



EXTRAORDINARY MEETING OF COUNCIL SUPPLEMENTARY ITEMS

To be held at 4.30pm on

Thursday 13 October 2022

Council Chambers

11 Manning Street, KIAMA NSW 2533

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

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SUP ADDENDUM TO REPORTS

S.1 Letter from the Hon. Wendy Tuckerman MP, Minister for Local Government

Attachments

- 1 Letter - Clr Neil Reilly and Ms Jane Stroud from the Hon. Wendy Tuckerman MP, Minister for Local Government [↓](#)
- 2 Proposed PIO (A836376) [↓](#)
- 3 PIO Fact Sheet (A837329) [↓](#)

Enclosures

Nil

RECOMMENDED

That Council:

1. Note the correspondence received 11 October 2022 from the Hon. Wendy Tuckerman MP, Minister for Local Government.
2. Coordinate urgent meetings with Audit Risk and Improvement Committee, and Finance Advisory Committee to discuss Council's response to the letter received from the Hon. Wendy Tuckerman, Minister for Local Government.
3. Formulate and table its submission to the Hon. Wendy Tuckerman MP, Minister for Local Government to a future Council meeting noting the due date of 25 October 2022.

REPORT

On Tuesday 11 October 2022, Council received the attached letter from the Hon. Wendy Tuckerman MP, Minister for Local Government at which time all Councillors were advised.

The correspondence identifies a 'Notice of Intention to issue a Performance Improvement Order to Kiama Municipal Council under Section 438A of the *Local Government Act 1993*'.

The Minister asks for the letter to be tabled publicly and invites Council to respond by 25 October 2022 by way of formal resolutions of Council.

This is a serious matter and must be given the required consideration. Councillors will meet to discuss the letter and will consult with Audit and Risk Improvement Committee and the Finance Advisory Committee. This information is in the public interest and is duly officially tabled.



The Hon. Wendy Tuckerman MP
Minister for Local Government

Our Ref: A837015

Clr Neil Reilly and Ms Jane Stroud
Mayor and General Manager
The Council of the Municipality of Kiama
PO Box 75
KIAMA NSW 2533

Via email: neil.reilly@kiama.nsw.gov.au
janes@kiama.nsw.gov.au

Dear Clr Reilly and Ms Stroud

NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER TO KIAMA MUNICIPAL COUNCIL UNDER SECTION 438A OF THE LOCAL GOVERNMENT ACT 1993

In accordance with section 438C of the *Local Government Act 1993* (the Act) I hereby give notice of my intention to issue a Performance Improvement Order under section 438A of the Act, for actions to be taken to improve the performance of the Council.

A copy of the proposed Performance Improvement Order is attached.

Section 438B (2) of the Act requires me to consider the performance improvement criteria prescribed by clauses 413D and 413DA of the *Local Government (General) Regulation 2021* before issuing a Performance Improvement Order. These include:

- whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,
- whether there are significant risks facing the council that are not being addressed,
- whether previous intervention attempts have failed,
- whether council business is being disrupted and the council failing to exercise its functions,
- whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified,
- any other matter that, in my opinion, is relevant to the issuing of the order.

I have considered these mandatory criteria in the context of the factual findings listed below. On balance, I have formed the preliminary view that action must be taken to improve the Council's performance.

My concerns are as follows:

1. There is evidence to suggest that Council has failed to meet its legislative responsibilities in relation to its financial management. Specifically, Council has accessed restricted funds without approval and used those funds for purposes other than for which they were intended in breach of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.
2. There is evidence to suggest that Council may not be able to pay its debts as they fall due.

3. There were, and continue to be, serious risks faced by the Council due to its financial position having deteriorated to the extent that it had insufficient cash to cover all internal and external obligations.
4. There is evidence to suggest that Council's records do not adequately indicate Council's true financial position.
5. There is evidence that Council has not effectively monitored its liquidity.
6. There is evidence that there have been inadequacies in relation to the oversight and reporting on the financial circumstances of the Council.
7. There is evidence to suggest that Council has not fully or correctly reported the construction costs of the Blue Haven aged care facility (Blue Haven).
8. There is evidence to suggest that Council has not operated the Blue Haven aged care facility in accordance with relevant legal requirements of the *Aged Care Act 1997* (Cth).
9. There is evidence that the continued operation of the Blue Haven has caused and is causing significant financial stress to Council.
10. Council has failed to meet its statutory reporting obligations with respect to its 2021/2022 financial statements.

The community needs to have confidence that Council's financial management and performance has close oversight and is being closely monitored. Given the difficult financial circumstances facing the Council, it is important that Council builds on the financial strategies that have been put in place to reduce expenditure and increase revenue.

In my opinion, a temporary adviser with the requisite financial expertise is needed to advise Council, to report on and oversee the implementation of the financial aspects of the Performance Improvement Order.

