



EXTRAORDINARY MEETING OF COUNCIL

To be held at 6pm on

Thursday 20 October 2022

Council Chambers

11 Manning Street, KIAMA NSW 2533

Order of Business

- 1 Apologies
- 2 Acknowledgement of Traditional owners
- 3 Declarations of interest
- 4 Report of the Chief Executive Officer
- 5 Closure

Members

Mayor

Councillor N Reilly

Deputy Mayor

Councillor I Draisma

Councillor M Brown

Councillor M Croxford

Councillor J Keast

Councillor S Larkins

Councillor K Renkema-Lang

Councillor K Rice

Councillor W Steel

19 October 2022

To the Chairman and Councillors:

NOTICE OF EXTRAORDINARY MEETING

You are respectfully requested to attend an **Extraordinary Meeting** of the Council of Kiama, to be held in the **Council Chambers, 11 Manning Street, KIAMA NSW 2533** on **Thursday 20 October 2022** commencing at **6pm** for the consideration of the undermentioned business.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jane Stroud', written in a cursive style.

Jane Stroud

Chief Executive Officer

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**AGENDA FOR THE
EXTRAORDINARY MEETING OF KIAMA MUNICIPAL COUNCIL
HELD IN THE COUNCIL CHAMBERS
THURSDAY 20 OCTOBER 2022 AT 6PM**

1 APOLOGIES

2 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

“I would like to acknowledge the traditional owners of the land on which we meet, the Wadi Wadi people of the Dharawal nation, and pay my respect to Elders past and present.”

3 DECLARATIONS OF INTEREST

4 REPORT OF THE CHIEF EXECUTIVE OFFICER

4.1 Response to the Minister Tuckerman - notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993

CSP Objective: Outcome 12: Public funds and assets are managed strategically, transparently and efficiently

CSP Strategy: 12.1 Manage Public Funds in accordance with Financial Management Standards and the Local Government Act

Delivery Program: 12.1.7 Improved financial reporting and legislative compliance

Summary

Council received a notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 on 11 October 2022. Council's position and response to that notice is attached for Councillor endorsement.

Financial implication

There is no budget for the appointment of a financial advisor.

Risk implication

As indicated in the notice.

Policy

Local Government Act 1993

Consultation (internal)

A copy of the response has been circulated for feedback to the following:

- Councillors
- Chairs of Audit, Risk and Improvement Committee and the Finance Advisory Committee, and the remaining member of the Blue Haven Advisory Board
- Maddocks lawyers who could not provide detailed feedback given the extremely short timeframes.

Communication/Community engagement

A copy of the Notice of intention was placed on the public record at the Extraordinary Council meeting on 13 October 2022.

Attachments

- 1 Letter to The Hon. Minister Tuckerman - response to the notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 [u](#)

Enclosures

Nil

Report of the Chief Executive Officer

- 4.1 Response to the Minister Tuckerman - notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 (cont)
-

RECOMMENDATION

That Council:

1. Endorse the letter developed in response to the Minister of Local Government, The Hon. Wendy Tuckerman's notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 and confirm the stated position.
2. Give delegated authority to the Chief Executive Officer to continue to work on and seek legal advice on the detailed responses for the items noted in the Schedule attached to the Performance Improvement Order.
3. Give delegated authority to the Mayor, Deputy Mayor and Chief Executive Officer, to approve the detailed responses to the Performance Improvement Order schedule, prior to due date of 25 October 2022.
4. Receive at the November 2022 Ordinary meeting, a complete copy of the final responses to the Performance Order Improvement Schedule and the letter (noted at recommendation one (1) above) for the public record.

Background

On 11 October 2022 Council received a notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 from the Hon. Wendy Tuckerman MP, Minister for Local Government.

The Minister invited Council to make a submission in respect of the proposed Performance Improvement Order within 14 days from the date upon which the notice was served. The Minister also suggested that the submission be provided by way of resolution of the Council.

