

20 August 2020

Dear Councillor,

You are kindly requested to attend the **Extraordinary Meeting** of Wingecarribee Shire Council to be held remotely using audio visual link and is open to members of the community via webcast on **Monday 24 August 2020** commencing at **4.30pm**.

Yours faithfully

Barry W Paull
Acting General Manager

SCHEDULE

4.30pm Council Meeting begins



Business

- 1. OPENING OF THE MEETING**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. PRAYER**
- 4. APOLOGIES**
- 5. DECLARATIONS OF INTEREST1**

- 6. GENERAL MANAGER**
 - 6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993.....2

- 7. CLOSED COUNCIL**

Nil
- 8. MEETING CLOSURE**

Our Mission, Our Vision, Our Values

OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

OUR VISION

Leadership: *'An innovative and effective organisation with strong leadership'*

People: *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

Places: *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

Environment: *'A community that values and protects the natural environment enhancing its health and diversity'*

Economy: *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

Council Chambers

Recording and Webcasting of Ordinary and Extraordinary Meetings of Council

This meeting is being recorded and webcast via Facebook and a person's image and/or voice may be publicly broadcast. Attendance at the meeting is to be taken as consent by a person to their image and/or voice being webcast. Any part of the meeting that is held in closed session will not be webcast.

Council requests that everyone in attendance is respectful and uses appropriate language. All speakers should refrain from making any defamatory, discriminatory or offensive comments or releasing any personal information about another individual without their consent. Council accepts no liability for any damage that may result from defamatory, discriminatory or offensive comments made by persons attending meetings – all liability will rest with the individual who made the comments.

Individuals acting in a disorderly manner can be asked by the Chairperson to leave the meeting under the Council's Code of Meeting Practice.

The recording will be available for viewing on the internet for 12 months and retained as a Council record. The recording is subject to copyright.

The meeting must not be recorded by others without the prior written consent of Council in accordance with Council's Code of Meeting Practice.

Council's webcasting of meetings via Facebook is designed to encourage constructive dialogue. We remind users to be digitally responsible and respect their fellow posters. We ask users to keep comments relevant and not to spam or post personal or commercially sensitive information. This includes content that may be defamatory, derogatory, offensive or discriminatory towards Council employees, Councillors or other persons or organisations. Failure to follow Facebook house rules will result in comments being deleted and if this behaviour persists the user will be blocked.

Please ensure that all electronic devices including mobile phones are switched to silent.



ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.

APOLOGIES

Nil at time of print.

DECLARATIONS OF INTEREST

101/3, 101/3.1

The provisions of Chapter 14 of the *Local Government Act 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

6 GENERAL MANAGER

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993

Reference:	101; 102; 103/6
Report Author:	Group Manager Corporate and Community
Authoriser:	Acting General Manager
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

To consider correspondence from the Minister for Local Government, The Hon. Shelley Hancock, MP advising of her intention to issue Council with a Performance Improvement Order.

RECOMMENDATION

1. **THAT Council considers the correspondence from the Minister for Local Government, The Hon. Shelley Hancock dated 19 August 2020 in Attachment 1 and determines its Submission.**
2. **THAT Council submits its Submission to the Notice of Intention to the Minister for Local Government by Wednesday 26 August 2020.**

REPORT

BACKGROUND

On 13 May 2020, Council considered 'Private and Confidential' correspondence from the Office of Local Government dated 24 April 2020 (MN152/20).

REPORT

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, Duncan Gair and Acting General Manager, Mr Barry Paull. The letter gives 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. The letter and the proposed Performance Improvement Order is included in **Attachment 1** to this report.

After considering the mandatory criteria prescribed by clauses 413D and 413DA of the Local Government (General) Regulation 2005, the Minister has formed the preliminary view that action must be taken to improve the Council's performance. The Minister has outlined the following reasons for proposing to issue a Performance Improvement Order (section 438A(3)(a)):

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REPORT ACTING GENERAL MANAGER



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.*

The Minister is proposing to appoint a temporary adviser in accordance with section 438G of the Act as it is her opinion that:

1. *A temporary adviser with requisite professional qualifications is needed to bring councillors together to address the acrimony and hostility that is apparent.*
2. *A temporary adviser with requisite skills in meeting procedure is needed to provide advice and assistance with the conduct of Council meetings.*

A draft Performance Improvement Order has been prepared and provided attached to the Notice of Intention included in **Attachment 1**.

Pursuant to sections 438C(3) and 4 of the Act, the Minister has invited Council to make submissions to her in respect of the proposed Performance Improvement Order. If Council chooses to make submissions, they must be provided to her no later than 7 days from the date upon which the notice was served.

The Minister will consider all submissions made to her by the Council during this period before deciding whether to issue a performance improvement order. It is also suggested that Council provides its submissions by way of resolution of the Council.

COMMUNICATION AND CONSULTATION

Community Engagement

Not applicable to this report.

Internal Communication and Consultation

Not applicable to this report.

External Communication and Consultation

Not applicable to this report.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

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- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The notice of intention to issue a Performance Improvement Order is made in accordance with section 438C of the *Local Government Act 1993*.

COUNCIL BUDGET IMPLICATIONS

Not applicable to this report.

RELATED COUNCIL POLICY

Not applicable to this report.

OPTIONS

Option 1

1. THAT Council considers the correspondence from the Minister for Local Government, The Hon. Shelley Hancock dated 19 August 2020 in **Attachment 1** and determines its Submission.
2. THAT Council submits its Submission to the Notice of Intention to the Minister for Local Government by Wednesday 26 August 2020.

