



ORDINARY MEETING OF COUNCIL SUPPLEMENTARY ITEMS

To be held at 5.00pm on

Tuesday 13 February 2024

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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18 LATE ITEMS

18.1 Congratulations to Ali Day

Attachments

Nil

Enclosures

Nil

RECOMMENDED

That Council formally congratulates Alistair Day on winning the Australian Iron Man title for the sixth time.

REPORT

Locally-born Kiama man Alistair (Ali) Day has just won the Australian Iron Man Title for the sixth time, after six starts...a history-making achievement in this gruelling, highly competitive sport.

Now six-time Nutri-Grain Series champion and Nine-time Coolangatta Gold champion, there is no doubting Ali Day's incredible skill in the surf. Originally from the NSW South Coast's Kiama, Day has competed and found success in just about every facet of surf sport competition. After missing the 2019/2020 Nutri-Grain Series due to injury, Day returned to the scene with an unstoppable six wins from six starts, a feat that has never before been achieved, and he backed it up with another trophy in 2021/2022.

I am pleased to say that I know Ali's dad, and I know his tenacity is one of the traits that has made Ali the champion he is.

Kiama Municipal Council congratulates Alistair Day and his grand sporting achievements.

18.2 Response to Minister Hoenig - Notice of Intention to vary a Performance Improvement Order under section 438A(6A) 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

Item 18.2

Summary

Kiama Municipal Council was issued with a Performance Improvement Order (PIO) under section 438A of the Local Government Act 1993 on 8 November 2022. The period of compliance with that order finished on 30 June 2023, with the provision of a final report to the Minister on the status of the implementation of all actions of the PIO.

Following the Ministers review of Council's compliance reports and at the Minister's request Mr John Rayner was appointed to undertake a further review of documentation. Mr Rayner submitted his report to the Minister on 17 January 2024 (attached).

On 30 January 2024, Council received a Notice of Intention to vary the PIO (attached). Council's position and response to that variation is provided for Councillor endorsement.

Financial implication

Some of the work required to be undertaken will need future budget allocation as there are costs associated with completing the activities.

Risk implication

There is a risk that if Council does not comply with the PIO and improve its operating position that further ministerial interventions will be required. Continuing to fail to meet Office of Local Government benchmarks for financial sustainability (performance ratios) is not an acceptable outcome. There is also a risk that new or existing Councillor candidates will perceive an opportunity to make different decisions or make new commitments beyond what Council is capable of accommodating given the status and the PIO. This PIO is proposed to manage that risk by spanning this and the future Council.

Policy

Local Government Act 1993

Consultation (internal)

- Councillors were informed of the intention to vary the PIO via the supplementary report at the Extraordinary Council meeting on 1 February 2024.
- Chairs of the Audit, Risk and Improvement Committee, the Finance Advisory Committee, and the Blue Haven Advisory Committee, and their members were also informed via the supplementary report at the Extraordinary Council meeting on 1 February 2024.

Supplementary Reports

18.2 Response to Minister Hoenig - Notice of Intention to vary a Performance Improvement Order under section 438A(6A) of the Local Government Act 1993 (cont)

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- Members of the public and council staff were also informed via the supplementary report at the Extraordinary Council meeting on 1 February 2024.

Communication/Community engagement

A copy of the Notice of Intention was placed on the public record at the Extraordinary Council meeting on 1 February 2024 and is available on Council's and the Office of Local Government's website.

Attachments

- 1 Correspondence from the Minister for Local Government dated 30 January 2024 - Notice of Intention to vary a Performance Order [↓](#)
- 2 Review of Kiama Municipal Council by John Rayner - Report for Minister of Local Government Hoenig [↓](#)
- 3 Correspondence from the Minister for Local Government dated 19 December 2023 [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. Accept Minister for Local Government, The Hon Ron Hoenig MP's intention to issue a variation to the Performance Improvement Order issued on 8 November 2022.
2. Give delegated authority to the Chief Executive Officer to respond to the Minister advising of the decision and Council's commitment to meeting the actions required in the Schedule 2 attached to the Notice, but noting the anomalies and matters for further consideration outlined in the Council report.

Background

On 30 January 2024 Council received a Notice of Intention to vary a PIO under section 438A(6A) of the Local Government Act 1993 from the Hon. Ron Hoenig MP, Minister for Local Government. The original PIO was received by Council on 8 November 2022.

The Minister invited Council to make a submission in respect of the proposed PIO within 28 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.

Response to the Notice of Intention

The letter from the NSW Minister for Local Government, The Hon. Ron Hoenig MP, recognises the substantial financial challenges faced by Council. It acknowledges that

Supplementary Reports

18.2 Response to Minister Hoenig - Notice of Intention to vary a Performance Improvement Order under section 438A(6A) of the Local Government Act 1993 (cont)

Council has taken significant steps to address the matters that gave rise to the issuance of a PIO in November 2022, but notes the PIO will be varied and will continue.

The Minister's letter was accompanied by a report from Mr John Rayner, who was appointed by the Minister to conduct a review, which was completed in January 2024. The report from Mr Rayner contains poignant findings that echo the numerous briefings and reports provided to Council and the community on a range of governance and financial matters since January 2022. It is a factual and fair appraisal of Council's situation however uncomfortable it is to read.

The Raynor report was conducted using only publicly available information and with targeted requested interviews with the Mayor, CEO and Chairs of the Audit, Risk and Improvement Committee, the Finance Advisory Committee and the Blue Haven Advisory Committee.

As the review was undertaken at the request of the Minister, the appointment scope, process and findings of the review are matters for the Minister and the Office of Local Government (OLG). Council is not able to object to this work or the review, nor decline to participate or refuse any assistance. Council played no role in scoping or commissioning the review and was advised via letter that the Minister was undertaking this work. As an instrument of State Government, the OLG and Minister can request any information from Council and undertake any review deemed appropriate in line with the provisions made in the Local Government Act 1993. Council was advised of this work occurring on 30 December 2023.

Subsequently the CEO provided all requested information and supported the review work as required during early January 2024. Councillors were advised via email from the CEO on 2 January 2024 and again on 10 January 2024 that the Minister and OLG were undertaking review work on the PIO and that we would know more in late January or early February. The letter received by the Mayor and CEO, sent from the Minister is outlined in the Rayner Report and at the Mayor's instruction was not circulated until the review was completed (refer attached). The Mayor's instruction arose primarily due to the review being operational and the work of the Minister and the department, notwithstanding that instruction Councillors were advised via the email as above.

The Rayner review makes it plain that collective action to protect Council and its financial sustainability is required and continuation of the PIO will bind this Council, future candidates and ultimately the next incoming Council. Until the structural deficit is corrected and Council lives within its means, it is what is needed, and is a reasonable and well-thought intervention by the State Government.

The news that the Minister has not yet imposed further sanctions or moved to appoint a financial controller is welcomed. Council staff have worked hard to comply with the previous Performance Improvement Order and every effort will be made to continue to meet the new requirements.

The review also thoroughly dispels the propagated myth of a fire sale of assets, noting in reality only two assets have been sold and achieved market valuation, and also met legislative requirements. The review notes the necessity of the sale of Blue Haven Bonaira and expresses concern over the pace of Council in addressing financial sustainability matters. The ongoing requirements of Blue Haven Terralong are also

Supplementary Reports

18.2 Response to Minister Hoenig - Notice of Intention to vary a Performance Improvement Order under section 438A(6A) of the Local Government Act 1993 (cont)

noted with a clear body of work recommended to understand costs, liabilities, and risks and meet regulations and Act requirements.

Recommendations regarding the Audit, Risk and Improvement Committee and the Finance Advisory Committee presenting to Council are currently being undertaken by staff and will be scheduled shortly, noting all Councillors have always been able to attend both meetings as observers and they receive the business papers and minutes from those committees. Staff will likewise include the Blue Haven Advisory Committee in those presentations to Council as an extension of meeting Standard 8 of the Federal Government Aged Care Act 1997.

The news that the Minister has not yet imposed further sanctions or moved to appoint a financial controller is welcomed. Council staff have worked hard to comply with the previous PIO and every effort will be made to continue to meet the new requirements.

The Minister needs to have confidence that Council's financial management and performance has improved and until that is satisfied, the Ministerial and OLG oversight and monitoring will continue. It is recommended that Council accepts that the PIO is to remain in place with the proposed variation.

Items for ongoing discussion or amendment

There are some items that require further discussion with the OLG or need minor corrections and these are noted below.

Part A

- The Strategic Improvement Plan 2 will be re-written and simplified into the "Finance and Governance Plan". This will be submitted to the March 2024 ordinary Council meeting.
- The Long-Term Financial Plan will need to be changed substantially to reflect the PIO timeframes of 2026/2027 for financial sustainability. Officers are undertaking this work now.

Part B

- Recommend changing the wording of (3) to "Monitor and report on compliance with the Retirement Villages Act 1999 and the Retirement Village Regulations relating to Blue Haven Terralong."

Part C

- Note that implementing TechnologyOne by 2025 as specified in (1) may not be achievable, and Council will continue to report to the OLG on the program of works and consider how this project could be accelerated.

