

New South Wales

Medium Neutral Citation:	Office of Local Government v Councillor Ticehurst of Lithgow City Council (No 2) [2016] NSWCATOD 162
Hearing dates:	13 December 2016
Date of orders:	13 December 2016
Decision date:	13 December 2016
Jurisdiction:	Occupational Division
Before:	Dr J Renwick SC, Senior Member
Decision:	Councillor Ticehurst is suspended for a period of five months.
Catchwords:	CIVIL AND ADMINISTRATIVE TRIBUNAL – Local Government Act – Local Government Councillor – Code of Conduct – misconduct established – consideration of penalty – suspension ordered – consequence of suspension is disqualification from civil office for five years
Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW) Local Government Act 1993 (NSW)
Cases Cited:	Director General, Department of Premier and Cabinet re Councillor Martin Ticehurst LGPIDT 06/2012
Category:	Principal judgment
Parties:	Office of Local Government (Applicant) Councillor Martin Ticehurst of Lithgow City Council (Respondent)
Representation:	Ms B Tronson, of counsel; instructed by Mr Rowe (Applicant) Respondent in person
File Number(s):	1520173
Publication restriction:	None

REASONS FOR DECISION DELIVERED ORALLY

Introduction

- 1 On 27 September 2016, I found that the respondent, Councillor Martin Ticehurst, had engaged in misconduct within the meaning of the *Local Government Act 1993* (*the Act*), and the Model Code of Conduct adopted by Lithgow City Council under that Act. These reasons should be read together with my earlier decision as to the established misconduct.
- 2 In essence, I have found misconduct established on three bases:
 - (1)

On 27 October 2014, the respondent swore at the Mayor, calling her twice a "bitch" and also threatening her by saying "I hope you choke on your sandwich" (Ground 1);

- (2) At the Council meeting on 1 June 2015, despite there being a Council resolution that he apologise to the Mayor for the conduct the subject of the finding on Ground 1, he declined to do so (Ground 5A); and
 - (3) On 1 June 2015 following a Council meeting, he acted in an aggressive, rude, intimidating and embarrassing manner toward a member of the public, namely Ms Renee di Franco (Ground 6).
- 3 A number of other grounds, it was true, were not successful.
- 4 The earlier hearing was conducted, with the consent of both parties, on the basis that I would first determine whether there had been misconduct (as I now have) and, if so, I would proceed to consider penalty.
- 5 I ordered that submissions be filed by both parties, together with any further evidence, and that the parties indicate whether they wished an oral hearing on the question of penalty.
- 6 I had received submissions from the applicant at the commencement of the matter, I received submissions from Councillor Ticehurst which included a request for oral hearing on penalty, and I received submissions in response from the applicant.
- 7 I have considered all of these and I conducted a further oral hearing at Councillor Ticehurst's request. I have, earlier today, first, declined to admit fresh evidence in relation to Ground 6, and second, declined to refer proceedings to the Independent Commission Against Corruption under s 486 of the Act.
- 8 Section 482A(2) of the Act provides as follows:
- (2) The Tribunal may, if it finds that the behaviour concerned warrants action under this section:
 - (a) counsel the councillor, or
 - (b) reprimand the councillor, or
 - (c) suspend the councillor from civic office for a period not exceeding 6 months, or
 - (c1) disqualify the councillor from holding civic office for a period not exceeding 5 years, or
 - (d) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).
- 9 By reason of the insertion of s 275(1A) of the Act, which commenced on 13 November 2015, if I am to make an order that the Councillor be suspended and that is the third or subsequent such suspension order, the Councillor is, by operation of law, disqualified from holding civic office for 5 years:- I am conscious that if I do make a suspension order, that would be the practical effect of the decision, but I consider that it is my duty is to consider the appropriate punishment under s 482A, without being diverted by the consequence of a suspension order, should I so order.
- 10 In my opinion, there is a need to denounce misconduct, to deter Councillor Ticehurst specifically, and other councillors more generally, from behaving in the same fashion, and to maintain public confidence in the institution of local government.

- 11 Very significantly, Councillor Ticehurst has been before the Local Government Pecuniary Interest and Disciplinary Tribunal on a number of occasions. In fact, on six occasions, Councillor Ticehurst has been suspended. The relevant Tribunal orders were:
- (1) On 28 August 2009, he was suspended from holding civic office for a period of 1 month.
 - (2) On 12 August 2010, he was suspended from holding civic office for a period of 2 months.
 - (3) On 14 May 2013, he was suspended from holding civic office for 2 months.
 - (4) On 15 July 2013, he was suspended from holding civic office for 4 months.
 - (5) On 27 June 2014, he was suspended from holding civic office for 2 months.
 - (6) On 2 July 2014, he was suspended from holding civic office for 2 months.
- 12 That is a significant history of penalties. Plainly enough, in those circumstances, the need for specific deterrence is high, and further, Councillor Ticehurst does not get the benefit of leniency on the basis that he had never previously engaged in misconduct, whereas in fact, he has done so. Earlier findings include findings concerning failure to apologise in accordance with council resolutions, and that includes matter 06/2012. As was made clear in that decision, failure to comply with such resolutions 'strikes at the heart' of the local government system. I agree with the finding of the previous Tribunal in that regard.
- 13 The misconduct in relation to the Mayor, particularly, calling her a "bitch", needs to be the subject of both specific and general deterrence and denunciation. Being respectful towards colleagues, but particularly, the Presiding Officer at meetings, namely, the Mayor (although this was immediately outside the Council Chamber) is important in ensuring that the local government system operates properly. Failing to apologise for such misconduct exacerbates the misbehaviour. Finally, inappropriately aggressive or intimidating conduct towards a member of the public also requires denunciation and deterrence.
- 14 I take into account that:
- (1) The misconduct in this case concerns matters central to the effective operation of the important civic institution of local government;
 - (2) There needs to be punishment of the Councillor's failure to comply with his statutory obligations, bearing in mind that any punishment greater than reprimand or censure will, by operation of law, prevent Councillor Ticehurst for a period of time, from exercising any functions as a Councillor, and this does have an impact on his constituents which weighs in his favour. Just now, Councillor Ticehurst has reminded me that he has been re-elected and that he is the Deputy Mayor, and there will be a cost involved in any by-election. I have taken those matters into account; and
 - (3) Finally and significantly, there is no acknowledgement of wrongdoing (or apology), indeed, Councillor Ticehurst's continuing persistence with apparently baseless claims of malicious prosecution and perjury means that any reduction of punishment on the basis of contrition, and thus insight, is unavailable.