The attached proposed Performance Improvement Order forms part of this notice. This includes the terms of the proposed Performance Improvement Order and period for compliance as required by section 438C(2)(a), and the actions required to be taken to improve the performance of the Council as required by section 438A(3)(b).

If a Performance Improvement Order is not complied with, as specified under Section 438C(2)(c)), I may consider:

- issuing a further Performance Improvement Order; and/or
- issuing a compliance order (s438HA); and/or
- temporarily suspending the Council under Chapter 13, Part 7 of the Act.

I invite Council to make submissions to me in respect of the proposed Performance Improvement Order as allowed under Sections 438C (3) and (4). Should Council choose to make a submission, it must be provided to me no later than 14 days from the date upon which this notice is served.

I will consider all submissions made to me by Council during this period before deciding whether to issue a Performance Improvement Order.

It is suggested that Council tables this notice at an open Council meeting and provides its submissions by way of resolution of the Council.

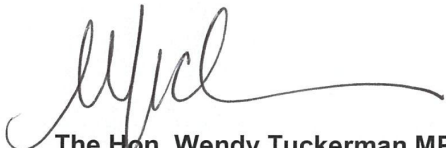
Further information regarding the process for the issuing of Performance Improvement Orders is available at <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/improvement-and-intervention/early-intervention-orders/>.

**Item S.1 - Letter from the Hon. Wendy Tuckerman MP,
Minister for Local Government**

**Attachments 1 - Letter - Cllr Neil Reilly
and Ms Jane Stroud from the Hon.
Wendy Tuckerman MP, Minister for
Local Government**

If you have any questions or would like to discuss this matter in more detail please contact. Karin Bishop, Director Sector Performance and Intervention, on [REDACTED] or [REDACTED]

Yours sincerely



The Hon. Wendy Tuckerman MP
Minister for Local Government

Encl:
Proposed Performance Improvement Order
Performance Improvement Order Fact Sheet

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Wendy Tuckerman MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993* (the Act), require Kiama Municipal Council, for the reasons specified in Schedule 1 below, to undertake the actions described in Schedule 2 below within the period specified.

I hereby appoint the person specified in Schedule 3 as a temporary adviser to Council to exercise the functions for the term specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated thisday of2022

The Hon. Wendy Tuckerman, MP.
Minister for Local Government

SCHEDULE 1

Reasons for Order – section 438A(3)(a)

There is evidence to suggest that Council has failed to meet its legislative responsibilities in relation to its financial management. Specifically, these include:

1. There is evidence Council has accessed restricted funds without approval and used those funds for purposes other than for which they were intended in breach of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979 in order to fund Council's operating expenses.
2. There is evidence to suggest that Council may not be able to pay its debts as they fall due.
3. There were, and continue to be, serious risks faced by the Council due to its financial position having deteriorated to the extent that it has insufficient cash to cover all internal and external restrictions.
4. There is evidence to suggest that Council's records do not adequately indicate Council's true financial position.
5. There is evidence that Council has not effectively monitored its liquidity.
6. There is evidence that there are inadequacies in relation to the oversight and reporting on the financial circumstances of the Council.
7. There is evidence to suggest that Council has not fully or correctly reported the construction costs of the Blue Haven aged care facility (Blue Haven).
8. There is evidence to suggest that Council has not operated the Blue Haven aged care facility in accordance with relevant legal requirements, including the Aged Care Act 1997 (C'wealth).
9. There is evidence that the continued operation of the Blue Haven aged care facility has

caused, and is continuing to cause, significant financial stress to Council.

Given the difficult financial circumstances facing the Council, it is important that Council remains on track with the financial strategies that have been put in place to reduce expenditure and increase revenue.

The community needs to have confidence that Council's financial management and performance has close oversight and is being closely monitored.

Council has failed to meet its statutory reporting obligations with respect to its 2021/2022 financial statements.

In my opinion, a temporary adviser with the requisite financial expertise is needed to advise Council, to report on and oversee the implementation of the financial aspects of the performance improvement order.

In my opinion, a temporary adviser with requisite skills in financial management is needed to provide advice and assistance in relation to Council's implementation of the governance aspects of the performance improvement order.

SCHEDULE 2

Action required to improve performance – section 438A(3)(b)

With the assistance of the Temporary Adviser, Council is required to implement the following actions to improve its performance.

Part A Council's Financial Management

1. Review Council's current financial circumstances, including Council's Strategic Improvement Plan.
2. Review Council's current compliance with accounting principles including the Act, Regulations and Code of Accounting Practice.
3. Review Council's strategies to improve its current financial circumstances, including preparation of its Liquidity Plan.
4. Develop longer term strategies to ensure its long-term financial security.
5. Undertake a strategic review of its property holdings and investments.