In conclusion, the variance of the PIO is a reasonable State intervention and all effort should be made to address the matters the PIO raises within the timeframes specified. The CEO has already commenced regular liaison with the OLG and will continue to report on progress and Council matters to the department.

The Hon. Ron Hoenig MP

Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government



Our Ref: A888577

Mrs Jane Stroud
General Manager
The Council of the Municipality of Kiama
PO Box 75
KIAMA NSW 2533

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

Dear Mrs Stroud,

I refer to Council's representations seeking the conclusion of the current Performance Improvement Order (PIO) issued for Kiama Municipal Council (Council).

The PIO, which was issued by the former Minister for Local Government, the Hon Wendy Tuckerman MP, required Council to address thirteen specific issues and to provide four reports detailing Council's progress. I note that Council has provided those reports.

I am satisfied that Council has taken and is continuing to taking significant steps to address the matters giving rise to the PIO. In this regard, the Audit Office has now signed off on the 2020/21 financial accounts and the financial accounts for the following years are nearing completion. Additionally, I am satisfied that Council has taken positive steps to address other major issues, including its ongoing financial challenges, and has adopted a long-term financial plan to replenish its financial capacity.

While I have considered the actions taken by Council to address the PIO under section 438E(2) of the *Local Government Act 1993* (the Act), I remain concerned Council is not moving quickly enough to a stable and sustainable financial situation. I have advice from both the Office of Local Government and the independent financial assessment from Mr John Rayner PSM as to the dire state of Council's long term financial situation.

Given the difficult financial circumstances facing the Council, it is important 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 independent oversight and is being closely monitored.

While Council has recognised these challenges and has taken some steps towards addressing them, in my opinion the PIO should remain in place with a number of variations to the actions required to improve performance. This will ensure both existing councillors and any new councillors elected in the September 2024 elections are aware of and operate within the financial constraints necessary to return Council to financial sustainability by 2026/2027.

52 Martin Place Sydney NSW 2000
GPO Box 5341 Sydney NSW 2001

02 7225 6150
nsw.gov.au/ministerhoenig

1

In accordance with the requirements of the Act, I attach a Notice of Intention to vary the PIO as well as a proposal for the varied PIO.

I invite Council to make submissions regarding my proposed action within 28 days of the date of this letter and attach a copy of a summary sheet outlining the processes relating to a PIO under the Act.

Yours sincerely,



The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government

Encl: Notice of intention to vary the PIO, draft varied PIO and summary sheet

NOTICE OF INTENTION TO VARY A PERFORMANCE IMPROVEMENT ORDER TO KIAMA MUNICIPAL COUNCIL UNDER SECTION 438A(6A) 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 vary the Performance Improvement Order (PIO), dated 8 November 2022, pursuant to section 438A(6A) of the Act, for actions to be taken, as identified in the proposed variation to the Performance Improvement Order, to improve the performance of the Council.

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

- a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,
- b) whether there are significant risks facing the council that are not being addressed,
- c) whether previous intervention attempts have failed,
- d) whether council business is being disrupted and the council failing to exercise its functions,
- e) repealed,
- f) 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,
- g) any other matter that, in the opinion of the Minister, 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 decided that action must be taken to improve the Council's performance.

The reasons why I, as Minister, propose to vary the Performance Improvement Order (section 438C(2)(b)).

There is evidence to suggest that Council has failed in the past to meet its legislative responsibilities in relation to its financial management which continues to create challenges for its financial sustainability.

In the past it has operated and taken decisions without proper financial accounting, records and reports. The current Council has been made aware of and recognises past failures but is moving too slowly to achieve surplus budgets and become financially sustainable.

The ongoing financial and governance issues facing the Council include:

- a) An inability to produce 20/21 annual financial statements leading to a disclaimer of audit.
- b) A negative trend of increasing liabilities and trading losses.
- c) Questions raised about Council's liquidity and viability.
- d) Council's Aged Care facility/service (Blue Haven) running at a loss.
- e) Poor understanding of the loss, efficiency and compliance of the Blue Haven aged care facilities
- f) As a result of changed accounting systems Council was unable to produce reliable financial reports.

- g) Concerns whether Council's Auditor would certify Council as a going concern
- h) Significant cost overrun in the establishment of Blue Haven Bonaira
- i) Restricted funds had been illegally applied to general use.

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 independent oversight and is being closely monitored.

While Council has recognised these challenges and has taken some steps towards addressing them, in my opinion the PIO should remain in place with a number of variations to the actions required to improve performance.

Further, in my opinion, Council should provide bi-monthly reports to the Office of Local Government on the progress and effectiveness of actions taken to achieve financial sustainability for the duration of the period that this PIO remains in place.

The terms of the proposed Performance Improvement Order, including the period for compliance with the order (section 438C(2)(a)).

The attached proposed Performance Improvement Order is intended to form part of this notice. As required by section 438C(2)(a), the terms of the proposed Performance Improvement Order and period for compliance are specified in the proposed Order. As required by section 438A(3)(b),

The actions required to be taken to improve the performance of the Council are specified in the proposed Performance Improvement Order.

The actions that may be taken by me, as Minister, if a Performance Improvement Order is not complied with (section 438C(2)(c)).

If a Performance Improvement Order is not complied with, I may consider:

1. Issuing a further Performance Improvement Order; and/or
2. Temporarily suspending the Council under Chapter 13, Part 7 of the *Local Government Act 1993*.

Invitation to make submissions to me regarding the proposed Performance Improvement Order (sections 438C(3) and (4)).

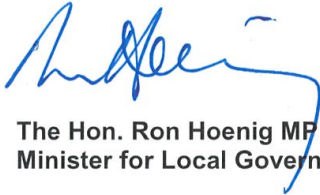
I invite Council to make submissions to me in respect of the proposed variation to the Performance Improvement Order. Should Council choose to make submissions, they must be provided to me no later than 28 days from the date upon which this notice is served on it.

I will consider all submissions made to me by Council during this period before deciding whether to issue a variation to the 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.

I have attached an information sheet about the process for the issuing of Performance Improvement Orders.

Signed on this 30th day of January 2024



**The Hon. Ron Hoenig MP
Minister for Local Government**

Encl: Information sheet and proposed Performance Improvement Order

Local Government Act 1993

Section 438A

Proposed Performance Improvement Order

I, the Honourable Ron Hoenig MP, Minister for Local Government, do, by this order under section 438A of the *Local Government Act 1993* (the Act), propose to 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.

Dated this 30th day of January 2024

The Hon. Ron Hoenig, MP.
Minister for Local Government



SCHEDULE 1

Reasons for Order – section 438A(3)(a)
<p>There is evidence to suggest that Council has failed to meet its legislative responsibilities in relation to its financial management.</p> <p>In the past it has operated and taken decisions without proper financial accounting, records and reports. The current Council has been made aware of and recognises past failures but is moving too slowly to achieve surplus budgets and become financially sustainable.</p> <p>The ongoing financial and governance issues facing the Council include:</p> <ul style="list-style-type: none">• An inability to produce 20/21 annual financial statements leading to a disclaimer of audit.• A negative trend of increasing liabilities and trading losses.• Questions raised about Council's liquidity and viability.• Council's Aged Care facility/service (Blue Haven) running at a loss.• Poor understanding of the loss, efficiency and compliance of the Blue Haven aged care facilities• As a result of changed accounting systems Council was unable to produce reliable financial reports.• Concerns whether Council's Auditor would certify Council as a going concern• Significant cost overrun in the establishment of Blue Haven Bonaira• Restricted funds had been illegally applied to general use. <p>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.</p>

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

While Council has recognised these challenges and has taken some steps towards addressing them, in my opinion the PIO should remain in place with a number of variations to the actions required to improve performance.

Further, in my opinion, Council should provide bi-monthly reports to the Office of Local Government on the progress and effectiveness of actions taken to achieve financial sustainability for the duration of the period that this PIO remains in place.

SCHEDULE 2

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

Council is required to undertake the following actions to improve its performance.

Part A Council's Financial Management

1. Regularly and continuously review Council's financial situation with a view to becoming financially sustainable by 2026/27.
2. Review and update the Strategic Improvement Plan 2 with an emphasis on the urgency to address the financial and governance issues facing Council.
3. To focus on the challenges faced by Council, brand the updated plan "Finance and Governance Improvement Plan".
4. Implement the actions identified in Council's Strategic Finance and Governance Plan and report monthly to Council on the financial position and bi-monthly on the governance and other actions in the Plan.
5. Continue to improve compliance with accounting principles including the Local Government Act 1993, the Local Government (General) regulation 2021 and the Code of Accounting Practice.
6. Update the Finance and Governance Improvement Plan to set out the actions Council will take over the next two budgets (FY 24/25 and FY 25/26) to break the practice of adopting deficit operating budgets without relying on property sales.
7. Immediately review the timing for service reviews and revenue opportunities to ensure Council can move to surplus operating budgets and ensure its long term financial security.
8. Invite the Finance Advisory Committee to present bi-monthly to Council Briefings.
9. Update the Finance and Governance Improvement Plan to include a three-year financial strategy which will culminate in Council increasing its unrestricted cash balance to a sustainable level by FY 2026/27.
10. Continue to investigate and pursue opportunities to benefit from property holdings and investments.

