

Local Government Act 1993

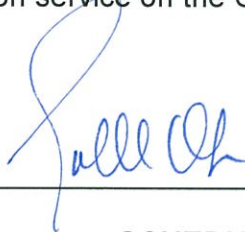
**Order under section 438A
Short Term**

I, the Minister for Local Government, issue this performance improvement order to the Council and/or persons specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

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

This Order takes effect upon service on the Council.

Dated: 9.3.17



The Hon. Gabrielle Upton MP
Minister for Local Government

SCHEDULE 1

NORTH SYDNEY COUNCIL

SCHEDULE 2

Reasons for Order

Section 438ZC

1. The North Sydney Council Public Inquiry commenced with the appointment of Mr Tom Howard SC as Commissioner on 21 January 2016 and concluded with the provision of his report on 10 October 2016.
2. The performance improvement order has been issued in response to the recommendations of the Public Inquiry. More detailed reasons are provided in the Report of the Inquiry under s 438U of the Act undertaken by Commissioner Howard.

Action required to improve performance

Section 438A(3)(b)

That Council take all reasonable steps to give effect to the following recommendations of the Commissioner's report

Short Term

1. 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. **(Recommendation 5)**
2. 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. **(Recommendation 6)**

3. 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. **(Recommendation 9)**
4. 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 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. **(Recommendation 11)**

Long Term

5. 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 **(Recommendation 1)**
 - a. 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.
 - b. 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.
 - c. If a Councillor wishes to raise a point of order, the Councillor is to speak out "Point of Order", but is not to seek to articulate the point of order until recognised by the Chair. When a Councillor speaks 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 Councillor is to do so. The Mayor is then to rule on the point of order before the substantive debate continues.
 - d. 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 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.
 - e. 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.
 - f. 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.

- g. 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.
 - h. The Mayor and Councillors are to familiarise themselves and henceforth comply with the requirements under clause 241 of the LG Regulation concerning the raising of items of business at Council meetings without due notice.
 - 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.
 - j. 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.
6. 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 premises to facilitate the performance of the Mayor's civic and ceremonial functions. **(Recommendation 8)**
7. Council utilise the services of the temporary adviser to assist in Council's implementation and compliance with this order, including but not limited to the orderly conduct of Council Meetings. **(Recommendation 15)**

Period for compliance with Order

Compliance Report One (Short Term)

A compliance report is to be provided to the Minister within 60 days from the date of this order.

Compliance Report Two (Long Term)

A further compliance report is to be provided to the Minister on the 18 August 2017.

Evidence to be provided with each compliance report

- A report from Council confirming the actions taken by the Council to give effect to the relevant recommendation of the Commissioner.
- Any comments from temporary adviser on Council's actions.

SCHEDULE 3

Appointment of temporary adviser

Pursuant to section 438G of the *Local Government Act 1993*, that Brian Petschler be appointed as a temporary adviser to North Sydney Council for the period up to the submission of the final compliance report to the Minister.

The temporary adviser shall have the following functions:

- (i) to provide advice and assistance to Council for the purpose of ensuring that it implements actions under the Performance Improvement Order.
- (ii) to monitor Council's compliance with the Performance Improvement Order.
- (iii) to attend all Council Meetings to assist with the orderly conduct of meetings and to advise the Mayor and councillors on compliance with meetings provisions of the *Local Government Act 1993*, the Local Government (General) Regulation 2005 and Council's Code of Meeting Practice.

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 . The estimated maximum cost of the appointment will be \$44,220 (including GST).