

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 Wingecarribee Shire 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 temporary advisers to Council to exercise the functions and for the terms specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated thisday of2020

The Hon. Shelley Hancock, MP
Minister for Local Government

SCHEDULE 1

Reasons for Order – section 438A(3)(a)
<ol style="list-style-type: none">1. There are reputational and work, health and safety risks facing Council as a consequence of the behaviours of some councillors.2. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction.3. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with staff of the Council.4. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other.5. In my opinion, a temporary adviser with requisite professional qualifications is needed to bring councillors together to address the acrimony and hostility that is apparent.6. In my opinion, a temporary adviser with requisite skills in meeting procedure is needed to provide advice and assistance with the conduct of Council meetings.

SCHEDULE 2

Action required to improve performance – section 438A(3)(b)
<ol style="list-style-type: none">1. All councillors undergo training in relation to:<ol style="list-style-type: none">(a) their role as elected representatives;(b) their obligations under work, health and safety legislation with particular reference to bullying;

- (c) their obligations under Council's "*Councillor's Access to Information and Interaction with Staff*" policy;
 - (d) their obligations under Council's Code of Conduct with a focus on the proper disclosure and management of conflicts of interests and respectful behaviours; and
 - (e) meeting procedures and the respectful participation at Council and committee meetings.
2. The Mayor undergo training on the effective chairing of meetings.
 3. All councillors participate in a structured mediation process to be undertaken by a temporary adviser appointed under this Order.

Period for compliance with Order

First compliance report: Council is to report to the Minister on the completion of the required training and mediation process 2 months from the date of service of this Order.

Final compliance report: Council is to report to the Minister on the conduct at, and of, its meetings 4 months from the date of service of this Order.

Evidence to be provided with the compliance report

Council is to provide attendance sheets and resource documentation for all training sessions conducted as required by this Order.

SCHEDULE 3

Appointment of temporary advisers

1. Pursuant to section 438G of the *Local Government Act 1993*, [NAME] is hereby appointed as a temporary adviser to Wingecarribee Shire Council to:
 - a. undertake a structured mediation process with all councillors to negotiate agreement on respectful behaviours in their dealings with each other and with Council staff;
 - b. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - c. monitor the council's compliance with the performance improvement order.

This appointment will cease upon [NAME] providing a report to me on Council's first compliance report, the participation by each councillor in the mediation process and the outcome(s) of that process.

2. Pursuant to section 438G of the *Local Government Act 1993*, [NAME] is hereby appointed as a temporary adviser to Wingecarribee Shire Council to:
 - a. attend Council meetings for the purpose of providing advice and assistance to the Chair in respect of meeting procedures and dealing with acts of disorder;
 - b. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - c. monitor the council's compliance with the performance improvement order.

This appointment will cease upon [NAME] providing a report to me on Council's final compliance report and their observations of three consecutive Council meetings.



Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, powers to issue performance improvement and suspension orders may be used.

HOW DOES THE PROCESS WORK?

- Notice of intention to issue a performance improvement order will be given.
- Councils will be given no less than 7 days to respond.
- Notices of intention and orders will outline what is required.
- Council is requested to consider and table the notice of intention at an open council meeting.
- Council should provide its response to the notice of intention by resolution.
- The Minister is required to consider council's submission when making a decision.
- Council should table a performance improvement order at the next available council meeting.
- Council is required to publish the order on its website.
- The Office of Local Government will monitor the implementation of performance improvement orders.
- Council will be required to complete a compliance report on the implementation of the performance improvement order.
- If a temporary adviser is appointed, the council, councillors and members of staff are required to co-operate with the temporary adviser. This includes providing any information or assistance that the adviser reasonably requires to exercise his or her functions.
- If a temporary adviser is appointed, the council is required to provide the temporary adviser with an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister. A copy of the adviser's comments (if any) is to be provided to the Minister. Failure to comply with this is a contravention of the legislation.
- Council will be advised in writing of the outcome of the Minister's consideration of its compliance report.
- The Office will publish orders, compliance reports and monitoring assessments on its website.
- The Minister may issue a compliance order to a councillor if they have failed to take action as required by a performance improvement order.
- A councillor is not entitled to exercise any of the functions of a councillor if they are issued with a compliance order.
- Failure of an individual councillor to take action as required by a performance improvement order is misconduct.

Further detail is contained in the Framework for Implementing Performance and Suspension Orders. This document, available at www.olg.nsw.gov.au, provides more detail about who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.