Part B Blue Haven Aged Care Facility

If Council proceeds with the sale of Blue Haven Bonaira, Council is to:

1. Address issues associated with Blue Haven Terralong including, but not limited to:
 - the true costs which should be applied and whether general rate revenue is subsidising its operation
 - The adequacy of current and proposed future maintenance fees
 - Completing and making public a dilapidation/building report for Terralong and Havilah
 - Examining options to retain and refurbish Terralong to conform with contemporary independent living units
 - Establishing a restricted reserve to meet the cost of replacement/renewal of assets
 - Examine the potential to subdivide and divest Havilah Place in accordance with the criteria contained in the Property Plan
 - Review the level of maintenance fees.
2. Complete Plan of Management for Blue Haven Terralong
3. Monitor and report on compliance with the Aged Care Act 1997 and other relevant legislation relating to Blue Haven Terralong.

If Council does not proceed with the sale of Blue Haven Bonaira, Council is to:

1. Address issues associated with Blue Haven Terralong above; and
2. Continue to implement improvements to Council's management and operation of Blue Haven aged care facility, ensuring there is regular reporting on
 - a. Staffing costs, particularly the use of contract labour hire
 - b. Operational costs for delivery of services
 - c. Maintenance and facility costs
3. Report on the implementation of the Operational Plan of Management for the Blue Haven aged care facility
4. Continue to update the Operational Plan of Management to take into account any finding or recommendation from the Aged Care Quality and Safety Commission accreditation assessment
5. Review and report on Council's compliance with the *Aged Care Act 1997 (C'wlth)* and other relevant legislation regarding management of the 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. Any response to the facility's accreditation audit.

<p>Part C Council's Financial Accounting and Management Systems</p> <p>Review Council's current financial accounting and management systems and implement any improvements to these systems.</p> <ol style="list-style-type: none">1. Fully implement Technology One by mid-to-end of 20252. Restructure the presentation of the draft and published budgets to detail programs and activities compared to current and previous years and funding sources for each capital project.3. Implement the governance recommendations from the Hopwood Report and the Auditor's Letter from the 2021/22 audit.
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<p>Period for compliance with Order</p> <p>Council is to comply with the requirements of the Order within the timeframes specified in Schedule 2.</p>
<p>Compliance reporting to be submitted at bi-monthly intervals:</p> <p>Report on the status of the implementation of all actions in Schedule 2 to be provided no later than two months from the commencement date of the PIO.</p>
<p>Evidence to be provided with the compliance reports</p> <p>Provide a copy of any action/improvement plans and strategies and a report on the outcome of reviews as required by Schedule 2.</p> <p>Provide a copy of a report on the actions taken by Council to address issues identified by the required reviews as at that time.</p>

Review of Kiama Municipal Council

Report to the Minister for Local Government

January 2024

Report authored by John Rayner PSM

This report was commissioned by the NSW Office of Local Government.

Review of Kiama Municipal Council

First published: January 2024

Acknowledgements

The author notes this report was funded by NSW Office of Local Government and acknowledges Kiama Municipal Council and Office of Local Government in providing access to material that was used to inform the author's opinion and findings.

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Item 18.2

Attachment 2

Executive summary

The Hon Ron Hoenig, MP

Minister for Local Government

and

Mr Brett Whitworth

Deputy Secretary Office of Local Government

Department of Planning, Housing and Infrastructure

Dear Sirs,

Re: Kiama Municipal Council

It is with pleasure that I submit my report in response to your request for advice on whether:

- A. Council has recognised its financial and budgetary challenges and is moving appropriately to address the challenges for the long-term benefit of its community.
- B. Council has made the appropriate decisions on asset sales, particularly:
 - i. Whether the assets should be disposed or whether they could be retained, and
 - ii. Whether there is a longer-term value to retaining the assets.
- C. If Council is right to dispose of the assets, is it getting the best value for the assets.
- D. Whether the Minister should appoint a Financial Controller to oversee the financial decisions of the Council, using the provisions of the Local Government Regulation to frame the advice.

The review was undertaken by:

- examining documents made available to me by Office of Local Government (OLG)
- holding discussions with and obtaining clarifications from the Mayor and CEO, Kiama Municipal Council (KMC)
- holding discussions with the Chairperson Audit, Risk and Improvement Committee, Chairperson Finance Advisory Committee (a volunteer) Chairperson Blue Haven Advisory Committee (a volunteer)
- examining Council reports and decisions.

Access to confidential Council information was not sought nor provided. This summary is supported by the following more detailed report.

Background

In December 2021 the Chief Executive Officer (CEO) to the Council, self-reported the Council's financial and governance issues to the Office of Local Government, including:

- An inability to produce 20/21 annual financial statements.
- A negative trend of increasing liabilities and trading losses.
- Council's Aged Care facility/service (Blue Haven) running at a loss.
- Poor understanding of the loss, efficiency and compliance of the Blue Haven Aged Care facility.
- Concerns whether Council's Auditor would certify Council as a going concern.
- Restricted funds had been illegally applied to general use.

In November 2022 the then Minister for Local Government issued a Performance Improvement Order (PIO) on the Council and appointed a Temporary Advisor under the Local Government Act. The Council was required to address the financial issues it faced including:

- Review Council's compliance with accounting principles.
- Review Council's strategies to improve its immediate financial circumstances.
- Develop strategies to ensure its long-term financial security.

Plus, a range of requirements to improve regulatory compliance and financial viability of Blue Haven Aged Care facility.

Kiama Municipal Council is small in terms of area, population, and financial capacity and flexibility. In fact, of the Councils outside of the Metropolitan area and to the east of the Great Dividing Range, Kiama Municipal Council is one of the smallest. Therefore its ability to find innovative solutions to its circumstances are extremely limited.

Also, it is the only Council east of the Great Dividing Range operating an aged care facility.

The Long-Term Financial Plan (LTFP) proposes Council reach financial sustainability in 2031/32 however this report proposes this is achieved by FY 2026/27.

It is evident that the Council has for many years and continues to 'live beyond its means'. In the past it has operated and taken decisions without proper financial accounting, records and reports.

The current Council has been made aware of and recognises past failures but is moving too slowly to achieve surplus budgets and become financially sustainable.

Response to the Brief

A. Whether Council has recognised its financial and budgetary challenges and is moving appropriately to address the challenges for the long-term benefit of its community

The Council's financial position is dire!

It is not meeting the principles of sound financial management as set out in the Local Government Act. Past financial reporting has been such that adequate financial management was not possible.

Analysis

Council has accepted responsibility for the financial situation and is taking steps to address its circumstances. Evidence of its financial situation is provided through:

- the Council relying on asset sales to produce a surplus and without asset sales the FY 23/24 budget will be in deficit of approximately \$12m.
- the Capital Works Program relies on grants and external funding.
- Council does not have discretionary funds to finance additional capital works or unplanned maintenance.
- Council not having the funds to install the necessary infrastructure if it was to introduce paid parking.
- Council not having unlimited assets it can divest so this income stream will soon run out.
- the sale of Blue Haven Bonaira being essential to reduce debt and improve liquidity.

A significant Special Rate Variation (SRV) may be required but this should not be pursued until all other options are exhausted or if it becomes evident that a SRV is required to meet the financial sustainability target.

Whilst Council has been made aware of its financial challenges, the structure of the FY 2023/24 Budget demonstrates the Council is not addressing its financial challenges with the urgency required. Expenditure must be reduced.

The balance of Council's unrestricted cash varies from month to month and when liquidity is low, cash is boosted through transfers from the Land Development Reserve.

Good progress is being made on updating information technology (IT) systems to improve financial reporting and governance arrangements.

Council is facing litigation over the sale of Akuna Street (Mitre 10 site) and if this is successful and not covered by insurance, Council will be at significant financial risk. A negotiated settlement will also severely impact on Council's finances.

B. Whether Council has made the appropriate decisions on asset sales, particularly.

- i. Whether the assets should be disposed or whether they could be retained, and*
- ii. Whether there is a longer-term value to retaining the assets.*

To address its critical financial situation and challenges, Council has adopted Strategic Improvement Plan 2 which guides Council in actions to improve its immediate financial circumstances and look to its long-term financial sustainability.

Council is pursuing the actions in close consultation with the Office of Local Government, its Audit, Risk and Improvement Committee and its Finance Advisory Committee.

Key actions include:

- Divestment of selected assets including Blue Haven Bonaira
- Achieving savings and efficiencies
- Business and service reviews
- Exploring revenue opportunities

The latter three actions will not achieve the turn around necessary to improve Council's liquidity.

Council has adopted a Property Plan which commits Council to:

- seek the best value from its property holdings to provide community and economic benefits.
- utilise returns from land holdings to supplement revenue sources and minimise the demand for increasing rates above rate-pegging or reducing services.
- hold returns from property sales in a Property Reserve to seed other property developments or acquisitions.
- undertake business cases to assess and compare relative outcomes through financial tools such as NPV, return on investment and potential dividends or yields, together with relative impacts on Council's finances and services.

