigator will prepare a report (using the Form 1 – Investigation & Recommendation Report template) for council including the following details:
 - a) the investigation process;
 - b) any witnesses interviewed;
 - c) documents or other evidence obtained;
 - d) a summary of evidence;
 - e) a statement of the relevant facts ascertained;
 - f) confirmation that the subject councillor has been provided with an opportunity to respond to the complaint and the evidence compiled;
 - g) a summary of any evidence given by the subject councillor and/or a copy of any written submission provided by the subject councillor;
 - h) the Investigation findings;
 - i) a statement of any relevant previous disciplinary history for the subject councillor;
 - j) any recommendations about dealing with any proven conduct breach; and
 - k) a record of the Investigation costs.
- (4) The Investigator must prepare a summary of the Investigation Report that must include:
 - a) The name of the subject councillor;
 - b) A description of the alleged conduct breach;
 - c) A statement of the facts established by the investigation;
 - d) A description of how Natural Justice was afforded to the subject councillor during the conduct of the investigation;
 - e) A summary of the findings of the investigation; and
 - f) Any recommendations made by the Investigator in respect to the suspected conduct breach.
- (5) The following information must not be made publicly available:
 - a) The name of, or any information that could reasonably be expected to result in identifying, the complainant or any other person, other than the subject councillor; or
 - b) Any other information council is entitled or required to keep confidential under a law.
- (6) The Summary Report must be publicly available on or before:
 - a) 5pm on the next business day after the notice of the meeting at which a decision is to be made has been provided to councillors, or
 - b) The day and time when the agenda for that meeting is publicly available.

13.6 Making a Decision about the Investigation

- (1) Council (or where applicable, the Standing Committee) must make a decision as to whether the subject councillor has engaged in a conduct breach.

- (2) When debating this matter the subject councillor has a declarable conflict of interest in the matter and must declare the conflict of interest. The eligible councillors (those who do not have a declared conflict of interest in the matter) can decide by resolution whether the subject councillor may remain in the meeting during the debate and may answer questions put to the subject councillor through the chairperson to assist the eligible councillors in making a decision.
- (3) The resolution can include conditions that the subject councillor must leave the place where the meeting is being held, including any area set aside for the public, during the vote on whether they have committed a conduct breach and what, if any, penalty to impose if the subject councillor is found to have committed a conduct breach.
- (4) Should the complainant be a councillor, the complainant has a declarable conflict of interest in the matter and must follow the declarable conflict of interest procedures set out in council's Standing Orders and Meeting Procedures Policy.
- (5) If the council has lost quorum due to the number of conflicted councillors or another reason, the matter must be dealt with in accordance with section 63(11) of council's Standing Orders and Meeting Procedures Policy, or where there are no non-conflicted councillors, the decision is to be made by the CEO.
- (6) If a decision is reached that the subject councillor has engaged in a conduct breach, council's eligible councillors at the meeting (with the exception of the subject councillor, and any complainant councillor, who cannot participate in the decision) will consider the findings and recommendations of the Investigation Report and decide what, if any, action it will take under section 150AH of the Act.
- (7) If council decides that the subject councillor has engaged in a conduct breach, any of the following orders may be imposed:
 - a) Order that no action be taken against the subject councillor, or
 - b) An order outlining action the subject councillor must undertake in accordance with section 150AH(b) of the Act.

Note: For further information refer to Addendum 2 – Conduct breach disciplinary action guideline.

14. Notice about the Outcome of the Investigation

- (1) After making a decision about the conduct breach, Council must make the Investigation Report publicly available, on or before:
 - a) 5pm on the tenth day after the meeting at which the decision about the outcome of the investigation is made; or
 - b) The day and time that the meeting minutes from that meeting are made publicly available.
- (2) The following information contained in the Investigation Report must, subject to clause 14.3, **not** be made publicly available:
 - a) The name of, or any information that could reasonably be expected to result in identifying, the complainant (if the investigation relates to the conduct of a councillor that was the subject of a complaint) or any other person, other than the subject councillor.