Part B Blue Haven Aged Care Facility

6. Review Council's management of Blue Haven aged care facility.
7. Prepare Council's business case for options relating to the facility.
8. Review the operation of the facility and enable Council to make a decision about the retention, sale or lease of the facility.
9. Review and report on Council's compliance with the *Aged Care Act 1997* (C'wealth) and other relevant legislation regarding the management of Blue Haven aged care facility, including but not limited to:
 - i. The use of funds, deposits and bonds;
 - ii. The financial circumstances of the facility;
 - iii. Strategies to improve the financial performance of the facility;
 - iv. any response to the facility's accreditation audit
10. Prepare a management plan for the facility

Part C Council's Financial Accounting and Management Systems

11. Review Council's current financial accounting and management systems and implement any improvements to these systems

Period for compliance with Order

Compliance report 1:

Undertake all actions in Schedule 2 by **31 January 2023**.

Compliance report 2:

Report on the status of the implementation of all actions in Schedule 2 by **29 April 2023**.

Compliance report 3:

Further report on the status of the implementation of all actions in Schedule 2 and a final report on compliance with the PIO by **31 July 2023**.

Evidence to be provided with the compliance report

Compliance report 1:

Provide a copy of any action/improvement plans and strategies and a report on the outcome of reviews as required by Schedule 2

Compliance report 2:

Provide a copy of any action/improvement plans and strategies as required by Schedule 2 finalised after Compliance Report 1 and a report on the actions taken by Council to address issues identified by the required reviews as at that time

Compliance report 3:

Provide a copy of any improvement and action plans and strategies as required by Schedule 2 finalised after Compliance Report 2 and a final report on compliance with the PIO.

SCHEDULE 3

Appointment of temporary adviser

1. Pursuant to section 438G of the *Local Government Act 1993*, [NAME] is hereby appointed as a temporary adviser to Kiama Municipal Council to:

Part A Council's Financial Management

- i. Review Council's current financial circumstances, including Council's Strategic Improvement Plan
- ii. Review Council's current compliance with accounting principles including the Act, Regulations and Code of Accounting Practice
- iii. Provide guidance and advice to Council on strategies to improve its current financial circumstances, including preparation of its liquidity plan
- iv. Assist Council to develop longer term strategies to ensure its long-term financial security
- v. Assist Council to undertake a strategic review of its property holdings and investments

Part B Blue Haven Aged Care Facility

- vi. Review Council's management of Blue Haven aged care facility
- vii. Assist preparation of Council's business case for options relating to the facility
- viii. Provide strategic advice regarding the operation and/or divestment of the facility
- ix. Review and report on Council's compliance with the *Aged Care Act 1997* (C'wealth) and other relevant legislation regarding the management of Blue Haven aged care facility, including but not limited to:

- a. The use of funds, deposits and bonds;
- b. The financial circumstances of the facility;
- c. Strategies to improve the financial performance of the facility
- d. Assist with any response to the facility's accreditation audit
- x. Assist Council in the preparation of the management plan for the facility

Part C Council's Financial Accounting and Management Systems

- xi. Review Council's current financial accounting and management systems and, as necessary provide advice and guidance on any improvements to these systems.

This appointment will cease upon [NAME] providing a report to me on Council's final compliance report.

Pursuant to section 438G(7) of the *Local Government Act 1993*, the temporary adviser shall be paid from the Council's funds for the period of the appointment as agreed to under the terms of the contract.

DRAFT



Quick Guide to Performance Improvement Order PROCESS FOR COUNCILS

HOW DOES THE PROCESS WORK?

- Notice of intention to issue a performance improvement order will be given.
- Councils will be given no less than 7 days to respond.
- Notices of intention and orders will outline what is required.
- Council should consider and table the notice of intention at an open council meeting.
- Council should provide its response to the notice of intention by resolution.
- The Minister is required to consider council's submission when making a decision.
- Council should table a performance improvement order at the next available council meeting.
- Council is required to publish the order on its website.
- Council will be required to complete a compliance report on the implementation of the performance improvement order.
- If a temporary adviser is appointed, the council, councillors and members of staff are required to co-operate with the temporary adviser. This includes providing any information or assistance that the adviser reasonably requires to exercise his or her functions.
- If a temporary adviser is appointed, the council is required to provide the temporary adviser with an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister. A copy of the reviewer's comments (if any) is to be provided to the Minister. Failure to comply with this is a contravention of the legislation.
- The Office of Local Government will monitor the implementation of performance improvement orders.
- Council will be advised in writing of the outcome of the Minister's consideration of its compliance report.
- The Office will publish orders, compliance reports and monitoring assessments on its website.

This is a quick guide to how the process of issuing a performance improvement order will work. Further detail is contained in the Framework for Implementing Early Intervention Orders. This document, available at <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/improvement-and-intervention/early-intervention-orders/> provides more detail about who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.

Version: February 2016