

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 Adviser 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 Adviser are also not immediately apparent to Council.

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, recommendation to undertake forensic assessment and establishment of Financial Advisory Group (August 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, previously provided (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 draft 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

A handwritten signature in black ink, appearing to read 'Jane Stroud', with a long, sweeping flourish extending to the right.

Jane Stroud
Chief Executive Officer