

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 this 6th day of February 2025


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 of councillors and council staff being exposed to psychosocial work health and safety risks. 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 this PIO to be issued 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 OLG from 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.

Some of Cr Thaler's social media posts are to the effect that other councillors are attempting to working together against him. This is also a demonstration of dysfunction affecting the Council, which this PIO can address.

Performance risk

While complaints against councillors 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 processes necessary for making appropriate referrals to the OLG. The ongoing diversion of resources to these issues poses a 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 taking action 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 repeated allegations of council misconduct, which have been reviewed by council staff and rejected, and then raised again. Council has been able to conduct its business, however the delays created by some councillors' conduct are not sustainable for the council to exercise its functions longer term. Some councillors are using what appear to be 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 Public Interest Disclosure (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	Councillor or Council Staff member

	and to create a hostile environment for the Mayor, Cr Hanna.	
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	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.	Councillor or Council Staff member and numerous community members

	The videos also contain content which is considered harassment of other Council staff, including calling the Mayor a 'dog arse c###'.	
21 October 2024	Cr Thaler posted written content on his social media page publicising the appointment of the acting CEO before council had issued a press release. This information was considered confidential until its formal release by council.	Councillor or Council Staff member and community member

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.

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 refrain from making or implying allegations of wrongdoing against any Council official, unless such allegations are made through the established processes for receiving such matters,
3. Councillors refrain from disclosing, or causing the release of confidential Council information to any public forum, including on any social media platform,
4. Councillors 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 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 or if no timeframe is specified, within 7 days of the date of service of this Order.

SCHEDULE 3

Councillor Undertaking

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

I will:

- a) 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) 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) 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) refrain from disclosing or causing the release of confidential Council information to any public forum, including on any social media platform.