In the circumstances, I suspend Councillor Ticehurst for a period of 5 months from civic office. That has a consequence by operation of law, but my order is for suspension for a period of 5 months.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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Decision last updated: 22 December 2016



Submission and Report: Proposed Performance Improvement Order

Lithgow City Council

December 2016



Prepared for:

Ref	Date	Version	Approving Director
7220	December 2016	Final	Dan Bonifant

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Introduction

Lithgow City Council has actively participated in the Fit for the Future (FFTF) program. Initially, Council was assessed against the financial sustainability criteria and associated benchmarks and was found to be 'not fit'.

In July 2016 Council submitted a reassessment proposal for assessment and was found to be 'not fit'. On 6th Dec 2016 Council was issued with a proposed Performance Improvement Order (PIO), with 18 days to make a submission.

Morrison Low has been engaged to prepare a report and submission in response to the proposed PIO. We have worked closely with staff to ensure there is a thorough understanding of Council's circumstances.

The report deals with the requirements of the proposed PIO, a review of Council's key strategic and financial documents, develops a range of FFTF solutions (including a base LTFP financial model), responds specifically to each of the Minister's reasons and includes a Draft Performance Improvement Plan.

PROPOSED PERFORMANCE IMPROVEMENT ORDER

Assessment Requirements

In our view, Council will need to clearly demonstrate to the Office of Local Government (OLG) the need for further time to action and/or implement changes and improvements to satisfy the proposed PIO.

The intention to issue a Performance Improvement Order is issued under section 438C of the Local Government Act with consideration of 413D of the Local Government (General) Regulation 2005 in particular the criteria of the following clauses:

- (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.

Attached as appendix A and B are the notices from the Minister of Local Government.

Minister's Reasons

Following are the specific reasons why the minister has issued the proposed PIO;

1. Failure by Council to follow the principles of sound financial management (set out in Chapter 3 section 8B of the Act) with respect to ensuring that Council's forecast spending is responsible and sustainable, aligning general revenue and expenses.
2. Council has reported annual deficits in its financial statements over the past 5 years and its LTFF for the next ten years forecasts the deficit increasing.
3. The Council does not have a documented strategy to meet its forecast operating performance ratio necessary to ensure its long term financial sustainability which does not involve seeking approval for rate increases.
4. IPART has determined that Council is 'not fit' following the Local Government *Fit for the Future* process. The further material provided by Council to the Office does not provide substantive evidence of strategies implemented since the IPART review to move Council towards long term financial sustainability.
5. The OLG has assessed the Council's further submission against the IPART criteria and has determined that Council remains 'not fit'. The reassessment process has identified that the financial sustainability ratios forecast in Council's FTF reassessment submission (General Fund) do not align with the ratios forecast in Councils LTFF (Consolidated Fund).

Required Actions

Council is required to undertake the following actions in order to satisfy the obligations of the proposed PIO.

- 1. Council must develop a Performance Improvement Plan that contains financial modelling and strategies which demonstrate:**
 - (a) how council will achieve the five year forecast Operating Performance Ratio (OPR) set out in its reassessment proposal dated July 2016
 - (b) how council will achieve the five year forecast Building Infrastructure Renewal Ratio (BIRR) set out in its reassessment proposal dated July 2016
 - (c) how special Rate Variation proposed in the reassessment proposal will enable Council to meet its forecast OPR and BIRR
 - (d) council's timeframe for the preparation and submission of the SRV application identified in its reassessment proposal dated July 2106
 - (e) an alternative strategy to meet the forecast OPR and BIRR benchmarks included in the reassessment proposal should the SRV not be approved.
- 2. The Performance Improvement Plan must:**
 - (a) specify the steps Council will take to implement the strategies identified in the Performance Improvement Plan
 - (b) identify the person/s responsible for implementing each step/strategy.
- 3. If the Performance Improvement Plan is satisfactory to the Minister, the Council is to adopt the plan and commence its implementation.**

Initial Review

Having reviewed the proposed PIO, Council's reassessment proposal and supplementary information, it appears to us that:

- The OLG has lost confidence in Council's financial management practices.
- The reassessment proposal does not show a clear pathway to financial sustainability for Council.
- There are few documented improvement strategies that are supported by evidence.
- This is a very heavy reliance on a successful SRV to achieve the forecast operating performance ratio.
- Council has not documented any improvement actions since the original IPART FFTF assessment.
- There is a pressing need to develop consistent and aligned financial and asset information to demonstrate that Council can become financially sustainable.
- A robust and realistic solution for appropriate consideration by the community and Council requires time.

COUNCIL'S INITIAL RESPONSE

Immediate Action

We have undertaken a review of the proposed PIO, the Reassessment Proposal, the LTFP upon which this was based, 2015/16 Financial Statements, Asset Management Plan and other related documents. In our view the immediate requirements were to reassess the baseline to obtain an accurate position and to develop a draft Performance Improvement Plan (PIP).

