Item 19.1

19 NOTICE OF MOTION

19.1 Notice of motion: Councillor Cains - Clarification from Minister regarding budget requirements

Clr Mike Cains has submitted the following Notice of Motion for consideration:

MOTION

That Council:

1. Write to the NSW Minister for Local Government (Hon. Ron Hoenig MP) seeking formal written clarification regarding the financial management expectations for Kiama Municipal Council (KMC), specifically:
   (a) Whether a failure by KMC to project a balanced budget in the 2026/2027 financial year would trigger the appointment of an administrator;
   (b) Whether short-term deficit budgeting, if presented alongside a long-term financial sustainability strategy, is considered acceptable; and
   (c) The extent to which KMC is expected to balance immediate fiscal constraints against maintaining essential services, community infrastructure, and economic activity.

And

2. Request that the Minister urgently provide any relevant policy documents, guidelines, or precedents that inform such decisions so that this matter can be considered ahead of our May meeting on 19 May 2026.

Signed Councillor Mike Cains

Councillor information provided

<u>What is the purpose of the motion?</u>

To seek clarification from the Minister so that Council can be better informed in relation to whether it is necessary or alternatively how hard we need to cut community services to avoid administration. Whether it is essential to budget for a neutral or surplus budget as an essential non-negotiable trigger to avoid administration.

<u>Background to the motion</u>

Council has recently been presented with the assertion that failure to project a balanced budget in 2026/2027 may result in the appointment of an administrator. This assertion has materially influenced current budget deliberations toward an austerity-based approach.

Given the significant implications for service delivery, community outcomes, and long-term financial strategy, it is prudent that Council seeks direct confirmation from the Minister to ensure decisions are based on explicit policy requirements rather than assumptions or interpretations.

Clarity on this matter will allow Council to balance fiscal responsibility with its broader obligations to the community in a transparent and evidence-based manner

Source of funding

Not stated.

Chief Executive Officer response

In responding to this notice of motion, it is necessary to establish the following facts:

- At no time in the past three years since the Performance Improvement Order (PIO) was first issued have staff acted on assumptions nor interpretations, staff have acted on the instructions in the orders. At all times staff have followed the *Local Government Act 1993* (the Act) and the orders.
- The Minister's powers are defined by legislation in relevant sections contained within Section 438A of the Act and *the Local Government (General) Regulation 2021* (the Regulation).
- A PIO can be used to require a council, or individual councillors, or both, to improve the council's performance, within a specified time.
- The Office of Local Government re-issued the "Performance and Suspension Procedural Framework" document in January 2024 which provides information on the processes for issuing orders, monitoring compliance, and for taking further action in the case of noncompliance.

Councils are responsible for their own performance. Where councils are not performing satisfactorily, the Minister for Local Government (the Minister) and the Office of Local Government (OLG) encourage and support councils to voluntarily take actions to improve. Where this fails, performance improvement, compliance, and suspension orders may be used to ensure councils and individual councillors take the actions required to address the performance issues identified. Interim administrators, temporary advisers and financial controllers can be appointed to assist a council.

The decision regarding what action should be taken will be based on the nature and seriousness of the performance issue and the response of the council. Section 438A of the Act provides that a performance improvement order may be issued if the Minister or their delegate "reasonably considers" action must be taken to improve the performance of the council. The issues or conduct in question should be sufficiently serious to warrant the order.

Section 413D of the Regulation stipulates the criteria that must be considered before issuing a PIO. Examples of where a PIO may be issued include:

- a council has consistently failed to implement required legislation or consider mandatory guidelines such as those related to Integrated Planning and Reporting.
- a council has failed to heed advice from the OLG and/or declined offers of assistance.
- the conduct of an individual or a group of councillors is having an adverse impact on the council's performance and/or is disrupting the ability of the council to function.
- a council has failed to follow proper process in making a decision that will impose significant costs on the community.
- a council has immediate and ongoing financial sustainability issues.
- a council has failed to address an auditor's concerns.
- a council is not following the required processes to appoint or manage its general manager.

