

7.1 Performance Improvement Order Under Section 438A of the Local Government Act 1993

Reference: 101; 102; 103/6
Report Author: Mayor T D Gair
Authoriser: Mayor T D Gair
Link to Community
Strategic Plan:

PURPOSE

To advise that on 8 September 2020 The Hon. Shelley Hancock MP issued Wingecarribee Shire Council with a Performance Improvement Order, under section 438A of the Local Government Act 1993.

RECOMMENDATION

THAT Council acknowledge the Performance Improvement Order issued by the Minister for Local Government, The Hon. Shelley Hancock issued under section 438A of the *Local Government Act 1993* as included in Attachment 1

REPORT

BACKGROUND

On 19 August 2020, in accordance with section 438C of the *Local Government Act 1993* (the Act) the Minister for Local Government The Hon. Shelley Hancock MP wrote to the Mayor, Councillor Duncan Gair and Acting General Manager, Mr Barry W Paull. The letter gave notice of the Minister's intention to issue a Performance Improvement Order under section 438A of the Act, for actions to be taken, as identified in the proposed Performance Improvement Order, to improve the performance of the Council.

At an Extraordinary Meeting held on 24 August 2020 Council considered the correspondence from the Minister of Local Government and her notice of intention to issue Wingecarribee Shire Council with a Performance Improvement Order. At this meeting Council resolved its submission to the Minister of Local Government as follows:

MN334/20

MOTION moved by Mayor Clr T D Gair and seconded by Clr G McLaughlin

1. **THAT** Council acknowledges the Minister for Local Government's correspondence, dated 19 August 2020, notifying Council of the Minister's intention to issue a Performance Improvement Order on Council under Section 438A of the *Local Government Act 1993*.
2. **THAT** Council advise the Minister that it accepts the "Reasons for the Order" as detailed in Schedule 1, accepts the "Action required to improve performance" in Schedule 2, and accepts the proposal for "Appointment of temporary advisers" in Schedule 3, as proposed in the Draft Order.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 September 2020

MAYORAL MINUTES



3. THAT Council provide all necessary assistance to the proposed “Temporary Adviser” when appointed, including access to relevant documents and video files for the term of this Council.
4. THAT the Wingecarribee Shire Council agrees with the intent of the proposed Performance Improvement Order to be issued under the provisions of Section 438B(2) of the Local Government Act 1993 and Clauses 413D and 413DA of the Local Government (General) Regulation 2005 as listed (a) – (f). Particular emphasis should be placed upon (a) with regard to legislative responsibilities.
5. THAT the Minister for Local Government ensure that any ‘investigation’ undertaken by any representative of her be comprehensive and include both elected representatives of the Shire and members of staff of the Council.

REPORT

On 8 September 2020, the Minister for Local Government The Hon. Shelley Hancock MP wrote to the Mayor, Councillor Duncan Gair and Acting General Manager, Mr Barry W Paull to notify of her decision to issue Wingecarribee Shire Council with a Performance Improvement Order (PIO), as outlined in **Attachment 1** to this Mayoral Minute. This follows consideration of all information provided to her including the submission from Council.

The Minister for Local Government’s decision to issue a PIO also includes the decision to appoint temporary advisers and this is set out in the Order, **Attachment 2** to this Mayoral Minute.

The Minister for Local Government has advised her decision to issue a PIO, *‘had particular regard to the need to address reputational and work, health and safety risks facing Council as a consequence of behavioural and relationship issues within Council.’*

The Minister also noted that *‘It is important for that the elected body works together to comply with the terms of the PIO. In this regard, I have noted that Council has agreed with the intent of the proposed PIO, and has accepted the reasons for the proposed Order, the actions required to improve performance and the proposal for the appointment of temporary advisers. I am also pleased to note Council’s commitment to provide all necessary assistance to the temporary advisers, when appointment, and in this regard draw your attention to section 438H of the Act.’*

Section 438H states:

- “(1) If a temporary adviser is appointed to a council, the council, councillors and members of the staff of the council are required to co-operate with the temporary adviser and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.*
- (2) In particular, the council is to give the temporary adviser an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister and is to give the Minister a copy of the temporary adviser’s comments (if any) on the compliance report.*
- (3) A contravention of this section is a failure to comply with a performance improvement order.”*

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 09 September 2020

MAYORAL MINUTES



ATTACHMENTS

1. Performance Improvement Order letter from The Hon. Shelley Hancock MP, Minister for Local Government
2. Performance Improvement Order



The Hon. Shelley Hancock MP
Minister for Local Government

Ref: A719124

Clr Duncan Gair and Mr Barry Paull
Mayor and Acting General Manager
Wingecarribee Shire Council

duncan.gair@wsc.nsw.gov.au
barry.paull@wsc.nsw.gov.au

Dear Clr Gair and Mr Paull

I refer to previous correspondence concerning my intention to issue a Performance Improvement Order (PIO) to Wingecarribee Shire Council under section 438A of the *Local Government Act 1993* (the Act).

