

Local Government Act 1993

Order under section 438A

I, the Minister for Local Government, issue this performance improvement order to the council 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 the council for the term specified in the Schedule.

This Order takes effect upon service on the council.

Dated: 24.7.14



The Hon Paul Toole MP
Minister for Local Government

SCHEDULE 1

STRATHFIELD MUNICIPAL COUNCIL

SCHEDULE 2

The issue	Evidence of serious deficiencies with Council's internal control systems in the undertaking of procurement and purchasing.
Reasons for order – criteria – clause 413D Local Government (General) Regulation 2005	CI 413D(a) - Council has failed to comply with its legislative responsibilities, standards or guidelines. CI 413D(b) - there are significant risks facing the Council that are not being addressed. CI 413D(e) - appointment of a temporary adviser is necessary to restore the proper or effective functioning of the Council CI 413D(g) – related matters have been previously raised by the ICAC, three reports commissioned by the Council, and Council's auditor
Evidence supporting need for order	ICAC Operation Torrens identified weaknesses in Council's record keeping in 2008. ICAC Operation Centurion identified weaknesses in Council's record keeping, tendering and procurement practices in 2010. Council's Internal Review of Purchasing in March 2012 identified significant control weaknesses in relation to procurement and the management of contracts. Council's Internal Review of Purchasing in September 2012 identified significant control weaknesses in relation to procurement and record keeping. Council's review of procurement in August 2013 reported specific

	<p>concerns (as previously raised in the above reports) in relation to procurement practices.</p> <p>The Audit Management Letter of 29 October 2013 from Council's Auditors identifies procurements in breach of section 55 of the <i>Local Government Act 1993</i>.</p> <p>Despite the benefit of all the above reports, a review of Council's procurement practices by Sinc Solutions, as outlined in its report of 17 March 2014 and 4 June 2014, found prima facie evidence of:</p> <ul style="list-style-type: none"> • Breaches of section 55 of the <i>Local Government Act 1993</i> and the related tendering provisions of the Local Government (General) Regulation 2005; • A failure to enter into written contracts for the provision of goods and services in circumstances where such contracts would otherwise have been warranted; • A failure to keep and maintain proper and adequate records pertaining to procurement of goods and services; and • The making of payments for the provision of goods and services significantly in excess of amounts agreed to in the corresponding contract (contract variations). <p>The independent members of Council's Audit Committee have not been appointed by the governing body and there does not appear to be a delegation for the General Manager to have appointed those members. The appointments are inconsistent with the Office of Local Government's <i>Internal Audit Guidelines</i> and the Council's Audit Committee Charter.</p>
<p>Action required to improve performance</p>	<p>The Council is required the implement the following actions to improve its internal controls that have a direct impact on the procurement and purchasing of services and goods:</p> <ol style="list-style-type: none"> 1. Take immediate steps to implement internal controls to ensure that all procurement and expenditure on goods and services complies with all relevant statutory requirements and Council's policies, delegations and guidelines. <p>In doing so:</p> <ol style="list-style-type: none"> a. Utilise the services of the temporary adviser to assist Council in assessing the adequacy or otherwise of the existing system of internal control. b. Have due regard to the advice of the temporary adviser as to changes that are required to ensure Council has an effective system of internal control. c. Prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months, or earlier if so advised by the temporary adviser. d. Require, for the next twelve months, the General Manager to report in writing to the monthly meeting of Council and

each meeting of the Internal Audit Committee, on progress against the improvement plan.

2. Establish and implement an effective internal audit function having due regard to the *Internal Audit Guidelines* issued by the Office of Local Government under section 23A of the *Local Government Act 1993*. In doing so, adopt an audit plan for the next two years.
3. Without delay, review the appointment of Council's Audit Committee to ensure that the appointment process gave consideration to the *Internal Audit Guidelines* issued by the Office of Local Government under section 23A of the *Local Government Act 1993* and is in accordance with Council's Audit Committee Charter.
4. Engage a suitably qualified person approved by the temporary adviser to undertake a compliance review within 12 months to assess the implementation and effectiveness of Council's internal controls in ensuring that procurement and expenditure on goods and services complies with relevant statutory requirements and Council's policies, delegations and guidelines.
5. Report the findings of the compliance review to a public Council meeting and the Office of Local Government.
6. Ensure that the performance management process governing the employment of the General Manager, Directors and Council's *responsible accounting officer* is effective in ensuring that:
 - a. appropriate performance criteria pertaining to the establishment and maintenance of effective internal controls over procurement and expenditure are stipulated in contracts of employment and performance agreements;
 - b. the persons holding these positions are capable of fulfilling their responsibilities in regard to Council's internal control system;
 - c. their performance in fulfilling these responsibilities is regularly and effectively assessed; and
 - d. timely and appropriate action is taken to address poor performance.

In doing so, Council is required to:

- a. have due regard to clauses 207 and 209 of the *Local Government (General) Regulation 2005*;
- b. assess the adequacy of its current performance management process;
- c. have due regard to the advice of the temporary adviser and/or other suitably qualified person; and
- d. prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months or earlier if so advised by the temporary adviser.

Who is required to take action	The governing body of the Council is responsible for ensuring the Council's compliance with the performance improvement order.
Reporting requirements and timeframes	<p>Council is to provide the Office of Local Government with a monthly progress report detailing achievements measured against actions taken to improve performance, using any template provided by the Office. In doing so Council is to give the temporary adviser an opportunity to review the proposed progress report at least 7 days before it is given to the Office and is to give the Office a copy of the temporary adviser's comments (if any) on the progress report.</p> <p><i>A compliance report</i> pursuant to section 438F of the Act is to be submitted to the Minister within 12 months from the service of this order on the Council. The report is to detail actions taken to comply with this order and the findings of the compliance review detailed in the order.</p>
Evidence to be provided with reports	Documentary evidence to substantiate the actions taken and any improvements to Council's performance.
Period for compliance with order	12 months from the service of this order on the Council.
Options for further intervention	Expand terms of reference for current section 430 investigation, authorise a further investigation and/or suspension of the Council.

SCHEDULE 3

Appointment of temporary adviser	<p>Pursuant to section 438G of the <i>Local Government Act 1993</i>, that IAB Services be appointed as a temporary adviser to Strathfield Municipal Council for the period of 12 months from the service of this order on the Council.</p> <p>The temporary adviser shall have the following functions:</p> <ul style="list-style-type: none"> • to monitor the Council's compliance with the performance improvement order, and • assist the General Manager to ensure compliance with this order. <p>Pursuant to section 438G(7) of the <i>Local Government Act 1993</i>, 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.</p> <p>IAB Services has indicated that the estimated cost over the period will be \$54,000 (including GST).</p>
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