A response period of 18 days was given to develop an initial PIP. A meeting with the Acting General Manager and key staff was held on 14th Dec 2016 to discuss the initial plan of action to get agreement on the tasks. The plan sets out the action task, responsibility, timelines and status.

The initial PIP was finalised, endorsed by Council, and presented to the OLG on 15th Dec 2016 with a subsequent teleconference with OLG staff on 16th Dec 2016. The purpose of this was to ensure that the OLG was aware that Council is very serious in dealing with the proposed PIP, to advise the extent of actions required and to be fully informed throughout the process.

The key parts of the initial plan are:

- Review all key documents
- A new baseline LTFP so that the true position is known
- Some initial improvement strategies included in the model
- Submission on the proposed Performance Improvement Order
- Draft Performance Improvement Plan

The Initial Performance Improvement Plan is in the following table.

Initial Performance Improvement Plan

Lithgow City Council – Proposed Performance Improvement Order (PIO)			
Initial Performance Improvement Plan			
Task	Responsibility*	Timeline	Status
GM informed Council on Performance Improvement Order	AM	8/12	Completed
Initial discussions with Andrew Muir	DB/GS	9/12	Completed
Provide regular updates to OLG over the next 2 weeks	AM & GS	14/12, 16/12	15/12
Morrison Low talk to OLG	DB	13/12	Completed
Review documents and provide observations/issues/opportunities	DB/GS/SC		
<ul style="list-style-type: none"> Performance Improvement Order 2015/16 Financial Accounts and previous 3 years LTFP Council Reassessment Proposal FFF July 2016 Asset Management Plan Community Strategic Plan 	GS SC SC DB SC GS	Initial – 13/12/16 Final – 16/12	Completed Completed
Prepare and meet with Andrew Muir and staff	GS	14/12	Completed
Develop initial Performance Improvement Plan for OLG	GS	15/12	Completed
Approve Initial Performance Improvement Plan	DB/AM	15/12	Completed
Create base LTFP Improvement Financial Model – to ascertain Council's base position by 23 Dec 2016	SC/ND	20/12	Completed
Create initial Improvement Strategy Plan with options	GS/LCC	20/12	Completed
Undertake analysis of Financial Sustainability and determine Council's base financial position	SC	20/12	Completed
Prepare a Draft Performance Improvement	GS	19/12	Completed
Report, including submission on proposed PIO, and Draft Performance Improvement Plan to OLG	GS	23/12	Completed – AM has delegation

REVIEW OF CURRENT SITUATION

Financial Statements, LTFP and Asset Management Plan

The following are our general observations from a review of the 2015/16 financial statements, the current LTFP and Asset Management Plan, as they materially affect forecasts in the LTFP.

2015/16 Financial Statements

- Income from user fees and charges was over budget by 10%.
- Operating grants were almost 30% over budget.
- Employee costs were about 16% over budget. This was consistently the case in both 2015/16 and 2014/15.
- The revaluation gains included in the 2015/16 accounts (and the 2014/15 accounts) are much higher than allowed for in the financial base case.
- The 2015/16 operating result for before capital grants was a deficit of \$4.1m, compared to a \$1.3m deficit in the LTFP.

LTFP

- The LTFP should be updated to 2015/16 actuals.
- Calculation of cash balances is confusing and appear incorrect.
- There are no estimates for asset renewals expenditure.
- The balance sheet doesn't balance in 2027.
- No inflation or indexation of grants income.

Asset Management Plan

- There appears to be a significant variation between the asset condition status in the Asset Management Plan and Special Schedule 7 (SS7). For example, footpaths have an average condition rating of 2 (good) in the Asset Management Plan while 100% are rated 5 (Very Poor) in SS7.
- The Asset Management Plan was adopted in 2012, so a review is warranted to ensure alignment to the Revised LTFP and Reassessment Proposal.
- Council will undertake an asset valuation and useful life review.

Council Reassessment Proposal

There is a range of inconsistent and contradictory information within the document, and the following are some examples:

- Asset backlog named as a threat (page 13) which is contradicted by the submission (page 18) which shows a declining backlog.
- The Re-assessment Proposal states 'Lithgow previously met the criteria set by the NSW government for it financial sustainability', however it didn't. IPART deemed Council 'not fit' and the Operating Performance Ratio, Renewal Ratio and Real Operating Performance Ratio were all below the benchmarks.

Further inconsistencies occur with the difference between the financial statements of 30 June 2016 and submission of 27 July 2016 as detailed below:

	FFTF Re-assessment	Financial Statements
Operating Performance 15/16	-5.1% (improvement on last year)	-9.5% (down on last year)
Own Source Revenue	64.9%	56.8% (under benchmark)
Renewals Ratio	88.5%	55%

The reassessment proposal suggests that the water and sewer funds are operating at break even, yet:

- The Financial Statements show that the water fund had an operating performance ratio of -17.2% in 15/16
 - Water and sewer funds had renewal ratios of 39% and 55% respectively.
 - The backlog ratios were 18% and 36% respectively.

DEVELOPING THE SOLUTION

The approach

Council needs to develop a clear pathway that ensures future financial sustainability. The key issues that need to be addressed in order to achieve FFTF benchmarks are:

- embedding sound financial management practices
- a coherent LTFP, incorporating financial projections with realistic scenarios
- an Improvement Plan with justifiable improvement strategies.

