



Tasmanian
Audit Office



**Report of the Auditor-General
No. 3 of 2023-2024**

Private works undertaken by councils

21 May 2024

Our Role

The Auditor-General and Tasmanian Audit Office are established under the *Audit Act 2008* and *State Service Act 2000*, respectively. Our role is to provide assurance to Parliament and the Tasmanian community about the performance of public sector entities. We achieve this by auditing financial statements of public sector entities and by conducting audits, examinations and investigations on:

- how effective, efficient, and economical public sector entity activities, programs and services are
- how public sector entities manage resources
- how public sector entities can improve their management practices and systems
- whether public sector entities comply with legislation and other requirements.

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In recognition of the deep history and culture of Tasmania, we acknowledge and pay respect to Tasmanian Aboriginal people, the past and present custodians of this island. We respect Tasmanian Aboriginal people, their culture and their rights as the first peoples of this land. We recognise and value Aboriginal histories, knowledge and lived experiences and commit to being culturally inclusive and respectful in our working relationships.



2024
PARLIAMENT OF TASMANIA

Private works undertaken by councils

21 May 2024

Presented to both Houses of Parliament pursuant to
Section 30(1) of the *Audit Act 2008*

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21 May 2024

President, Legislative Council
Speaker, House of Assembly
Parliament House
HOBART TAS 7000

Dear President, Speaker

Report of the Auditor-General No. 3 of 2023-24 – Private works undertaken by councils

This report has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*. The objective of the review was to form a limited assurance conclusion on the effectiveness of councils' management of private works.

Yours sincerely

Martin Thompson
Auditor-General

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Table of contents

Foreword	1
Independent assurance report	3
Executive summary	7
Summary of findings	7
Recommendations	9
Submissions and comments received	9
1. Introduction	15
Context	15
2. Private works policies and processes	18
Chapter summary	18
Councils had largely not established policies to support private works	19
Councils had largely not established effective decision-making processes to manage private works	23
Councils had established, but not fully complied with, dispute resolution processes	25
Councils had established, but not fully complied with, conflict of interest processes	27
3. Compliance with the <i>Local Government Act 1993</i> and the National Competition Policy	31
Chapter summary	31
Councils had not established or consistently applied fee schedules	32
Councils had not considered the Competitive Neutrality Policy	36
Acronyms and abbreviations	41

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Foreword

Councils enable the economic, social and cultural development of municipal areas by providing a range of services. Most of these are core services provided in accordance with legislative requirements, such as planning and waste management services. Some councils provide other services to individuals, community organisations and government entities, at their request. The supply of services and works to external parties at their request is referred to as 'private works.' These occur under section 205 of the *Local Government Act 1993* and can include services to council employees and councillors.

Historically, there has been little transparency on how these services are managed, which could increase the perceived or actual risk of mismanagement and fraud.

In 2018-19, the Integrity Commission considered allegations regarding a council general manager's misuse of public resources for personal gain arising from private works (Investigation Weld). Whilst the Integrity Commission found the general manager had followed correct procedures in all instances, it referred process-related issues to me for examination to increase transparency and accountability for managing private works.¹ In November 2019, the Local Government Inspectorate in Victoria also investigated alleged offences and breaches arising from private works being conducted by staff for cash or in-kind payments.²

Private works undertaken by a council may also have an impact on private contractors and local businesses who may be providing or looking to provide similar services.

As such, the objective of this review was to form a limited assurance conclusion on the effectiveness of councils' management of private works, and to promote transparency and consistency across the local government sector.

In evaluating and examining the management of private works, this report provides information to councils on risks and best practice for the management of private works, and recommendations to increase transparency, compliance, and good governance.

I thank the councils involved, and the Local Government Association of Tasmania, for their cooperation throughout the review.

Martin Thompson

Auditor-General

21 May 2024

¹ IC (Integrity Commission) (2023), [Annual Report 2018-19](https://www.integrity.tas.gov.au/__data/assets/pdf_file/0006/546738/Integrity-Commission-Annual-Report-2018-19.pdf), p62, IC, accessed 1 November 2023.

² LGI (Local Government Inspectorate) (2019), [Protecting Integrity: Yarriambiack Shire Council Investigation](#), LGI, accessed September 2023.

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Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my review of the effectiveness of councils' management of private works.

Review objective

The objective of the review was to form a limited assurance conclusion on the effectiveness of councils' management of private works.

Review scope

The review examined all 29 councils to determine whether their private works processes were transparent and consistent, and whether their charges for private works complied with relevant legislative requirements. The review examined:

- policies and procedures related to the management of private works
- documentation related to private works undertaken in 2021-22
- financial information related to private works undertaken in 2021-22.

Section 21 of the *Local Government Act 1993* establishes council's enterprise power, including the authority to form or participate in corporations, trusts, partnerships or other bodies.³ These were not considered in this review, which was restricted to private works and activities under section 205 of the Act.

Review approach

The review was conducted in accordance the Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements* issued by the Australian Auditing and Assurance Standards Board, for the purpose of expressing a limited assurance opinion. In accordance with the standard, the approach was adapted and supplemented as necessary in the engagement circumstances.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement. Consequently, the level of assurance is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed.

I decided to take a limited assurance approach due to the low financial materiality and limited examples of private works in some councils. This approach provides transparency of councils' processes to manage private works, while identifying areas for improvements.

³ Tasmanian Government (2023), [Local Government Act 1993](#), Tasmanian Government, accessed 30 October 2023.

