

EXTRAORDINARY MEETING AGENDA

11 September 2019

Held in the Young Chambers, 189 Boorowa Street, Young

6. GENERAL MANAGER'S LATE REPORTS

(Clause 3.28 (b) Hilltops Council Code of Meeting Practice - The business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council).

6.2 – EOM 19/02A – NOTICE OF INTENTION TO ISSUE PERFORMANCE IMPROVEMENT NOTICE – MINISTER FOR LOCAL GOVERNMENT SEPTEMBER 2019

Responsible Officer: General Manager

PURPOSE

The purpose of this report is to advise Council of the receipt of the Minister for Local Governments Notice of Intention to issue a performance improvement notice in relation to the late submission of Councils audited statements for 17/18

RECOMMENDATION

That Council:

- (a) Receive and note the correspondence from the Minister for Local Government, Shelley Hancock MP on 6 September 2019 about the notice of intention to issue a performance improvement notice;
- (b) Acknowledge that a submission will be supplied no later than 13 September 2019; and
- (c) Advise that the 17/18 financials have been audited and lodged with the State Audit Office on the 6 September 2019 and we are awaiting their response

SUMMARY/BACKGROUND

Council is required to lodge its financial statements combined with its Annual Report to the Minister within four months of the end of previous financial year. Council requested and was granted an extension until 28 February 2019 to lodge the audited statements. This was as a result of the merging of all former Shire Council three legacy systems combined with an early migration of data before year end on the 31 May 2018.

This migration of data before the end of the financial year meant that Council was running 4 separate financial systems which were not fully integrated. This led to significant reconciliation issues for the Council and we were unable to meet the deadline extension of February 28, 2019.

A significant amount of work was done combined with several onsite audits on 29/1-1February 2019 and 1 - 2 August to finally resolve all issues and audited statements were uploaded to the State Audit Office on Friday the 6 September 2019. A copy of the Statements are attached as Attachment b.

Unfortunately, on the same day, Council received a Notice of Intention to issue a performance improvement notice in relation to the 2017/18 accounts.

The Minister has requested a submission from the Council as to why this Performance Notice should not be issued.

The Ministers Notice is attached as Attachment A.

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ATTACHMENTS:

Attachment 1 - The Ministers Notice is attached as Attachment A.

POLICY AND LEGISLATION

- S 438C Local Government Act 1993

STRATEGIC PLAN LINKAGE

Governance – Audit Statements – legislative compliance

FINANCIAL IMPLICATIONS

Councils audited result was significantly improved to the budget set down.

All KPI's indicate a positive improvement in relation to asset management and performance.

RISK IMPLICATIONS

Operational Risk – the organisation must ensure that key intergovernmental deadlines are met, and the community has transparency over the financial activities of council in a timely way.

CONSULTATION AND TIMING

State Audit Office, Crowe Horwath External Auditors

Office of Local Government submission must be provided in 7 days of receipt being no later than Friday, 13 September 2019.



Clr Brian Ingram and Dr Edwina Marks
Mayor and General Manager
Hilltops Council
Locked Bag 5
YOUNG NSW 2594

By email: brian.ingram@hilltops.nsw.gov.au
edwina.marks@hilltops.nsw.gov.au

Dear Clr Ingram and Dr Marks

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

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

I have serious concerns that the failure by Council to submit its audited 2017-18 financial reports within the four month statutory period demonstrates it is not functioning effectively. The disclosure of a council's financial reports is a crucial way in which it remains accountable to its ratepayers.

The timelines for financial reporting under the Act are not optional; they are mandatory obligations. Every council in NSW must adhere to these obligations and every council in NSW is given ample time to return their financial reports.

The reports provide vital information to councillors and the local community about the progress of the Council's implementation of the key activities it has committed to, as well as its audited financial statements, in order for the Council to remain accountable to its ratepayers. It is vital they are submitted on time.

