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The Hon. Gabrielle Upton MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

11 August 2017

Dear Minister,

PERFORMANCE IMPROVEMENT ORDER DATED 9 MARCH 2017

In accordance with the Performance Improvement Order and Section 438F of the Local Government Act 1993, please find attached Council's Compliance Report as well as commentary provided by the Temporary Adviser, Mr Brian Petschler PSM on the Report.

Please do not hesitate to contact the writer if you have any questions or concerns.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'A Panuccio'.

Adrian Panuccio
A/GENERAL MANAGER

Encl: Council's Compliance Report
Commentary from Temporary Adviser

Performance Improvement Order – Compliance Report

11 August 2017

	Action Item	Current Status
1	<i>That North Sydney Council promptly resolve to re-instate the delegation to the Mayor of the responsibility for the day to day oversight of, and liaison with, the General Manager.</i>	Completed. Amended policy (D5-31) adopted by Council 20 March 2017 and updated on Council’s <u>website</u> .
2	<i>That North Sydney Council forthwith revoke the following memoranda: (a) the Confidential Memorandum dated 26 August 2014 from the General Manager to the Mayor’s Executive Assistant (EA) entitled “Clarification of Position Requirements”; and (b) the Memorandum dated 10 November 2014 from the Chief Operating Officer to the Mayor and General Manager regarding meetings between the Mayor and the General Manager.</i>	Completed. The Confidential memo dated 26 August 2014 (Item 2a) was revoked by the Acting General Manager on 13 March 2017. Memorandum dated 10 November 2014 (Item 2b) was revoked by Council resolution on 20 March 2017 (Minute No.52).
3	<i>That North Sydney Council forthwith restore to the Mayor the security access entitlements with respect to external entry and internal access which equate with the entitlements this Mayor and previous mayor/s enjoyed prior to security access restrictions being imposed on and after 21 October 2014, including, but not limited to, the provision of security access to the Executive Suite in the Carole Baker Building.</i>	Completed. Mayor’s access to the Council building restored to those in place prior to 21 October 2014.
4	<i>That Council promptly engage a suitably qualified person (Consultant) to assess whether any other changes should be made to the working environment of the Mayor and Mayor’s EA in order to meet applicable modern workplace standards having regard to the potential physical</i>	Ongoing Final design has been agreed with Mayor. Currently undertaking procurement in order for the works to commence.

	Action Item	Current Status
	<p><i>isolation of the occupants of those workspaces and to make any appropriate recommendations and the Council is to implement any reasonable recommendations made by the Consultant.</i></p>	
<p>5</p>	<p><i>That the Mayor and Councillors of North Sydney Council to take the following actions to improve their level of compliance with the legislative requirements governing the conduct of Council meetings</i> (Recommendation 1) 5a. <i>The Mayor and Councillors are to familiarise themselves with, and abide by, the rules concerning the order of address and manner of debate during Council meetings as set out in clause 38 of the Council's Meeting Code. The Mayor and Councillors are not to engage in unstructured debate which does not comply with the requirements of clause 38 of the Meeting Code.</i> 5b. <i>Each Councillor is to show respect to the Mayor during Council and committee meetings as required by clause 6.6 of the Code of Conduct and is to comply with the requirement under clause 38.1(c) of the Meeting Code to speak only when recognised by the Chair.</i> 5c. <i>If a Councillor wishes to raise a point of order, the Councillor is to speak out "Point of Order", the Mayor is to cease the substantive debate and allow the Councillor to briefly articulate the point of order and the Council is to do so. The Mayor is then to rule on the point of order before the substantive debate continues.</i> 5d. <i>The Mayor is to familiarise herself with the provisions of clause 248 of the Local Government (General) Regulation 2005 (LG Regulation) regarding motions of dissent. The Mayor is to respect the</i></p>	<p>Ongoing Council's Temporary Advisor has attended Council meetings and has provided advice to the Mayor and councillors regarding the conduct of meetings, as necessary. Additionally, Council's Temporary Advisor prepared a proposed meeting procedure for the benefit of the Mayor that was utilized for the Council meeting of 24 July. With local government elections scheduled on 9 September, there are no further council meeting for the current term of the elected body. Council continued to transact business during the course of the PIO.</p>

