



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

PUBLIC EXHIBITION COPY

Extraordinary Council Meeting
23 December 2024

STATEMENT OF ETHICAL OBLIGATIONS

Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993 and their obligations under the Council's code of conduct to disclose and appropriately manage conflicts of interest.

CONFLICTS OF INTEREST

A conflict of interest arises when the Mayor or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Mayor or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Mayor or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Mayor or Chief Executive Officer, or another Council employee to determine whether or not a person may have a conflict of interest.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Mayor or Chief Executive Officer are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Part 2, Division 1 of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Mayor, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Country

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Walgalu, Ngunnawal and Bidhawal people and their Ancestors past and present.

Webcasting

Council meetings are recorded and live streamed to the internet for public viewing. By entering the Chambers during an open session of Council, you consent to your attendance and participation being recorded and streamed on Council's website www.snowymonaro.nsw.gov.au

**EXTRAORDINARY COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS, 81 COMMISSIONER STREET, COOMA NSW
2630**

**ON MONDAY 23 DECEMBER 2024
COMMENCING AT 10:00 AM**

BUSINESS PAPER

- 1. OPENING MEETING**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. COUNCILLOR REQUEST FOR ATTENDANCE VIA AUDIO-VISUAL**
- 4. APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS**
- 5. DISCLOSURE OF INTEREST**
(Declarations also to be made prior to discussions on each item)
- 6. OTHER REPORTS TO COUNCIL**
 - 6.1 EXECUTIVE OFFICE**
 - 6.1.1 Notice of Intention to Issue a Performance Improvement Order 2
- 7. CONFIDENTIAL MATTERS**
Nil

6.1.1 NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER

Record No: I24/707

OFFICER'S RECOMMENDATION

That Council:

- A. Receives and notes the receipt of the Minister's intention to issue a Performance Improvement Order on Snowy Monaro Regional Council dated 16 December 2024 citing the following reasons:
 - a. Council has limited further ability to eliminate or mitigate the psychosocial risks present and require urgent intervention.
 - b. Council risk assessments are continuing to return an outcome risk of 'High'.
 - c. Council underwent a financial sustainability review and while Council has been making steady improvements, there has not been sufficient improvement and the impact of transition of the newly elected Council has slowed progress.
 - d. Council needs to retain its budget discipline to achieve financial sustainability.
 - e. Council needs to ensure it maintains access to appropriate staff expertise and engagement to provide secure advice to the councillors on financial, governance, and regulatory matters.
 - f. Council should only be changing strategic priorities with a clear understanding of costs and funding sources and not at the detriment of achieving financial sustainability.
 - g. Council needs to continue to deliver and implement the changes required as part of recommendations of the AEC Group financial sustainability review.
 - h. Any initiatives in progress to assist Council with its objective of achieving financial sustainability must continue.
 - i. The publicly displayed attitude towards a policy intended to set expected standards of behaviour will inevitably negatively affect the Council's reputation within the community if allowed to continue.
 - j. The ongoing diversion of resources to these issues poses a significant risk of adversely impacting other aspects of Council's operations.
 - k. Certain councillors have repeatedly disrupted Council meetings with baseless allegations of council misconduct.
 - l. The delays associated with some councillors' conduct are not sustainable for the Council to exercise its functions longer term.
 - m. There has been a pattern of poor or inappropriate behaviour by some councillors.
- B. In acknowledging the negative impacts the cited reasons have on the wellbeing of staff, on the efficient functioning of Council, and on Council's reputation, Council does not provide a submission in response to the Minister regarding his intention to issue a performance improvement, and that Council await his final decision on the matter.
- C. Continue to work collaboratively with the Office of Local Government in demonstrating Council's commitment to the Towards Excellence and financial sustainability journey.
- D. Immediately commence a staff and community awareness campaign following council's decision in respect of the Minister's Notice.
- E. Receive a further report following receipt of the Minister's final decision on the matter.

ISSUES

The Minister for Local Government has issued a notice of intention to issue a performance improvement order on the Council. The performance improvement order would require councillors to refrain from undertaking certain behaviours. It would also require Council to continue the adopted path to achieve financial sustainability.

The Minister for Local Government has made it clear that the reported behaviours occurring, as outlined in his correspondence, are breaches of not only the Local Government Act, but also the Work Health and Safety Act. Council, its officers and councillors have obligations under both Acts to provide a safe workplace and this must be a priority for the organisation. It is considered that by accepting the performance improvement order the councillors will be showing that they are committed to providing a safe workplace for staff and fellow councillors. Further, as the recently appointed Interim Chief Executive Officer, I would welcome receiving a very clear direction from the Minister regarding the expected standards of behaviour and performance that would see a much-improved level of community trust and confidence in both the governing body and the organisation that is Snowy Monaro Regional Council.