Whilst the commitments include holding sales returns in Reserve to seed other property developments or acquisitions, it is also being used to meet cash flow requirements.

Under the Property Divestment Plan, Council has taken decisions to sell three land holdings, Akuna Street (2 properties) and Irvine Street currently on the market, plus the loss-making

business, Blue Haven Bonaira. The 2023/24 Budget lists a number of additional land holdings to be sold.

The Budget shows an overall surplus of \$18.5 million due to a predicted \$31.2 million from the gain or profit from asset sales, primarily the forecast sale of Blue Haven Bonaira.

Excluding sale of assets, the budget is in deficit by \$12.7 million, however if predicted asset sales are not achieved the deficit could be higher.

Council's Cash Flow and Sustainability Strategy, adopted 28 February 2023, identifies asset divestment as a key element in its financial recovery.

Of the sales to date and upcoming sales the following amounts have been/will be transferred to the Land Development Restricted Reserve, in accordance with one of the commitments in the Property Plan:

- Akuna Street (Mitre 10) \$8.4m
- Akuna Street (Car Park) \$2m
- Irvine Street - all net funds will be applied to the Reserve however, this Reserve is also used to meet liquidity issues.

Blue Haven

Paul Sadler Consultancy and Stewart Brown were engaged by Council to undertake the review of Council's Aged Care Facility Blue Haven.

The review found that the residential aged care operation at Blue Haven Bonaira was in deficit to the value of \$5.26m in FY22, offset by surpluses in other sections of Blue Haven. The amount of the loss in previous years had never been understood as the financial position of Blue Haven had always been reported as part of Council's consolidated accounts. This was confirmed by The Auditor General for New South Wales in her letter to the Minister for Local Government on 16 August 2022.

Council is now able to provide more accurate reports on the financial performance of Blue Haven.

It was reported to the July 2023 Council meeting that the Blue Haven Bonaira Residential Aged Care "continues to operate at a substantive loss, currently \$5.34M as of 31 May 2023 compared to \$4.34M at 30 April 2023".

NB: Council's rate revenue is in the vicinity of \$26m.

The September 2023 Monthly Financial Report for Residential Aged Care suggests a \$1m net deficit for the first quarter compared to a budgeted loss of \$591k.

The Paul Sadler review also highlights the increasing requirements for residential aged care which is the major focus for aged care reform in Australia. The higher standards of care, the

challenges in staffing and the reliance on agency staff is unsustainable. The community care services suffer from the same agency cost overheads.

The review's analysis of the 'Keep', 'Partnership' and 'Sell' options overwhelmingly rated the 'sell' option as the preferred way to improve Council's liquidity, reduce risk and enable quality care and accommodation.

Council will consider tenders for Blue Haven Bonaira at an Extraordinary Meeting in early February 2024.

Conclusion

Whilst there is a level of community ownership and sentiment towards Blue Haven, Council cannot take the financial and operational risk to maintain ownership and operation of Blue Haven Bonaira.

The asset divestments have been supported by the ARIC, the Finance Advisory Committee and the Temporary Advisor appointed by the then Minister.

Council has been diligent in its analysis of the options for Blue Haven and in identifying the potential of holdings through the Property Plan.

Adherence to the Property Plan answers the question of whether the assets should be disposed or whether they could be retained.

The only two sales to date, the Akuna land holdings, have been disposed of as originally intended providing immediate and necessary financial benefit being applied to boost Reserves, reduce debt and supplement income.

Local government and particularly Kiama Municipal Council, is not resourced and does not have the skills and expertise to manage the ever increasing complex and regulated residential aged care facility. The sale of Blue Haven Bonaira will bring immediate and ongoing financial benefit and Council will have disposed of a loss-making business.

In normal operating circumstances it is preferable for a Council to retain property assets, particularly if those holdings are generating a revenue stream. The land holdings sold or planned to be sold by the Council were/are not generating income and were/are absolutely necessary to improve liquidity and to reduce debt.

Without the sales Council would not be able to maintain liquidity.

Many of Council's financial problems can be traced to the lack of adequate reporting on Blue Haven. Now that better financial measurement is available and there is closer scrutiny on the operations of Blue Haven Bonaira, it is obvious Council does not have the skills and expertise to manage residential aged care or to meet the standards now required by government.

Council cannot retain the loss-making business Blue Haven Bonaira which has only a two-star Clinical Quality rating.

C. If Council is right to dispose the assets, is it getting the best value for the assets.

Property divestments are conducted strictly in accordance with the Property Plan and for significant sales, probity advisors are appointed.

Prior to going to market, a valuation is obtained but the real value of a property is what the buyer is prepared to pay at the time.

- Akuna Street (Mitre10) sold for \$8m above valuation.
- Akuna Street (Car Park) sold slightly below the lower end of the valuation range but at a price deemed satisfactory to the Council considering the market at the time.
- Blue Haven Bonaira and Irvine Street sales have yet to be finalised.

Under the Property Plan the Council will also 'undertake business cases to assess and compare relative outcomes through financial tools such as NPV, return on investment and potential dividends or yields, together with relative impacts on Council's finances and services'.

It is considered Council has to-date obtained the best value for its two completed sales.

D. Whether the Minister should appoint a Financial Controller to oversee the financial decisions of the Council, using the provisions of the Local Government Regulation to frame the advice.

Ministerial intervention with Kiama Municipal Council has occurred through the issuing of a Performance Improvement Order (PIO) in November 2022 and the appointment of a Temporary Advisor at that time.

The Temporary Advisor's appointment concluded in June 2023.

The financial and governance issues facing the Council were a result of failures of previous Councils. The current Council is aware of the challenges and has commenced addressing them.

The recommended option is to issue a new or vary the current PIO.

Subject to the progress Council makes, the Minister can then consider whether a Temporary Advisor and/or a Financial Controller should be appointed or more extreme intervention.

The suggested PIO recognises the progress to date but proposes to emphasise the urgency required to address the finance and governance issues faced by Council.

The PIO would inform the current Council, candidates for election in September 2024 and the incoming Council, that the Council's operating expenses must be reduced and that there are no discretionary funds available for additional capital projects.

The attached detailed report reviews Council's response to the existing PIO under each requirement. The report also suggests the actions which could be included in the varied or new PIO.

Financial Controller/Temporary Advisor

It is recommended that at this time neither a Financial Controller nor a Temporary Advisor be appointed and that the response to a new or varied Performance Improvement Order be monitored by the Office of Local Government through reporting requirements.

The Minister would be able to intervene at any time should progress be deemed to be unsatisfactory, particularly if Council is not on track to reach a point of financial sustainability by 2026/27.

John Rayner PSM

17 January 2024

Purpose

The Minister for Local Government, through the Office of Local Government, is specifically seeking advice in the form of a short, written report on whether:

- A. Council has recognised its financial and budgetary challenges and is moving appropriately to address the challenges for the long-term benefit of its community.
- B. Council has made the appropriate decisions on asset sales, particularly:
 - I. whether the assets should be disposed or whether they could be retained, and
 - II. whether there is a longer-term value to retaining the assets.
- C. If Council is right to dispose the assets, is it getting the best value for the assets, and
- D. Whether the Minister should appoint a Financial Controller to oversee the financial decisions of the Council, using the provisions of the Local Government regulation to frame the advice.

The review was undertaken by:

- examining documents made available by Office of Local Government.
- holding discussions with and obtaining clarifications from the Mayor and CEO, Kiama Municipal Council.
- holding discussions with the Chairperson Audit, Risk and Improvement Committee, Chairperson Finance Advisory Committee (a volunteer) Chairperson Blue Haven Advisory Committee (a volunteer) and former Temporary Advisor Peter Tegart.
- examining Council reports and decisions.

Access to confidential Council information was not sought, nor was it provided.

Background

In responding to the brief, it is important to consider the dire financial standing of the Council.

In December 2021 the Chief Executive Officer (CEO) to the Council, self-reported the Council's financial position to the Office of Local Government (OLG). The financial and governance issues facing the Council included:

- An inability to produce 20/21 annual financial statements.
- A negative trend of increasing liabilities and trading losses.
- Questions raised about Council's liquidity and viability.
- Council's Aged Care facility/service (Blue Haven) running at a loss.
- Poor understanding of the loss, efficiency and compliance of Blue Haven.
- As a result of changed accounting systems Council was unable to produce reliable financial reports.
- Concerns whether Council's Auditor would certify Council as a going concern.
- Significant cost overrun in the establishment of Blue Haven Bonaira.
- Restricted funds had been illegally applied to general use.

In November 2022 the then Minister for Local Government issued a Performance Improvement Order (PIO) on the Council and appointed a Temporary Advisor under the Local Government Act.

The PIO required council to address the following:

- Council's financial management
 - Review Council's current financial circumstances against Council's Strategic Improvement Plan (SIP).
 - Revise the SIP as necessary.
 - Implement actions of the SIP.
 - Review Council's compliance with accounting principles.
 - Review Council's strategies to improve its immediate financial circumstances.
 - Develop strategies to ensure its long-term financial security.
 - Undertake a strategic review of its property holdings and investments.