Due to this extremely tight timeframe in which the response is due, being 25 October 2022 and the current meeting schedule, there has not been sufficient time in which to complete the letter and the detailed replies to the schedule in full, for the public agenda. The meeting cycle has included the Extraordinary Council meeting on 13 October 2022 where the Council made a significant decision in relation to Blue Haven Bonaira; the Ordinary Council meeting held on 18 October 2022; and the Extraordinary Council meeting on 20 October 2022 being held to consider this report. As a direct result, there has been insufficient time to seek appropriate legal advice on the detailed responses and to prepare the volume of evidence and attachments required to support the draft responses to the schedule.

Working drafts of both the letter to the Minister and the responses to the Performance Improvement Order (PIO) schedule have been developed and circulated for feedback. The Minister's letter seeks response by resolution. To that end the letter (attached) provides a response, and outlines Council's position on the PIO for Council consideration and adoption.

Report of the Chief Executive Officer

4.1 Response to the Minister Tuckerman - notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993 (cont)

It is further proposed that delegation be given to the Chief Executive Officer to continue working on the detailed responses and compilation of evidence for the schedule, and to allow sufficient time to seek legal advice on these replies.

Having then completed this work, it is proposed that the Mayor, Deputy Mayor and CEO would then authorise the responses to the PIO schedule and send the whole document in response to the Minister by the due date of 25 October 2022. A copy of this documentation would be tabled publicly at the November Ordinary Council meeting.

To complete the responses to the schedule, collation of documented evidence and a series of attachments needs to be finalised. Unfortunately, the additional work required cannot be actioned in the extremely short timeframes to meet the obligations of the Extraordinary and Ordinary Council meeting cycle. Councillors have of course been provided a draft of both the letter and the responses to the Schedule to ensure they are informed. All feedback received was appreciated.

The allowance of two working days to complete the responses to the schedule means that the lawyers would then be able to review the material early next week. Legal review on documents of this nature is recommended given the seriousness of the issues facing Kiama Municipal Council. Unfortunately, the impact of the cycle of Council meetings, meant that detailed legal advice on the response was unable to be obtained in the one working day.

The contents and position outlined in the letter makes it plain to the community and Minister the extensive effort that has gone into seeking to address legacy issues which are impacting on the current operating state of the organisation. Significant reporting has been completed and both Management and Elected Representatives remain completely committed to correcting this situation and taking all steps required to improve financial sustainability and protect the viability of Kiama Municipal Council.



Phone enquiries:
(02) 4232 0444

Reference:
JS:CB – 22/98800

19 October 2022

The Hon. Wendy Tuckerman MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

By email: Office@Tuckerman.minister.nsw.gov.au

Dear Minister

Response to: Notice of intention to issue a performance improvement order under section 438A of the Local Government Act 1993

The purpose of this letter is to reply to the correspondence sent to Kiama Municipal Council (KMC) on 11 October 2022. Your letter succinctly outlines a range of challenging matters that KMC is experiencing in respect to its current financial position and a complex set of legacy issues that pervade the organisation.

From the outset, I offer my sincere gratitude to the Office of the Local Government, the Audit Office of NSW and TCorp whom I have met with and worked collaboratively with on a weekly basis since January 2022. Unfortunately, due to the extremely short timeframes for the preparation of a response completed via resolution and extraordinary meeting timetable, I am not able to obtain the measured legal advice typically required for matters of this nature.

At its meeting on 20 October 2022 Council will be asked to endorse the position outlined in this letter whilst the detailed reply and attached evidence will need to be developed within the fourteen (14) day timeframe concluding 25 October 2022. Working drafts of the letter and response have been circulated to Elected Representatives, the Audit, Risk and Improvement Committee and the Finance Advisory Committee for initial feedback.

Council's position on the proposed Performance Improvement Order

1. Kiama Municipal Council accepts the fact the State Government of NSW has compliance and regulatory responsibility of Local Governments. We understand that given the financial position of Council, the incomplete audit of the financial statements for the year of 2020/21 and historic legacy issues facing the organisation, the issuance of an Improvement Order may be necessary.
2. Kiama Municipal Council objects to the appointment of a Financial Advisor, due to the demonstrated commitment to addressing these issues, with the vast majority of the actions noted in the Schedule of the Performance Improvement Order already underway, or complete. Council's evidenced transparency with the community and the relevant key State agencies in approaching these challenges is well documented and will continue. Council is of the view that the appointment of a Financial Advisor would be cost prohibitive for an entity in our circumstances, and respectfully requests that if appointed, the State Government be responsible for the remuneration of this position. The legislative purpose and functions of a State appointed Financial Advisor are also not immediately apparent to Council.

