

**Local Government Act 1993**

**Section 438A**

**Performance Improvement Order**

I, the Honourable Wendy Tuckerman MP, Minister for Local Government, do, by this order pursuant to 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.

I hereby appoint the person specified in Schedule 3 as a temporary adviser to Council to exercise the functions for the term specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated this 8<sup>th</sup> day of November 2022

The Hon. Wendy Tuckerman, 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. Specifically, these include:

1. There is evidence Council has accessed restricted funds without approval and used those funds for purposes other than for which they were intended in breach of *the Local Government Act 1993* (Act) and the *Environmental Planning and Assessment Act 1979* in order to fund Council's operating expenses.
2. There is evidence to suggest that Council may not be able to pay its debts as they fall due.
3. There were, and continue to be, serious risks faced by the Council due to its financial position having deteriorated to the extent that it has insufficient cash to cover all internal and external requirements.
4. There is evidence to suggest that Council's records do not adequately indicate Council's true financial position.
5. There is evidence that Council has not effectively monitored its liquidity.
6. There is evidence that there are inadequacies in relation to the oversight and reporting on the financial circumstances of the Council.
7. There is evidence to suggest that Council has not fully or correctly reported the construction costs of the Blue Haven aged care facility (Blue Haven).
8. There is evidence to suggest that Council has not operated the Blue Haven aged care facility in accordance with relevant legal requirements, including the *Aged Care Act 1997* (C'wealth).
9. There is evidence that the continued operation of the Blue Haven aged care facility has

caused, and is continuing to cause, significant financial stress to Council.

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.

Council has failed to meet its statutory reporting obligations with respect to its FY21 financial statements.

In my opinion, a temporary adviser with the requisite financial expertise is needed to advise Council and to report on and oversee the implementation of the financial aspects of the performance improvement order.

In my opinion, a temporary adviser with requisite skills in financial management is needed to provide advice and assistance in relation to Council's implementation of the governance aspects of the performance improvement order.

## **SCHEDULE 2**

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

Council, with the assistance of the Temporary Adviser, is required to undertake the following actions to improve its performance.

#### **Part A Council's Financial Management**

1. Review Council's current financial circumstances, against Council's Strategic Improvement Plan.
2. Revise Council 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 9-3B Notice for Information.
3. Implement the actions identified in Council's Strategic Improvement Plan and report its progress monthly to Council.
4. Review Council's current compliance with accounting principles including the Act, Local Government (General) Regulation 2021 and Code of Accounting Practice.
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. (22/1040C).
6. Develop strategies to ensure its long-term financial security.
7. Undertake a strategic review of its property holdings and investments.

#### **Part B Blue Haven Aged Care Facility**

8. Review Council's management and the operations of the Blue Haven aged care facility.
9. Develop an Operational Plan of Management for the Blue Haven aged care facility.
10. Revise the Operational Plan of Management, taking into account any finding or recommendation from the Aged Care Quality and Safety Commission accreditation assessment
11. Prepare a comprehensive business case for Council's consideration, outlining the options, (lease sell, joint venture or retain) for the Blue Haven facility, as per part 3(a) of the resolution of Council on 23 May 2022. (22/1040C).

12. Review and report on Council's compliance with the *Aged Care Act 1997* (C'wealth) and other relevant legislation regarding the management of Blue Haven aged care facility, including but not limited to:
- i. The use of funds, deposits and bonds
  - ii. The financial circumstances of the facility
  - iii. Strategies to improve the financial performance of the facility
  - iv. 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.

**Period for compliance with Order**

**Compliance report 1:**

Report on the status of the implementation of all actions in Schedule 2 by **15 December 2022**.

**Compliance Report 2:**

Report on the status of the implementation of all actions in Schedule 2 by **15 February 2023**.

**Compliance report 3:**

Undertake all actions in Schedule 2 by **29 April 2023**.

**Compliance report 3:**

Further report on the status of the implementation of all actions in Schedule 2 and a final report on compliance with the PIO by **30 June 2023**.

**Evidence to be provided with the compliance report**

**Compliance report 1:**

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

**Compliance report 2**

Provide a copy of any action/improvement plans and strategies as required by Schedule 2 finalised after Compliance Report 1 and a report on the actions taken by Council to address issues identified by the required reviews as at that time.

**Compliance report 3**

Provide a copy of any action/improvement plans and strategies as required by Schedule 2 finalised after Compliance Report 2 and a report on the actions taken by Council to address issues identified by the required reviews as at that time.

**Compliance report 4:**

Provide a copy of any improvement and action plans and strategies as required by Schedule 2 finalised after Compliance Report 3 and a final report on compliance with the PIO.

## SCHEDULE 3

### Appointment of temporary adviser

1. Pursuant to section 438G of the *Local Government Act 1993*, Peter Tegart is hereby appointed as a temporary adviser to Kiama Municipal Council to:

#### **Part A Council's Financial Management**

- i. Review Council's current financial circumstances, including Council's Strategic Improvement Plan
- ii. Assist with the development and revisions of Council's Strategic Improvement Plan
- iii. Assist with the implementation of Council's Strategic Improvement Plan
- iv. Review Council's current compliance with accounting requirements including the Act, Regulations and Code of Accounting Practice
- v. Provide guidance and advice to Council on strategies to improve its current financial circumstances, including preparation of its Liquidity Plan
- vi. Assist Council to develop strategies to ensure its long-term financial security
- vii. Assist Council to undertake a strategic review of its property holdings and investments

#### **Part B Blue Haven Aged Care Facility**

- viii. Review Council's management of Blue Haven aged care facility
- ix. Provide advice to assist with the development of an Operational Plan of Management for the Blue Haven aged care facility
- x. Assist the preparation of Council's business case for options relating to the facility as per part 3(a) of the resolution of Council on 23 May 2022. (22/1040C).
- xi. Provide strategic advice regarding the operation and/or divestment of the facility
- xii. Review and report on Council's compliance with the *Aged Care Act 1997* (C'wealth) and other relevant legislation regarding the management of 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. Assist with any response to the facility's accreditation audit

#### **Part C Council's Financial Accounting and Management Systems**

- xiii. Review Council's current financial accounting and management systems and, as necessary provide advice and guidance on any improvements to these systems.

This appointment will cease upon Mr Tegart providing a report to me on Council's final compliance report.

Pursuant to section 438G(7) of the *Local Government Act 1993*, the temporary adviser shall be paid from the Council's funds for the period of the appointment as agreed to under the terms of the contract.