The only requirement the performance improvement order sets that is not current legislative requirements or Council's policy position is the requirement to always maintain at least \$500,000 in unconstrained cash. This constraint can be managed within the existing cash balances due to Council having built up cash reserves in the 2023-24 financial year.

Resources will need to be diverted to reporting on the Council's performance to the Office of Local Government. The extent of this will depend on the actions taken by councillors. If the order is complied with there will be minimal reporting time required.

RISK ASSESSMENT

Risk Type	Current Risk	Expected Risk	Within Accepted
Asset management	High	High	No
Financial Sustainability	High	High	No
Health and Safety	High	Low	Yes
Legislative Governance and Compliance	High	Low	Yes
Reputation and Image	High	High	No

The draft performance improvement order touches on several different risk categories.

Asset management: Ongoing operating deficits indicate that assets are being used at a faster rate than they are being replaced. Based on this it is likely that in the future key assets and infrastructure will require repairs that are outside the budget allocations. Council does not have the current financial strength that is a significant key asset fails it could replace it within the current budget allocations. If the Council continues to improve towards a surplus result, in all its funds, as set out in the performance order the risk will reduce.

Financial Sustainability: Council is running operating deficits, this creates a high level of risk that it will not be able to sustain the same level of infrastructure and services into the future. As the Council continues to improve towards a surplus result in all its funds, the risk will reduce.

Health and Safety: Ongoing threatening, bullying behaviour from people in positions of authority can have serious detrimental impacts on the wellbeing of staff. Behaviour where the result is that

6.1.1 NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER

psychological treatment is possible to occur results in a high-risk exposure to Council. If councillors behave in accordance with the code of conduct there should be no risk to staff.

Legislative Governance and Compliance: The performance improvement order sets out that the view of the Minister of Local Government is that the behaviour of several councillors is breaching the legislative requirements. This makes the risk for legislative compliance rated as high. Should councillors cease undertaking the behaviours referred to the level of risk is low.

Reputation and Image: Having a performance order issued will make local and regional news and have a negative impact on the reputation of the Council.

FINANCIAL IMPACTS

There are no financial impacts of sending a submission or not.

RESPONSIBLE OFFICER: Acting CEO

OPTIONS CONSIDERED

Whilst I have outlined my view on the matter, which is reflected in the recommendation to Council as printed, I acknowledge that councillors may of course have a different view in relation to making a submission to the Minister. In considering this point, it is highlighted from the information provided that the Minister makes it clear that it is the view of the Minister and the assessment of officers from the Office of Local Government that the reported behaviours that have been noted breach not only the Local Government Act, but also the Work Health and Safety Act, and the Protected Interests Disclosures Act. It is suggested that seeking to argue against this is likely to increase the damage to Council's reputation and sends a message that the councillors consider the types of behaviour as set out in the proposed order are acceptable.

However, should Council intend to provide a submission an alternative resolution will be required. Options councillors could consider in this regard may include:

That Council lodge a submission to the Minister setting out that Council does not feel that the situation is of sufficient merit to warrant a performance order and that the Minister's concerns can be resolved by alternative means, including providing voluntary certification that expected behaviours will be adhered to and that similar voluntary reporting on Council's organisational performance improvements will be provided to the Office of Local Government.

OR

That Council:

A. Reaffirm its commitment to:

- a. Budgeting for and maintaining an unconstrained cash reserve of at least \$5 million, to be achieved within the next four years.
 - b. Not undertaking projects unless they follow Council's project management framework.
-

6.1.1 NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER

- c. Not taking on any new or increased services or infrastructure without a full business case being in place and guaranteed funding for the lifecycle costs being in place.
 - d. Implementing the asset management improvements identified in the financial sustainability review.
- B. Reaffirm the commitment of the members of the governing body to comply with the code of conduct.

IMPLEMENTATION PLANS

Should no submission be proposed the Office of Local Government will be advise of this fact. Should Council decide to lodge a submission this will be written up and sent out under signature of the Mayor.

BACKGROUND

Three documents are attached to this report. The first is the letter from the Minister setting out his reasons for why he considers a performance improvement order should be made regarding Snowy Monaro Regional Council. The second document is a draft of the performance improvement order that the Minister is considering issuing. If the Minister does not change his mind, this shows the order that the Council would have to comply with. This my change, based on submissions received. The third document is for information on the process of performance improvement orders and is simply to provide and explanation on the process to councillors.

ATTACHMENTS

1. Letter - Notice of Intention to Issue Performance Improvement Order
 2. Proposed PIO
 3. Guide to Performance Improvement Orders
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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: A940321

His Worship the Mayor
Cr Chris Hanna
Snowy Monaro Regional Council
PO Box 714
COOMA NSW 2630

Mr Stephen Dunshea
Acting General Manager
Snowy Monaro Regional Council
PO Box 714
COOMA NSW 2630

Via email:
chris.hanna@snowymonaro.nsw.gov.au

Via email:
stephen.dunshea@snowymonaro.nsw.gov.au

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

Dear Cr Hanna and Mr Dunshea,

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 under section 438A of the Act, for actions to be taken, as identified in the proposed Performance Improvement 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 and 413DA of the Local Government (General) Regulation 2005 before issuing a Performance Improvement 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) 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 presented to me. On balance I have formed the preliminary view that action must be taken to improve the Council's performance.