In the case of Kiama Municipal Council (KMC), in December 2021 the CEO self-reported to the OLG, Minister and relevant State agency a range of concerns relating to maladministration, governance and financial sustainability. The CEO released this information publicly in a document titled "State of the Organisation" in February 2022, after a briefing had occurred on 11 January 2022 with the newly elected Councillors for that term and the Office of Local Government.

In 2022 the NSW Audit Office issued a letter to Council with going concern issues, and financial sustainability concerns. This led to qualifications and disclaimers of opinion over KMC's financial accounts. See separate report on this matter in reply to Cr Erica Warren.

It is a matter of fact and public record that KMC was issued a PIO by the Liberal Government Minister for Local Government Wendy Tuckerman, and a financial advisor appointed for a period of 7 months. Likewise, it is also fact the incoming Labor Government Minister Ron Hoenig issued a varied PIO consisting of three actionable parts: A, B and C. Minister Hoenig appointed an independent reviewer to assess Council, Mr John Rayner, and his report and findings were subsequently made public and used as the basis for the Ministerial exercise of power to vary the PIO. This information is readily obtainable and available online.

The Order, amongst other things, requires KMC to:

- Regularly and continuously review Council's financial situation with a view to becoming financially sustainable by 2026/27
- Update the Finance and Governance Improvement Plan to set out the actions Council will take over the next two budgets (FY 24/25 and FY 25/26) to break the practice of adopting deficit operating budgets without relying on property sales
- Update the Finance and Governance Improvement Plan to include a three-year financial strategy which will culminate in Council increasing its unrestricted cash balance to a sustainable level by FY 2026/27

The Act makes it clear, as does the supporting OLG 'Performance and Suspension Orders Procedural Framework' document, that there are other actions available to the Minister and the OLG if a council fails to comply with a PIO. Suspension of the elected council and/or a public inquiry will generally be considered as next steps. This notice of motion asserts "*Council has recently been presented with the assertion that failure to project a balanced budget in 2026/2027 may result in the appointment of an administrator".* This statement is incorrect.

Councillors were not "recently" presented with the facts concerning Section 430 or the powers of the Minister in relation to administrators and improvements. This information has been known by this body of elected representatives and the previous elected body since the orders were issued.

The following is noted:

- All Councillor candidates this term, as part of the 2024 election, were sent copies of the Rayner report, the State Government-issued PIO and the audit report.
- Once sworn in all Councillors were briefed by the OLG Deputy Secretary on 11 October 2024 on the PIO and the Strategic Finance and Governance Plan.
- As part of the induction in 2024, all Councillors were provided, through Objective Connect, the Rayner report, the PIO issued on 8 November 2022 and the variation issued on 23 May 2024, the Strategic Finance and Government Plan, the Todd Hopwood Review of Governance Report, the Forsyths forensic accounting assessment, and the Strategic Improvement Plan.
- All Councillors were provided a detailed briefing by the Finance Advisory Committee on 20 November 2024.
- The PIO is reported to Councillors on a bi-monthly basis in the business papers (full public document) basis through updates on the Strategic Finance and Governance Improvement Plan since December 2024 providing regular information of the PIO and the tasks being completed.
- All Councillors were invited to attend a workshop (briefing session as they were previously known) on the PIO on 12 August 2025.
- All Councillors were invited to attend a workshop on budget parameters on 5 March 2026.
- All Councillors were given access to all relevant documents re the budget parameters via the councillor portal.
- All Councillors were invited to attend a Major Projects and Finance Committee workshop on budget parameters on 31 March 2026.