	Action Item	Current Status
	<p>right of any Councillor to move a motion of dissent from the Mayor's ruling on a point of order. If a motion of dissent is moved, the Mayor is to suspend other business until there is a decision on the motion of dissent. If a dissent motion is passed, the Mayor is to proceed as though her ruling on the point of order had not been given.</p> <p>5e. The Mayor is to refrain from ruling any motion or items of business on an agenda at a council meeting illegal or out of order without first having obtained advice to that effect from the Council's General Manager, Chief Operating Officer, Legal Officer or Temporary Adviser.</p> <p>5f. The Mayor is to respect the right of the Council's governing body to determine by way of resolution, at its discretion, whether or not the person presiding at Council meetings, is given the authority to exercise the power to expel a person from a meeting.</p> <p>5g. The Mayor is to familiarise herself with the provisions of clause 256 of the LG Regulation (expulsion from meetings). If the Mayor has been given the authority to exercise the power of expulsion, the Mayor is not to seek to expel any Councillor from any meeting of the Council for an act of disorder unless the Mayor has first imposed on the Councillor one of the requirements under clause 256(2) of the LG Regulation (reproduced in clause 43.2 of the Meeting Code) and the Mayor must not seek to then expel the Councillor, unless the Councillor has failed to comply with that requirement.</p> <p>5h. The Mayor and Councillors are to familiarise themselves and henceforth comply with the requirements under clause 241 of the LG</p>	

	Action Item	Current Status
	<p><i>Regulation concerning the raising of items of business at Council meetings without due notice.</i></p> <p>5i. <i>In relation to the requirement that due notice be given of any item of business, a Councillor is not to seek to invoke the exception under clause 241(3) of the LG Regulation (matters of great urgency) unless the Councillor genuinely believes the item of business is one of great urgency having regard to both subject matter and timing. Where a Councillor has any intention prior to the start of a meeting to raise a matter of great urgency, written notice of that intention is to be provided to the Chair at the start of the meeting, to give the Chair some time to consider the question of whether the matter is one of great urgency before being called upon to make that ruling.</i></p> <p>5j. <i>Where a Councillor seeks to raise an item of business without due notice on the grounds that it is a matter of great urgency, the Councillors must not transact any business in relation to that item unless the Chair has first ruled the matter to be one of great urgency and Councillors are not to seek to move dissent from the ruling of the Chair as to whether the matter is, or is not, of great urgency.</i></p>	
6	<p><i>That North Sydney Council amend the Mayor and Councillor Facilities and Benefits Policy to restore the Mayor's entitlement to the use of a fully serviced and maintained vehicle, equivalent to the value of a vehicle in the Council's pool fleet, including a fuel card and allocated parking space at Council's premises to facilitate the</i></p>	<p>Completed</p> <p>Council resolved on 20 March 2017 to provide a vehicle to the Mayor on a temporary basis until the Mayor and Councillors Facilities and Benefits Policy is advertised.</p>

	Action Item	Current Status
	<i>performance of the Mayor's civic and ceremonial functions (Recommendation 8)</i>	No submissions were received and the policy has subsequently been adopted. Mayor has been assigned a vehicle in accordance with the amended Policy.

Other matters:

As at 11 August 2017, Council has no current Code of Conduct matters under investigation.

**Performance Improvement Order issued on North Sydney Council
Temporary Adviser's Commentary on Council's second Compliance Report
by
Brian Petschler PSM**

Preamble:

I was appointed by the Minister for Local Government (The Hon Gabrielle Upton MP) to exercise the functions as a temporary adviser for the term of the Performance Improvement Order (PIO) issued on North Sydney Council on 9 March 2017.

North Sydney Council was to provide a short-term compliance report to the Minister within 60 days of that order being issued, with a further long-term report to be provided on or before 18 August 2017.

Council provided me with a copy of the proposed short-term compliance report on 21 April 2017 and that report was submitted to (and endorsed by) Council on 1 May 2017. My commentary on that short-term compliance report was submitted to Council on 6 May 2017.

Council provided me with the proposed final compliance report on 31 July 2017 following endorsement by Council on 24 July 2017. My commentary on that final compliance report is set out below.

Commentary:

Council was required to take all reasonable steps to give effect to seven recommendations in the PIO, four recommendations to be addressed in the short term, and three recommendations classified as long term.