- b) If a person, other than the subject councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit:
 - (i) The name of the person; or
 - (ii) Information that could reasonably be expected to result in identifying the person or any other person, other than the councillor; or
 - (iii) The submission or affidavit of, or a record or transcript of information provided orally by, a person, including, for example, a transcript of an interview; or
 - (iv) Any other information council is entitled or required to keep confidential under a law e.g., documents subject to legal professional privilege.
- (3) However, the report made publicly available must include the name of the complainant if:
 - a) The complainant is a councillor or the CEO; and
 - b) The complainant's identity as the complainant was disclosed at the meeting at which the Investigation Report was considered.
- (4) After the Investigation is finalised, council must give a notice about the outcome decision of the investigation, including the reasons for the decision and any orders made under section 150AH of the Act to:
 - a) The Assessor;
 - b) The complainant, if their contact details are known; and
 - c) The subject councillor.

15. Compliance and Review Mechanism

- (1) This policy will be reviewed when any of the following occur:
 - a) the related legislation or governing documents are amended or replaced; or
 - b) other circumstances as determined by resolution of Council.

Table of Amendments			
Document History	Date	Council Resolution No	Notes (including the prior policy number, precise of change/s, etc.)
Amendment 1	24 July 2024	2024 / 07 / 24/ 008	Full review of policy



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Ross Musgrove
Acting CHIEF EXECUTIVE OFFICER

ADDENDUM 1 - Investigation standards

The Investigation must be managed in a consistent manner.

Documentation must be contained in an efficient records management system.

Confidential information must be secured appropriately.

1. Case management file

- (1) The Investigation must be supported by a recognised case management tool so that emails, letters, statements, and evidence can be stored and secured confidentially. File notes must be made in the case management system to document key milestones in the Investigation such as when lines of inquiry are identified, witnesses are spoken to, when evidence is secured, and document key decisions.

2. Investigation plan

- (1) The CEO or delegate will, prior to beginning the Investigation, check that the Investigator does not have a conflict of interest in the matter. Should a conflict of interest become known, the Investigator will be removed from the Investigation and a substitute Investigator appointed who does not have a conflict of interest.
- (2) The following investigation process must be followed by the Investigator unless the CEO agrees to vary the process in a particular case.
 - a) The Investigator must take all necessary steps to protect the identity of the complainant(s) as far as possible during communications with the subject councillor.
 - b) The Investigator is required to undertake the following:
 - (i) research the legislation and policy framework thoroughly;
 - (ii) identify lines of inquiry and record them as a file note in case file management system;
 - (iii) present all of the evidence the subject councillor provides or gives in a written statement;
 - (iv) gather further evidence (for example, from interviewing other witnesses, obtaining documents, or carrying out site inspections) when necessary;
 - (v) secure evidence in the case file management system, making a file note when lines of inquiry are followed up and key decisions are made during the course of the investigation;
 - (vi) undertake a proper and impartial examination of the evidence gathered, including expert advice and analysis and / or legal advice if required; and
 - (vii) draw conclusions based on the evidence and applying the appropriate legislative and policy frameworks.
- (3) The Investigator must, in conducting the Investigation, apply the principles of natural justice.
- (4) Before preparing an Investigation Report about the investigation, the Investigator must:
 - a) give the subject councillor the preliminary findings of the investigation consistent with Form 3 – Investigation Statement of Preliminary Findings template;
 - b) allow the subject councillor to give evidence or a written submission to council about the suspected conduct breach and preliminary findings;
 - c) consider any evidence and written submission given by the subject councillor in preparing the Investigation Report; and

- d) Include in the Investigation Report:
 - (i) if evidence is given by the subject councillor - a summary of the evidence; and
 - (ii) if the subject councillor gives a written submission - a full copy of the written submission.

3. Prepare an Investigation Report

- (1) The Investigator will prepare the Investigation Report for council to consider in the form of Form 1 Investigation and Recommendation Report Template and a Summary Report.
- (2) If during the course of an investigation, the Investigator obtains new information that the subject councillor may have engaged in a suspected conduct breach that may give rise to a new allegation, the Investigator must obtain particulars related to the subject councillor's conduct and then advise the CEO. The CEO will provide an information notice to the Assessor.
- (3) The Investigator will be informed of activities of council in relation to the investigation. For example, the Investigator will be informed in the event the finalisation of a matter is delayed, or if council is required to notify the Assessor of a fresh allegation identified during the course of an Investigation for a preliminary assessment.
- (4) If during the course of an investigation, the Investigator obtains new information that the subject councillor may have engaged in misconduct or corrupt conduct, the investigation will cease and the Investigator will notify the CEO who will be responsible for providing an information notice to the Assessor and Crime and Corruption Commission.