Council must then clearly articulate this in a revised reassessment proposal by announcing key themes, using evidence to show the difference between the base case and the improvement model. Proposed approach should include:

- Develop an Improvement Plan with a range of cost saving, efficiency and service level review options and model the likely impacts.
- Focus on renewals of existing infrastructure, thereby reducing the infrastructure backlog until the key ratios are satisfied.
- A concerted effort to reduce organisational costs without affecting service levels.
- Seek community input into the existing services and service levels where opportunity exists to reduce costs.
- Council to only look to a SRV where all of the above does not achieve a pass against all the benchmarks.

Financial Management

Council has an obligation to have in place sound financial management principles and practices in accordance with chapter 3, section 8B of the Local Government Act. To ascertain Council's current status, a financial management maturity assessment would identify gaps and provide an improvement roadmap.

Financial management is the system by which the resources of an organisation's business are planned, directed, monitored and controlled, to enable the organisation's goals to be achieved. A Financial Management Maturity Assessment provides an approach that council can:

- Determine its financial management requirements according to the nature, complexity and associated risks of its operations
- Assess its existing financial management capabilities against the criteria that has been determined.
- Identify any gaps between those criteria and its existing financial management capabilities and any stretch targets the Council wishes to set. Having identified these gaps, Council can then prioritise the actions and work toward developing the appropriate level of financial management capability and maturity.
- Review alignment to the Integrated Planning and Reporting and Fit for Future benchmark processes.
- Provide an understanding of the financial management categories in a high level organisational context.

Base Case LTFP

The version of the LTFP that was submitted to the Office of Local Government as part of the Reassessment Proposal has now been amended to establish a more accurate base LTFP. Some of the key updates include:

- Actual results from 2015/16, and projected 2016/17 budget and 2017/18 budget included.
- Incorporate annual fair value increments for infrastructure assets, and amend calculation of asset value.
- Balanced net assets and equity equal in the balance sheet.
- Shift projected asset expenditure from 'new' to 'renewal', based on discussions with Council that suggested no new asset expenditure is planned.
- Applied indexation to capital grants (@ 1%) and operating grants (@ 2%).
- Allowance for modest/minimal growth in rateable units based on DPE projections for growth in number of households during the period.
- Applied 1.5% rate cap for 2017/18.
- Applied inflation to forecast capital expenditure – based on advice that projections in LTFP were in today's dollars.

LTFP and Improvement Strategies

We have set out below some observations about the new base case scenario (General Fund):

- The result is that the base case LTFP is slightly worse in operating performance than the one that was submitted. However, we now have confidence that this projects a realistic situation.
- The operating result (excluding capital grants and contribution) is consistently a deficit, though this is never more than \$2m.
- There is an increase in accumulated cash reserves, because Council is spending less on renewals than the depreciation charge. This provides opportunity to further invest in infrastructure renewals which would likely improve the backlog and renewal ratio performance.
- There are significant differences in depreciation, employee costs and materials and contracts costs between the submitted LTFP and the 2016/17 budget. These account for a large amount of the difference in projected performance. The 2016/17 budget figures are more reflective of the 2015/16 actual results.
- Similarly the 2016/17 budget has slightly lower revenue forecast than the originally submitted LTFP. The 2016/17 budget also shows a decrease in the amount of revenue expected from user fees and charges, and capital grants.
- The 2016/17 budget has a 35% increase in 'other expenses' over the 2015/16 actuals. This now needs to be investigated.

There have been over 30 improvement strategies initially identified by Council and Morrison Low. These require further clarification and evaluation. The improvements, if justified and implemented, will help significantly reduce the deficit and potentially eliminate the need for a SRV. Some of the 30 are set below:

- Implement the review outcome of a valuation and depreciation of assets that identified a potential saving of \$1.3m in depreciation.
- Review of Fees and Charges to increase recovery of costs in the provision of services.
- Review Water and Sewer contributions to General Fund.
- Services and facilities review.
- Full cost recovery of direct service provision.
- Combine depots.

Revised Reassessment Proposal

It is clear from the analysis of all of the information and the issues raised by the proposed PIO, that despite the unsustainable financial position there are many opportunities to improve this and Council is in a position to demonstrate that they can become fit for the future. However, Council requires some time to develop these actions and implement them. The key findings for inclusion in the revised reassessment proposal are:

- A revised and realistic LTFP baseline must be developed as a priority. The current LTFP does not show an accurate projection of Council's baseline financial position. Until Council has an accurate understanding of the baseline it cannot develop scenarios nor sensibly engage with the community.
- The 2012 Asset Management Plans must be updated and integrated with the new LTFP.
- A realistic improvement plan must be developed, that details the actions which will create financial sustainability along with timelines as a demonstration of the commitment to making the necessary improvements.
- A Financial Management Maturity Assessment needs to be undertaken to ensure that financial practices across the organisation are lifted to the standard expected.
- An Asset Management Maturity Assessment needs to be undertaken to ensure the links between Assets and finances are strong. Both processes will lead to the development of improvement programs which need to be embedded within the organisation.
- A comprehensive ongoing monitoring program, beyond the requirements of the proposed PIO, must be put in place to ensure Council continually improves and sustains the changes implemented.

In submitting the revised reassessment proposal, Council will need to adopt all components of the draft Performance Improvement Plan to give them the best opportunity.

SUBMISSION ON THE PROPOSED PERFORMANCE IMPROVEMENT ORDER

Sound financial management

In this section we have detailed what we believe are the key parts to Councils submission. This includes actions, tasks, outcomes and timeframes.

Council acknowledges that a review of the broader financial management practices of the Council need to be assessed, particularly ensuring Council's forecast spending is responsible and sustainable. To clearly understand the gaps and to demonstrate the Council's commitment to having robust, consistent and integrated financial management governance and practices embedded in the organisation, a Financial Management Maturity Assessment will be undertaken.