Whether or not the Minister for Local Government chooses to appoint an administrator is a matter for the Minister and not for Council to speculate on. It is a fact that administrators, financial controllers or varied orders are all within the Minister's powers to enact. Pages 12 and 13 of the OLG 'Performance and Suspension Orders Procedural Framework' outline this explicitly:

"The Minister and/or OLG may undertake or recommend other appropriate intervention strategies if a council fails to comply with a performance improvement order. These options may include, but are not limited to:

- *issuing a variation to the order;*
- *preparation of a departmental report in relation to alleged non-compliance by an individual councillor;*
- *ordering a temporary suspension period and appointment of an interim administrator;*
- *instigating a section 430 investigation;*
- *recommending a section 438U public inquiry be convened."*

https://www.olg.nsw.gov.au/sites/default/files/2026-03/performance-and-suspension-orders-procedural-framework.pdf

Should Council choose to write to the Minister, staff will endeavor to action this. However, it is not considered necessary to write to the Minister to understand the need to comply with a Minsiterial Order or to clarify actions, as the PIO is quite clear in its expectations, and staff are aware of the legislative requirements for compliance. The PIO is not considered ambiguous in its terminology and does not use the phrasing such as "working towards". The PIO simply lays out the required timeframes and the expectations that KMC is to meet, alongside a range of tasks and action items.

Recommendation 1(b) of this notice of motion, as currently written, would not be able to be voted on as it would be in direct opposition to the PIO requirement to break the practice of deficit budgeting. This recommendation should be reworded prior to Councillors voting on it.

Pleasingly, since 2024, KMC has significantly improved its operating results from a deficit of $26.6M in FY2023/24 to a projected deficit of $4.5M in FY 2025/26, divested its Blue Haven Bonaira asset, delivered unmodified audit opinion on its 2024/25 Financial Statement and completed 57 of the 64 actions contained in the adopted Strategic Finance and Governance Improvement Order. As well as paid back $60 million in debt and refined operational expenditure year upon year, using data driven decision in service reviews to yield efficiencies.

At their extraordinary April 2026 meeting, Council adopted budget parameters which would result in a break-even budget. However, these parameters require the cessation of discretionary services in order to reach a balanced budget. Understandably, these parameters have garnered significant community, union and political interests.

KMC is committed to ensuring it is financially sustainable. However, requiring the adoption of a balanced budget by FY 2026/27 has significant ramifications for the Kiama community. Actions undertaken to secure KMC's financial sustainability are yet to come to fruition.

The Federal Government's House of Representatives' Standing Committee on Regional Development, Infrastructure and Transport have tabled an 'Interim report into local government sustainability'. The Standing Committee commented that the role of local governments in Australia has changed significantly over time and that Councils must balance their budgets while maintaining service delivery and investing in infrastructure.

The Interim Report notes that local governments are being increasingly relied upon to deliver services and infrastructure which were traditionally under the purview of the Commonwealth, state and territory governments. The Report also notes that rate pegging in NSW and Victoria restricts the amount councils can raise rates annually.

In line with this Report, KMC's ability to increase revenue, particularly in the short-term, has been restricted by rate pegging. Despite this, to date, KMC has reduced its operating budget while maintaining service delivery. Adopting a break-even budget for FY 2026/27 does however force a result in losses to service delivery.

The public record tracks all the improvements and work KMC has instigated to improve its operating result and ratios for performance. It is hoped the Minister considers these achievements prior to varying or taking further interventions, should they be required. Staff are doing everything they can to ensure the PIO is complied with and lifted. The CEO and Acting Mayor personally met with the OLG the week prior to the extraordinary to discuss the impacts of meeting a balanced budget and the PIO requirements. The CEO is also collaborating with the United Services Union to seek a meeting with the Minister to discuss all options.

All local governments in Australia are an instrument of the State Government, as local government is not referenced in the Australian Constitution. Local government and its elected officials must comply with the Act at all times and adhere to the governing State's rules, laws and orders if made in accordance with the legislation. Choosing not to comply is not an option that legislation allows for.