- Blue Haven Aged Care Facility
 - Review Council's management and operation of Blue Haven.
 - Develop an Operational Plan of Management for Blue Haven.
 - Revise the Operational Plan of Management.
 - Prepare a comprehensive business case outlining options for Blue Haven including lease, sale, joint venture or retention.
 - Review Council's compliance with relevant legislation including:
 - the use of funds, deposits and bonds,
 - the financial circumstances of the facility,
 - strategies to improve the financial performance,
 - any response to the facilities' accreditation audit.
- Council's Financial Accounting and Management Systems
 - Review Council's current financial accounting and management systems and implement changes.

The PIO required Council to provide four reports of its actions addressing the PIO.

The reports have been completed; the final report lodged 30th June 2023.

In considering Council's ability to address its financial and governance issues, Council's relative position needs to be taken into account.

Kiama Municipal Council is small in terms of area, population and financial capacity and flexibility. In fact, of the Councils outside of the Metropolitan area and to the east of the Great Dividing Range, Kiama Municipal Council is one of the smallest. Therefore, its ability to find innovative solutions to its circumstances are extremely limited.

Also, it is the only Council east of the Great Dividing Range operating an aged care facility.

It is evident that the Council has for many years and continues to 'live beyond its means'. In the past it has operated and taken decisions without proper financial accounting, records, and reports.

The current Council has been made aware of and recognises past failures but is moving too slowly to achieve surplus budgets and become financially sustainable.

Response to Brief

A. Whether Council has recognised its financial and budgetary challenges and is moving appropriately to address the challenges for the long-term benefit of its community

The Council's financial position is dire!

It is not meeting the principles of sound financial management as set out in the Local Government Act. Past financial reporting has been such that adequate financial management was not possible.

However, through the actions undertaken and proposed in the Strategic Improvement Plan and this report, the financial standing of the Council can be improved.

The financial position and challenges are evidenced through:

- The self-reporting of the financial issues in December 2021.
- The State of the Organisation Report (December 2021) to the new Council highlighted *“that the matters facing KMC are not unusual to local governments, cash flow, asset management, lack of governance are all issues that councils experience, however the added complexity of the aged care business presents an unusual circumstance.*

It is worth noting that 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, resourcing and quality systems and procedures to help inform quality Council decisions”.

- The fact that the then Minister for Local Government issued a Performance Improvement Order on the Council in November 2022 with an emphasis on financial issues including those emanating from the Blue Haven facility. A Temporary Advisor was appointed at that time.
- The Forsyths' Forensic Report, March 2022 stated, *“The current cash position poses a significant risk to Council's ability to fund its significant debt obligations into the future”* and *“Council has consistently spent outside of its original budget parameters during the period under review meaning that the budgeting process is not achieving its objectives of planning and monitoring expenditure”.*
- The Forsyths' Report made it abundantly clear to Council that it has many challenges and risks, including;

- the inappropriate use of Developer Contributions and non-compliance with EP&A Act.
 - unbudgeted project expenditure (Blue Haven) from restricted funds.
 - deterioration in Council's cash position.
 - risk to Council's ability to meet debt obligations.
 - an unfunded component (\$26.5m) of Refundable Accommodation Deposits (Blue Haven).
 - a liability of \$92.5m for Independent Living Unit (ILU) deposits.
 - Council consistently spending outside its budget parameters.
 - the increase in externally restricted funds as a percentage of overall cash poses a risk to Council.
 - shortfall of \$18.8m in loan repayments to TCorp.
 - risk that council may not have spent sufficient funds on infrastructure.
 - Council's budget and monetary process is ineffective as Council is failing to adequately manage funds within budget.
 - failure to meet benchmarks set by OLG in key financial indicators.
- August 2022 letter from Auditor General for NSW to the then Minister for Local Government advising of liquidity issues, the key source relating to construction of Blue Haven Bonaira, the unfunded liability of employee entitlements, the adequacy of Council's books and accounts and confirming that Council has never maintained separate ledgers for Blue Haven.
 - In considering the FY 20/21 Financial reports the Auditor issued disclaimers of opinion over everything in the financial report being unable to obtain evidence for any balance that was reported.
 - For the FY 21/22 the Auditor was able to verify most balances but issued disclaimers of opinion on the value of Property, Plant and Equipment and could not verify the split between restricted and unrestricted cash.
 - The recently completed FY 2021/22 Annual Financial Statements:
 - report a net operating loss of \$18,699.
 - Operating Performance Ratio (containing operating expenditure within operating revenue) outside benchmark.

- Unrestricted Current Ratio (adequacy of working capital) outside benchmark. The reason given is “*significant balance of Blue Haven current liabilities and no sufficient cash balance to offset it*”.
- negative performance indicators for Buildings and Infrastructure Renewal Ratio and Infrastructure Backlog Ratio.
- As of 30 June 2022 Council reported payables of \$139,339 as part of its current liabilities. The majority of the payables comprise the aged care accommodation bonds and lease liabilities attached to the independent living units.
- The November 2023 Statement of Investments reports on Cash and Investments held:
 - Externally Restricted \$30,022,634
 - Internally Restricted \$11,766,587
 - Unrestricted Funds \$ 2,563,061
 - Total \$44,352,282

Of concern is that the Total Cash drops to \$40.33m in April 2024 and to \$39.59 in May 2024.

It will be reported that the Unrestricted Funds will be \$4.8m on 31 December 2023.

The Land Development Reserve is being used under the Restricted Funds Policy to meet financial obligations and requirements of Council’s Long Term Financial Plan and emergencies with a resolution from the Council.

Whilst part proceeds of sales may be transferred to the Reserve, it has been drawn on in 2023 when cash flows have been low or unbudgeted expenditure occurs.

The Council has committed to address the financial situation through a range of strategies and actions, however under the Long-Term Financial Plan Council will not be financially sustainable until 2032/2033.

Those strategies and actions include:

- Council adopted its initial Strategic Improvement Plan (SIP) in April 2022 and has:
 - received accreditation for the Blue Haven Residential Aged Care Facility.
 - sold property at Akuna Street to partly restore reserves and working capital.
 - established the basis of improving its financial position through liquidity, property and cashflow plans.
 - opted to pay down \$30m of the debt to TCorp leaving a balance of \$15m.
 - resolved to progress reviews of business units and services, governance arrangements and technology.

- Strategic Improvement Plan 2 which updated the original SIP was adopted by Council in April 2023 with actions including:
 - providing monthly reports to Council on financial position and bimonthly on the SIP.
 - Liquidity Plan adopted.
 - Cash Flow Plan adopted.
 - Long Term Financial Plan adopted.
 - distribution and returns from property divestment used to respond to financial issues.
 - updating Property Plan identifying holdings to be divested.
 - reviewing Council's management and operation of Blue Haven Residential Aged Care Facility.
 - exploring options (lease, sell, joint venture or retain) for Blue Haven.
 - implementing recommendations of Forsyths Forensic Report
 - implementing TechOne finance, HR and Assets systems.
 - improving financial systems and reporting.
 - undertaking service reviews, initially waste, leisure centre, pavilion and holiday parks.
 - exploring revenue opportunities, including paid parking.
 - working with and taking advice from Audit Risk and Improvement Committee and Finance Advisory Committee, both with independent community representatives.
 - selling Blue Haven Bonaira to reduce debt and improve liquidity.
 - transforming organisation and improving governance arrangements.
 - restoring negative restricted funds, replenishing unrestricted and replenishing and strengthening infrastructure reserves.

Long Term Financial Plan

Long term financial plans are inherently uncertain and become visionary past the first few years. Assumptions need to be made and given the time span for the Plan. Those assumptions may need to be reviewed regularly.

Council's Plan states "The current Long Term Financial Plan was prepared based on the Strategic Improvement Plan (SIP) and parameters defined in Council's Liquidity Plan and Financial Sustainability and Cash Flow Strategy adopted by Council on 28 February 2023 with the key strategies being:

- Asset Divestment in the 2023/24 financial year including sale of Bonaira site and services component of Blue Haven at the end of next financial year.
- Refinancing \$15 million TCorp loan with the repayment of the loan tied to sale of Bonaira site and associated business.
- Capital Works Program focus on reserve funded projects with minimum allocation from unrestricted cash.
- Replenishment of unrestricted funds (working capital).
- Achieving operational efficiencies starting from 2024/25 financial year".

The Long-Term Financial Plan proposes that with the implementation of the strategies summarised above, Kiama Council (consolidated) will achieve a balanced budget with the positive unrestricted cash movement by 2026/27 financial year. It is claimed the positive unrestricted cash movement will continue in future years. "This will allow Council to build-up its unrestricted cash balance to a sustainable level by 2032/33 financial year".

The Long-Term Financial Plan (LTFP) recognises the sale of Blue Haven Bonaira will improve the annual income by some \$2 million initially and up to \$4 million per annum thereafter.