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

- (a) *Whether the council has failed to comply with its legislative responsibilities, standards or guidelines***

Work, Health and Safety Act 2011

Councils have statutory obligations under the *Work, Health and Safety Act 2011* (WHS Act) to ensure, so far as is reasonably practicable, the health and safety of Council's employees. This responsibility extends to councillors. WHS responsibilities are also stipulated in the Council code of conduct.

I am satisfied that actions of some councillors are having an impact on the welfare, health and safety of Council staff and as such, constitute a failure of the Council to comply with the WHS Act. In particular, I am aware that the Office of Local Government (OLG) has received 19 misconduct referrals/allegations against Cr Thaler during October and November 2024 which were reported by councillors, Council staff and the community. A number of these complaints deal with conduct that is alleged to constitute bullying, harassment and/or behaviour which would bring the Council into disrepute.

I understand there is evidence within the complaints, discussions with Council staff and an independent witness, that the actions of some councillors, including Cr Thaler, are posing psychosocial risks to councillors and council staff. This includes causing councillors and Council staff to feel anxious, intimidated and concerned for their safety which is affecting work performance. I am informed that one staff member has been physically ill on two occasions as a direct result of an interaction with Cr Thaler.

Council has implemented several mitigation measures to comply with its work health and safety obligations, including the automatic interception of emails received by Council staff from Cr Thaler's Council email to an Unreasonable Complainant Conduct (UCC) email address.

However, Council has limited further ability to eliminate or mitigate the psychosocial risks present and require urgent intervention. Council risk assessments are continuing to return an outcome risk of 'High.' As such, I am satisfied it is appropriate for OLG to issue a PIO to address Council's potential failures to comply with its WHS obligations.

(b) Whether there are significant risks facing the council that are not being addressed

Financial Risk

In late 2022, Council underwent a financial sustainability review conducted by AEC Group in response to poor financial performance, and recommendations were made as a result. I am aware that the Office of Local Government have been monitoring the progress of Council, who appear to be making steady improvements in conformance with the recommendations however, there has not been sufficient improvement, and the impact of the transition of the newly elected Council has slowed progress. I am of the view that action must be taken to ensure there is no loss to the improvement of Council's performance. I have taken into account factors which include that:

1. Council needs to retain its budget discipline to achieve financial sustainability,
2. Council needs to ensure it maintains access to appropriate staff expertise and engagement to provide secure advice to the councillors on financial, governance and regulatory matters,

3. Council should only be changing strategic priorities with a clear understanding of costs and funding sources and not at the detriment of achieving financial sustainability,
4. Council needs to continue to deliver and implement the changes required as part of the recommendations of the AEC Group financial sustainability review, and
5. Any initiatives in progress to assist Council with its objective of achieving financial sustainability must continue.

Reputational risk

The alleged conduct of councillors has been the subject of intermittent negative reporting in the media during this term of Council. The continued content posted on social media by Cr Thaler, which includes offensive language, harassing content and allegations of Council, councillor and Council staff corruption and wrongdoing is likely to bring Council and/or Council officials into disrepute. This is already being evidenced by complaints received by members of the public which state:

"...his [Cr Thaler's] continuing tenure is absolutely outrageous to the vast majority of local residents,"; and

"I just wanted someone to know that so many of us feel uncomfortable.....How is this appropriate behaviour for a professional?"; and

"Yes our council is broken and needs fixing. His intimidation and the videos and hate he spews is plain wrong,"; and

"This disgusting highly offensive revolting behaviour clearly marks this person as unfit to hold public office of any sort. "; and

"He has posted on the Jindabyne Notice Board and SMRC Chit Chat groups effectively publicising the appointment of the acting CEO before council had a chance to do their press release. This information was obviously confidential until its formal release by council."

On 8 November 2024 Cr Thaler posted content on his social media page which indicates that he is pleased with being the subject of numerous code of conduct complaints. In this post, he stated *'totally smashing this councillor thing.. baby I was born for it. I've already got 9 code of conduct complaints. in what. 5 weeks.'* This publicly displayed attitude towards a policy intended to set expected standards of behaviour will inevitably negatively affect the Council's reputation within the community if allowed to continue.

Performance risk

While complaints against Cr Thaler are now being directed to OLG, Council resources continue to be allocated to addressing matters related to Cr Thaler. This includes the time and efforts of the General Manager and other staff in assessing and mitigating risks to Councillors and staff, as well as managing procedural processes necessary for making appropriate referrals to the OLG. The ongoing diversion of resources to these issues poses a significant risk of adversely impacting other aspects of Council's operations.

