



The Hon Paul Toole MP
Minister for Local Government

Ref:
MIN:
Doc ID: A505815

Clr Leigh Byron and Mr Aaron Drenovski
Mayor and General Manager
Balranald Shire Council
PO Box 120
BALRANALD NSW 2715



4 NOV 2016

**NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER
TO BALRANALD SHIRE COUNCIL UNDER SECTION 438A OF THE
LOCAL GOVERNMENT ACT 1993**

Dear Clr Bryon and Mr Drenovski

I enclose the Office's report outlining the findings of the visit to Council on 19 July 2016 and which contains recommendations aimed at assisting Council to improve its performance.

In accordance with section 438C of the *Local Government Act 1993* I hereby give notice of my intention to issue a Performance Improvement Order (Order) under section 438A of the Act, for actions to be taken, as identified in the draft Order, to improve the performance of the Council.

Section 438B(2) of the Act requires me to consider the performance improvement criteria prescribed by clause 413D of the *Local Government (General) Regulation 2005* before issuing an Order:

- “(a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,*
(b) whether there are significant risks facing the council that are not being addressed,
(c) whether previous intervention attempts have failed,
(d) whether council business is being disrupted and the council failing to exercise its functions,
(e) whether the appointment of a temporary adviser is necessary, in the opinion of the Minister, to restore the proper or effective functioning of the council,
(f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified,
(g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.”

I have considered each of these criteria in the context of the factual findings in the preliminary enquiry report. On balance, for the reasons set out below, I have decided that action must be taken to improve the Council's performance.

The reasons why I, as Minister, have decided to issue a Performance Improvement Order (section 438A(3)(a)).

1. On a recent visit by the Office of Local Government (Office) to Balranald Shire Council (Council) on 19 July 2016 in relation to financial and governance practices the Office has observed instances where Council's financial and governance practices were inconsistent with its legislative responsibilities. [Criteria: (a) and (b)].
2. I am concerned that future services will be adversely affected or disrupted due to poor financial governance and asset management practices of the current Council. Council has budgeted for and subsequently run large operating deficits over a number of years. At the same time, Council has not had a reliable Long Term Financial Plan to provide a path to achieve a break-even result or an operating surplus in the future. Council will need to consider the long term and cumulative effects of actions on future generations. [Criteria: (a) and (b)].
3. It is necessary for Council to have an effective control environment because it manages and minimises risks and ultimately provides confidence to the community. Therefore, I am also concerned there remains considerable risk to Council in not having an audit committee or internal audit function. As a direct consequence of this omission, Council was not aware of, nor was it involved in the preparation of a response to, the issues raised in the external auditor's management letters in 2013/14 and 2014/15. [Criteria: (a) and (b)].
4. According to the Office's report, most of Council's policies do not appear to have been reviewed and/or updated since 2008. It is of particular concern to me that Council has seemingly dealt with code of conduct complaints (one of which has been referred to the Office for misconduct) pursuant to a superseded code and/or one which has not been adopted by Council. [Criteria (a) and (b)].
5. Furthermore, I note from the Office's report that a review of Council's meeting minutes found that disclosures made at the commencement of the meeting did not include the nature of the interest (pecuniary or non-pecuniary). There is no record of what, if any, action was taken by councillors to manage identified conflicts. This is contrary to the *Local Government Act 1993*, the Model Code of Conduct and the code of meeting practice. It also provides the community with little confidence that conflicts are being appropriately managed. [Criterion (a)].

6. I have considered the need for the appointment of a temporary adviser. The Office's report suggests that if a suitably qualified and experienced person were engaged at Council then the impediments to Council achieving on-going financial sustainability might be identified, or at least a path to identification of the impediments revealed. I believe the appointment of a temporary adviser to assist the Council in meeting the actions outlined in the proposed Order is reasonably required in the circumstances. [Criterion (e)].

The terms of the proposed Performance Improvement Order, including the period for compliance with the order (section 438C(2)(a)).

The attached draft Performance Improvement Order is intended to form part of this notice. As required by section 438C(2)(a), the terms of the Order and period for compliance are specified in the Order. As required by section 438A(3)(b), the actions required to be taken to improve the performance of the Council are specified in the Order.

The actions that may be taken by me, as Minister, if the performance improvement order is not complied with (section 438C(2)(c)).

If the Performance Improvement Order is not complied with, I may consider temporarily suspending the Council under Chapter 13, Part 7 of the *Local Government Act 1993*.

Invitation to make submissions to me regarding the proposed Order (sections 438C(3) and (4)).

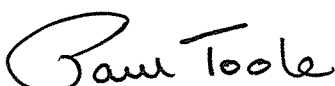
I invite Council to make submissions to me in respect of the proposed Order. Should Council choose to make any submissions, they must be provided to me no later than 14 days from the date upon which this notice is served on it.

I will consider all submissions made to me by Council during this period before deciding whether to issue the Order.

It is suggested that Council tables this notice at an open Council meeting and provides its submissions by way of resolution of the Council.

I have attached an information sheet about the process for the issuing of Performance Improvement Orders.

Signed on this 4th day of November 2016



Paul Toole MP
Minister

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