



AGENDA

Extraordinary Council Meeting

Tuesday, 25 June 2024

I hereby give notice that an Extraordinary Council Meeting will be held on:

Date: Tuesday, 25 June 2024
Time: 8:30 AM
Location: Council Chambers, Estates Building
190 Cressy Street, Deniliquin

Mark Dalzell
Acting Chief Executive Officer

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1. OPENING MEETING**2. LIVE STREAMING STATEMENT**

Edward River Council wishes to advise members of the public that Council Meetings will be recorded and will be available after each meeting on Council's website [Councils Website](#). All care will be taken to maintain the privacy of those in attendance, however As a visitor in the public gallery, your presence may be recorded. By remaining In the public gallery, it is assumed your consent is given in the event your image is broadcast. This includes any filming by television cameras if attendance is approved by the Chief Executive Office or Mayor.

3. ACKNOWLEDGEMENT OF COUNTRY

The Edward River Council acknowledges and embraces the Traditional Owners of the Lands - the Wamba Wamba/Perrepa Perrepa Peoples – and pay our respects to their elders, past, present, and emerging. The Edward River Council also recognises the diversity of different cultures within our community and their contribution.

4. STATEMENT OF PURPOSE

I have come here as a Councillor freely and without bias to:

- Represent the views of the community in considering the matters before us today
- To vote in a matter I consider to be in the best interest of the community
- To observe the Code of Conduct and respect the rule of the chair and views of my fellow Councillors.

5. APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE BY COUNCILLORS**6. CONFIRMATION OF MINUTES**

No Previous Minutes

7. DISCLOSURES OF INTERESTS

8. REPORTS TO COUNCIL

8.1. NOTICE OF INTENTION FROM THE MINISTER FOR LOCAL GOVERNMENT TO ISSUE COUNCIL WITH A PERFORMANCE IMPROVEMENT ORDER

Author: Acting Chief Executive Officer

Authoriser: Acting Chief Executive Officer

RECOMMENDATION

That Council:

1. Acknowledges the Minister for Local Government's correspondence, dated 17 June 2024, notifying Council of the Minister's intention to issue a Performance Improvement Order on Council under Section 438A of the Local Government Act 1993,
2. Advises the Minister that it accepts the '*Reasons for the Order*' as detailed in Schedule 1, accepts the '*Action required to improve performance*' in Schedule 2, and accepts the proposal for '*Appointment of temporary advisers*' in Schedule 3, as proposed in the draft Order,
3. Provides all necessary assistance to the proposed '*temporary advisor*' when appointed, including access to relevant documents and video files, and
4. Makes a submission to the Minister for Local Government regarding the Notice of Intention to issue Council with a Performance Improvement Order, noting that it accepts all items detailed in Schedules 1, 2 and 3 of the draft Order.

BACKGROUND

On 18 June 2024 Council received a Notice of Intention to issue a Performance Improvement Order (Notice), signed by The Hon. Ron Hoenig MP, Minister for Local Government. The Notice was sent by the Office of Local Government, with a copy sent to the Mayor and a second copy sent to the Interim CEO.

The Notice is issued under Section 438A of the *Local Government Act* and states that Council has seven days to provide a submission back to the Minister. It is recommended that any such submission be by way of Council resolution.

A copy of the letter from the Minister and the Notice, including the draft Performance Improvement Order, is included in Attachment 1 to this report.

ISSUE/DISCUSSION

Draft Performance Improvement Order

The reasons as to why the Minister proposes to issue a Performance Improvement Order (PIO) are detailed in Schedule 1 of the draft PIO and includes:

1. There is evidence that ERC's meeting procedures are not complying with the Meeting Code (of Practice) and there is a lack of appropriate respect and formality,
2. There is evidence to suggest that ERC is not complying with its work health and safety obligations as a result of the behaviours of some councillors,
3. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction and reputational damage,
4. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with the staff of council,

5. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other, and
6. There are behaviours that indicate that some councillors may not understand their obligations under the code of meeting practice.

Actions Required to Improve Performance

Schedule 2 of the draft PIO details actions that the Minister would like to see implemented by Council in order to lift the PIO. Performance against these actions would be reported back to the Minister by way of the following Compliance Reports:

- Compliance Report 1: Report on the status of Edward River Council, including observed conduct of councillors within the council chambers and report on any matters referred under the Code of Conduct by 30 June 2024,
- Compliance Report 2: Report on the status of ERC, including observations of conduct of councillors and staff as well as preparation for councillor induction by 1 September 2024, and
- Compliance Report 3: Provide a final report on the status of ERC including observations of behaviours and conduct of councillors, including the observations and outcomes from councillor induction. Make recommendations as to the ongoing improvement and functions of ERC by 28 February 2025.

