



EXTRAORDINARY MEETING OF COUNCIL

To be held at 4pm on

Wednesday 24 August 2022

Council Chambers

11 Manning Street, KIAMA NSW 2533

Order of Business

- 1 Apologies
- 2 Acknowledgement of Traditional owners
- 3 Report of the Chief Executive Officer
- 4 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 August 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 **Wednesday 24 August 2022** commencing at **4pm** 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
WEDNESDAY 24 AUGUST 2022**

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 REPORT OF THE CHIEF EXECUTIVE OFFICER

3.1 Letter from Auditor-General for New South Wales to Minister of Local Government

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: 12.1.2 Maintain compliance with the Office of Local Government risk management and internal audit framework; including ARIC and internal audit operation in accordance with legislation

Late on Tuesday 16 August 2022, during the Council meeting, Council received the attached letter the Auditor-General for New South Wales had sent to the Minister of Local Government.

Councillors were advised of the letter on Wednesday 17 August 2022. Following which, a number of Councillors queried the ability to release the letter publicly. Advice was then sought on GIPA Act requirements and meeting options. Following this, the Mayor formally sought to hold an extraordinary meeting to table this letter for the public record. As per the Meeting Code of Practice, the Mayor's request for an extraordinary meeting was supported by Deputy Mayor Imogen Draisma and Councillor Stuart Larkins. Accordingly, the meeting has been scheduled and the business paper prepared.

The correspondence identifies the Audit Offices' concerns as to the current financial state as a going concern and more importantly, the causes and potential risks for the business. The letter points out 'A key source of Council's current liquidity issues relates to the construction of the Kiama Aged Care Centre of Excellence, also referred to as Blue Haven Bonaira (Blue Haven).' It also identifies the past risks associated with noncompliance with the Act regarding restricted reserve movements, and poor record keeping and the difficulty in drawing conclusive findings due to past practices of combined ledgers for Blue Haven and Council.

The situation is serious. To date the organisation has been open and transparent with this detail publicly, and this practice will continue into the future. Likewise, staff effort will also focus on maintaining positive working relationships with key State Agencies including the Audit Office of NSW, Office of Local Government and TCorp. Good communication and constructive working relationships with key stakeholders will be essential in the coming months and years ahead, as the long road to financial sustainability continues.

Council's efforts to rectify cashflow must remain paramount.

It is also worth highlighting that at its ordinary meeting of Tuesday 16 August 2022 the Mayor prepared a Mayoral minute resolving to:

22/212OC

Resolved that Council:

Report of the Chief Executive Officer

3.1 Letter from Auditor-General for New South Wales to Minister of Local Government (cont)

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1. Undertake by the 31 August 2022, an in-house financial workshop to better understand and determine how Council might safeguard its future financial sustainability and demonstrate that it is a going concern able to meet its financial obligations as and when they fall due.
 2. Give delegated authority to the Chief Executive Officer to work with a suitably qualified specialist firm to review and present our Property Divestment Portfolio with associated recommendations for divestment and potential dates for realisation of return which can be used to inform cash flow analysis. The Chief Executive Officer shall be responsible for the conduct of all preliminary negotiations for land divestments.
 3. All negotiations undertaken by the Chief Executive Officer must be conducted on the basis that any potential divestment is subject to consideration and resolution by Council at a future meeting.

(Councillor Reilly)

This motion was resolved with eight (8) Councillors voting in support and one (1) against.

To that end, it is evident there is an urgent need for continued cohesive actions and decisions of Council which address the matters raised in this correspondence and which lead towards financial sustainability.

The finance workshop has been scheduled for 30 August 2022.

Attachments

- 1 REDACTED Letter from Auditor General to Office of Local Government - Financial Audit of Kiama Council [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Note the correspondence received 16 August 2022 from Auditor-General for New South Wales to the Minister of Local Government.
2. Continues to take all steps necessary to correct the financial situation of the organisation with a sense of urgency.



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

Contact name: Margaret Crawford
Phone no: [REDACTED]
Our ref: D2215828

16 August 2022

Dear Minister

30 June 2021 Financial Statements Audit for Kiama Municipal Council

I am writing to advise you of significant matters that have come to my attention through the course of my audit of the 30 June 2021 financial statements of Kiama Municipal Council (the Council). Section 426(1) of the *Local Government Act 1993* (the LG Act) requires I communicate these matters to you. The more substantial of these issues is whether the Council is able to continue to pay its debts as and when they fall due.

