

**Local Government Act 1993**

**Section 438A**

**Performance Improvement Order**

I, the Honourable Gabrielle Upton MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Blue Mountains City 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.

This order takes effect upon service on the Council.

Dated this 22<sup>nd</sup> day of January 2018



The Hon. Gabrielle Upton, MP  
Minister for Local Government

---

**SCHEDULE 1**

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

1. On the available information, Council may have failed to comply with relevant statutory obligations insofar as improvement notices and prohibition notices issued by SafeWork in November 2017 indicate that the Council may have contravened provisions of the *Work Health & Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
2. On the available information, Council may have failed to comply with relevant statutory obligations under the *Protection of the Environment Operations Act 1997* insofar as clean up notices were issued by the Environment Protection Authority (EPA) in December 2017 in respect of various properties owned or controlled by the Council.
3. There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos, including potential prosecution/liability issues. These arise from the issues identified in the SafeWork notices, as well as in clean up notices issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.
4. Ongoing action and monitoring needs to be taken by the Council to ensure that its governance and asbestos management practices comply with regulatory obligations.
5. Council has, in its response to the notice of intention to suspend Council, indicated that I should issue a Performance Improvement Order as an alternative to suspending the elected council.

## SCHEDULE 2

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

1. Council identifies and implements measures that strengthen reporting to the governing body which enables Council to give leadership on implementing all recommendations arising from the two independent investigations initiated by Council by resolution on 14 November 2017 regarding asbestos management and organisational matters and the investigations being undertaken by SafeWork and the EPA.
2. Following consideration of the recommendations from the investigations, Council develops Improvement Plans which include appropriate milestones. In doing so Council:
  - a. Utilise the services of an appropriately qualified consultant to assist Council in assessing the adequacy or otherwise of the existing system of internal control and reporting to the governing body
  - b. Provides all necessary resources to ensure the Improvement Plans are fully implemented
  - c. Require for the next 12 months the General Manager to report in writing to the monthly meeting of Council on progress against the Improvement Plans
  - d. Engage accredited experts to provide training to the governing body on its obligations under work health and safety, and environmental protection legislation.
3. Council ensures that there is an adequate mechanism in place which requires the General Manager to take action so that all concerns and incidents of possible contravention of relevant Work Health and Safety, and environmental protection legislation are reported immediately to the relevant regulatory agencies and the Minister.
4. The Improvement Plans must be sent to SafeWork NSW and the Environmental Protection Authority (EPA) for their review. The Improvement Plans must be modified to accommodate any feedback from those agencies.
5. Council liaises with SafeWork NSW as to whether or not it would be appropriate in the circumstances for Council to give an "Enforceable Undertaking" regulating Council's ongoing management of asbestos. If it is deemed appropriate by SafeWork NSW, Council must enter into such an undertaking.
6. Councillors undertake training on their role and responsibilities as members of the governing body.

### Period for compliance with Order

1. Compliance report 1: Council reports to the Minister on the outcome of its liaison with SafeWork NSW in regard to the giving of an Enforceable Undertaking within 1 month of the date of the Order.
2. Compliance report 2: Copies of all investigation reports must be provided to the Minister within 7 days of Council's receipt of each report.
3. Compliance report 3: Council develops and adopts Improvement Plans on the outcome of each investigation within 4 weeks of receiving the investigation reports.
4. Compliance report 4: Council's Improvement Plans along with evidence of the review of the Improvement Plans by SafeWork NSW and EPA must be provided to the Minister within 4 weeks from the date of Council's adoption of the plans.
5. Compliance report 5: Council must provide the Minister with a written report on the training undertaken by councillors on their role and responsibilities within 2 months of the date of this Order.
6. Compliance report 6: Council must provide the Minister with a written report on its progress against the Improvement Plans within 2 months of the Improvement Plans being sent to the Minister.
7. Final Compliance report: Council must provide the Minister with a written report on its progress against the Improvement Plans within 3 months of the Improvement Plans being sent to the Minister.

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

1. Compliance report 1: Copy of the Enforceable Undertaking if entered into or advice from SafeWork NSW if an Enforceable Undertaking is not entered into.
2. Compliance report 2: Investigation Final Reports.
3. Compliance report 3: A copy of Council's Improvement Plans.
4. Compliance report 4: Evidence from SafeWork NSW and EPA of their review of Council's Improvement Plans.
5. Compliance report 5: Documentary evidence that councillors attended the training, the outline of that training and any outcomes from the training.
6. Compliance report 6: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the Improvement Plans.
7. Final Compliance report: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the Improvement Plans.