

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Shelley Hancock MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Armidale Regional 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.

I hereby appoint the persons specified in Schedule 3 as financial controller and temporary adviser to Council to exercise the functions for the terms specified in Schedule 3.

This Order takes effect upon service on the council.

Dated this 9th.....day of December.....2020



The Hon. Shelley Hancock, MP.
Minister for Local Government

SCHEDULE 1

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

1. During Administration there has been a robust process for the recruitment and appointment of a new General Manager. Because of previous difficulty in managing the relationship between councillors and senior staff, actions are required to prevent inappropriate termination of the newly appointed General Manager's contract. The newly appointed General Manager needs to be given an adequate opportunity to undertake the role.
2. During Administration deficiencies were identified in Council's governance practices which need to be remedied. These matters come under the General Manager's responsibilities and the organisation needs to be given time and adequate resources to implement improvements. Deficiencies include:
 - a. a number of public registers are not available on Council's website as required by the Government Information (Public Access) Act 2009 (GIPA Act);
 - b. a number of statutory appointments not being made eg Privacy Officer;
 - c. a very low rate of declaration of conflicts of interests by councillors with no central register of declarations;
 - d. no centralised location for delegations and lack of clarity around staff delegations resulting in decisions escalating to senior staff;
 - e. Council's information management practices are poor;
 - f. while Council has an existing Enterprise Wide Risk Management Policy and Framework, they are based on an outdated standard. Council's risk register omits some important risks such as cyber security and strategy for digital services; and
 - g. lack of oversight of the procurement processes at Council.
3. A lack of evidence that Council has taken the Capital Expenditure Guidelines into

consideration before exercising its functions. There are a number of projects undertaken by Council that meet the threshold in the Guidelines. OLG has no record of Council having applied for a capital expenditure review as required by the Guidelines.

4. There is evidence that Council has not met its legislated responsibilities in relation to the management of land under its care and control. A review indicates that:
 - a. Council does not have a land register that meets the statutory requirements of the Local Government Act 1993 and outdated plans of management;
 - b. generic plans of management for land do not meet the requirements of the *Local Government Act 1993* and the *Crown Lands Management Act 2016*; and
 - c. the public exhibition requirements of the *Local Government Act 1993* in relation to the leasing of community land are not being met.
5. Evidence from an interim financial review of Council's position indicates that:
 - a. there are a number of unbudgeted financial commitments that are beyond the financial capacity of Council to support without reducing service levels;
 - b. a number of asset ratios are below the recommended benchmark levels; and
 - c. the cash position remains tenuous as internal reserves are established for specific purposes and unrestricted cash level is low.
6. There is evidence that Council may have made some decisions at councillor briefings and/or workshops. For example, the calling for expressions of interest for the airport.
7. There is an apparent failure to comply with statutory obligations that attach to procedures relating to section 356 of the *Local Government Act 1993*.
8. In my opinion, the financial controller with the requisite financial expertise is needed to implement financial controls at the Council and oversee the implementation of the financial elements of the performance improvement order.
9. In my opinion, the temporary adviser with expertise in the governance of councils is needed to oversee the implementation of improvements to Council's governance framework and to monitor the conduct and performance of the governing body at meetings of the council and committees of the council and at councillor briefings and workshops.

SCHEDULE 2

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

In accordance with section 438A of the *Local Government Act 1993*, this order requires that:

1. Council can only terminate its general manager's contract of employment with the concurrence of the Deputy Secretary, Local Government, Planning and Policy.
2. Council can only change its delegations with the concurrence of the Deputy Secretary, Local Government, Planning and Policy.
3. Council can only restructure the organisation with the concurrence of the Deputy Secretary, Local Government, Planning and Policy.
4. Council must implement the recommendations made in the report on the review of Council's governance practices under the oversight of the Audit, Risk and Improvement Committee.
5. Council must implement the recommendations made in the report on the review of Council's land management practices.
6. Council must implement the recommendations made in the report of the review of Council finances.
7. Council can only amend its councillor/staff interaction policy with the concurrence of the Deputy Secretary, Local Government, Planning and policy.
8. Within three months of the commencement of this order, Council must review its code of meeting practice to ensure it complies with the *Model Code of Meeting Practice for Local*

Councils in NSW (the Model Meeting Code).