Operational efficiencies identified through services review of the general fund operations will result in 3% reduction in expenditures in 2024/25, 5% in 2024/25, and 2% in 2026/27 and 2027/28 (total savings of \$6.6 million).

The LTFP demonstrates three scenarios and their implications of financial performance of Council.

Scenario 1 – Base Case. This scenario represents the Council's preferred outcome and projects a balanced budget by the 2026/27 financial year and an operational surplus by 2031/32.

Scenario 2 – 10% Special Rates Variation (SRV). Improves the Council's financial performance more quickly than scenario 1 and achieves a balanced budget in 2024/25.

Scenario 3 – Status Quo. This scenario demonstrates that the continuation of Council operating Bonaira, including care facilities and ILUs, is unsustainable. The LTFP forecasts ongoing Council deficits and no achievement of a balanced budget in the next 10 years.

2023/24 Budget

The Budget shows an overall surplus of \$18.5 million, due to a predicted \$31.2 million from the gain or profit from asset sales, primarily the forecast sale of Blue Haven Bonaira.

Excluding sale of assets, the budget is actually in deficit by \$12 million.

The \$13.9 million Capital Works Program is mainly financed from external sources such as grants.

Analysis

Council has accepted responsibility for the financial situation and is taking steps to address its circumstances. Evidence of its financial situation is provided through:

- the council relying on asset sales to produce a surplus and without asset sales the 23/24 Budget will be in deficit of approximately \$12m.
- the Capital Works Program relies on grants and external funding.
- Council does not have discretionary funds to finance additional capital works or unplanned maintenance.
- Council not having the funds to install the necessary infrastructure if it was to introduce paid parking.
- Council not having unlimited assets it can divest so this income stream will soon run out.
- the sale of Blue Haven Bonaira being essential to reduce debt and improve liquidity.

A significant Special Rate Variation (SRV) may be required but this should not be pursued until all other options are exhausted or if it becomes evident that a SRV is required to meet the financial sustainability target.

Whilst Council has been made aware of its financial challenges, the structure of the 2023/24 Budget demonstrates the Council is not addressing its financial challenges with the urgency required. Expenditure must be reduced.

The balance of Council's unrestricted cash varies from month to month and is boosted through transfers from the Land Development Reserve.

Good progress is being made on updating IT systems to improve financial reporting and governance arrangements.

Council is facing litigation over the sale of Akuna Street (Mitre 10 site) and if this is successful and not covered by insurance Council will be at significant financial risk. A negotiated settlement will also severely impact on Council's finances.

B. Whether Council has made the appropriate decisions on asset sales, particularly:

- I. Whether the assets should be disposed or whether they could be retained, and**
- II. Whether there is a longer-term value to retaining the assets.**

To address its critical financial situation and challenges Council has adopted Strategic Improvement Plan 2 which guides Council in actions to improve its immediate financial circumstances and look to its long-term financial sustainability.

Council is pursuing the actions in close consultation with OLG, its Audit, Risk and Improvement Committee and its Finance Advisory Committee.

Key actions include:

- Divestment of selected assets including Blue Haven Boronia
- Achieving savings and efficiencies
- Business and service reviews
- Exploring revenue opportunities

The latter three actions will not achieve the turn around necessary to improve Council's liquidity.

Council has taken a decision to focus on achieving operational efficiencies and service reviews before considering a Special Rate Variation (SRV).

Over past decades governments and Councils have sold assets to generate boosts to revenues, offset expenditure or to change the method of service delivery.

A current example is Central Coast Council where asset sales is a key element in Council's financial recovery. Sales to date are valued at circa \$85m.

Ideally Councils should establish a Property Reserve/Fund which acquires and protects income earning assets, generates an income stream and finances the purchase of assets which will add to the annual yield of the Fund.

In February 2023 Council unanimously adopted a working draft Property Plan/ Property Divestment Strategy which will be continually worked on by staff and which was reviewed by Council in August 2023.

After considering the status of each property Councillors have given clear direction on assets to be sold. The Property Divestment Strategy goes hand in hand with Council's liquidity strategy aimed at addressing financial issues.

The Property Plan *"tabulates Council's operational holdings and considers scenarios to retain, refurbish, redevelop, recycle, repurpose, partner, sell or lease with future assessment to outline the associated net present value (NPV) or return on investments (ROI) of those scenarios"*.

The Property Plan commits Council to:

- seek the best value from its property holdings to provide community and economic benefits.
- utilise returns from land holdings to supplement revenue sources and minimise the demand for increasing rates above rate-pegging or reducing services.
- hold returns from property sales in a Property Reserve to seed other property developments or acquisitions.
- undertake business cases to assess and compare relative outcomes through financial tools such as NPV, return on investment and potential dividends or yields, together with relative impacts on Council's finances and services.

Under the Property/Divestment Plan, Council has taken decisions to sell three land holdings, Akuna Street (2 properties) and Irvine Street currently on the market, plus the loss-making business, Blue Haven Bonaira. The FY 2023/24 Budget lists a number of additional land holdings to be sold.

The FY 23/24 Budget shows an overall surplus of \$18.5 million, due to a predicted \$31.2 million from the gain or profit from asset sales, primarily the forecast sale of Blue Haven Bonaira.

Excluding sale of assets, the budget is in deficit by \$12.7 million, however if predicted asset sales are not achieved the deficit could be higher.

Council's Cash Flow and Sustainability Strategy, adopted 28 February 2023 identifies asset divestment as a key element in its financial recovery:

"KMC recognises that asset divestment is simply the first piece of the overall financial sustainability strategy and the second component requires operational efficiency improvements from July 2024 and ongoing. Strategic Improvement Plans, Management focus and leadership with aligned sound governance decisions by Councillors (with advice and recommendations from its supporting ARIC and FAC sub-committees) can and will rectify KMC financial sustainability".

Of the sales to-date and upcoming sales the following amounts have been/will be transferred to the Land Development Restricted Reserve, in accordance with one of the commitments in the Property Plan:

- Akuna Street (Mitre 10) \$8.4m.

- Akuna Street (Car Park) \$2m.
- Irvine Street all net funds will be applied to the Reserve however this reserve is also used to meet liquidity issues.

Blue Haven

Paul Sadler Consultancy and Stewart Brown were engaged by Council to undertake the review of Council's Blue Haven Aged Care Facility.

The review found that the residential aged care operation at Blue Haven Bonaira was in deficit of \$5.26m in FY22, offset by surpluses in other sections of Blue Haven. The amount of the loss in previous years had never been understood as the financial position of Blue Haven had always been reported as part of Council's consolidated accounts. This was confirmed by The Auditor General for New south Wales in her letter to the Minister for Local Government on 16 August 2022.

Also, true costs have not been attributed to Blue Haven Terralong, nor have the Terralong assets been depreciated.

Council is now able to provide more accurate reports on the financial performance of Blue Haven. It is difficult to project the loss for Blue Haven Bonaira for FY23 and the current financial year.

The financial reports for 2022/23 will not be available until April 2024. It was reported to the July 2023 Council meeting that the Blue Haven Bonaira Residential Aged Care "*continues to operate at a substantive loss, currently \$5.34M as at 31 May 2023 compared to \$4.34M at 30 April 2023*".

NB: Council's rate revenue is in the vicinity of \$26m.

The September 2023 Monthly Financial Report for Residential Aged Care suggests a \$1m net deficit for the first quarter compared to a budgeted loss of \$591k. (Council Meeting 21st November 2023).

The Paul Sadler review also highlights the increasing requirements for residential aged care which is the major focus for aged care reform in Australia. The higher standards of care, the challenges in staffing and the reliance on agency staff is unsustainable. The community care services suffer from the same agency cost overheads.

The consultants acknowledged that the retirement villages, independent living, are a comparative success however, there remains a number of financial and other issues at Blue Haven Terralong.

The review's analysis of the 'Keep', 'Partnership' and 'Sell' options overwhelmingly rated the 'sell' option as the preferred way to improve Council's liquidity, reduce risk and enable quality care and accommodation.

Having resolved to explore all options for Blue Haven, Council considered the report from Paul Sadler on 28 February 2023 and decided unanimously to accept the consultant's recommendation and reaffirmed an earlier decision to divest all aged care assets located on the Bonaira site, including the residential aged care facility, community transport, independent living units and home care services.

Council will consider tenders for Blue Haven Bonaira at an Extraordinary Meeting in early February 2024.

Conclusion.

Whilst there is a level of community ownership and sentiment towards Blue Haven, Council cannot take the financial and operational risk to maintain ownership and operation of Blue Haven Bonaira. The level of community support for the status quo does not suggest other ways to meet the financial challenges facing Council. This is evidenced in the submissions to the Public Inquiry into the reclassification of the Boronia site. Whilst the objections were numerous there were no viable alternatives suggested.

The asset divestments have been supported by the ARIC, the Finance Advisory Committee and the Temporary Advisor appointed by the then Minister.

Council has been diligent in its analysis of the options for Blue Haven and in identifying potential of holdings through the Property Plan.

Adherence to the Property Plan answers the question of whether the assets should be disposed or whether they could be retained.