Temporary Advisor

As part of the draft PIO, the Minister has proposed that a temporary advisor be appointed to Council whilst any PIO is current. The role of the temporary advisor is detailed in Schedule 3 of the draft PIO and includes:

1. 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,
2. Attend councillor training workshops as requested by the Deputy Secretary, Local Government,
3. Provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order, and
4. Monitor the council's compliance with the performance improvement order.

It is understood that the temporary advisor will be appointed by the Minister and that Council will be liable for all costs. The total cost of this appointment is unknown at the time of writing this report.

Submission to the Minister

As noted in the Minister's letter, Council has seven days from the date of being served the Notice to provide a submission in response. As the Notice was served on Council on Tuesday, 18 June 2024, this submission would be due to the Minister by 25 June 2024.

A draft submission has been prepared by Council staff that addresses the issues raised by the Minister. A draft copy of this draft submission is included in Attachment 2 to this report. In summary the draft submission notes:

- Council's agreement with all points raised in Schedules 1 and 2 of the Notice, being the reasons for the order and actions to improve performance,
- Council's agreement with Schedule 3 of the Notice, being the appointment of a temporary advisor. It is noted that Council will be liable for all costs related to the temporary advisor,

- Acknowledgement that Council has appointed Mr Gary Arnold as Interim CEO for a period of up to 12 months, and
- A request to change the timeframe for Compliance Report 1, given that the Interim CEO is currently on leave and that a temporary advisor will not have had 14 days to review Compliance Report 1 prior to 30 June 2024.

It is recommended that Council resolves to make a submission to the Minister regarding the Notice based on the draft submission included in this report.

STRATEGIC IMPLICATIONS

It is important that Council fulfills its duty and purpose on behalf of the community in a professional manner in accordance with the requirements of the *Local Government Act*. Where the Office of Local Government determines that Council has not done so, it may take action it deems necessary to improve Council's performance, including issuing performance improvement orders.

COMMUNITY STRATEGIC PLAN

5. Accountable leadership and responsive administration

5.1 Collaborative and Engaged

5.3 Professional Workplace culture

FINANCIAL IMPLICATIONS

Council is liable for all costs associated with the temporary advisor. These costs are unknown at the moment and have not been included in the 2023/24 Operational Plan and Budget.

LEGISLATIVE IMPLICATIONS

The Notice has been issued to Council in accordance with Section 438A of the *Local Government Act*.

ATTACHMENTS

1. Letter from Minister for Local Government notifying Council of the Notice of Intention to issue a Performance Improvement Order on Council,
2. Draft submission to the Minister for Local Government.

Attachment 1 - Notice of Intention to issue a Performance Improvement Order**The Hon. Ron Hoenig MP**

Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government



Our Ref: A898435

Mr Gary Arnold
Interim General Manager
Edward River Council
PO Box 270
Deniliquin NSW 2710

Via email: gary.arnold@edwardriver.nsw.gov.au

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

Dear Mr Arnold,

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 attached proposed Performance Improvement Order, to improve the performance of Edward River Council (ERC).

Before I issue a PIO, I am required by section 438B(2) of the Act to consider the criteria prescribed by clause 413D of the *Local Government (General) Regulation 2021* (the Regulation).

In deciding whether to appoint a temporary advisor to a council pursuant to section 438G of the Act, clause 413DA of the Regulation requires that I am to consider whether the appointment will, in my opinion, assist ERC to comply with, or implement actions under, the PIO issued in respect of ERC.

I have considered these mandatory criteria in the context of the factual findings listed below. On balance, I have formed the preliminary view that action must be taken to improve ERC's performance.

The reasons why I, as Minister, propose to issue a Performance Improvement Order (section 438A(3)(a) of the Act) are:

1. There is evidence that ERC's meeting procedures are not complying with the Meeting Code of Practice and there is a lack of appropriate respect and formality.
2. There is evidence to suggest that ERC is not complying with its work health and safety obligations as a result of the behaviours of some councillors.
3. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction and reputational damage.
4. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with the staff of council.
5. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other.

52 Martin Place Sydney NSW 2000
GPO Box 5341 Sydney NSW 2001

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nsw.gov.au/ministerhoenig

6. There are behaviours that indicate that some councillors may not understand their obligations under the code of meeting practice.

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

If a Performance Improvement Order is not complied with, I may consider:

1. Issuing a further PIO; and/or
2. Temporarily suspending the Council under Chapter 13, Part 7 of the *Local Government Act 1993*.

I invite ERC to make submissions to me regarding the proposed Performance Improvement Order (sections 438C(3) and (4) of the Act). Should ERC choose to make submissions, they must be provided to me no later than 7 days from the date upon which this notice is served on it.

I will consider all submissions made to me by ERC during this period before deciding whether to issue a PIO.