All correspondence Chief Executive Officer PO Box 75 Kiama NSW 2533

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3. Kiama Municipal Council proposes to submit for approval to the Office of Local Government the second stage of the Organisation's Strategic Improvement Plan and commits to including those items listed in the Schedule in the document. This document would be submitted on 31 October 2022 for accountability purposes and will clearly document the strategies required for cash flow improvements and organisational improvement.

Background

Since commencing in the role of Chief Executive Officer in June 2021, I have carefully examined the finances, record keeping and policy position of the Council. As the Principal Officer of the local government authority I first reached out to your Senior Departmental staff in December 2021, as well as the relevant agencies of the NSW Government to disclose a series of concerns regarding potential maladministration, governance and solvency issues facing the organisation.

Working closely with the then Blue Haven Advisory Board, the Audit, Risk and Improvement Committee and the Finance Advisory Committee of Council I shared these concerns in a series of letters, reports to ICAC, and prepared a summary document titled "State of the Organisation".

This paper was distributed to the newly sworn in Council and a briefing held for the new Council, with Office of Local Government senior staff in attendance on 11 January 2022. A workshop was then held with the three relevant Chairs and the newly sworn in Council to work through the range of operational and financial matters that were (and are) impacting on the cash flow and liquidity of KMC.

The **State of the Organisation** paper was then publicly tabled with Council at the Ordinary meeting held on 11 February 2022, so that members of the community could likewise be informed of the challenges facing the elected representatives, and the Council administration. The matters facing KMC are not unusual to local governments; cash flow, asset management and lack of governance are all issues that councils experience. However, the added complexity of the aged care business presents an unusual circumstance for KMC.

Whilst good work was done in the past, and continues to be delivered today, many of the matters that are impacting on the business have taken decades to arrive at their current state. Across the board there has been a lack of planning, governance, staffing, and quality systems and procedures to help inform quality Council decisions. In short there are three fundamental matters immediately affecting the business and its future:

1. Financial sustainability – cash flow, liquidity, and financial management.
2. Organisational capability, culture and performance – investment in people, systems, performance management and culture has been weak.
3. Risk and governance – risk exposure created by lack of strategic direction, policy, poor decision making and lack of resources and revenue.

Since sharing these issues publicly, the organisation and elected body worked tirelessly to address these issues raised. Council has been open and transparent wherever possible in its issues and endeavours to remedy the situation. A range of public (and confidential) documents have been prepared including the following:

- Report to Council on the use of restricted reserves in September 2021, recommendation to undertake forensic assessment and establishment of Financial Advisory Group (November 2021)

- Creation of Blue Haven Advisory Board and board papers (December 2021) disclosing operating losses for residential aged care and construction costs / defects at Blue Haven Bonaira
- Correspondence to Minister on potential maladministration (December 2021)
- State of the Organisation briefing held in (January 2022 and released publicly in February 2022)
- Strategic Improvement Plan (April 2022), including monthly progress reports (May, June, July 2022)
- Hopwood Governance Report and implementation (April 2022)
- Correspondence to the Office of Local Government regarding cash flow (May 2022).
- Forensic Assessment report (May 2022), an executive summary is currently being prepared for public release
- Blue Haven construction costs / business case information released (June 2022)
- Finance Advisory Committee recommendation for cash flow (July 2022)
- Prudential Policy for Blue Haven (September 2022)
- Acquisition and Disposal Policy (August 2022)
- Cash flow analysis and going concern (September 2022)
- Improved monthly financial reports, with further improvements continuing
- ICAC Section 11 reporting (May, August, September, and October)
- Discussion paper for Local Government providers of aged care distributed in draft (October 2022) and two meetings held with counterparts
- Draft Restricted Reserves Policy put to Council for adoption (October 2022).