The only two sales to date, the Akuna land holdings, have been disposed of as originally intended providing immediate and necessary financial benefit being applied to boost reserves, reduce debt and supplement income.

In normal operating circumstances it is preferable for a Council to retain property assets, particularly if those holdings are generating a revenue stream. The land holdings sold or planned to be sold by Council were/are not generating income and sales are absolutely necessary to improve liquidity and to reduce debt.

Without the sales Council would not have the finances to continue.

Many of Council's financial problems can be traced to the lack of adequate reporting, poor decision making and unsustainable policies for Blue Haven. Now that better financial measurement is available and there is closer scrutiny on the operations of Blue Haven Bonaira

it is obvious Council does not have the skills and expertise to manage residential aged care or to meet the ever increasing, complex and regulated standards now required by government.

Council cannot retain the loss-making business Blue Haven Bonaira which has only a two-star Clinical Quality rating.

C. If Council is right to dispose of the assets, is it getting the best value for the assets.

Given its dire financial circumstances Council must dispose of some of its assets, in particular the loss-making business Blue Haven Bonaira. It has taken the decision on Bonaira following consideration of expert advice and recognising the increasing care standards required and that Council does not have the expertise to operate in the residential aged care sector.

Property divestments are conducted strictly in accordance with the Property Plan and probity advisors are appointed for significant sales.

It is noted that litigation has commenced in relation to the Akuna Street (Mitre 10) sale. Prospects advice will be received by Council in February 2023.

Prior to going to market, a valuation is obtained but the real value of a property is what the buyer is prepared to pay at the time:

- Akuna Street (Mitre10) sold for \$8m above valuation.
- Akuna Street (Car Park) sold slightly below the lower end of the valuation range but at a price deemed satisfactory to the Council considering the market at the time.
- Blue Haven Bonaira and Irvine Street sales have yet to be finalised.

Under the Property Plan the Council will also *“undertake business cases to assess and compare relative outcomes through financial tools such as NPV, return on investment and potential dividends or yields, together with relative impacts on Council’s finances and services”*.

It is considered that Council has to-date obtained best value for its two completed sales.

D. Whether the Minister should appoint a Financial Controller to oversee the financial decisions of the Council, using the provisions of the Local Government Regulation to frame the advice.

Ministerial intervention with Kiama Municipal Council has occurred through the issuing of a Performance Improvement Order (PIO) in November 2022 and the appointment of a Temporary Advisor at that time.

The Temporary Adviser was required to review aspects of Council's financial circumstances and the operation of Blue Haven and to generally advise Council on the implementation of the Strategic Improvement Plan and other financial matters.

The Temporary Advisor's appointment concluded in June 2023.

Whilst the reporting requirements of the PIO have been met, the Order remains in place.

The Minister has a number of intervention options available; the most extreme being the suspension of Council and the appointment of an Interim Administrator or dismissal of the Council (after a public inquiry) and the appointment of an Administrator.

The financial and governance issues facing the Council were a result of failures of previous Councils. The current Council is aware of the challenges and has commenced addressing them.

Extreme options may need to be considered if Council does not urgently advance the actions required to become financially sustainable by 2026/27.

The recommended option is to issue a new or vary the current PIO. Subject to the progress Council makes, the Minister can then consider whether a Temporary Advisor and/or a Financial Controller should be appointed. The suggested PIO recognises the progress to date but proposes to emphasise the urgency required to address the finance and governance issues faced by Council.

The PIO would inform the current Council, candidates for election in September 2024 and the incoming Council that the Council's operating expenses must be reduced and that there are no discretionary funds available for additional capital projects.

In addressing the brief, it is important to review the Council's response to the existing PIO under each of the 13 actions.

PIO action 1 - Review Council's current financial circumstances against Council's Strategic Improvement Plan

Since self-reporting the Council's financial circumstances in December 2021 Council has taken steps to improve its financial standing and to place its significant loss-making business on the market.

Poor financial systems and reporting has led to serious delays and inadequacies in completing Annual Financial Statements.

The FY 2021/22 Financial reports have been completed recently and the 2022/23 Financial Reports should be available by April 2024.

In considering the FY 20/21 Financial reports the Auditor issued disclaimers of opinion over everything in the financial report, being unable to obtain evidence for any balance that was reported.

For FY 21/22 the Audit was able to verify most balances but issued disclaimers of opinion on the value of Property, Plant and Equipment and could not verify the split between restricted and unrestricted cash.

Council is receiving monthly reports on its financial position and bi-monthly on performance against the Strategic Improvement Plan.

- **PROPOSAL: REGULARLY AND CONTINUOUSLY REVIEW COUNCIL'S FINANCIAL SITUATION WITH A VIEW TO BECOMING FINANCIALLY SUSTAINABLE BY 2026/27.**

PIO action 2 - Revise Council's Strategic Improvement Plan as necessary taking into account the review of Council's current financial circumstances, any findings or recommendations from the FY21 audit and the FY22 audit and the Aged Care Quality and Safety Commission's response to the Section 9-3 Notice for Information.

The Strategic Improvement Plan 2 contains 74 actions several which have been completed. The actions cover both financial and governance issues. The governance matters included in the FY22 Audit letter can be added to the SIP.

With so many actions monitoring becomes challenging, and it is suggested that an updated Plan with a focus on key financial and governance issues be developed. To draw a line in the sand the new plan could be titled 'Financial and Governance Improvement Plan'.

- **PROPOSAL: REVIEW AND UPDATE THE STRATEGIC IMPROVEMENT PLAN 2 WITH AN EMPHASIS ON THE URGENCY TO ADDRESS THE FINANCIAL AND GOVERNANCE ISSUES COUNCIL IS FACING.**
- **PROPOSAL: TO FOCUS ON THE CHALLENGES FACED BY COUNCIL, CONSIDER BRANDING THE UPDATED PLAN FINANCE AND GOVERNANCE IMPROVEMENT PLAN**

PIO action 3 - Implement the actions identified in Council's Strategic Improvement Plan and report progress monthly to Council.

This action has been partly complied with. Financial updates occur monthly and reporting on the Strategic Improvement Plan 2 is bi-monthly.

- **PROPOSAL: IMPLEMENT THE ACTIONS IDENTIFIED IN COUNCIL'S STRATEGIC/FINANCE AND GOVERNANCE PLAN AND REPORT MONTHLY TO COUNCIL ON THE FINANCIAL POSITION AND BI-MONTHLY ON THE GOVERNANCE AND OTHER ACTIONS IN THE PLAN**

PIO action 4 - Review Council's current compliance with accounting principles including the Act, Local Government (General) Regulation 2021 and Code of Accounting Practice.

With the implementation of systems and with the recruitment of an experienced CFO, Council's compliance with this requirement is improving. This is evidenced by the Audit Office.

- In considering the FY 20/21 Financial reports the Auditor issued disclaimers of opinion over everything in the financial report being unable to obtain evidence for any balance that was reported.
- For the FY 21/22 the Audit was able to verify most balances but issued disclaimers of opinion on the value of Property, Plant and Equipment and could not verify the split between restricted and unrestricted cash.

- **PROPOSAL: CONTINUE TO IMPROVE COMPLIANCE WITH ACCOUNTING PRINCIPLES INCLUDING THE LOCAL GOVERNMENT ACT, LOCAL GOVERNMENT(GENERAL) REGULATION 2021 AND CODE OF ACCOUNTING PRACTICE**

PIO action 5 - Review Council's strategies to improve its immediate financial circumstances. Including development and implementation of its Liquidity Plan as per the resolution of Council on 23 May 2022.

Council has improved its financial circumstances through property divestment improving Council's liquidity. The proposed sale of Blue Haven Bonaira will continue this improvement.

The FY 2023/24 Budget shows an overall surplus of \$18.5 million, due to a predicted \$31.2 million from the gain or profit from asset sales, primarily the forecast sale of Blue Haven Bonaira. However, excluding sale of assets, the budget is in deficit by \$12.7 million.

To properly improve its financial circumstances Council must break from its pattern of adopting and achieving deficit operational budgets. Deficit budget cannot continue, and Council will need to live within its means. Asset sales to prop up the Budget cannot go on forever.

- **PROPOSAL: TAKE ACTION OVER THE NEXT TWO BUDGETS (24/25 and 25/26) TO BREAK THE PRACTICE OF ADOPTING DEFICIT OPERATING BUDGETS WITHOUT RELYING ON PROPERTY SALES.**

PIO action 6 - Develop strategies to ensure Council's long term financial security.

Whilst Council has identified a number of areas where it will achieve efficiencies and boost revenue streams, there needs to be more urgency in progressing these actions. For example, service reviews were flagged in Council's initial Strategic Improvement Plan April 2022,

however only preliminary steps have been taken. Other revenue opportunities must be considered.

Council has engaged well qualified citizens to advise it on financial matters through its Finance Advisory Committee and Audit Risk and Improvement Committee (ARIC). The Finance Advisory Committee should be invited to present to Council Briefings and ARIC should present to Council in accordance with the new guidelines.