This will entail assessment of Council's finance governance and leadership, financial planning and budget methodology, decision making on cost drivers, income streams and project evaluation, financial monitoring and forecasting and financial performance reporting.

Council should also undertake an Asset Management Maturity assessment to determine its current status of Asset Management systems and process and ensure strong integration of the asset and financial forecasts.

Detailed actions are in the Draft Performance Improvement Plan in the next section.

Past and forecast deficits

The LTFP that was used as the basis for the Reassessment Proposal under the FFTF process has been reviewed. Council does not now believe that it projected a realistic view of the future and recognises that it did not provide for Council to become sustainable.

A new base LTFP has been developed, along with some initial improvement strategies. The financial analysis undertaken to date indicates that the situation is slightly worse than before, however with realistic and achievable opportunities to fix that. If implemented, these changes are likely to achieve the FFTF benchmarks.

With the inclusion of the Council identified actions taken since the original IPART review and improvement opportunities, early initial modelling of indicative savings suggests that implementation of these improvements may be sufficient to enable Council to meet most of the fit for the future benchmarks by 2021. However these savings still require further evaluation and consideration.

The revised LTFP will incorporate both the proven improvement strategies and savings from the actions taken since the original IPART review.

Detailed actions are in the Draft Performance Improvement Plan in the next section.

Document an improvement strategy

Council's revised LTFP will be based on developing a comprehensive improvement strategy with a range of improvement actions that will drive a future financially sustainable Council.

The revised LTFP will incorporate a number of scenarios that will demonstrate adherence to sound financial management principles in accordance with criteria (a) and (b) of the regulations.

Over 30 improvement strategies have initially been identified through a process of engaging with staff and Morrison Low's review. These all require further clarification and evaluation, but the following improvements, if justified and implemented, will help significantly reduce the deficit and with further improvements, potentially eliminate the need for an SRV.

- Implement the review outcome of a valuation and depreciation of assets that identified a potential saving of \$1.3m in depreciation
- Review of Fees and Charges to increase recovery of costs in the provision of services
- Review Water and Sewer contributions to General Fund
- Services and facilities review
- Implement full cost recovery of direct service provision
- Rationalisation of Depots

A comprehensive, costed and integrated Improvement Plan with a range of strategies focused on improving Council's financial sustainability will be developed and incorporated into the revised LTFP. This will form the basis of Council's reassessment proposal to be submitted in early 2017.

Detailed actions are in the Draft Performance Improvement Plan in the next section.

Actions taken since the original IPART review

Council recognises that it has failed to clearly demonstrate the actions taken since the original IPART review. It is critical to evidence any actions and Council will ensure that occurs in the reassessment proposal. In the meantime Council has identified the following actions, subsequent to the original IPART review, that should make a positive impact on Council's operating performance.

- **Litter Bin Collection** - Savings achieved through the contracting out of litter bin collections, estimated savings total \$23k pa.
- **Depreciation Schedule** - Council engaged Morrison Low to review our depreciation levels as a part of Fit for the Future. Council looking to action this advice as we revalue asset with estimated savings of \$1.3m pa.
- **Electricity Contract** - Savings achieved through CENTROC tendering process Electricity contract savings totalling \$25k pa.
- **Electricity Small Sites** - Savings of \$25k pa achieved by identifying sites which had not been rolled into the large sites electricity contract already.
- **Insurances** - Savings in Property and Public Liability premiums have been and will be achieved by increasing excess on claims.
- **Cleaning Contract** - Savings in the vicinity of \$260k pa were made by engaging contract cleaners. This was achieved over a period of time by not replacing staff.
- **Tony Luchetti Showground – Clean Up** - Council has approached local sporting teams seeking their help in cleaning up after use of the sportsground. This will reduce the need/amount of overtime for Council staff on weekends.
- **Review Plant Levels** - Council is currently reviewing plant and equipment levels going forward.

As indicated above, these improvement savings may be sufficient to enable Council to meet most of the Fit for the Future benchmarks by 2021. However, these savings still require further evaluation and consideration.

Detailed actions are in the Draft Performance Improvement Plan in the next section.

Aligned financial sustainability ratios

The review of the current Reassessment Proposal and associated LTFP confirmed that there were some inconsistencies in FFTF benchmark ratios and some anomalies in the formulas used to calculate some ratios.

The revised LTFP and Reassessment Proposal will correct these through the provision of more accurate information. Regardless, there will still be some variance between General Fund and Consolidated Fund ratios as they draw on financial and asset information across General, Water and Sewer Funds.

The revised documents will incorporate all FFTF benchmark ratios, including a comprehensive analysis of all FFF ratios to ensure Council sets a clear timeline for meeting these ratios.

Detailed actions are in the Draft Performance Improvement Plan that follows.

DRAFT PERFORMANCE IMPROVEMENT PLAN

Draft Performance Improvement Plan

The Draft Performance Improvement Plan (PIP) details what Council has done, a status on where they are currently up to and what they are proposing to do. Following is a summary, with the full plan at Appendix C.

Task	Timeline	Status
Assess PIO and allocate resources to respond	12/12/16	Completed
Submit Initial Performance Improvement Plan to OLG	16/12/16	Completed
Develop base LTFP and initial improvement strategies	23/12/16	Completed
Submission on Proposed PIO & Draft PIP	23/12/16	Completed
Revised LTFP, Improvement strategies and FFTF benchmarks	Feb 2017	
Asset Management Assessment and Revised Asset Management Plan	Feb/Mar 2017	
Financial Management Review	Mar 2017	
Revised Reassessment Proposal for FFTF	Mar 2017	
Implement and Monitor Improvements and Actions	April 2017	Commence
Report Progress	Feb 2017	Commence

CONCLUSION

Conclusion

The proposed PIO is not just about recasting the LTFP. There is an obligation on Council to understand and improve the broader financial management governance and processes to ensure a robust and sustainable Council into the future.