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

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

Signed on this 17th day of June 2024



The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government

Encl: Information Sheet

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Ron Hoenig MP, Minister for Local Government, do, by this order under section 438A of the *Local Government Act 1993* (the Act), require the Edward River Council (ERC) for the reasons specified in Schedule 1 below, to undertake the actions described in Schedule 2 below within the period specified.

I hereby appoint the person specified in Schedule 3 as a Temporary Advisor to ERC to exercise the functions for the term specified in Schedule 3.

This Order takes effect upon service on ERC.

Dated this xxx day of xxx 2024

The Hon. Ron Hoenig, MP.
Minister for Local Government

Schedule 1

Reasons for Order – section 438A(3)(a) of the Act

1. There is evidence that ERC's meeting procedures are not complying with the Meeting Code of Practice and there is a lack of appropriate respect and formality.
2. There is evidence to suggest that ERC is not complying with its work health and safety obligations as a result of the behaviours of some councillors.
3. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction and reputational damage.
4. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with the staff of council.
5. There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other.
6. There are behaviours that indicate that some councillors may not understand their obligations under the code of meeting practice.

In my opinion, a temporary advisor with requisite skills in management and governance is also needed to provide advice and assistance in relation to ERC's implementation of this Performance Improvement Order.

Schedule 2

Action required to improve performance – section 438A(3)(b) of the Act

With the assistance of the temporary advisor, ERC is required to implement the following actions to improve its performance.

1. Improve council behaviours within ERC meetings and workshops to reflect community standards and ensure compliance of council's code of meeting practice.
2. Complete councillor training workshops as requested by the Deputy Secretary, Local Government.
3. Identify actions required to be taken to ensure compliance by the councillors with the staff interaction policy. These actions will be informed by the Temporary Advisor.
4. Identify actions that the governing body and councillors need to undertake to ensure compliance with its legislative obligations including Financial Reporting and IP&R (End of Term report).
5. Identify actions and strategies to ensure ERC is complying with its obligations under Safe Work NSW, specifically around Councillor / Councillor and Councillor / Staff interactions.
6. Identify actions and strategies to ensure councillors are correctly briefed on the effective operations of ERC and relevant activities.
7. Identify actions to deliver and evaluate councillor induction training, including how to respect the principles of political discourse within and outside council meetings.

Period for compliance with Order

Compliance report 1:

Report on the status of Edward River Council, including observed conduct of councillors within the council chambers and report on any matters referred under the Code of Conduct or Code of Meeting Practice by 30 June 2024

Compliance report 2:

Report on the status of ERC, including observations of conduct of councillors and staff as well as preparation for councillor induction by 1 September 2024

Compliance report 3:

Provide a Final Report on the status of ERC including observations of behaviours and conduct of councillors, including the observations and outcomes from councillor induction. Make recommendations as to the ongoing improvement and functions of ERC by 28 February 2025

Evidence to be provided with the compliance report:

Schedule 3

Appointment of temporary adviser

1. Pursuant to section 438G of the *Local Government Act 1993*, [Name] is hereby appointed as a temporary adviser to Edward River 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. attend councillor training workshops as requested by the Deputy Secretary, Local Government
 - c. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - d. 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 including their observations of at least three consecutive Council meetings.

Pursuant to section 438G(7) of the *Local Government Act 1993*, [Name] shall be paid from the Council's funds for the period of the appointment. The estimated maximum cost of the appointment will be \$XX (including GST).



Quick Guide to Performance Improvement Orders PROCESS FOR COUNCILS

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 should 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.
- 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 reviewer's comments (if any) is to be provided to the Minister. Failure to comply with this is a contravention of the legislation.
- The Office of Local Government will monitor the implementation of performance improvement orders.
- 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.

This is a quick guide to how the process of issuing a performance improvement order will work. Further detail is contained in the Framework for Implementing Early Intervention 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.

Version: February 2016

Attachment 2 - Letter to Minister for Local Government regarding Submission

**Edward
River**
COUNCIL

180 Cressy Street Deniliquin NSW 2710
T: 03 5898 3000 F: 03 5898 3029
council@edwardriver.nsw.gov.au
www.edwardriver.nsw.gov.au

ABN 90 407 359 958
Address all correspondence to:
General Manager, PO Box 270
Deniliquin NSW 2710

25 June 2024

The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government
52 Martin Place
SYDNEY. NSW 2000

Dear Minister Hoenig MP,

Ref: A898435

NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER TO THE EDWARD RIVER COUNCIL UNDER SECTION 438A OF THE LOCAL GOVERNMENT ACT 1993.

Thank you for the invitation to Council to provide a submission in response to the Notice of Intention to issue a Performance Improvement Order.