Management, Council and Council's Audit, Risk and Improvement Committee (ARIC) have been made aware of all issues in relation to the 2021 audit, but the response has been insufficient to conclude the audit. Work on the audit of Council's 30 June 2022 financial statements has not commenced.

Going Concern

As at 30 June 2021, Council's draft financial statements disclose \$141.1 million in current liabilities and \$46.1 million in current assets, including \$37.6 million of cash and investments. The deficit in liquid assets available to fund Council's liabilities poses a significant risk to Council.

A key source of Council's current liquidity issues relates to the construction of the Kiama Aged Care Centre of Excellence, also referred to as Blue Haven Bonaira (Blue Haven). A project to significantly expand the aged care facility, which Council had been operating for the past 40 years, was approved in 2017. The original budget for the project was \$74 million, but the final cost is estimated at \$107.2 million.

A key source of funding for the project was a \$60 million loan from T-Corp, of which the remaining outstanding balance of around \$45 million is payable in August 2023. Repayment of the loan was to be met in part through an asset sale, which is now delayed by legal action. There is now no certainty the transaction can be completed before the T-Corp loan is due.

Council also holds Aged Care Refundable Accommodation Deposits (RADs) on behalf of Blue Haven residents. Council's draft 30 June 2021 financial statements disclose a RAD liability of \$29.5 million, of which Council has set aside \$3.0 million, the minimum required to comply with the Council's Liquidity Management Strategy at 30 June 2021, leaving an unfunded RAD liability balance of \$26.5 million.

Separately, residents of independent living units (ILU) enter a Licence Arrangement with the Council whereby they make an entry payment generally, which is generally refundable within 6 months of a resident leaving the ILU. Residents do not own or have a registered interest in the ILU. Council has not funded repayment of this liability of \$92.5 million at 30 June 2021.

Council's current liabilities also include employee entitlement liabilities of \$7.4 million at 30 June 2021. Council has set aside \$1.5 million towards its expected short-term obligations, but the unfunded liability is \$5.9 million.

There are a variety of economic and circumstantial factors that will impact the timing and quantum of cash required over the short to medium term to fund these liabilities. Council is preparing but has yet to provide us with a sufficiently detailed future monthly cashflow forecast, incorporating different scenarios and assumptions that sets out the potential timing and quantum of cash inflows and payments for a period of not less than 12 months from the certification of the 2021 financial statements.

Adequacy of Council's books and records

Council implemented a new financial system during the 2021 financial year. Poor data migration coupled with the loss of key finance personnel, mean that the weaknesses communicated in my letter of 22 March 2022 have persisted and prevented a satisfactory conclusion to the audit. These issues include:

- weaknesses in supporting working papers and reconciliations of key accounts and sub-ledgers
- deficiencies in the presentation and disclosures within the draft financial statements
- an absence of supporting documentation for prior period restatements of balances within previously submitted financial statements.

Use of externally restricted funds

Council has never maintained separate ledgers for Blue Haven and the Council's other operations. This means it is not possible for the Council to determine the exact financial position of Blue Haven since it commenced operations. This creates a risk that Council has used externally restricted funds for purposes that are inconsistent with section 409(3) of the LG Act. However, given the weaknesses in Council's books and records, and the lack of separation between the ledgers for Blue Haven and the Council, I have not been able to validate the nature or extent of the non-compliance. Among the issues identified:

- Council is unable to substantiate the extent to which RADs have been used to meet Council or Blue Haven operational expenses. The use of funds for these purposes would be inconsistent with section 52N-1 of the Aged Care Act 1997 (Cth) and paragraphs 62-63 of the Fees and Payments Principles 2014 (No. 2)
- \$3.4 million of developer contribution funds, intended for use on Council Chamber upgrades, appears to have been spent on the Blue Haven project during the 2018 and 2020 financial years.

If you need more information about the matters noted in this letter or have information that I should be aware of, please contact me on [REDACTED] or alternatively, Ms Alison Brown (Assistant Auditor-General) on [REDACTED]

Yours sincerely



Margaret Crawford
Auditor-General for New South Wales

Cc: Ms Jane Stroud, Kiama Municipal Council - Chief Executive Officer

4 CLOSURE