As at 24 July 2017, Council has formally acted to implement the PIO recommendations as follows:

Recommendation 1 (Reinstatement of Mayor's delegations):

As detailed in the commentary submitted on the short term PIO report, this recommendation has been fully implemented.

Mr Adrian Panuccio took over as Acting General Manager on 9 May 2017 and is still undertaking that role. The relationship and liaison between the Mayor and the Acting General Manager has continued to develop positively and is effective.

Recommendation 2 (Revocation of Memoranda):

This recommendation has been fully implemented.

I have continued to attend regular meetings between the Mayor, Acting General Manager and other senior officers and believe the relationship has continued to develop positively.

Recommendation 3 (Restoration of Mayor's security access):

This recommendation has been fully implemented, with the Mayor having full security access entitlements to the Council's offices and Council Chambers.

Recommendation 4 (Assessment of Mayor's working environment):

I believe that this recommendation continues to progress satisfactorily.

Minor alterations have been undertaken in agreement between the Mayor and Acting General Manager. The Acting General Manager has relocated his office to the same level in close proximity to the Mayor's office. A design for the mayoral office renovations has been agreed with the Mayor, with quotations being obtained for the works.

Given the proximity of the forthcoming elections, the works will be considered by the new Council.

Recommendation 5:

This is the principal long-term recommendation of the PIO, dealing with the conduct of Council Meetings. I have attended a total of five Council meetings during my term as temporary adviser and my commentary on each subsection of this recommendation is detailed below.

In considering the commentary on the issues in recommendation 5, I would refer also to my remarks in the general comments at the end of this report.

Recommendation 5a (Address & Manner of Debate at Meetings):

The Mayor and Councillors have generally abided by the rules concerning the order of address and manner of debate during Council meetings, but there have still been some instances when this has not occurred. Unstructured debate that does not comply with the Meeting Code still occurs but this has decreased. The Mayor is currently introducing a new meeting procedure that should reduce the opportunities for unstructured debate to occur.

I believe the Mayor and Councillors need to better understand the Meeting Code, and training for the incoming Council is recommended.

In terms of this recommendation, there has been some improvement.

Recommendation 5b (Respect for Chair/Speaking when recognized by Chair {Code of Conduct and Meeting Code}):

I have noted the continuation of an underlying tension between the Mayor and the majority of Councillors. This has resulted in some frustration on behalf of some Councillors at some actions by the Mayor acting as Chair (and conversely, by the Mayor in response). It has also led to some disrespect being shown to the Mayoral position from time to time. This was evident at the Council meeting held on 26 June 2017, arising particularly in debate and amendments arising from mayoral minutes. Interruptions by the Mayor in council debate has sometimes led to displays of councillor frustration.

The occasions for this disrespect to occur have now ended, as further Council meetings before the election are unlikely. As in Recommendation 5a, I believe the new council should undertake training on both the Code of Conduct and the Meeting Code. The introduction of a new meeting procedure (as agreed after several meetings with the Mayor) should assist in these matters in the future.

Further improvement on this recommendation is required.

Recommendation 5c (Points of Order):

I believe that the procedure outlined in the recommendation has been implemented. It has been canvassed and discussed with the Mayor and Acting General Manager. The Mayor and Councillors are aware of the process to be followed.

Recommendation 5d (Motions of Dissent):

The procedure for motions of dissent has been discussed with the Mayor and Acting General Manager. While no formal motions of dissent have had to be dealt with, the Mayor has indicated a desire to work with the Acting General Manager should they arise and has been briefed on the process to follow.

Recommendation 5e (Mayor's rulings on motions as illegal or out of order):

The Mayor has shown a desire to seek advice from the Acting General Manager or other senior staff before making any rulings on illegality or formal actions on "out of order" issues. This follows some considerable discussion with the Mayor on the Act, Regulation and Meeting Code requirements in this regard.

No such Mayoral rulings have occurred in the meetings I have attended.

Recommendation 5f (Respect for Council's right of resolution):

This has been discussed with the Mayor and Acting General Manager in a broad review of the duties of mayors and councillors. The Mayor indicated an understanding of the Council's right to resolve matters. I believe this recommendation can be taken as implemented.