All local governments in NSW are required to meet the State ratios for performance. KMC reports on our progress against these on a quarterly basis to Council. The Auditor General's most recent report to parliament (tabled 28 January 2026) noted the following concerning KMC in relation to financial sustainability risks due to ongoing operating losses or other indicators:

> *Cash balance impacted by repayment of borrowings during 2024–25 and ongoing losses from one aged-care facility, which was subsequently sold during 2024–25.*

Financial sustainability has long been an issue affecting all local governments across Australia. In recent years, Council has made submission to State and Federal Government Inquiries into rate pegging methodologies, financial sustainability and grants. KMC's (and many other LG's) ability to meet performance ratios for financial sustainability is made more complex by accounting standards inclusions for depreciation and treatment/timing of capital grants in annual accounts. KMC, like many in the sector, struggles to meet performance ratios and to provide all manner of services to the community due to:

- limited rate base (revenue) and low growth rate,

- historic over-investment in aged care services and annual losses in operating performance,
- capital construction costs blowing out at Blue Haven Boniara, which were funded by operational budgets.

Today, the challenge is made all the more complex by the completion of the PIO action item in Part B 1 dot point 3 "*completing and making public a dilapidation/building report for Terralong and Havilah*". The report which was released at the extraordinary meeting earlier this month shows costs in the order of $51.2M, and may yet be higher once analysis on omissions, criticality and project delivery costs are known.

As the public servant who disclosed this situation to the State Government and managed the process of navigating the first PIO and the varied PIO, and who has worked with three elected bodies to address this complex and challenging matter of financial sustainability, I take seriously my obligations to act on the State orders and adhere to the Local Government Act while balancing the demands for services and the rising costs associated with such. I have deep empathy for the organisation and staff I lead, the community and its Elected Representatives in meeting the PIO and the enduring need to live within our means.

I care immensely for my staff and am extremely proud of their work. The reality of removing positions and/or functions to balance the budget is an impossibly hard choice. But this fact does not negate the other simple fact that the Act and the PIO are clear in their requirement to break the practice of a deficit budget, achieve a balanced budget, and to be a financially sustainable local government, albeit within the timeframe (2026-27) set out in the improvement order.

I continue to strive to find any solution possible, but it is not my professional advice that Council writing to the NSW Minister of Local Government to seek clarity on the PIO wording is necessary. The instruments, legislation, procedures and orders KMC have and are familiar with, are clear in their intent and requirements.

19.2 Notice of motion: Councillor Tatrai - World Fuel Crises and its impact on waste management

Clr Yasmin Tatrai has submitted the following Notice of Motion for Council's consideration:

MOTION

That Council retains its existing waste management services without changes, pending thorough review after the recent world fuel crises.

Signed Councillor Yasmin Tatrai

Councillor information provided

What is the purpose of the motion?

The purpose of this motion is to ensure that the council does not put itself in a position where waste management becomes even more expensive under an external provider.

Transitioning to an external service can lead to several potential cost increases:

- Higher Service Fees:
  External providers often charge premium rates, leading to inflated waste management costs with hidden charges for additional services or penalties for exceeding waste limits.
- Lack of Accountability:
  Outsourcing may reduce the council's ability to hold the provider accountable for service quality and cost management, potentially leading to inefficiencies and increased expenses.
- Reduced Flexibility:
  External contracts may limit the council's ability to adapt services based on community needs, resulting in unnecessary expenditures if the providers services do not align with local demands.
- Increased Disposal Costs: External providers may not prioritise recycling and waste diversion as effectively as local councils, leading to higher disposal costs due to increased landfill use.
- Transition and contracting costs:
  Switching to an external provider involves initial costs for contract negotiation and service transition, which can quickly accumulate and negate any perceived savings.

Background to the motion

Economic Context

The review of waste management services was conducted prior to the world fuel crisis which has led to increased operational costs across various sectors. In light of these changes, it is essential to prioritise cost cutting measures.

Kiama Council's Situation: KMC is currently under a Performance Improvement Order (PIO), which mandates strict cost cutting measures. This necessitates careful financial management, making it critical to avoid additional expenses associated with outsourcing waste management.

PREVIOUS WASTE SERVICE REVIEW: The review of waste management was conducted prior to the world fuel crisis, which has since highlighted the need for KMC to maintain independence in it's operations. This independence is crucial for ensuring responsiveness to community needs and financial stability.