ADDENDUM 2 - Conduct breach disciplinary action guideline

This guideline is provided to assist council to make consistent decisions about the appropriate disciplinary action to be taken against a councillor who is found to have engaged in a conduct breach.

1. What is a Conduct Breach?

- (1) According to section 150K of the *Local Government Act 2009* (the Act), a conduct breach occurs when a councillor:
 - a) breaches a behavioural standard (Code of Conduct for Councillors in Queensland);
 - b) breaches a council policy, procedure, or resolution;
 - c) contravenes an order by a chairperson of council to leave a council meeting and stay away from the place at which it is being held;
 - d) is part of a course of unsuitable meeting conduct orders on three occasions, within a one-year period, taken together. Council is not required to notify the Assessor of these matters and may deal with the conduct as if an investigation has been undertaken under section 150J and make a decision under section 150AG of the Act.

2. Decision

- (1) Section 150AG of the Act provides that where an allegation of a conduct breach has been referred by the Assessor to council for investigation, council must decide:
 - a) whether or not the councillor has engaged in a conduct breach, and,
 - b) what action council will take under section 150AH of the Act to discipline the councillor if the councillor has been found to have engaged in a conduct breach.

3. Types of orders

- (1) Section 150AH of the Act provides a list of the types of orders that council may make where it has found that a councillor has engaged in a conduct breach:
 - a) an order that no action be taken against the councillor,
 - b) an order that the councillor make a public apology, in the way decided by council, for the conduct,
 - c) an order reprimanding the councillor for the conduct,
 - d) an order that the councillor attend training or counselling addressing the councillor's conduct including at the councillor's expense,
 - e) an order that the councillor be excluded from a stated council meeting,
 - f) an order that the councillor is removed or must resign from a position representing council other than the office of councillor,
 - g) an order that if the councillor engages in the same type of conduct again, it will be treated as misconduct,
 - h) an order that the councillor reimburse council for all or some of the costs arising from the councillor's conduct breach.
- (2) Any combination of the orders is permitted.

4. Factors that may be taken into account

- (1) Section 150AG(2) of the Act provides that in deciding what action to take, council may consider:
 - a) any previous conduct breach of the councillor, and
 - b) any allegation made in the investigation that-
 - (i) was admitted, or was not challenged; and
 - (ii) council is reasonably satisfied is true.

5. Guidance on appropriate disciplinary action

- (1) It is open to council to decide which order/s in section 150AH of the Act are suitable when a councillor is found to have engaged in a conduct breach. The particular circumstances of a case must always be taken into consideration.
- (2) As a guide, it is suggested that it may be appropriate for council to consider making an order or combination of orders depending on whether a councillor has been found to have engaged in a conduct breach for the first time, or for a second, or third time.
- (3) Section 150L of the Act provides that conduct is misconduct if the conduct is part of a course of conduct leading council to take action under section 150AG of the Act, to discipline the councillor for a conduct breach on three occasions within a one-year period.
- (4) The table below is provided to assist council to decide what disciplinary action is suitable in various circumstances.

Order	First instance engaging in a conduct breach	Second instance engaging in a conduct breach	Third instance engaging in a conduct breach
No action to be taken against the councillor	✓		
An order for the councillor to make a public apology in the way decided by council, for the conduct	✓*	✓*	✓*
An order reprimanding the councillor for the conduct	✓#	✓#	✓#
An order that the councillor attend training or counselling addressing the councillor's conduct including at the councillor's expense	✓#	✓#	✓#
An order that the councillor be excluded from a stated council meeting		✓	✓
An order that the councillor is removed or must resign from a position representing council other than the office of councillor			✓
An order that if the councillor engages in the same type of conduct again it will be treated as misconduct	✓^	✓	
An order that the councillor reimburse council for all or some of the costs arising from the councillor's inappropriate conduct **		✓	✓

*May be appropriate where there is heightened or particular public interest in the type of conduct or the subject matter relating to the conduct

May be particularly appropriate where the conduct involves bullying or harassment or making inappropriate comments about another person

^ For more serious and deliberate conduct breaches by an experienced councillor

** Costs arising from the councillor's conduct breach includes investigative costs, legal costs, and administrative costs. However, costs should be kept to a reasonable rate taking into consideration the costs for more serious matters dealt with by the Tribunal.