(c) Whether previous intervention attempts have failed

There have been no prior Performance Improvement Orders or Suspensions imposed upon Council. However, some councillors' apparent disregard for the Code of Conduct and disciplinary action indicate that usual processes for councillors are not or will not be effective.

(d) Whether council business is being disrupted and the council is failing to exercise its functions

Certain councillors have repeatedly disrupted council meetings with baseless allegations of council misconduct. Council has been able to conduct its business however the delays associated with some councillors' conduct are not sustainable for the council to exercise its functions longer term. I believe that some councillors are using apparently deliberate delay tactics including at the following instances:

1. Prior to the first meeting of the Council, Cr Thaler made the affirmation of office before a JP outside of the Council building while being filmed and then posted it on social media. OLG has viewed the video and is satisfied that Cr Thaler made the affirmation of office in accordance with the requirements of section 233A of the Act. Cr Thaler and two other councillors subsequently alleged that all other councillors had failed to take/make an oath/affirmation of office as required under section 233A of the Act because the then Acting General Manager had not been correctly appointed and was therefore not authorised to administer their oaths and affirmations of office.
2. Council held its first meeting on 10 October 2024 where most councillors made their oath or affirmation of office and elected the Mayor. While the conduct of the meeting fell short of a standard that would promote community confidence in the Council, it was not sufficiently serious to warrant intervention.
3. The subsequent extraordinary meeting on 24 October 2024 saw a repeat of the behaviour at the first meeting, with Cr Thaler and two other councillors impeding the consideration of business at the meeting with repeated baseless points of order. It took Council an hour to get to the first item of business on the agenda. OLG will be continuing to closely monitor the situation.
4. The meeting on the 10 November 2024 was an improvement upon the previous two meetings, however the OLG is still concerned about the time it is taking for Council to get through business meetings. This appears to be as a result of disharmony between the councillors, believed to be caused by the ongoing behaviour of Cr Thaler referenced within the code of conduct complaints. The Mayor has chaired the meeting effectively.

(e) Repealed

(f) Whether there is a pattern of poor or inappropriate behaviour by one or more councillors that has not been rectified

There has been a pattern of poor or inappropriate behaviour by some councillors, in particular, Cr Thaler, as set out in this section. Council has not been able to rectify this behaviour.

Alleged Code of Conduct breaches

I set out a summary of the code of conduct complaints made to OLG in relation to Cr Thaler:

1. one complaint alleges Cr Thaler interacted with a Council staff member on Council premises in a way that caused the person, and witnesses to the incident, to feel intimidated and /or scared
2. approximately 9 code of conduct complaints relate to emails sent by Cr Thaler to councillors and /or Council staff members, the content of which was perceived as, and has been assessed as, language that constitutes personal attacks on staff, bullying, harassment, intimidation, being overbearing and/or an abuse of power; all of which would constitute a breach of Councils Code of Conduct and the WHS Act
3. more than 10 complaints relate to both written and video social media content posted by Cr Thaler, the content of which has been assessed as language that constitutes personal attacks on staff, bullying, harassment, intimidation, being overbearing and/or an abuse of power; all of which would constitute a breach of Council's Code of Conduct and the WHS Act
4. two of the social media posts have been assessed by OLG as constituting detrimental action in breach of the section 33 of the *Public Interest Disclosures Act 2022* (PID Act).

A sample of the complaints received has been provided below:

DATE OF COMPLAINT	SUMMARY OF ALLEGATION	COMPLAINANT
15 October 2024	Cr Thaler interacted with a Council staff member on Council premises in a way that caused the person to feel intimidated. Cr Thaler sent an email to this person and other staff with content that threatened the employment of staff.	Councillor or Council Staff member
19 October 2024	Cr Thaler sent an email to councillors alleging corruption of Mr Rawlings (then the Acting General Manager), and the content of which was likely to intimidate and to create a hostile environment for the Mayor, Cr Hanna.	Councillor or Council Staff member
25 October 2024	Cr Thaler sent an email to councillors and council staff which threatens legal action against other councillors and contains content that is likely	Councillor or Council Staff member

	to threaten, intimidate or harass the recipients.	
7 November 2024	Cr Thaler sent an email to councillors and Council staff which suggests Mr Rawlings seek urgent legal advice with respect to person liability for a decision, with an insinuation Mr Rawlings' job was in danger. The content is considered to be overbearing and threatening.	Councillor or Council Staff member
7 November 2024	Cr Thaler sent an email to councillors and council staff which was directed at a specific councillor in response to an informative email regarding a road issue within the Council area, the content of which is considered to be a personal attack, overbearing, threatening, intimidating and harassing.	Councillor or Council Staff member
8 November 2024 to 12 November 2024	Between 8 and 12 November 2024, Cr Thaler posted numerous videos to his social media Facebook profile in which he references his awareness of Code complaints made against him and makes derogatory and disparaging remarks against one or more people involved in the disclosure or investigation of the complaints. The videos also contain content which is considered harassment of other Council staff, including calling the Mayor a 'dog arse c##t'.	Councillor or Council Staff member and numerous community members
21 October 2024	Cr Thaler posted written content on his social media page publicising the appointment of the acting CEO before council has issued a	Councillor or Council Staff member and community member

	press release. This information was considered confidential until its formal release by council.	
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Alleged offence against the Public Interest Disclosures Act 2022

It is alleged that Cr Thaler has committed an offence under section 33 of the PID Act, with respect to a number of social media posts he published between 8 and 22 November 2024.

