

## 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 Dubbo 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 person specified in Schedule 3 as a temporary adviser to Council to exercise the functions for the terms specified in Schedule 3.

I require councillors to enter into an undertaking in the form specified in Schedule 4.

This Order takes effect upon service on the Council.

Dated this 29<sup>th</sup> day of June 2021



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

---

#### SCHEDULE 1

Reasons for Order – section 438A(3)(a)
<ol style="list-style-type: none"><li>1. There is evidence that Council made changes that are deemed to be substantial to its <i>Payment and Provision of Expenses for the Mayor and Councillors Policy</i> without placing these on public exhibition as required by section 253 of the <i>Local Government Act 1993</i>.</li><li>2. There is evidence that some of the communications to senior Council staff from some councillors were unpleasant and intimidating. This was having an impact on the work health and safety of the Council staff.</li><li>3. There is evidence that some Council staff were feeling bullied and harassed by some councillors which resulted in them having to seek medical advice and have time off work. This was having an impact on the work health and safety of Council staff.</li><li>4. There is evidence that because of the actions of some councillors, some Council staff were unable to effectively fulfil their roles because of concerns about intimidation and harassment thereby affecting the functioning of Council at that time.</li><li>5. There is evidence that some councillors were acting in a way that sought to interfere with the consideration of matters under Council's code of conduct.</li><li>6. There is evidence that some councillors were making public allegations of wrongdoing by other councillors, which was inconsistent with their obligations under the Model Code of Conduct for Local Councils in NSW.</li><li>7. There is evidence that the conflict that occurred between councillors was eroding the community's confidence in Council and impacted on Council's reputation.</li><li>8. In my opinion, a temporary adviser is necessary to oversee the implementation of the performance improvement order and to monitor councillors' compliance with the order.</li></ol>

## 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 formally consider the changes made to the *Payment and Provision of Expenses for the Mayor and Councillors Policy* under 226(d) of the Act that were endorsed at its meeting of 24 May 2021 (CCL21/96), and as indicated in the report CCL21/136 to Council's meeting of 28 June 2021, as there is no evidence of a Council resolution to rescind or remove these changes.
2. Council provides a report on the outcome of the public exhibition of its amended *Payment and Provision of Expenses for the Mayor and Councillors Policy*, to the Office of Local Government, following the completion of that process.
3. Council must continue to implement the communication between senior staff and councillors process identified in its submission dated 15 June 2021 at paragraph 2 and report to the temporary adviser and Office of Local Government should there be any breaches of this process.
4. The communication between senior staff and councillors process is to remain in place until such time as Council adopts a formal councillor request policy/system.
5. Council must within one month of the commencement of this order ensure that the General Manager reviews (if one exists) or 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.
6. Each councillor enters into a written undertaking, attached and forming part of this order, in the following terms:
  - a. To conduct themselves in a manner that does not constitute bullying or harassment of Council staff.
  - b. Refrain from any action that is, or could be seen to be, an action of reprisal against any member of Council staff for performing their functions and duties.
  - c. Refrain from making public statements or public allegations of wrongdoing, or implying wrongdoing, by any other Council official.
  - d. Use the current regulated processes for making of allegations of wrongdoing against any other Council official.
  - e. Refrain from interference in the consideration of matters under Council's code of conduct.

### **Period for compliance with Order**

Compliance report one: A report on compliance with action item 6 that all councillors enter into an undertaking is due one week from the commencement of this order.

Compliance report two:

- (a) A report on the review or development of a councillor request system is due by end of July 2021.
- (b) A report on the consideration of changes made to Council's *Payment and Provision of Expenses for the Mayor and Councillors Policy* in compliance with action item 1 is due by end of July 2021.

Compliance report three: A report on the outcome of the public exhibition of Council's *Payment and Provision of Expenses for the Mayor and Councillors Policy* is due by 20 August 2021.

Final compliance report: A report on Council's compliance with actions in this order is due on 3 September 2021.

**Evidence to be provided with the compliance report**

Compliance report one: A copy of undertakings from all councillors.

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

A copy of the report to Council and minutes of the Council meeting.

Compliance report three: A copy of the amended *Payment and Provision of Expenses for the Mayor and Councillors Policy* and submissions received by Council are to be included with the compliance report.

---

**SCHEDULE 3****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 Dubbo Regional Council to:
  - a. in consultation with Council's General Manager, ensure that he is advised of communications between councillors and Council staff that are not in compliance with this order;
  - 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 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.

---

**SCHEDULE 4**

**Councillor undertaking**

I, Councillor [*name*] of Dubbo Regional Council do hereby give the following undertaking.  
I undertake to:

- a. Conduct myself in a manner that does not constitute bullying or harassment of Council staff.
- b. Refrain from any action that is, or could be seen to be, an action of reprisal against any member of Council staff for performing their functions and duties.
- c. Refrain from making public statements or public allegations of wrongdoing, or implying wrongdoing, by any other Council official.
- d. Use the current regulated processes for making of allegations of wrongdoing against any other Council official.
- e. Refrain from interference in the consideration of matters under Council's code of conduct.

Signed: .....

Name: .....

Dated this .....day of .....2021