The draft PIP is key to Council becoming financial sustainable along with embedding changes to the underlying financial management practices that will both reinstate the financial creditability of Council and have Council become a leader in organisational financial management.

Council has taken an immediate and serious approach in responding to the proposed PIO and developing a board and detailed set of actions. Council, through the draft PIP, commits to becoming financially sustainable and will engage and work with the community in implementing these actions.

Appendix A



The Hon Paul Toole MP
Minister for Local Government

Ref:
MIN:
Doc ID: A519172

Clr Stephen Lesslie and Mr Andrew Muir
Mayor and Acting General Manager
City of Lithgow Council
PO Box 19
LITHGOW NSW 2790



6 DEC 2016

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

Dear Clr Lesslie and Mr Muir

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 proposed PIO, to improve the performance of the Council.

Section 438B(2) of the Act requires me to consider the performance improvement criteria prescribed by clause 413D of the Local Government (General) Regulation 2005 before issuing 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 failing to exercise its functions;*
- (e) whether the appointment of a temporary adviser is necessary, in the opinion of the Minister, to restore the proper or effective functioning of the council;*
- (f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified;*
- (g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.”*

I have considered 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, propose to issue a PIO (section 438A(3)(a)).

1. The reassessment of Council's *Fit for the Future* (FFTF) reassessment proposal by the Office of Local Government (the Office) has identified a failure by the Council to follow the principles of sound financial management with respect to ensuring that Council's forecast spending is responsible and sustainable, aligning general revenue and expenses.

I am concerned that Council may not be following the principles of sound financial management set out in Chapter 3 section 8B(1) of the Act in relation to the exercise of its functions (Criteria (a) and (b)).

2. Council has reported annual deficits in its financial statements over the past five financial years, and consistently forecasts deficits in its Long Term Financial Plan (LTFP) for the next ten years until 2024-25. Notably, the LTFP forecasts the deficit increasing from - \$1.267 million in 2015-16 to - \$2.270 million in 2024-25.

I am concerned that future services will be adversely affected or disrupted due to poor financial governance practices of the current Council. Council has budgeted for and subsequently run large operating deficits over a number of years. At the same time, Council's LTFP is not providing a path to achieve a break-even result or an operating surplus in the future. Council will need to consider the long term and cumulative effects of its actions on future generations (Criteria (a) and (b)).

3. It is noted that in its FFTF reassessment proposal the Council forecasts to meet the financial sustainability criteria. However, Council's proposal is heavily reliant, if not wholly dependent upon, two proposed Special Rate Variations (SRVs). Council does not provide a documented strategy to meet its forecast operating performance ratio to ensure its long term financial sustainability which does not involve seeking approval for rate increases. Council's plans on the SRV's are unclear. An approval to the variations is not guaranteed. Council's achievement of its long term financial sustainability goals appears to be vulnerable absent approval of the two proposed SRV's.

Further, Council's proposal does not provide substantive evidence of strategies implemented since the initial Independent Pricing and Regulatory Tribunal (IPART) review to move the Council towards long term financial sustainability. The reassessment process has also identified that the financial sustainability ratios forecast in Councils FFTF reassessment submission (General Fund) do not align with the ratios forecast in Councils LTFP (Consolidated Fund).

I am concerned that by not adhering to the principles of sound financial management there are significant risks facing the council that are not being addressed (Criteria (a) and (b)).

4. IPART determined that Council is 'not fit' following the assessment of Council's *Fit for the Future* Proposal. The further material provided by Council to the Office does not provide substantive evidence of strategies implemented since the IPART review to move the Council towards long term financial sustainability (Criterion (b)).

5. Subsequently, the Office has reassessed the Council's further submission against the IPART criteria and reports that Council remains 'not fit'. The reassessment process has identified that the financial sustainability ratios forecast in Councils FFTF reassessment submission (General Fund) do not align with the ratios forecast in Councils LTFP (Consolidated Fund) (Criterion (b)).

The terms of the proposed PIO, 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 actions required to be taken to improve the performance of the Council are specified in the proposed PIO.

The actions that may be taken by me, as Minister, if a PIO 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 Performance Improvement 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 18 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 6th day of Dec 2016



Paul Toole MP
Minister
Encl

Appendix B

Local Government Act 1993

Order under section 438A

I, the Minister for Local Government, issue this Performance Improvement Order to the Council and/or persons specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

This Order takes effect upon service on the Council.

Dated:

The Hon Paul Toole MP
Minister for Local Government

SCHEDULE 1

City of Lithgow Council

SCHEDULE 2

Reasons for Order – section 438A(3)(a)
<p>1. A failure by Council to follow the principles of sound financial management with respect to ensuring that Council's forecast spending is responsible and sustainable, aligning general revenue and expenses.</p> <p>I am concerned that Council may not be following the principles of sound financial management set out in Chapter 3 section 8B(1) of the Act in relation to the exercise of its functions.</p> <p>2. Council has reported annual deficits in its financial statements over the past five (5) years and its Long Term Financial Plan for the next ten years forecasts the deficit increasing.</p> <p>I am concerned that future services will be adversely affected or disrupted due to poor financial governance practices of the current Council.</p> <p>3. The Council does not have a documented strategy to meet its forecast operating performance ratio necessary to ensure its long term financial sustainability which does not involve seeking approval for rate increases.</p> <p>I am concerned that by not adhering to the principles of sound financial management there are significant risks facing the council that are not being addressed.</p> <p>4. IPART has determined that Council is 'Not Fit' following the Local Government <i>Fit for the Future</i> process. The further material provided by Council to the Office does not provide substantive evidence of strategies implemented since the IPART review to move the Council towards long term financial sustainability.</p>

1. A failure by Council to follow the principles of sound financial management with respect to ensuring that Council's forecast spending is responsible and sustainable, aligning general revenue and expenses.