DATE	SUMMARY OF ALLEGATION	EVIDENCE
8 November 2024 to 22 November 2024	In Facebook videos posted by Cr Thaler between the 8 th and 22 nd November 2024, he makes a number of offensive and derogatory remarks about persons he believes were involved in the making of, or investigation of complaints against him.	Complaint from Councillor or Council Staff member Download of Facebook posts

Alleged offence against the Local Government Act 1993

It is an offence under section 664 of the Act to disclose any information obtained in connection with the administration or execution of the Act, unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#) or the [Government Information \(Public Access\) Act 2009](#), or
- (e) with other lawful excuse.

There is evidence of three instances of the disclosure of confidential information by Cr Thaler.

DATE	SUMMARY OF ALLEGATION	EVIDENCE
21 November 2024	Cr Thaler posted written content on his Facebook page publicising the appointment of the Acting CEO before being announced by Council.	Complaint from Councillor or Council Staff member Download of Facebook post
8 November 2024 to 22 November 2024	In Facebook videos posted by Cr Thaler between the 8 th and 22 nd November 2024, he references his awareness of,	Complaint from Councillor or Council Staff member

	and the content of, some Code of Conduct complaints made against him, in breach of Part 12 of the Procedures for the Administration of the Model Code for Local Councils in NSW	Download of Facebook post
22 November 2024	In a Facebook video posted by Cr Thaler on 22 November 2024, he read aloud a letter sent from the OLG, marked as confidential, and relating to code of conduct complaints and public interest disclosures made against him	Download of Facebook post

(g) Any other matter that, in the opinion of the Minister, is relevant to the issuing of the order

I also take into account the following matters:

1. Council has indicated that it requires assistance to manage the issues relating to councillor conduct
2. certain councillor behaviour is having a significant resourcing impact on the Council. The time and costs associated with managing the complaints set out above, including mitigating the associated risks, is significant. Further, Cr Thaler's apparently deliberate delaying tactics are preventing the Council from running its business as efficiently as it could.

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

The attached proposed Performance Improvement Order is intended to form part of this notice. As required by section 438C(2)(a), the terms of the proposed Performance Improvement Order and period for compliance are specified in the proposed 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 proposed Performance Improvement Order.

The actions that may be taken by me, as Minister, if a Performance Improvement Order is not complied with (section 438C(2)(c)).

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

1. Issuing a further Performance Improvement Order; and/or
2. Issuing a further Compliance Order under s.438HA of the *Local Government Act 1993*.
3. Temporarily suspending the Council under Chapter 13, Part 7 of the *Local Government Act 1993*; or

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

I invite Council to make submissions to me in respect of the proposed Performance Improvement Order. Should Council choose to make submissions, they must be provided to me no later than **7 days** from the date upon which this notice is served.

I will consider all submissions made to me by Council, and any submissions made to me by individual councillors, during this period before deciding whether to issue a Performance Improvement 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 *16th* day of *December* 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: Proposed PIO
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 pursuant to section 438A of the *Local Government Act 1993*, require Snowy Monaro 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 require all Councillors to enter into an undertaking in the form specified in Schedule 3, to be provided to me within 7 days of the service of the Order. I require all Councillors to comply with that undertaking.

This Order takes effect upon service on the Council.

Dated thisday of2024

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

SCHEDULE 1

Reasons for Order – section 438A(3)(a)

(a) Whether the council has failed to comply with its legislative responsibilities, standards or guidelines

Work, Health and Safety Act 2011

Councils have statutory obligations under the *Work, Health and Safety Act 2011* (WHS Act) to ensure, so far as is reasonably practicable, the health and safety of Council's employees. This responsibility extends to councillors. WHS responsibilities are also stipulated in the Council code of conduct.

I am satisfied that actions of some councillors are having an impact on the welfare, health and safety of Council staff and as such, constitute a failure of the Council to comply with the WHS Act. In particular, I am aware that the Office of Local Government (OLG) has received 19 misconduct referrals/allegations against Cr Thaler during October and November 2024 which were reported by councillors, Council staff and the community. A number of these complaints deal with conduct that is alleged to constitute bullying, harassment and/or behaviour which would bring the Council into disrepute.