I have carefully considered Council's submission, made by resolution of the Council on 24 August 2020.

Having considered all information available to me, including Council's submission, I have decided to issue a PIO and to appoint temporary advisers to assist Council to improve its performance. The reasons for my decision to issue a PIO, and to appoint temporary advisers, are set in the body of the Order. In deciding to issue a PIO, I have had particular regard to the need to address reputational and work, health and safety risks facing Council as a consequence of behavioural and relationship issues within Council.

It is important that the elected body works together to comply with the terms of the PIO. In this regard, I have noted that Council has agreed with the intent of the proposed PIO, and has accepted the reasons for the proposed Order, the actions required to improve performance and the proposal for the appointment of temporary advisers. I am also pleased to note Council's commitment to provide all necessary assistance to the temporary advisers, when appointed, and in this regard draw your attention to section 438H of the Act.

I expect that Council will table the PIO at an open Council meeting and place the PIO on Council's website in accordance with s438D(2) of the Act.

At my request, Mr Chris Allen of the Office of Local Government is available on (02) 4428 4100 or by email at chris.allen@olg.nsw.gov.au should you have any questions or wish to discuss any matter relating to the PIO.

Yours sincerely

The Hon. Shelley Hancock MP
Minister for Local Government

8 SEP 2020

Encl

Local Government Act 1993

Section 438A

Performance Improvement Order

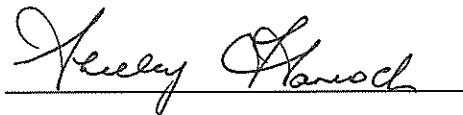
I, the Honourable Shelley Hancock MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Wingecarribee Shire Council, for the reasons specified in Schedule 1 below, to undertake the actions described in Schedule 2 below within the period specified in Schedule 2.

I hereby appoint the persons specified in Schedule 3 as temporary advisers to Council to exercise the functions and for the terms specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated this 8th day of September 2020

The Hon. Shelley Hancock, MP
Minister for Local Government



SCHEDULE 1

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

1. There are reputational and work, health and safety risks facing Council as a consequence of the behaviours of some councillors.
2. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction.
3. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with staff of the Council.
4. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other.
5. In my opinion, a temporary adviser with requisite professional qualifications is needed to bring councillors together to address the acrimony and hostility that is apparent.
6. In my opinion, a temporary adviser with requisite skills in meeting procedure is needed to provide advice and assistance with the conduct of Council meetings.

SCHEDULE 2

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

1. All councillors undergo training in relation to:
 - (a) their role as elected representatives;
 - (b) their obligations under work, health and safety legislation with particular reference to bullying;
 - (c) their obligations under Council's "*Councillor's Access to Information and Interaction with Staff*" policy;
 - (d) their obligations under Council's Code of Conduct with a focus on the proper disclosure and management of conflicts of interests and respectful behaviours; and
 - (e) meeting procedures and the respectful participation at Council and committee meetings.
2. The Mayor undergo training on the effective chairing of meetings.
3. All councillors participate in a structured mediation process to be undertaken by a temporary adviser appointed under this Order.

Period for compliance with Order

First compliance report: Council is to report to the Minister on the completion of the required training and mediation process 2 months from the date of service of this Order.

Final compliance report: Council is to report to the Minister on the conduct at, and of, its meetings 4 months from the date of service of this Order.

Evidence to be provided with the compliance report

Council is to provide attendance sheets and resource documentation for all training sessions conducted as required by this Order.

SCHEDULE 3

Appointment of temporary advisers

1. Pursuant to section 438G of the *Local Government Act 1993*, Mr Norm Turkington is hereby appointed as a temporary adviser to Wingecarribee Shire Council to:
 - a. undertake a structured mediation process with all councillors to negotiate agreement on respectful behaviours in their dealings with each other and with Council staff;
 - b. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - c. monitor the council's compliance with the performance improvement order.

This appointment will cease upon Mr Turkington providing a report to me on Council's first compliance report, the participation by each councillor in the mediation process and the outcome(s) of that process.

Pursuant to section 438G(7) of the *Local Government Act 1993*, Mr Turkington shall be paid from the Council's funds for the period of the appointment. The estimated maximum cost of the appointment will be \$40,000 (including GST).

2. Pursuant to section 438G of the *Local Government Act 1993*, Mr Ian Reynolds is hereby appointed as a temporary adviser to Wingecarribee Shire Council to:
 - a. attend Council meetings for the purpose of providing advice and assistance to the Chair in respect of meeting procedures and dealing with acts of disorder;
 - b. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - c. monitor the council's compliance with the performance improvement order.

This appointment will cease upon Mr Reynolds providing a report to me on Council's final compliance report and his observations of at least three consecutive Council meetings.

Pursuant to section 438G(7) of the *Local Government Act 1993*, Mr Reynolds shall be paid from the Council's funds for the period of the appointment. The estimated maximum cost of the appointment will be \$38,500 (including GST).