I am concerned that Council may not be following the principles of sound financial management set out in Chapter 3 section 8B(1) of the Act in relation to the exercise of its functions.

2. Council has reported annual deficits in its financial statements over the past five (5) years and its Long Term Financial Plan for the next ten years forecasts the deficit increasing.

I am concerned that future services will be adversely affected or disrupted due to poor financial governance practices of the current Council.

3. The Council does not have a documented strategy to meet its forecast operating performance ratio necessary to ensure its long term financial sustainability which does not involve seeking approval for rate increases.

I am concerned that by not adhering to the principles of sound financial management there are significant risks facing the council that are not being addressed.

4. IPART has determined that Council is 'Not Fit' following the Local Government *Fit for the Future* process. The further material provided by Council to the Office does not provide substantive evidence of strategies implemented since the IPART review to move the Council towards long term financial sustainability.

5. The Office of Local Government has assessed the Council's further submission against the IPART criteria and has determined that the Council remains 'Not Fit.' The reassessment process has identified that the financial sustainability ratios forecast in Councils FFTF reassessment submission (General Fund) do not align with the ratios forecast in Councils LTFP (Consolidated Fund).

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

1. That Council develop a Performance Improvement Plan that contains financial modelling and strategies which demonstrate:
 - a. how Council will achieve the five year forecast Operating Performance Ratio (OPR) set out in its reassessment proposal dated July 2016;
 - b. how Council will achieve the five year forecast Building Infrastructure Renewal Ratio (BIRR) set out in its reassessment proposal dated July 2016;
 - c. how the Special Rate Variation proposed in the reassessment proposal will enable Council to meet its forecast OPR and BIRR;
 - d. Council's timeframe for the preparation and submission of the Special Rate Variation application identified in its reassessment proposal dated July 2016; and
 - e. An alternate strategy to meet the forecast OPR and BIRR benchmarks included in the reassessment proposal should the Special Rate Variation not be approved.
2. The Performance Improvement Plan must:
 - a. Specify the steps Council will take to implement the strategies identified in the Performance Improvement Plan; and
 - b. Identify the person/s responsible for implementing each step/strategy.
3. If the Performance Improvement Plan is satisfactory to the Minister, the Council is to adopt the plan and commence its implementation.

Period for compliance with Order

[Date of service]

1. Compliance report 1: Council must provide the Minister with a written report on its compliance attaching the Performance Improvement Plan for approval within 5 weeks from the date of service.
2. Compliance report 2: Council must provide the Minister with a written report on its compliance with action 3 within 6 weeks of the Minister's approval of the plan.

Evidence to be provided with the compliance reports

Compliance report 1: A copy of Council's Performance Improvement Plan that is to be submitted to the Minister for approval.

Compliance report 2: A copy of Council's resolution adopting the plan.

Appendix C

Draft Performance Improvement Plan

ID	Project Actions and Tasks	Timeline	Status
1.0	Assess PIO	Dec-16	Completed
2.0	Develop and Submit Initial Performance Improvement Plan		
2.1	Review key documents	Dec-16	Completed
2.2	Develop base LTFP with some initial improvement strategies	Dec-16	Completed
2.3	Submission on the proposed Performance Improvement Order	Dec-16	Completed
2.4	Draft Performance Improvement Plan	Dec-16	Completed
3.0	Revised LTFP, Improvement strategies and FFTF benchmarks		
3.1	Develop revised LTFP including scenario's - Improvements v SRV	Feb-17	
3.2	Create an Improvement Plan with a range of strategies	Jan-17	
3.3	Council to evaluate actions to date as part of the improvement plan	Jan-17	
3.4	Incorporate improvements into revised LTFP	Jan-17	
4.0	Revised Asset Management Plan		
4.1	Asset valuation and useful life review	Feb-17	
4.2	Review asset conditions and depreciation costs	Jan-17	
4.3	Asset Management Maturity Assessment	Feb-17	
4.4	Draft Revised Asset Management Plan	Mar-17	
5.0	Financial Management Review		
5.1	Undertake Financial Management Maturity Assessment	Feb-17	
5.2	Develop Road map and specific actions for improvement	Mar-17	
6.0	Revised Reassessment Proposal for FFF		
6.1	Assess an incorporated revised LTFP forecasts	Mar-17	
6.2	Include documented Improvement strategies	Mar-17	

Draft Performance Improvement Plan

6.3	Document pathway to achieving FFF benchmark targets	Mar-17	
6.4	Council endorsement of revised proposal	Mar-17	
7.0	Implement and Monitor Improvements and Actions		
7.1	Implement Improvement strategies	Apr-17	Implementation commenced
7.2	Implement priority actions from Financial Management Assessment	Apr-17	Implementation commenced
7.3	Implement priority actions from Asset Management Assessment	Apr-17	Implementation commenced
8.0	Report Progress		
8.1	Progress reports to OLG	Feb-17	Initial report provided; Monthly reporting to OLG
8.2	Regular reports to Council and the community	Feb-17	Quarterly reports to Council and Community



Local Government Remuneration Tribunal

Lithgow City Council

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Ref: A3484434

Clr Maree Statham
Mayor
City of Lithgow Council
PO Box 19
LITHGOW NSW 2790

28 November 2016

Dear Mayor

I write to advise that the Local Government Remuneration Tribunal has commenced its review for the 2017 annual determination.