COST BENEFITS OF LOCAL CONTROL - Managing waste services in house can lead to a 10-15% reduction in costs compared to outsourcing (Local Government Association), while also enhancing responsiveness to community needs.

Data Supporting Cost Savings: Councils with direct waste management services often achieve higher recycling rates, leading to lower disposal costs (Environment Protection Agency).

Recent examples of increased costs:

1. Bega Valley Shire Council: reported a 20% rise in waste processing fees in 2025 forcing budget adjustments
2. Wollongong City Council: Reported a 15% increase in waste management costs due to rising disposal and operation fees leading to potential garbage collection fee hikes.
3. Central Coast Council: faced a 25% cost increase after switching to contractors, driven by higher operational and transport costs. The changed to external providers in an effort to improve efficiency and service delivery. However, the transition has faced challenges, including a significant increase in costs - reportedly around 25% after the switch.
4. Newcastle City Council: Costs increased by 18% in 2025

In light of the increasing costs and challenges associated with outsourced waste management services, it's clear that maintaining local control offers significant advantages. The experiences of councils like Wollongong, Central Coast, and Blacktown who reported a staggering 30% increase in waste management costs illustrate the financial pressures that can arise from outsourcing, including rising service fees and accountability issues.

In the current climate retaining inhouse waste management, can ensure cost savings and enhance service quality and respond more effectively to community needs. It is vital council doesn't enter into new business processes until we are certain of their sustainability.

Further to the above, not transitioning to outsource waste management will retain jobs for locals.

Source of funding

Existing 2025-26 budget/staff time as part of developing the 2026-27 budget.

Chief Executive Officer response

Council commenced a review of the Domestic Waste Management (DWM) service in June 2025 as part of the rolling program of service reviews under the Continuous Improvement Framework. The purpose of the review was to assess service delivery, financial sustainability and run optimisation.

Councillors were briefed on the outcomes of the service review on Tuesday 12 August 2025.

The final report was tabled at the 16 September 2025 Council meeting as a confidential information report. In the report, two strategic recommendations emerged from the review which were:

1. Change the yellow bin collection from weekly to fortnightly;
2. Move to end accepting waste material at Minnamurra and look for alternate service provision.

A subsequent business case and report for each recommendation was endorsed at the 18 November 2025 Council meeting and is currently being implemented via extensive community consultation and internal restructuring of services utilising existing council staff.

As part of the service review it was noted that the current costs for Council to deliver domestic waste management were well above the benchmarked rates from commercial operators and local government best practice, based on a $ per bin lift rate. Council’s costs generally reflect the following factors:

- Size of the council, smaller councils will pay a higher price for the service.
- Level of competition for the service, higher competition delivers a lower price.
- Mix of bins, more smaller bins results in a slightly lower rate.
- Low proportion of Multi Unit Dwellings, as higher density of bins generates a lower price.
- Inefficient / unbalanced zone collections.
- Rural (remote) bin collections, inefficient use of resources;

In addition to the two strategic recommendations above, the service review also identified a number of areas for operational improvements in terms of plant replacements, disposal locations, bin types and frequencies, run program optimisation, cost containment strategies and infrastructure compatibility. These operational improvements to the Council run waste collection service are forecast to reduce the $ per bin lift rate to within the Local Government Best Practice rates and comparable to Commercial rates.

The service review also recommended that following the implementation of the above, further price benchmarking and service model testing are undertaken to ensure that cost efficiency gains have been realised.

At the extraordinary Council meeting on 7 April 2026, the report Item 8.1) *Parameters for 2026-27 Budget and Long-Term Financial Plan*, contained the following endorsed recommendation:

> *4(c) Undertake market tendering in line with Section 173 'changes to the Local Government (General) Regulation 2021' for the purposes of comparing internal versus external waste management options.*

It should be noted that the wording in 4(c) is in error, with the word '*tendering'* should have been listed as *'testing'* which is proposed to be fixed in the draft budget report in this business paper. The intent is for Council to undertake market testing of domestic waste collections with other local councils to determine their costs, after which the outcomes will be evaluated to compare and contrast KMC's costs versus others.