

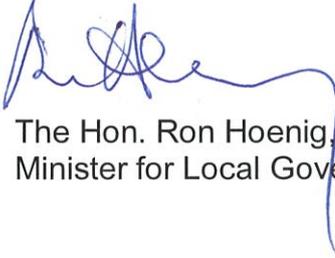
Local Government Act 1993

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 23rd day of May 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, 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.

Compliance reports 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.