I understand there is evidence within the complaints, discussions with Council staff and an independent witness, that the actions of some councillors, including Cr Thaler, are posing psychosocial risks to councillors and council staff. This includes causing councillors and Council staff to feel anxious, intimidated and concerned for their safety which is affecting work performance. I am informed that one staff member has been physically ill on two occasions as a direct result of an interaction with Cr Thaler.

Council has implemented several mitigation measures to comply with its work health and safety obligations. However, Council has limited further ability to eliminate or mitigate the psychosocial risks present and require urgent intervention. Council risk assessments are continuing to return an outcome risk of 'High.' As such, I am satisfied it is appropriate for OLG to issue a PIO to address Council's potential failures to comply with its WHS obligations.

(b) Whether there are significant risks facing the council that are not being addressed

Financial Risk

In late 2022, Council underwent a financial sustainability review conducted by AEC Group in response to poor financial performance, and recommendations were made as a result. I am aware that the OLG has been monitoring the progress of Council, who appear to be making steady improvements in conformance with the recommendations, however there has not been sufficient improvement, and the impact of the transition of the newly elected Council has slowed progress. I am of the view that action must be taken to ensure there is no loss to the improvement of Council's performance. I have taken into account factors which include that:

1. Council needs to retain its budget discipline to achieve financial sustainability,
2. Council needs to ensure it maintains access to appropriate staff expertise and engagement to provide secure advice to the councillors on financial, governance and regulatory matters,
3. Council should only be changing strategic priorities with a clear understanding of costs and funding sources and not at the detriment of achieving financial sustainability,
4. Council needs to continue to deliver and implement the changes required as part of the recommendations of the AEC Group financial sustainability review, and
5. Any initiatives in progress to assist Council with its objective of achieving financial sustainability must continue.

Reputational risk

The alleged conduct of councillors has been the subject of intermittent negative reporting in the media during this term of Council. The continued content posted on social media by Cr Thaler, which includes offensive language, harassing content and allegations of Council, councillor and Council staff corruption and wrongdoing is likely to bring Council and/or

Council officials into disrepute. This is already being evidenced by complaints received by members of the public which state:

"...his [Cr Thaler's] continuing tenure is absolutely outrageous to the vast majority of local residents,"; and

"I just wanted someone to know that so many of us feel uncomfortable.....How is this appropriate behaviour for a professional?"; and

"Yes our council is broken and needs fixing. His intimidation and the videos and hate he spews is plain wrong,"; and

"This disgusting highly offensive revolting behaviour clearly marks this person as unfit to hold public office of any sort. " and

"He has posted on the Jindabyne Notice Board and SMRC Chit Chat groups effectively publicising the appointment of the acting CEO before council had a chance to do their press release. This information was obviously confidential until its formal release by council."

On 8 November 2024 Cr Thaler posted content on his social media page which indicates that he is pleased with being the subject of numerous code of conduct complaints. In this post, he stated *'totally smashing this councillor thing.. baby I was born for it. I've already got 9 code of conduct complaints. in what. 5 weeks.'* This publicly displayed attitude towards a policy intended to set expected standards of behaviour will inevitably negatively affect the Council's reputation within the community if allowed to continue.

Performance risk

While complaints against Cr Thaler are now being directed to OLG, Council resources continue to be allocated to addressing matters related to Cr Thaler. This includes the time and efforts of the General Manager and other staff in assessing and mitigating risks to Councillors and staff, as well as managing procedural processes necessary for making appropriate referrals to the OLG. The ongoing diversion of resources to these issues poses a significant risk of adversely impacting other aspects of Council's operations.

(c) Whether previous intervention attempts have failed

There have been no prior Performance Improvement Orders or Suspensions imposed upon Council. However, some councillors' apparent disregard for the Code of Conduct and disciplinary action indicate that usual processes for councillors are not or will not be effective.

(d) Whether council business is being disrupted and the council is failing to exercise its functions

Certain councillors have repeatedly disrupted council meetings with baseless allegations of council misconduct. Council has been able to conduct its business, however the delays associated with some councillors' conduct are not sustainable for the council to exercise its functions longer term. I believe that some councillors are using apparently deliberate delay tactics including at the following instances:

1. Prior to the first meeting of the Council, Cr Thaler made the affirmation of office before a JP outside of the Council building while being filmed and then posted it on social media. OLG has viewed the video and is satisfied that Cr Thaler made the affirmation of office in accordance with the requirements of section 233A of the Act. Cr Thaler and two other councillors subsequently alleged that all other councillors had failed to take/make an oath/affirmation of office as required under section 233A of the Act because the then Acting General Manager had not been correctly appointed and was therefore not authorised to administer their oaths and affirmations of office.
2. Council held its first meeting on 10 October 2024 where most councillors made their oath or affirmation of office and elected the Mayor. While the conduct of the meeting fell short of a standard that would promote community confidence in the Council, it was not sufficiently serious to warrant intervention.
3. The subsequent extraordinary meeting on 24 October 2024 saw a repeat of the behaviour at the first meeting, with Cr Thaler and two other councillors impeding the consideration of business at the meeting with repeated baseless points of order. It took Council an hour to get to the first item of business on the agenda. OLG will be continuing to closely monitor the situation.
4. The meeting on the 10 November 2024 was an improvement upon the previous two meetings, however the OLG is still concerned about the time it is taking for Council to get through business meetings. This appears to be as a result of disharmony between the councillors, believed to be caused by the ongoing behaviour of Cr Thaler referenced within the code of conduct complaints. The Mayor has chaired the meeting effectively.

