

17 REPORTS FOR INFORMATION

17.1 Outstanding Questions with Notice Register - January 2025

Responsible Director: Office of the Chief Executive Officer

Report

Attached for Councillors' information is a list of the outstanding questions with notice as at January 2025.

Communication/Community Engagement

This report provides the community with the status and timeframes for a response to any outstanding questions with notice from Councillors from previous meetings.

Risk implication

This register provides tracking of responses to questions with notice submitted by Councillors to ensure that all questions are responded to, therefore removing the risk of a question being missed.

Attachments

- 1 Outstanding questions with notice - January 2025 [↓](#)



Outstanding Questions with Notice Register

24/084681

No	Details	Response actions
Questions with notice from the 18 June 2024 meeting		
19.1	<p>Cr Renkema-Lang - Forecast and actual cash receipts from sale of assets - 2023-2027</p> <p>Could Council please have a report detailing actual or forecast cash flows from investing activities covering financial years 2023-2027 that identifies:</p> <ul style="list-style-type: none"> (a) public land sales (b) redemption of term deposits (c) a year-by-year breakdown (d) totals for the 5-year period. <p>This report is requested to provide transparency and improve understanding of the extent to which Council has and will continue to be reliant on the sale of assets as progress is made along the improvement journey. This is consistent with Part A of the Performance Improvement Order – Council’s Financial Management, action (6) ‘...to break the practice of adopting a deficit budget without relying on property sales’.</p>	Response report to be provided to the February 2025 meeting.

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17.2 Response to Councillor Croxford's question with notice: financial mismanagement, project management failures and payout transparencyResponsible Director: Office of the Chief Executive Officer

Précis

At the 18 June 2024 ordinary Council meeting then Councillor, Mark Croxford asked a question with notice on the financial mismanagement, project management failures and payout transparency.

Responses to each of the questions are provided below. Responses have been kept brief as the public record on this matter is extensive.

Q1. Origins of financial mismanagement and project management failures:

The current body of council has inherited significant issues related to financial mismanagement and project management failures. Can the Chief Executive Officer confirm whether these issues originated in the 2016 - 2021 term of Council, or do they have roots in earlier terms of Council?

The previous term of Council certainly inherited some challenging matters to address. Those matters were documented and reported by the CEO (as per the requirements of the Local Government Act) to the NSW Office of Local Government (OLG) in late December 2021. At that time local government elections were being held and there was no Council body.

Therefore, in order to ensure governance and oversight the CEO convened a briefing on those matters with the Blue Haven Advisory Committee, the Audit, Risk and Improvement Committee (ARIC), and the Finance Advisory Committee and met with staff from the OLG. A draft report titled State of the Organisation was prepared which outlined the financial, governance and organisational challenges that were being experienced by Kiama Municipal Council (KMC).

Once the new Council was sworn in on 11 January 2022, a confidential briefing was provided to the new Councillors with senior staff from the Office of Local Government in attendance. At that briefing a draft copy of the State of the Organisation paper was circulated to Councillors for information. Councillors as part of their induction on 12 January 2022 participated in a workshop with the Chairs of ARIC, the Blue Haven Advisory Committee and the Finance Advisory Committee to discuss in more detail the State of the Organisation paper. Following that session, the draft was refined and presented publicly in a Council report to the 15 February 2022 ordinary meeting (resolution 22/023OC). All parties agreed that being open and transparent with the challenges being experienced by KMC would be in the public interest, and the report was made fully public.

In order to address the issues raised in the State of the Organisation report, Council then prepared its own Strategic Improvement Plan (SIP) making this document public at Council's Ordinary Meeting in April 2022. Monthly and bi-monthly updates were provided publicly on progress so the community and councillors could be informed.

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17.2 Response to Councillor Croxford's question with notice: financial mismanagement, project management failures and payout transparency (cont)

The State of the Organisation (SoO) report made it quite clear that some of the matters affecting KMC had existed for decades, so it is not reasonable to assume that all matters in their entirety originated in the 2016 – 2021 term, some occurred prior.

What is evident is that the costs of embarking on a major capital project such as Blue Haven Bonaira together with Council's lack of adequate operational planning for the Blue Haven project, and the business's insufficient and immature accounting / financial practices, meant that the Blue Haven project placed the financial solvency of the organisation at acute risk.

This situation gave rise to the Audit Office of NSW questioning and duly reporting to the OLG concerns about going concern status. Ultimately these concerns from the Audit Office were also tabled publicly on 24 August 2022 and resulted in qualifications and disclaimers of audit opinions. For the last three (3) years the organisation has worked tirelessly to address and remove these issues. In positive news all disclaimers and qualifications on audit opinions were lifted late 2024 by the Audit Office of NSW. This information was also shared publicly.

The going concern issue and other matters outlined in the State of the Organisation and SIP reports also resulted in KMC being issued a State Government imposed Performance Improvement Order (PIO) on 8 November 2022 by former Minister for Local Government Wendy Tuckerman. The PIO was subsequently reviewed and varied by the current Minister for Local Government Ron Hoenig on 23 May 2024. The PIO is a public document, all reports related to it are fully public and able to be reviewed.