- PROPOSAL: IMMEDIATELY REVIEW THE TIMING FOR SERVICE REVIEWS AND REVENUE OPPORTUNITIES TO ENSURE COUNCIL CAN MOVE TO SURPLUS OPERATING BUDGETS AND ENSURE ITS LONG-TERM FINANCIAL SECURITY.
- PROPOSAL: INVITE THE FINANCE ADVISORY COMMITTEE TO PRESENT BI-MONTHLY TO COUNCIL BRIEFINGS.
- PROPOSAL: PREPARE A THREE-YEAR FINANCIAL PLAN WHICH WILL CULMINATE IN COUNCIL INCREASING ITS UNRESTRICTED CASH BALANCE TO A SUSTAINABLE LEVEL BY FY 2026/27

PIO action 7 - Undertake a strategic review of its property holdings and investments.

The review has been undertaken and Council is aware of the opportunities and constraints on the majority of its property holdings. The Property Plan contains policies and disciplines to be observed in deciding on the divestment of a property.

Sales of properties are partly applied to improve liquidity. A further review should be undertaken to examine whether the current Administration Centre, 11 Manning Street Kiama and its uses are appropriate for this valuable site.

- PROPOSAL: CONTINUE TO INVESTIGATE AND PURSUE OPPORTUNITIES TO BENEFIT FROM PROPERTY HOLDINGS AND INVESTMENTS INCLUDING STRATEGIC HIGHLY VALUED SITES SUCH AS 11 MANNING STREET.

PIO action 8 - Review Council's management and operations of the Blue Haven Aged Care Facility

Council has received expert advice on the management and operations of Blue Haven. A decision on the tenders received for Blue Haven Bonaira will be considered by Council in February 2024.

Attention needs to be given to Blue Haven Terralong to address issues including:

- There being no restricted reserve to meet the cost of replacements/renewal of assets.
- The potential to subdivide and sell former nursing home site at Havilah Place
- The appropriateness of the current caretaker model.

- The level of Terralong maintenance fees which are well below market.
- The actual financial result for Terralong when true costs and depreciation are applied and whether because maintenance fees are below market general rate revenue is subsidising its operations.
- Undertaking and making public a dilapidation/building report for Terralong and Havilah.
- Examine options to retain and refurbish Terralong to conform with contemporary Independent Living Units.

• PROPOSAL: ADDRESS ISSUES ASSOCIATED WITH BLUE HAVEN TERRALONG INCLUDING BUT NOT LIMITED TO:

- The true costs which should be applied and whether general rate revenue is subsidising its operation.
- The adequacy of current and proposed future maintenance fees.
- Completing and making public a dilapidation/building report for Terralong and Havilah.
- Examining options to retain and refurbish Terralong to conform with contemporary independent living units.
- Establishing a restricted reserve to meet the cost of replacement/renewal of assets.
- Examine the potential to subdivide and divest Havilah place in accordance with the criteria contained in the property plan.
- Review the level of maintenance fees.

PIO action 9 - Develop an Operational Plan of Management for Blue Haven Aged Care Facility.

Completed

- PROPOSAL: COMPLETE PLAN OF MANAGEMENT FOR BLUE HAVEN TERRALONG (assuming the sale of Blue Haven Bonaira)**

PIO action 10 - Revise the Operational Plan of Management, taking into account any finding or recommendation from the Aged Care Quality and Safety Commission accreditation assessment.

Completed.

PIO action 11 - Prepare a comprehensive business case for Council’s consideration, outlining options (lease, sell, joint venture or retain) for the Blue Haven Facility.

Completed

PIO action 12 - Review and report on council’s compliance with the Aged Care Act 1997 and other relevant legislation regarding the management of Blue Haven Aged Care Facility including but not limited to the following:

- The use of funds, deposits and bonds
- The financial circumstances of the facility
- Strategies to improve the financial performance of the facility
- Any response to the facility’s accreditation audit

- **PROPOSAL: MONITOR AND REPORT ON COMPLIANCE WITH THE AGED CARE ACT AND OTHER RELEVANT LEGISLATION RELATING TO BLUE HAVEN TERRALONG**

PIO action 13 - Review Council’s current financial accounting and management systems and implement any improvements to these systems.

This work is tracking well but all modules are yet to be installed. Transparency in budgeting is important for the community and the Council. The published draft budget and adopted budget limits transparency in relation to Council’s functions and only contains a table which summarises Income and Expenditure. There is a list of capital projects.

Budget Summary 2024

Consolidated Revenue	\$
Consolidated Rates and annual charges	28,134,335
User charges and fees	23,002,301
Other revenues	9,086,546
Grants and contributions-operating	15,825,626
Grants and contributions-capital	11,445,385
Interest and investment income	2,387,133
Other income	3,129,931
Net gain from disposal of assets	31,218,368
Total Revenue	124,229,624
Consolidated Expenses	
Employee benefits and on-costs	37,517,824
Materials and Services	39,473,293
Borrowing costs	386,926
Depreciation and amortisation	14,608,055
Other expenses	2,271,786
Total Expenses	94,257,884
Surplus/(Deficit)	29,971,739

Surplus/(Deficit) before capital grants and cont.	18,526,335
S/(D) before capital grants and cont and one-off sales	(12,692,013)

The draft and published Budgets should be structured so that councillors and the community can see detail of Council’s programs and activities, funding sources for each capital project and when possible, compared with current and previous year.

- PROPOSAL: FULLY IMPLEMENT TECHNOLOGY ONE BY MID TO END 2025.
- PROPOSAL: RESTRUCTURE THE PRESENTATION OF THE DRAFT AND PUBLISHED BUDGETS TO DETAIL PROGRAMS AND ACTIVITIES COMPARED TO CURRENT AND PREVIOUS YEARS AND FUNDING SOURCES FOR EACH CAPITAL PROJECT.
- PROPOSAL: IMPLEMENT THE GOVERNANCE RECOMMENDATIONS FROM THE HOPWOOD REPORT AND THE AUDITOR’S LETTER FROM THE 2021/22 AUDIT.

Financial Controller/Temporary Advisor

Currently there is no Financial Controller or Temporary Advisor in place and the Council continues to address the requirements of the Performance Improvement Order. Council is being offered sound advice from the community representatives on its Finance Advisory Committee and the Audit Risk and Improvement Committee.

The CEO and staff are progressing improvements to governance and Council’s liquidity; however, improvements are not proceeding with the urgency the financial situation demands.

The Office of Local Government is monitoring the progress of the Council.

It is recommended that at this time neither a Financial Controller nor a Temporary Advisor be appointed and that the response to a new or varied Performance Improvement Order be monitored by the Office of Local Government through reporting requirements.

In making this recommendation the cost associated with appointing a Financial Controller and/or Temporary advisor is acknowledged. These funds could be applied to engage expertise to assist in meeting the requirements of the PIO, particularly in regard to 11 Manning Street and Blue Haven Terralong.

The Minister would be able to intervene at any time should progress be deemed to be unsatisfactory particularly if Council is not on track to reach a point of financial sustainability by FY 2026/27.

John Rayner PSM

17th January, 2024

The Hon Ron Hoenig MP

Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government



Ref: O-121a

**Ms Jane Stroud
General Manager
Kiama Municipal Council
11 Manning Street
KIAMA NSW 2533**

Via email: council@kiama.nsw.gov.au

Dear Ms Stroud,

I write in response to your correspondence in relation to Kiama Municipal Council's decision to sell Blue Haven Bonaira, and related financial concerns.

As Minister for Local Government I must be sure that Council is fulfilling its duties, ensuring the long-term sustainability of its finances, and abiding by the terms of the Performance Improvement Order imposed upon you.

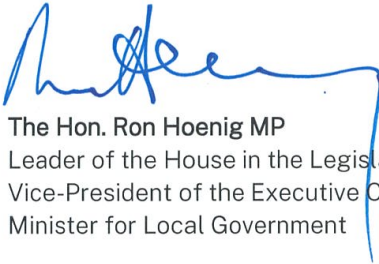
I have considered that I am unable to determine at this stage whether Council has complied with all of these responsibilities, especially with regard to the sale of Blue Haven Bonaira. The NSW Government has an interest in ensuring that Kiama Municipal Council stays solvent, not only to ensure that no further intervention into a local Council's affairs is necessary, but to protect the jobs and livelihoods of the other staff working at Council.

In order to assist me with a determination as to whether Council is performing its duties adequately, I wish to advise I have asked Mr John Rayner, former General Manager of Sutherland Shire Council, to give me advice as to whether:

- Council has recognised its financial and budgetary challenges and is moving appropriately to address the challenges for the long-term benefit of its community;
- Council has made the appropriate decisions on asset sales, particularly:
 - Whether the assets should be disposed or whether they could be retained;
 - Whether there is a longer-term value to retaining the assets, particularly in the case of Blue Haven Bonaira; and
- If Council is right to dispose the assets, is it getting the best value for the assets.
- Whether I should appoint a Financial Controller to oversee the financial decisions of the Council, using the provisions of the Local Government regulation to frame the advice.

Should you have further questions, I invite you to contact Mr Brett Whitworth to discuss further.

Yours sincerely,



The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government

19 DEC 2023