9. Council must amend its code of meeting practice to adopt clauses 3.32 and 3.34 – 3.35 of the Model Meeting Code and to provide that councillor briefings are to be open to the public unless the general manager is satisfied that grounds exist to exclude members of the public from a briefing to consider information that should not be made public.
10. Council must conduct its meetings in accordance with its code of meeting practice and must not make decisions at councillor briefings and workshops.
11. Council must within one month of the commencement of this order ensure that the General Manager develops a councillor request system to manage email requests from councillors that incorporates rules about the use of the councillor request system with a focus on ensuring that communications are respectful, the number of requests are reasonable and include provisions permitting the General Manager to impose limitations where disrespectful or excessive use of the system occurs..
12. Council is to ensure that resources are provided to the General Manager so that adequate funds are provided for:
 - a. governance standards to be maintained;
 - b. the delivery of the operational plan;
 - c. infrastructure maintenance; and
 - d. the improvement of financial ratios.
13. Council must take immediate steps to implement improvements to Council's financial monitoring and reporting. In doing so Council is to:
 - a. utilise the services of the financial controller to assist Council in assessing the adequacy or otherwise of the existing system of financial accounting, monitoring and reporting;
 - b. have due regard to the advice of the financial controller to ensure Council has an effective system of financial accounting and internal control; and
 - c. prepare an improvement plan with advice and direction from the financial controller giving timeframes for each action and requiring all improvements to be implemented by 04 September 2021.

Period for compliance with Order

Compliance report one: A report on the implementation of action item 10 is due six weeks from the commencement of this order.

Compliance report two: A report on the amendments to the code of meeting practice (action items 7 and 8) is due four months from the commencement of this order.

Compliance report three: A report on the implementation of the governance review, finance review and land management review recommendations (action items 4, 5 and 6) is due six months from the commencement of this order.

Final compliance report: A report on Council's compliance with actions in this order is due on 04 September 2021.

Evidence to be provided with the compliance report

Compliance report one: A copy of the councillor request system rules to be provided.

Compliance report two: A copy of the amended code of meeting practice is to be included with the compliance report.

Compliance report three: A copy of the recommendations and actions taken is to form the compliance report.

SCHEDULE 3

Appointment of financial controller

1. Pursuant to section 438HB of the *Local Government Act 1993*, Mr John Rayner PSM is hereby appointed as a financial controller to Armidale Regional Council to:
 - a. undertake the role of financial controller as provided in section 438HC of the Act;
 - b. implement financial controls;
 - c. provide advice on the adequacy of Council's assessment of its current financial position and make any recommendations to improve Council's immediate financial position;
 - d. provide advice on the adequacy of Council's financial accounting, monitoring and reporting systems and internal controls and make recommendations to improve Council's processes;
 - e. monitor the council's compliance with the performance improvement order; and
 - f. provide advice on the adequacy of Council's financial position and control environment at the end of the order implementation.

This appointment will cease upon Mr Rayner providing a report to me on Council's final compliance report and financial position, due on 04 September 2021.

Pursuant to section 438HB(8) of the *Local Government Act 1993*, the financial controller shall be paid from the Council's funds for the period of the appointment as agreed to under the terms of the contract.

Appointment of temporary adviser

1. Pursuant to section 438G of the *Local Government Act 1993*, Mr John Rayner PSM is hereby appointed as a temporary adviser to Armidale Regional Council to:
 - a. observe Council meetings for the purpose of ensuring Council is complying with the code of meeting practice in respect of meeting procedures and dealing with acts of disorder;
 - b. observe Council workshops and councillor briefings for the purpose of ensuring that no decisions are made at those sessions;
 - c. provide advice in relation to the implementation of the recommendations from the governance review;
 - d. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - e. monitor the council's compliance with the performance improvement order.

This appointment will cease upon Mr Rayner 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.