Minister Hoenig commissioned a report prepared by Mr John Rayner to review the status of KMC. This too is a public document and provides a brief and insightful body of information on the challenges faced by KMC and the Blue Haven build / cost situation. This Rayner report, copy of the PIO and the adopted Strategic Governance and Finance Improvement Plan were sent to all Councillor candidates for this current term (2024-28) and was noted in the induction processes. Importantly the varied PIO binds this Council as well.

Q2. Project management and Blue Haven Bonaira costs:

Why did the Council fail to adequately project manage or seek reports on key projects, including but not limited to the Blue Haven Bonaira project, across multiple terms? Specifically, why were the following aspects not adequately addressed:

- *Operational costs of the facilities*
- *Variances to budget*
- *Defects reporting*
- *Completion reports*

The Blue Haven Bonaira project, in particular, incurred substantial costs not fully covered by available funding, leading to significant budget overruns. What steps were missed in the project management process that contributed to these issues?

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- 17.2 Response to Councillor Croxford's question with notice: financial mismanagement, project management failures and payout transparency (cont)

Can the Chief Executive Officer provide an account of the Blue Haven Bonaira construction project costs and explain why the council did not adequately manage and report on these costs?

This question has been answered extensively in prior reports to the previous Council (and current) including the following:

- Report to the 12 May 2022 extraordinary meeting (item 4.1)
- Report to the 18 July 2023 ordinary meeting (item 13.4)
- Report to the 13 February 2024 ordinary meeting (item 17.3)
- Supplementary report to the 1 February 2024 extraordinary meeting.

The Rayner report adequately summarises this information utilising all sources of publicly available information. The public record clearly attests to costs and project management immaturity of the organisation at the time of the Blue Haven Bonaira build and the effect this has had on the operating position of the organisation.

It is a matter of public record and already published fact that:

- no operational or strategic plan was developed for the project or facility
- no clear strategies for the repayment of the TCorp loan and replenishment of significant internal cash reserves had been documented, or developed or endorsed by council
- the original feasibility plan lacked extensive detail on alternative options (with the main attention based on a 134 bed model)
- inadequate reporting to Council on project variation costs occurred
- operational funds were used to fund capital shortfalls without any strategies or ability to repay or replenish operational cash flow and without correct approval processes from Council reporting
- project management practices were of concern and lacked structure and due process
- Council's financial records did not adequately show or separate the accounting ledgers for Blue Haven and KMC.

All of the above was well reported publicly and regularly discussed with the previous Council and the OLG.

Q 3. Transparency, justification and overturning confidentiality agreements for payouts:

Why have the significant payouts to executive directors and the then General Manager, which occurred during the period 2018 to 2021, not been made public?

Can the Chief Executive Officer provide details for these substantial payouts, including the rationale behind these payments and the approval process followed?

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- 17.2 Response to Councillor Croxford's question with notice: financial mismanagement, project management failures and payout transparency (cont)

Considering the substantial financial impact of these payouts on the Council's cash flow, can the Council review and potentially overturn any confidentiality agreements related to these payouts to enhance transparency and accountability? How does the Council plan to address the community's concerns about the lack of transparency regarding these payouts and ensure that similar situations are handled more openly in Page 3 in the future?

The Forsyths report which was adopted in confidential session in May 2022 outlined a concern with contract payouts sign off / process for the former General Manager and the lack of Elected Body delegation, documentation and decision-making processes. The need to improve this aspect was made public in the SIP 1 and 2 (publicly available) and an internal procedure for administration was implemented in direct response. Likewise, in direct response to this, the CEO Performance Review Committee was established and adopted in February 2022 and again in 2024 in accordance with State regulations issued by the OLG.

Under section 338 of the Local Government Act 1993, general managers of councils and executive officers of joint organisations must be employed under an employment contract based on a standard contract approved by the departmental chief executive of the Office of Local Government. This is a public document on the OLG website titled "Standard contracts of employment for general managers". Section 11 clearly outlines relevant termination clauses.

Confidentiality and nondisclosure agreements at the time of termination are legally binding documents and cannot be made public without consequences for both parties (including KMC). In the former General Managers instance an agreement was executed and signed by relevant parties and therefore must be maintained as confidential. It is therefore simply not possible for the current CEO to make this information public, and the Councillor was aware of this at the time of lodging this question with notice. To do so would expose KMC to contract breaches and potential risks attached to defamation.

Information on salaries or severance pay for Senior staff in Local Government is governed by the Local Government Act 1993 and the Annual Report must account for these. The figures associated and brief rationale were provided in the 2020-21 Annual Report on page 55, again a public document which the previous Council endorsed.

Other executive payouts related to that period of time are not known to the CEO, was not identified as an issue in the Forsyth's work and that question is unable to be answered.

