



# EXTRAORDINARY MEETING OF COUNCIL SUPPLEMENTARY ITEMS

To be held at 1.00pm on

**Monday 27 May 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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## 0 LATE ITEMS

### S.1 Receipt of Varied Performance Improvement Order

CSP Objective: Outcome 5.3: Council has the right structures, technology, processes and precedures to support delivering for the public

CSP Strategy: 5.3.2 Council will deliver the actions outlined in the State of the Organisation Report and the Strategic Improvement Plan

Delivery Program: 5.3.2.1 Continuous improvement is embedded in the organisation through delivery of the Strategic Improvement Plan priorities annually.

Item S.1

### 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, by the then Minister for Local Government, the Hon. Wendy Tuckerman MP. The period of compliance with that order finished on 30 June 2023. Council met all compliance milestones and provided the final report to the Minister on the same date.

Not long after receiving the report the State Government moved into caretaker and on to elections. Following the new Ministry being sworn in, the new Minister for Local Government, the Hon. Ron Hoenig MP, undertook a review of all of Council's submitted material. Subsequently the Minister requested an independent external review be completed by Mr John Rayner. Mr Rayner submitted his report to the Minister on 17 January 2024.

Having considered the findings of the Rayner report, the Minister determined to issue Council with a Notice of Intention to vary a Performance Improvement Order on 30 January 2024.

All this information was tabled with Council for consideration. At their Ordinary February 2024 meeting, Council resolved to:

1. accept the Minister's intention to vary the PIO, and
2. authorise the CEO to respond to Minister advising of Council's commitment to meeting the actions of the varied PIO but also noting anomalies and matters for further consideration when issuing the final varied PIO.

Following this, on 16 February 2024, the CEO wrote to the Minister and provided the advice regarding anomalies and matters noted for further consideration as the PIO was finalised. This advice was acted on and incorporated. On 24 May 2024, Council received the attached signed Performance Improvement Order from the Hon. Ron Hoenig MP.

The purpose of this report is to advise the elected body and broader community of the receipt of this PIO and the need to adhere to meeting the actions of the new PIO, including to provide the required Strategic Finance and Governance Improvement Plan to the elected body at the intended extraordinary June 2024 meeting where all

Report of the Chief Executive Officer

S.1 Receipt of Varied Performance Improvement Order (cont)

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budget and Integrated Planning and Reporting (IP&R) material will be presented for adoption.

### Financial implication

Some of the work required to be undertaken has been included in the draft 2024-25FY budget 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 imposed. 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 requirements of 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, Chairs and members of the Audit, Risk and Improvement Committee, the Finance Advisory Committee, and the Blue Haven Advisory Committee were informed of the intention to vary the PIO via the supplementary report at the Extraordinary Council meeting on 1 February 2024.
- 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 the Council website and the Office of Local Government's website.

As part of preparing the Strategic Finance and Governance Improvement Plan an Engagement Plan will be prepared to ensure the community is aware of the Improvement Plan and the tracking of Council's performance against actions are transparent.

### Attachments

- 1 Letter from the Hon. Ron Hoenig MP - Variation to Performance Improvement Order - 23/05/2024 (redacted)[↓](#)
- 2 Signed Variation to Performance Improvement Order - 23/05/2024[↓](#)

### Enclosures

Nil

Report of the Chief Executive Officer

S.1 Receipt of Varied Performance Improvement Order (cont)

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## **RECOMMENDATION**

That Council:

1. Note that the Minister for Local Government, The Hon Ron Hoenig MP's has formally issued Kiama Municipal Council with a variation to the Performance Improvement Order on 24 May 2024,
2. Display a copy of the varied Performance Improvement Order on the Council website,
3. Acknowledge that the varied Performance Improvement Order establishes actions required to be undertaken by Kiama Municipal Council over the following three (3) financial years to improve its operating performance which will take organisational precedence,
4. Acknowledge that a Strategic Finance and Governance Improvement Plan will be reported to Council's extraordinary June 2024 Integrated Planning and Reporting meeting, and that this Plan will respond directly to the requirements of the varied Performance Improvement Order, including compliance with the cycle of reporting to Council and the Office of Local Government.

Item S.1

## **Background**

Kiama Municipal Council was issued a PIO on 8 November 2022 by the former State Government. 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.

## **Notice of Intention and the Rayner Report**

The Notice from the NSW Minister for Local Government, The Hon. Ron Hoenig MP, recognised the substantial financial challenges faced by Council. It acknowledged that Council had taken significant steps to address the matters that gave rise to the issuance of a PIO in November 2022, but noted the PIO would be varied and continued.

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 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. This year's budget and long-term financial plan is built on the premise of the PIO and delivers a balanced budget as required. Future budgets and further decisions concerning financial sustainability will need to be progressed.

Report of the Chief Executive Officer

S.1 Receipt of Varied Performance Improvement Order (cont)

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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. 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.