(e) Repealed

(f) Whether there is a pattern of poor or inappropriate behaviour by one or more councillors that has not been rectified

There has been a pattern of poor or inappropriate behaviour by some councillors, in particular, Cr Thaler, as set out in this section. Council has not been able to rectify this behaviour.

Alleged Code of Conduct breaches

I set out a summary of the code of conduct complaints made to OLG in relation to Cr Thaler:

1. one complaint alleges Cr Thaler interacted with a Council staff member on Council premises in a way that caused the person, and witnesses to the incident, to feel intimidated and /or scared;
2. approximately 9 code of conduct complaints relate to emails sent by Cr Thaler to councillors and /or Council staff members, the content of which was perceived as, and has been assessed as, language that constitutes personal attacks on staff, bullying, harassment, intimidation, being overbearing and/or an abuse of power; all of which would constitute a breach of Councils Code of Conduct and the WHS Act;
3. more than 10 complaints relate to both written and video social media content posted by Cr Thaler, the content of which has been assessed as language that constitutes personal attacks on staff, bullying, harassment, intimidation, being overbearing and/or an abuse of power; all of which would constitute a breach of Council's Code of Conduct and the WHS Act; and
4. two of the social media posts have been assessed by OLG as constituting detrimental action in breach of the section 33 of the PID Act.

A sample of the complaints received has been provided below:

DATE OF COMPLAINT	SUMMARY OF ALLEGATION	COMPLAINANT
15 October 2024	Cr Thaler interacted with a Council staff member on Council premises in a way that caused the person to feel intimidated. Cr Thaler sent an email to this person and other staff with content that threatened the employment of staff.	Councillor or Council Staff member
19 October 2024	Cr Thaler sent an email to councillors alleging corruption of Mr Rawlings (then the Acting General Manager), and the content of which was likely to intimidate and to create a hostile environment for the Mayor, Cr Hanna.	Councillor or Council Staff member
25 October 2024	Cr Thaler sent an email to councillors and council staff which threatens legal action against other councillors and contains content that is likely to threaten, intimidate or harass the recipients.	Councillor or Council Staff member

7 November 2024	Cr Thaler sent an email to councillors and Council staff which suggests Mr Rawlings seek urgent legal advice with respect to person liability for a decision, with an insinuation Mr Rawlings' job was in danger. The content is considered to be overbearing and threatening.	Councillor or Council Staff member
7 November 2024	Cr Thaler sent an email to councillors and council staff which was directed at a specific councillor in response to an informative email regarding a road issue within the Council area, the content of which is considered to be a personal attack, overbearing, threatening, intimidating and harassing.	Councillor or Council Staff member
8 November 2024 to 12 November 2024	<p>Between 8 and 12 November 2024, Cr Thaler posted numerous videos to his social media Facebook profile in which he references his awareness of Code complaints made against him and makes derogatory and disparaging remarks against one or more people involved in the disclosure or investigation of the complaints.</p> <p>The videos also contain content which is considered harassment of other Council staff, including calling the Mayor a 'dog arse c###'.</p>	Councillor or Council Staff member and numerous community members
21 October 2024	Cr Thaler posted written content on his social media page publicising the appointment of the acting	Councillor or Council Staff member and community member

	CEO before council has issued a press release. This information was considered confidential until its formal release by council.	
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Alleged offence against the *Public Interest Disclosures Act 2022*

It is alleged that Cr Thaler has committed an offence under section 33 of the *Public Interest Disclosures Act 2022* (PID Act), with respect to a number of social media posts he published between 8 and 22 November 2024.

DATE	SUMMARY OF ALLEGATION	EVIDENCE
8 November 2024 to 22 November 2024	In Facebook videos posted by Cr Thaler between the 8 th and 22 nd November 2024, he makes a number of offensive and derogatory remarks about persons he believes were involved in the making of, or investigation of complaints against him.	Complaint from Councillor or Council Staff member Download of Facebook posts

Alleged offence against the *Local Government Act 1993*

It is an offence under section 664 of the Act to disclose any information obtained in connection with the administration or execution of the Act, unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#) or the [Government Information \(Public Access\) Act 2009](#), or
- (e) with other lawful excuse.