Option 2

THAT Council considers the correspondence from The Hon. Shelley Hancock MP, Minister for Local Government and determine not to make a submission in respect of the proposed Performance Improvement Order.

Option 1 is the recommended option to this report noting Council will need to as part of the recommendation specify Council's position in relation to the draft proposed Performance Improvement Order.

CONCLUSION

This report presents correspondence from Minister for Local Government, The Hon. Shelley Hancock MP, giving notice of her intention to issue Council with a Performance Improvement Order. Council must consider the Notice of Intention and the terms of the proposed draft Performance Improvement Order and if it wishes to do so resolve to make a submission to the Minister by resolution.

ATTACHMENTS

1. Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993

AGENDA FOR THE EXTRAORDINARY MEETING OF COUNCIL
Monday 24 August 2020
REPORT ACTING GENERAL MANAGER



Barry W Paull
Acting General Manager

Thursday 20 August 2020

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993



ATTACHMENT 1 Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993



The Hon. Shelley Hancock MP
Minister for Local Government

Ref: A717831

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

**NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER TO
WINGECARRIBEE SHIRE COUNCIL UNDER SECTION 438A OF THE
LOCAL GOVERNMENT ACT 1993**

In accordance with section 438C of the *Local Government Act 1993* (the Act) I hereby give notice of my intention to issue a Performance Improvement Order under section 438A of the Act, for actions to be taken, as identified in the proposed 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 clauses 413D and 413DA of the Local Government (General) Regulation 2005 before issuing a Performance Improvement Order and appointing a temporary adviser, specifically:

- (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.

And

In deciding whether to appoint a temporary adviser to a council, the Minister is to consider whether the appointment will, in the opinion of the Minister, assist the council to comply with, or implement actions under, the performance improvement order issued in respect of the council.

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993**ATTACHMENT 1 Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993**

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

The reasons why I, as Minister, propose to issue a Performance Improvement 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.

The reasons why I, as Minister, propose to appoint temporary advisers (section 438G)

1. 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.
2. 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.

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 Performance Improvement Order. Should Council choose to make submissions, they must be provided to me no later than 7 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 Performance Improvement Order.

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993



ATTACHMENT 1 Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993

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 19th day of August, 2020


The Hon. Shelley Hancock MP
Minister for Local Government

Encl

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993



ATTACHMENT 1 Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993

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 thisday of2020

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: <ul style="list-style-type: none"> (a) their role as elected representatives; (b) their obligations under work, health and safety legislation with particular reference to bullying;

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<ul style="list-style-type: none"> (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. <ul style="list-style-type: none"> 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.
<p>Period for compliance with Order</p> <p>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.</p> <p>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.</p>
<p>Evidence to be provided with the compliance report</p> <p>Council is to provide attendance sheets and resource documentation for all training sessions conducted as required by this Order.</p>

SCHEDULE 3

<p>Appointment of temporary advisers</p> <ul style="list-style-type: none"> 1. Pursuant to section 438G of the <i>Local Government Act 1993</i>, [NAME] is hereby appointed as a temporary adviser to Wingecarribee Shire Council to: <ul style="list-style-type: none"> 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. <p>This appointment will cease upon [NAME] 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.</p> 2. Pursuant to section 438G of the <i>Local Government Act 1993</i>, [NAME] is hereby appointed as a temporary adviser to Wingecarribee Shire Council to: <ul style="list-style-type: none"> 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. <p>This appointment will cease upon [NAME] providing a report to me on Council's final compliance report and their observations of three consecutive Council meetings.</p>

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993



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Quick Guide to Performance Improvement Orders
PROCESS FOR COUNCILS

Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, powers to issue performance improvement and suspension orders may be used.

HOW DOES THE PROCESS WORK?

- Notice of intention to issue a performance improvement order will be given.
- Councils will be given no less than 7 days to respond.
- Notices of intention and orders will outline what is required.
- Council is requested to consider and table the notice of intention at an open council meeting.
- Council should provide its response to the notice of intention by resolution.
- The Minister is required to consider council’s submission when making a decision.
- Council should table a performance improvement order at the next available council meeting.
- Council is required to publish the order on its website.
- The Office of Local Government will monitor the implementation of performance improvement orders.
- Council will be required to complete a compliance report on the implementation of the performance improvement order.
- If a temporary adviser is appointed, the council, councillors and members of staff are required to co-operate with the temporary adviser. This includes providing any information or assistance that the adviser reasonably requires to exercise his or her functions.
- If a temporary adviser is appointed, the council is required to provide the temporary adviser with an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister. A copy of the adviser’s comments (if any) is to be provided to the Minister. Failure to comply with this is a contravention of the legislation.
- Council will be advised in writing of the outcome of the Minister’s consideration of its compliance report.
- The Office will publish orders, compliance reports and monitoring assessments on its website.
- The Minister may issue a compliance order to a councillor if they have failed to take action as required by a performance improvement order.
- A councillor is not entitled to exercise any of the functions of a councillor if they are issued with a compliance order.
- Failure of an individual councillor to take action as required by a performance improvement order is misconduct.

Further detail is contained in the Framework for Implementing Performance and Suspension Orders. This document, available at www.olg.nsw.gov.au, provides more detail about who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.

Version: March 2020

6.1 Notice of Intention from the Minister for Local Government to Issue Council a Performance Improvement Order Under Section 438A of the Local Government Act 1993

ATTACHMENT 1 Letter from Minister for Local Government - Notice of Intention to Issue a Performance Improvement Order to Wingecarribee Shire Council Under Section 438A of the Local Government Act 1993



Barry W Paull
Acting General Manager

Thursday 20 August 2020