Council's own **Strategic Improvement Plan (SIP)** explicitly showed the community and our stakeholders, what work would need to occur in a 14 week period to address some of the complex underlying issues facing the organisation. The following gives a snapshot of key projects (64 in total) which were delivered in direct response:

- separation of the ledger and creation of a separate set of accounts for Blue Haven Bonaira, which went live on 1 July 2022 and is now reported on publicly each month
- accreditation specialist project to support meeting the quality aged care standards
- review of the TechnologyOne system and improvement program developed to improve monthly reporting
- review of the finance department
- property divestment portfolio and valuations for key land holdings
- preparation of an asset management plan for Blue Haven
- completion of a forensic assessment report into Council's finances
- policy development for a range of matters
- infrastructure charges, developer contributions review and policy development

- cash flow analysis, long term financial plan and exploration of additional grants and revenue raising strategies
- Holiday Park compliance
- construction costs publicly disclosed for Blue Haven Bonaira
- governance improvements and delegation register established.

Whilst much work was undertaken during this 14-week period, there are outstanding items still to be delivered. Management continues to focus on implementing the SIP and completing work as budget and staffing resources allow whilst continuing the usual operation of a Local Government Authority. Council is proposing that a second stage of this document is undertaken and provides a clear road map for the next stages of required improvements. Further, Council offers the OLG the opportunity to approve this document and be provided regular monthly reports on completion so that compliance can be tracked.

Following many months of work, the **Auditor General of NSW** wrote to you outlining significant abiding concerns about Council's liquidity and cash flow, and risks associated with current liabilities, debts and available cash and investments. The letter was tabled publicly so the community could remain informed. This letter centred its concerns on KMC's:

- continued and historical involvement in aged care services, liquidity challenges due to construction costs, operational expenditure, and unfunded liability balances for residential accommodation deposits,
- independent living units unfunded liability balances,
- accessing restricted reserves,
- unfunded liabilities for employee leave entitlements, and
- inadequacy of books and record issues.

It is fair to surmise not just from the AO NSW letter, but also from the issues raised first in the State of the Organisation paper, again in the Strategic Improvement Plan and in the many voluntary public and private State based disclosures that KMC has serious legacy issues impacting on its current effectiveness. Continued and deliberate work needs to follow to restore the Council to the realm of a normal local government operating environment, which delivers services and programs to its constituents within its financial means. Divestment of assets, operational efficiencies, service reduction and deliberate cash flows documentation must be provided. Council recently resolved to reclassify the land at Blue Haven Bonaira to operational, and subject to this process divest itself of its aged care services located at this site.

Council would like to continue to work in partnership with the OLG and relevant State agencies to complete the next body of improvement work, without the need for an intermediary role (and the cost burden) of a Financial Advisor.

Conclusion

To date, the new Council has made a series of decisions that plan to reduce expenditure, and increase revenue, whether through operational efficiencies or deliberate divestment of assets and a change in service provision. Councillors continue to heed the advice and work collaboratively with the Audit, Risk and Improvement Committee and the Finance Advisory Committee.

Council continues to communicate openly and honestly with the residents and ratepayers about the need to improve the financial outlook of the municipality and the causal factors. Often

community reaction to the situation and its facts is strong and divided, but the exercise of sharing what is known publicly is imperative if community confidence is ever to be restored.

Your letter summarises this ongoing situation and centres on further improvements expected for completion as a matter of urgency. A response to the Performance Improvement Order Schedule will also be provided by 25 October 2022.

Council seeks to reassure you as Minister, that the Elected Representatives and Management realise the seriousness of the situation facing Council. Every effort is being given to improving our outlook and maintaining the core services of a local government authority. As the third tier of government, the role of local government in servicing and representing its community, must remain fundamental to KMC.

Council respects the regulatory and compliance role that you as the Minister and Office of Local Government hold. Our reply is offered not just as a response that seeks to avoid the decision to appoint a financial adviser, or the issuance of strategic improvement orders, but to genuinely document and evidence our ongoing and future commitments to the work required to improve the organisation. We trust that by giving the Office of Local Government deliberate oversight for the second stage of the Strategic Improvement Plan this may further provide accountability measures that satisfy the Minister.

I trust this response will assist your determination and I can be contacted at any time to discuss this matter on the above details.

Yours faithfully



Jane Stroud
Chief Executive Officer

5 CLOSURE