**Varied Performance Improvement Order and next steps**

A copy of the varied PIO will be placed on Council's website in accordance with section 438D(2) of the *Local Government Act 1993*.

Work has commenced, and will now proceed in full, on the preparation of the Strategic Finance and Government Improvement Plan as required by the varied PIO. This Plan will respond directly to the requirements of the varied PIO, including compliance with the cycle of reporting to Council and the Office of Local Government. Noting that Council will need to provide bi-monthly reports to both the elected body and the NSW Office of Local Government on the status of the implementation of all actions in the PIO, this reporting must commence by 24 July 2024.

The required Strategic Finance and Governance Improvement Plan will be reported to the elected body at their extraordinary June 2024 meeting which will also finalise the budget and IP&R documents.

**The Hon. Ron Hoenig MP**

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



Your Ref: JS:CB - 24/17235  
Our Ref: A891535

His Worship the Mayor  
Cr Neil Reilly  
Kiama Municipal Council  
PO Box 75  
KIAMA NSW 2533

Via email: [neil.reilly@kiama.nsw.gov.au](mailto:neil.reilly@kiama.nsw.gov.au)

Dear Cr Reilly,

I refer to previous correspondence concerning my intention to vary the Performance Improvement Order (PIO) issued to Kiama Municipal Council (Council) under section 438A subsection (6A) of the Local Government Act 1993 (the Act).

I first want to acknowledge the work that Council has taken to date to address its financial situation. The work has been challenging for both staff and councillors and I appreciate the efforts taken by everyone to arrive at this point.

I have considered Council's submission, made by resolution of Council on 13 February 2024 and communicated by way of letter dated 16 February 2024. I note that Council has accepted my intention to issue a variation to the PIO and requested several amendments be made to the document.

Given the reasoning which was outlined in the Notice of Intention and Council's submission, I have decided to vary the PIO incorporating the amendments requested.

In varying the PIO, I have considered the mandatory criteria set out in clause 413D of the Local Government (General) Regulation 2021. I have had particular regard to concerns that Council is not moving quickly enough to ensure a stable and sustainable financial situation. The advice I received from both the Office of Local Government (OLG) and the independent financial assessment made by Mr John Rayner PSM, point to the dire state of Council's long-term financial position.

With continuing difficult financial circumstances, 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.

I also request that Council place the variation to the PIO on Council's website in accordance with section 438D(2) of the Act, and that it be tabled at the next open meeting of Council.

Please also note that Council will be required to provide OLG with reports on its progress every 2 months from the date the varied PIO commences.

At my request, Ms Karin Bishop, Director, Sector Performance and Intervention, at OLG is [REDACTED] should you have any questions or wish to discuss any matter relating to the variation to the PIO.

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

23 MAY 2024

Cc: Jane Stroud, General Manager, Kiama Municipal Council  
[janes@kiama.nsw.gov.au](mailto:janes@kiama.nsw.gov.au)



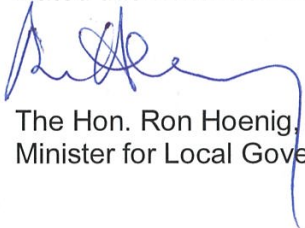
Local Government Act 1993

Section 438A

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), 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 23<sup>rd</sup> day of May 2024

  
The Hon. Ron Hoenig, MP  
Minister for Local Government

SCHEDULE 1

<p><b>Reasons for Order – section 438A(3)(a)</b></p> <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"> <li>• An inability to produce 20/21 annual financial statements leading to a disclaimer of audit.</li> <li>• A negative trend of increasing liabilities and trading losses.</li> <li>• Questions raised about Council’s liquidity and viability.</li> <li>• Council’s Aged Care facility/service (Blue Haven) running at a loss.</li> <li>• Poor understanding of the loss, efficiency and compliance of the Blue Haven aged care facilities</li> <li>• As a result of changed accounting systems Council was unable to produce reliable financial reports.</li> <li>• Concerns whether Council’s Auditor would certify Council as a going concern.</li> <li>• Significant cost overrun in the establishment of Blue Haven Bonaira.</li> <li>• Restricted funds had been illegally applied to general use.</li> </ul> <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>
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Attachment 2

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, including strategic and highly valued sites.

**Part B Blue Haven Aged Care Facility and Residential Village**

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 (C'wlth)*, the *Retirement Villages Act 1999*, *Retirement Villages Regulation 2017* 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. 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
2. Report on the implementation of the Operational Plan of Management for the Blue Haven aged care facility
3. 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
4. Review and report on Council's compliance with the *Aged Care Act 1997 (C'wlth)*, the *Retirement Villages Act 1999* and the *Retirement Villages Regulation 2017*, and any 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 the end of the 2026/2027 financial year.
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 until further notice.
<b>Compliance reports to be submitted at bi-monthly intervals:</b> 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.
<b>Evidence to be provided with the compliance reports</b> 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.