There is evidence of three instances of the disclosure of confidential information by Cr Thaler.

DATE	SUMMARY OF ALLEGATION	EVIDENCE

21 November 2024	Cr Thaler posted written content on his Facebook page publicising the appointment of the Acting CEO before being announced by Council.	Complaint from Councillor or Council Staff member Download of Facebook post
8 November 2024 to 22 November 2024	In Facebook videos posted by Cr Thaler between the 8 th and 22 nd November 2024, he references his awareness of, and the content of, some Code of Conduct complaints made against him, in breach of Part 12 of the Procedures for the Administration of the Model Code for Local Councils in NSW	Complaint from Councillor or Council Staff member Download of Facebook post
22 November 2024	In a Facebook video posted by Cr Thaler on 22 November 2024, he read aloud a letter sent from the OLG, marked as confidential, and relating to code of conduct complaints and public interest disclosures made against him	Download of Facebook post

(g) Any other matter that, in the opinion of the Minister, is relevant to the issuing of the order

I also take into account the following matters:

1. Council has indicated that it requires assistance to manage the issues relating to councillor conduct.
2. Certain councillor behaviour is having a significant resourcing impact on the Council. The time and costs associated with managing the complaints set out above, including mitigating the associated risks, is significant. Further, Cr Thaler's apparently deliberate delaying tactics are preventing the Council from running its business as efficiently as it could.

DRAFT

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. All Councillors enter into an undertaking in the form specified in Schedule 3, to be provided to me within 7 days of the service of the Order. I require all Councillors to comply with that undertaking,
2. Councillors immediately refrain from making or implying allegations of wrongdoing against any Council official, unless such allegations are made through the established processes for investigating such matters,
3. Councillors immediately refrain from disclosing, or causing the release of confidential Council information to any public forum, including on any social media platform,
4. Councillors immediately refrain from publicly disclosing information relating to code of conduct complaints, including at Council, Committee or other meetings, in any other forum, or on any social media platform,
5. Councillors immediately refrain from making statements, orally or in writing, that a reasonable person may consider offensive, abusive, harassing, threatening or disrespectful, about or to other councillors or Council staff members; and
6. Councillors are to conduct their interactions with each other and Council staff with respect, professionalism, objectivity, honesty and to a high standard of ethical behaviour,
7. Councillors are to interact with Council staff in accordance with Council's Councillor Staff Interaction Policy,
8. Councillors are to conduct themselves in accordance with Council's Code of Conduct,
9. Council must continue to implement the recommendations from the AEC financial sustainability review as resolved at its extraordinary council meeting on 24 November 2022, including but not limited to:
 - a) Budgeting for and maintaining an unconstrained cash reserve of at least \$5 million
 - b) Not undertaking projects unless they follow Council's project management framework
 - c) No new or increased services or infrastructure be taken on without a full business case being in place
 - d) Implementing asset management improvements identified in the financial sustainability review
10. Council must enact the adopted operating plan and budget for 2025 and any necessary amendments must have an identified funding source and be compliant with the objective of achieving financial sustainability,
11. Council must, at all times, maintain unrestricted funds of at least \$500,000 and expend externally restricted funds only for the purpose for which they are set aside,

12. Council must ensure it maintains access to a finance professional who can provide timely advice to councillors on financial performance and other matters,

13. That the work planned or in progress through the "Towards Excellence Program" is to continue.

Reporting in compliance with this order

Pursuant to section 438F of the Act I require the Council to provide me with the following reports on compliance with this Order, within the time frames specified:

1. A report on compliance with Actions 1 to 8 within one month from the commencement of this Order.
2. A report on compliance with Actions 1 to 13 to be provided each month, to be received by me no later than the fifteenth day of the month following the month to which the report relates, for a period of 12 months.
3. A final report on the implementation of all the Actions required by this order to be provided with the final compliance report, due end of December 2025.

Period for compliance with Order

Council is to comply with the requirements of the Order within the timeframes specified in Schedule 2.

SCHEDULE 3

Councillor Undertaking

I, Councillor [*name*] of Snowy Monaro Regional Council (Council), do hereby give the following undertaking:

I will:

- a) immediately refrain from making statements, orally or in writing, that a reasonable person may consider offensive, abusive, harassing, threatening or disrespectful, about or to other councillors or Council staff members; and
- b) immediately refrain from making statements that allege breaches of the Model Code of Conduct for Local Councils in NSW or Council's adopted Code of Conduct by other councillors or Council staff, unless in accordance with the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW; and
- c) immediately refrain from publicly disclosing information relating to code of conduct complaints, including at Council, Committee or other meetings, in any other forum, or on any social media platform; and
- d) immediately refrain from disclosing or causing the release of confidential Council information to any public forum, including on any social media platform.



Quick Guide to Performance Improvement Orders PROCESS FOR COUNCILS

Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, powers to issue performance improvement and suspension orders may be used.

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.