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 a PIO:

- (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 is failing to exercise its functions;*
- (e) repealed;*
- (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 these mandatory criteria in the context of the factual findings listed below. On balance, I have decided that action must be taken to improve the Council's performance.

The reasons why I, as Minister, am considering issuing a Performance Improvement Order (section 438A(3)(a))

1. A failure of Council to have its financial reports prepared in accordance with the *Local Government Code of Accounting Practice and Financial Reporting (Code)* and audited within four months after the end of the financial year, or within the extension of time granted by the Deputy Secretary, Local Government, Planning and Policy, is contrary to the requirements of sections 413 and 416 of the Act. Further, Council has failed to submit to the Office of Local Government (OLG) its audited financial reports for the 2017-18 financial year in accordance with the Code. (Criterion 413D(a)).
2. I am concerned that the failure by Council to prepare audited financial reports within the four month statutory period demonstrates that the Council is not functioning effectively. (Criterion 413D(a)).
3. I believe that the maintenance of effective financial governance and reporting frameworks at a council are crucial to manage and minimise risks and, ultimately, to provide transparency and confidence to the community. The timely presentation of audited financial reports is the primary statutory mechanism by which councils meet their financial reporting obligations. That Council has failed to meet its financial reporting obligations is therefore a matter of serious concern. (Criterion 413D(b)).

The terms of the proposed performance improvement order, including the period for compliance with the order (section 438C(2)(a) of the Act)

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

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

If a PIO is not complied with, I may consider:

- i. issuing a further PIO; and/or
- ii. temporarily suspending the Council under Chapter 13, Part 7 of the Act.

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

I invite Council to make submissions to me in respect of the proposed PIO. Should Council choose to make submissions, they must be provided to me no later than seven 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 a PIO.

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 PIOs.

Signed on this Friday 6th day of September 2019



Shelley Hancock MP
Minister for Local Government

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6.3 – EOM 19/02B – RATES HARMONISATION OPT OUT SEPTEMBER 2019

Responsible Officer: General Manager

PURPOSE

The purpose of this report is to seek advice from Council about opt in or out of the 2020 Rates Harmonisation decision.

RECOMMENDATION

That Council:

- (a) Receive and note the report on rates harmonisation opt out option;
- (b) Remain on the amended rate path extension with the intention to introduce a new rating structure from 1 July 2021; and
- (c) Acknowledge by accepting the extension that no further action is required

SUMMARY/BACKGROUND

The 2016 Amalgamations Proclamation prescribed that the first elected Council must review the rating structure in the first four years following merger. The Minister for Local Government has provided merged Councils under the Local Government Amendment Act 2019 with an extension of twelve months.

Councils have the option to:

- a) opt out of the rate path extension and introduce a new rating structure from 1 July 2020
- b) remain on the amended path to commence from 1 July 2021.

Merged councils may choose to retain the current path to introduce harmonised rates from 1 July 2020 by opting out; or remain on the amended path to commence from 1 July 2021. Councils are required to opt out by early September. The Act does not allow for a phase-in period, to graduate any changes or increases.

Given the issues with the lateness of the accounts, only recently being finalised and recent correspondence by the Minister in relation to these accounts, the Office of Local Government have advised that the Minister is unlikely to support Hilltops Council from opting out of the extension (going early in 2020). Simply put, the Office are saying that we now have the extension until 2021 as identified under the Local Government Amendment Act 2019.

ATTACHMENTS:

Nil

POLICY AND LEGISLATION - Local Government Act 1993

STRATEGIC PLAN LINKAGE - Governance – Financial models to support long term financial plan

FINANCIAL IMPLICATIONS

The review of rating structures does not change the annual notional rate yield established in the Operational Plan. That yield is only influenced by the rate peg set by IPART, or any subsequent SRV approved by IPART

RISK IMPLICATIONS

Operational – Infrastructure and Environmental Risk – Council may still consider a SRV regardless of the extension.

CONSULTATION AND TIMING

The new extension under the LG Amendment Act will require a harmonisation of rates by 1 July 2021 for merged councils.