

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.

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)

There is evidence to suggest that Council has failed to meet its legislative responsibilities in relation to its financial management.

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:

- 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.

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.

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.

Part C Council's Financial Accounting and Management Systems

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

1. Fully implement Technology One by mid-to-end of 2025
2. 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.

Period for compliance with Order

Council is to comply with the requirements of the Order within the timeframes specified in Schedule 2.

Compliance reporting to be submitted at bi-monthly intervals:

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.

Evidence to be provided with the compliance reports

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

Provide a copy of a report on the actions taken by Council to address issues identified by the required reviews as at that time.