Q 4. Informed decision-making:

Were the elected members of the Council, whether from the 2016-2021 term or earlier, adequately advised by the General Manager and Executive Leadership Team of Council of the specifics of 'Project Management and Blue Haven Bonaira Costs' and 'Transparency, Justification, and Overturning Confidentiality Agreements for Payouts' details in either public or confidential sessions of ordinary and extraordinary meetings of Council to allow them to make informed decisions? If not, why was this critical information withheld?

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17.2 Response to Councillor Croxford's question with notice: financial mismanagement, project management failures and payout transparency (cont)

This question is repetitious and has already been answered above. Nonetheless, it is worth noting that in June 2022 Council resolved to release publicly all available information on the Blue Haven Bonaira build and its origins at the Ordinary meeting. All of this material is readily accessible to any member of the public on Council's website.

As previously noted above, the facts and the known circumstances are noted in the State of the Organisation Report, SIP 1, SIP 2 and the current Strategic Governance and Finance Improvement Plan. Ultimately an elected body makes decisions on the information at hand, available at a particular point in time.

It is impossible and not appropriate for the current CEO to speculate on whether critical information was deliberately withheld by any previous member of staff. The CEO can only look at the prior public record and the set of circumstances that exist on the day their tenure commences and then take positive corrective action to address any deficits in processes, procedures, policies or practices within the allocated resources of the day.

To speculate on intentions of prior general managers is simply not appropriate and may bring the organisation into disrepute. As stated on many occasions verbally and in public documents, much good work has been done in past by many former and current staff, and Elected Representatives. Many past staff and Elected Representatives are much loved, respected and valued residents of the community who worked tirelessly for their community and performed their duties exceptionally well. Their efforts are to be commended and appreciated.

The CEO and Executive have remained focused on ensuring previous term and current Councillors have been provided with information, quality financial reporting and clear plans for addressing matters in the PIO or the Strategic Governance and Finance Improvement Plan. This effort must remain the core focus of this current Council. Financial sustainability and lifting the PIO must be the core focus and all effort and attention must remain on forward momentum for the business.

Q 5. Accountability for financial mismanagement and maladministration of operational issues:

What actions have been or can be taken against those identified as responsible for the financial mismanagement and maladministration of operational issues inherited at the beginning of this Council term?

Specifically, what measures, including disciplinary actions, sanctions, terminations, or legal proceedings, have been implemented or considered? If no actions have been taken, please explain why not.

As previously noted, the CEO has met the fiduciary and statutory responsibilities associated with the role and as required by legislation, reported maladministration to the OLG in December 2021. Likewise, Council resolved to self-report to the Independent Commission Against Corruption (ICAC) on 20 September 2022 and this was dutifully actioned. Correspondence from ICAC in relation to the November 2022 self-referral noted no investigations would be undertaken. Refer to the Information report from the 18 April 2023.

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Local Government is an instrument of the State Government and accordingly the process for oversight is handled by the Minister for Local Government and their appointed Office bearers / senior staff of the Office of Local Government. It is a fact that the PIO was issued on KMC and varied (by two Ministers) in direct response to many of the matters previously publicly reported.

PIO's are serious State Government interventions issued after investigation / reviews processes and require extensive work and regular reporting. Every action possible continues to be taken to address the PIO as finances and resources allow and the CEO regularly reports to the OLG on progress and completes compliance reports.

ICAC legislation and role is important to understand in relation to this question. The CEO took the required legislative reporting steps for disclosure and has continued to focus on the improvement of the business.

Q 6. Release of Forsyths Report:

What would need to be done to publicly release the full details of the Forsyths Report? Can the Chief Executive Officer provide an outline of the necessary steps and any potential legal or procedural obstacles to making the full report available to the public?

The executive summary of the Forsyths Report was made public in a subsequent report tabled and adopted by Council in July 2023. As much information as can be made public has already been released.

In July 2022, a GIPA Application was lodged for release of the Forsyths Report. In September 2022, following third party consultation and balancing of the public interest test, Council staff refused the application on the grounds that it was not in the public interest to release the document. An application for review of Council's decision was subsequently lodged with the Information and Privacy Commission NSW (IPC). The IPC recommended that Council make a new decision.

In January 2023, following review of the original decision, a new decision was made and again, access to the Forsyths Report was again refused pursuant to various considerations of the GIPA Act 2009.

The Council resolved to undertake a forensic audit assessment report. Following completion of the report, it was lodged with the NSW Audit Office to be reported to Parliament, the OLG, ICAC and NSW T-Corp. As the NSW Audit Office held a stake in the process it was not able to be released without their explicit consent. The Forsyths Report is an assessment that was conducted on behalf of Council and its release would prejudice the conduct, effectiveness and integrity of the audit that was conducted.

The report contains information that relates to the 'investigative, audit and reporting functions' of the Audit Office which is considered to be excluded information under the GIPA Act. The objector (the Audit Office) did not provide consent to disclose the information. These reasons for refusal were supported by the IPC decision.