Please find below Council's responses to the reasons for the Notice of Intention, actions required and appointment of a temporary advisor, as detailed in your letter dated 17 June 2024,

Draft Response to items raised in Schedule 1: Reasons for Order

1. *There is evidence that ERC's meeting procedures are not complying with the Meeting Code and there is a lack of appropriate respect and formality.*

Council adopted the latest version of its Code of Meeting Practice, based on the model code, in January 2022. At meetings since this date the Code of Meeting Practice has been referenced on many occasions to assist councillors with adhering to the requirements of the Code, including acting with appropriate respect and formality.

Council agrees that, despite the best intentions of all involved at meetings, behaviours may not have met expected standards in this regard. Council will address matters pertaining to compliance with its Code of Meeting Practice as part of induction and training following the September elections.

Edward River Council

2. *There is evidence to suggest that ERC is not complying with its work health and safety obligations as a result of the behaviours of some councillors.*

Council acknowledges its role as a Person Conducting a Business or Undertaking (PCBU) under the *Work Health and Safety Act*. This includes the behaviours and actions of councillors.

Council agrees that behaviours at meetings may not have met expected community standards or standards as required under the *Work Health and Safety Act*. Requirements and expectations relating to the *Work Health and Safety Act* and Code of Conduct have been discussed with councillors, including relevant training in this matter.

Council agrees that further training and support is required so that it can meet its obligations under the *Work Health and Safety Act* and shall work towards planning and implementing this training and support.

3. *There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction and reputational damage.*

Throughout this term of Council, councillors have had to consider many items that have been complex in nature. This has led to various points of view being raised and debated at briefings and meetings, sometimes robustly.

Council has continued to act on behalf of the community and has fulfilled its role under the *Local Government Act* throughout the current term. This has culminated in the adoption of the 2024-25 Operational Plan and Budget, including the Long Term Financial Plan, at its June 2024 ordinary meeting.

Council agrees that, at times, the behaviour of councillors may give the perception of hostility and acrimony within the councillor group. Acknowledgement and training in this regard will be addressed as part of discussions with current councillors as training and induction following the September elections.

4. *There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with the staff of council.*

Councillors have undertaken Code of Conduct training during this term of council as well as adoption of the latest version of the Councillor and Staff Interaction Policy

Council agrees that further work and support would be beneficial for current councillors regarding the Councillor and Staff Interaction policy, as well as making this a focus area as part of induction and training following the September elections.

5. *There are behaviours that indicate that some councillors may not understand their obligations under the code of conduct when dealing with each other.*

Council adopted the latest version of its Code of Conduct in May 2022. Refresher training was held regarding the Code of Conduct in November 2022.

Edward River Council

Council agrees that further work and support would be beneficial to current councillors regarding the Code of Conduct, as well as making this a focus area as part of induction and training following the September elections.

6. *There are behaviours that indicate that some councillors may not understand their obligations under the code of meeting practice.*

Council adopted the latest version of its Code of Meeting Practice in January 2022. Refresher training was held regarding the Code of Meeting Practice in November 2022.

Council agrees that further work and support would be beneficial for current councillors regarding the Code of Meeting Practice, as well as making this a focus area as part of induction and training following the September elections.

Appointment of Interim Chief Executive Officer

Council notes that, as part of addressing many of the issues stated in the Notice, it has appointed Mr Gary Arnold as Interim CEO. Mr Arnold's appointment is for up to 12 months to lead the completion of current term of Council, the September elections and induction of a new Council following the election. Mr Arnold brings to Council a wealth of experience in local government leadership and executive management experience.

Temporary Advisor

Council would welcome the appointment of a temporary advisor to assist councillors and senior staff regarding the items noted above.

Draft Response to items raised in Schedule 2: Actions required to improve performance

Council acknowledges and agrees with all actions stated in Schedule 2 of the Notice of Intention and will work with the temporary advisor on the implementation of these actions.

Regarding Compliance Report 1, it is noted that Council's Interim CEO, Mr Gary Arnold, is currently on leave until 9 July 2024. It is requested that the submission date for Compliance Report 1 be revised based on Mr Arnold's return from leave, as well as the commencement of a temporary advisor and providing the temporary advisor with a 14 day period in which to review the report.

Council agrees with the timeframes for Compliance Reports 2 and 3.

Draft Response to items raised in Schedule 3: Appointment of a temporary advisor

As noted previously in this response, Council supports the appointment of a temporary advisor to assist Council with addressing the matters raised in the Notice of Intention.

Edward River Council

In issuing this Notice of Intention, Council notes that it is done so under Section 438A of the *Local Government Act*, regarding “actions the Minister considers necessary to improve or restore the proper or effective functioning of the council”. Throughout this term of Council it has continued to effectively function in delivering services to the community and the elected body has continued to consider matters brought before it by Council staff and fellow Councillors.

Yours faithfully,

Mark Dalzell

Acting Chief Executive Officer

9. CLOSE OF MEETING