Pursuant to s. 241 of the *Local Government Act 1993* (LG Act), the Tribunal is required to make an annual determination, by no later than 1 May 2017, on the fees payable to Councillors and Mayors to take effect from 1 July 2017.

The Tribunal notes that the NSW Government has published proclamations under the LG Act to amalgamate a number of council areas and constitute a total of 20 new councils commencing from the date of publication on the NSW legislation website. The Tribunal's 2017 determination will place each of these 20 new councils into a new or existing category. The Tribunal notes that the 20 new councils are currently being run by an Administrator and an interim General Manager until council elections are held in September 2017.

A number of other merger proposals are on hold as a consequence of legal action taken by councils covered by these proposals. The Tribunal may also need to consider the categorisation of further new councils following the conclusion of legal action. Whether any further councils can be considered during the 2017 annual review will depend on the timing and outcomes of the legal process.

The Tribunal notes that the NSW Electoral Commissioner has advised that for any councils created after the end of November 2016, the earliest an election may be held is March 2018. If there is insufficient time for the Tribunal to consider the categorisation of further new councils for 2017, the Minister for Local Government may direct the Tribunal to make a special determination to address these matters prior to the making of the 2018 determination.

Categorisation

The Tribunal has examined the list of existing and new councils and intends to revise the existing categorisation model for the purposes of determining fees.

The proposed model provides for metropolitan and non-metropolitan councils to be categorised into different groups as follows:

- **Metropolitan**

Five metropolitan categories are proposed. The existing *Principal City* category is proposed to be retained for Sydney City Council and renamed Principal CBD. *Major City* is proposed to be abolished and a new category created for Parramatta City Council. The Tribunal's preliminary thinking is that this category will be titled Major CBD. The existing *Metropolitan Major*, *Metropolitan Centre* and *Metropolitan* categories will be retained for the new and remaining existing councils.

Category	Council	Criteria for inclusion
Principal CBD	Sydney	<i>To be defined</i>
Major CBD	Parramatta	<i>To be defined</i>
Metropolitan Major	<i>To be determined</i>	<i>To be defined</i>
Metropolitan Centre	<i>To be determined</i>	<i>To be defined</i>
Metropolitan	<i>To be determined</i>	<i>To be defined</i>

- **Non Metropolitan**

Four non metropolitan categories are proposed. A new *Regional City* category will be created for Newcastle and Wollongong City Councils. A new *Regional Strategic Centre* category will be created for Central Coast and Lake Macquarie Councils. The existing *Regional Rural* and *Rural* categories will be retained for other new and remaining councils.

Category	Council	Criteria for inclusion
Regional City	Newcastle Wollongong	<i>To be defined</i>
Regional Strategic Centre	Central Coast Lake Macquarie	<i>To be defined</i>
Regional Rural	<i>To be determined</i>	<i>To be defined</i>
Rural	<i>To be determined</i>	<i>To be defined</i>

- **County Councils**

The Tribunal does not intend to make any change to the categorisation of county councils and will retain the existing categories of Water and Other.

Criteria for Categorisation

The Tribunal is yet to finalise the criteria for classifying councils into the proposed metropolitan and non-metropolitan categories.

The Tribunal's 2009 annual determination outlines the characteristics for the existing categories. At this stage the Tribunal intends to adopt a similar approach and will determine descriptors for the proposed categories for the purposes of classifying councils into the categories. Population is likely to remain a determining factor for differentiating categories of councils. The Tribunal will also have regard to the matters prescribed in section 240 of the LG Act.

The Tribunal would welcome submissions from councils on the proposed classification model and the criteria to which the Tribunal should have regard to when determining the categories.

Submissions may also address the proposed titles of each of the categories and suggest alternative titles if appropriate.

The Tribunal would also welcome submissions from councils on the appropriate classification for their individual council.

Fees

The Tribunal will also determine the minimum and maximum fee levels for each category in the categorisation structure.

In accordance with s. 242A of the LG Act the Tribunal is required to apply the Government's public sector wages policy to the determination of ranges of fees for Councillors and Mayors. The public sector wages policy currently provides for a cap on increases of 2.5 per cent.

Section 242A of the LG Act was amended on 30 August 2016 to insert sub-sections (3) and (4), to clarify the intent of the impact of the wages policy on a determination which may change the category of a council. Those amendments make clear that the minimum and maximum fees applicable to the existing categories cannot be increased by more than 2.5 per cent. The Tribunal is however able to determine that a council can be placed in another category with a higher range of remuneration without breaching the government's wage policy. These changes provided the Tribunal with greater flexibility in reviewing fees for existing and new councils.

Any submission you wish to make in regard to the range of fees payable to each category should be made having regard to the Tribunal's obligations under section 242A of the LG Act.

Submissions

The Tribunal calls for submissions from individual councils in respect to the proposed categorisation structure and fees, as outlined above, and any general matters as part of this annual review.

It is important to note that the Tribunal has a limited period of time to undertake the annual review and the determination is required to be made before 1 May. For that reason any comments the Council may wish to make should be received by no later than 30 January 2017 and should be emailed to catherine.power@psc.nsw.gov.au.

Please note that any material provided to the Tribunal may be made available to any member of the public under the *Government Information (Public Access) Act 2009*.

As part of the annual review the Tribunal will seek to meet with Local Government NSW, as it does each year, to receive a sector wide view on the future direction for local government in NSW.

If you require any further information please email sarah.bradshaw@psc.nsw.gov.au or telephone on 02 9272 6006.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Lang', with a stylized flourish at the end.

Dr Robert Lang
Local Government Remuneration Tribunal