Recommendation 5g (Expulsions from meetings):

The provisions of clause 256 of the LG Regulation (expulsions from meeting) have been brought to the Mayor's attention. The Mayor has indicated that she would seek advice from the Acting General Manager in the event that such a situation should arise to ensure the proper process is being followed.

There has been no such incident at any of the meetings I have attended.

Recommendation 5h (Raising business without due notice):

I believe this recommendation has been properly met. There have been no incidents of late business being raised without notice at meetings I have attended.

Recommendation 5i and 5j (Process for raising business of great urgency/business raised without notice):

No such action has occurred before or during meetings that I have attended. However, the process has been discussed with the Mayor and the Acting General Manager and referred by memorandum to all Councillors. The Mayor is aware of the requirements of clause 241 of the LG Regulation. Any such matter would now be reviewed if and when raised to ensure the correct process is followed.

As indicated, the process has also been drawn to the Councillors' attention.

Recommendation 6:

This recommendation has been implemented.

Recommendation 7:

My role as temporary advisor is completed following the submission of this commentary.

General Comments:

Council took immediate action to implement the short-term recommendations of the PIO and, as indicated previously, it is to be commended for that response. The only outstanding matter is recommendation 4 (finalisation of the changes to the mayoral office) that has been subject to positive discussion between the Mayor and the Acting General Manager.

With relation to the key, long-term recommendation (Recommendation 5), I believe there has been some progress in implementation as detailed above. However there is a significant level of ongoing suspicion and distrust between the Mayor and the majority of the outgoing Council that has affected some aspects of Council meetings, particularly mayoral minutes. The forthcoming elections may provide for a fresh start in developing better communication between councillors and between the mayor and councillors.

During the term of the PIO (and following the preparation of the interim compliance report), I circulated a memorandum to all Councillors highlighting the issues raised in Recommendation 5. I emphasized in that memo the requirement for all Councillors *"to improve their compliance with the legislative requirements governing the conduct of council meetings"*.

Several attempts were made to seek direct comments from the Councillors, but I was able to meet privately with only Councillor Melissa Clare (Deputy Mayor) and Councillor Zoe Baker. Discussions with those Councillors were positive and provided me with the opportunity to understand the issues from their point of view. I also had some email correspondence with Councillor MaryAnn Beregi on several issues.

I should stress that I was treated with respect and courtesy by all Councillors to whom I spoke during the PIO, both at council meetings and privately.

A considerable amount of time was spent with the Mayor discussing the structures set up for Council meetings under the LG Act and Regulation and also under the Council's Codes. In conjunction with the Acting General Manager (and in consultation with the Mayor) a more practical step by step process was devised for the incoming Mayor to use in chairing Council Meetings which may help to overcome some of the difficulties that have arisen in the past.

Two positive matters have occurred as a result of the PIO. Firstly, the Mayor has been able to continue to develop a positive working relationship with the two Acting General Managers during the term of the PIO (Mr Ross McCreanor and Mr Adrian Panuccio). I believe she will use that relationship now with Mr Panuccio in the event of any difficulties arising to ensure the proper meeting procedures are followed in the future.

Secondly, there is a need for some early training and explanation of the Act, Regulation and Council Codes relating to Council meetings and councillor relationships after the upcoming council elections to ensure that all councillors (including the mayor) are properly conversant with those procedures.

In making these general comments, I wish to emphasise that the Council has continued to perform effectively in an operational sense, with a professional group of senior officers undertaking the implementation of council policies in a timely and competent manner.

Appreciation:

A considerable amount of time was spent in consultation and discussion with Mayor Jilly Gibson on the chairing of Council and Committee meetings. I again place on record my appreciation for her positive approach to adopting processes and procedures developed in consultation with the Acting General Manager. Those procedures were to ensure the meetings she chaired were fair and efficient in accordance with the regulations.

I extend appreciation to Mayor Gibson for her input and commitment.

Both Mr McCreanor and Mr Panuccio provided help and assistance to me in my role as Temporary Adviser, and I thank them. More particularly, Mr Panuccio has provided advice and support in helping to advise the Mayor on the particulars of the legislation and Council codes.

In doing so, he has accelerated the development of a trusting relationship with the Mayor. I believe it is already achieving benefits.



Brian Petschler
Temporary Adviser
10 August 2017