The review evaluated the following criteria:

1. Are private works processes transparent and consistent?
 - Have councils established policies and/or practices to manage private works?
 - Are decisions to undertake private works consistent and/or compliant with policies and procedures?
 - Is a dispute resolution process in place?
 - Do councils manage conflicts of interest in relation to private works?
2. Were councils' private works fees and processes compliant with relevant legislative requirements?
 - Have councils established transparent fees and charges schedules?
 - Have councils complied with the National Competition Policy?

I conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances. Evidence for the review was obtained primarily through discussions with relevant personnel and examining collaborative documentation. Observations and findings were based on information and evidence obtained primarily through:

- discussions with relevant personnel involved in the administration and delivery of private works, and examining corroborative documentation
- analysing information from councils' financial systems
- reviewing policies, procedures and documentation related to private works.

Responsibility of management

Local government councils are responsible for managing private works in accordance with requirements under the *Local Government Act 1993*. Councils are also required to operate in accordance with Department of Treasury and Finance guidance on the application of the National Competition Policy.

Responsibility of the Auditor-General

My responsibility was to express a limited assurance opinion on the effectiveness of Councils' management of private works.

Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQM1 *Quality Management for Firms that Perform Audits or Review of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements* in undertaking this review.

Conclusion

It is my conclusion that councils, as measured against the criteria, were not effectively managing private works. This is because they have not established transparent and consistent processes for managing private works or complied fully with relevant legislative requirements.

Martin Thompson
Auditor-General

21 May 2024

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Executive summary

Summary of findings

Private works occur under Division 7 of Part 12 – Special Powers in the *Local Government Act 1993*. While the Act does not use the term ‘private works,’ section 205 allows councils to supply services and to undertake work at a person’s request. Some examples of the types of private works undertaken in 2021-22 included:

- road works on state and privately owned roads
- upgrading and grading of private driveways
- commercial rubbish collection
- cleaning of the Tasman Bridge.

In some instances, private works are isolated and used to resolve ad hoc local issues. The amounts of money involved in private works are relatively small. The total revenue across all councils in 2021-22 was approximately \$3.5m.

Private works policies and processes

Councils had largely not established effective and transparent processes for managing private works in the 2021-22 financial year.

Policies

Only Glamorgan-Spring Bay Council had a policy that was publicly available, had established a transparent private works decision-making process, and gave priority to the council’s own work program. Thirteen councils which undertook private works had other procedures, forms, or other policies for the management of private works, although these did not fully meet our expectations.⁴ Six councils which undertook private works had not established documented private works policies or procedures.⁵ Of the 9 councils which did not undertake any private works in 2021-22, 3 nonetheless had documented private works policies or procedures.^{6,7}

Decision-making processes

Of the 20 councils that undertook private works during 2021-22, only Latrobe and Meander Councils were compliant with their own internal processes for making decisions to undertake private works. Eight councils were not fully compliant with internal or publicised

⁴ The 13 councils were Break O’Day, Central Coast, Central Highlands, Derwent Valley, Devonport City, Dorset, Hobart City, Kingborough, Latrobe, Meander Valley, Northern Midlands, Sorell and Southern Midlands Councils.

⁵ The 6 councils were Brighton, Circular Head, Flinders, King Island, Launceston City, and Tasman Councils.

⁶ The 9 councils were Burnie City, Clarence City, George Town, Glenorchy City, Huon Valley, Kentish, Waratah-Wynyard, West Coast Councils and West Tamar Councils.

⁷ The 3 councils were George Town, Kentish, and Waratah-Wynyard Councils.

decision-making processes.⁸ Ten councils had not established a consistent process for making decisions to undertake private works.⁹ Of these 10, King Island Council had established a debt recovery policy which included some requirements in relation to private works but did not comply with these requirements.

Dispute resolution

Almost all 29 councils established publicly available dispute resolution policies and processes applicable to private works. Launceston City Council had established a Customer Service Charter, but did not outline a complaints management procedure. Only King Island Council had a dispute in relation to private works in 2021-22, and this was not managed in accordance with its publicly available dispute resolution policy.

Management of conflicts of interest

All 29 councils had established publicly available conflict of interest policies applicable to private works. Six undertook private works for Councillors, employees, or related parties. Two – Devonport City and Meander Valley Councils – were fully compliant with their own processes for managing these conflicts. Four – King Island, Tasman, Glamorgan-Spring Bay, and Derwent Valley Councils – were not.

Compliance with the *Local Government Act 1993* and the National Competition Policy

Councils had largely not complied with the 2 key policy requirements relevant to private works in the 2021-22 financial year.

Local Government Act 1993 compliance

The *Local Government Act 1993* requires councils to establish a list of fees and charges for private works, which must be made available for public inspection. Approaches to calculating fees and charges varied significantly. Of the 20 council's that undertook private works, 3 had approved fee schedules which were applied consistently.¹⁰ Eleven had some combination of approved fee schedule or documented method for calculating private works charges, but they were not applied consistently or did not cover all the kinds of private works being undertaken.¹¹ The remaining 6 had no fee schedule or documented method for calculating private works charges.¹²

National Competition Policy compliance

Tasmania's Competitive Neutrality Policy requires councils to consider whether their activities constitute significant business activities. The national competition principles should be applied

⁸ The 8 councils were Break O'Day, Central Coast, Derwent Valley, Dorset, Glamorgan-Spring Bay, Sorell, Northern Midlands and Southern Midlands Councils.

⁹ The 10 councils were Brighton, Central Highlands, Circular Head, Devonport City, Flinders, Hobart City, Kingborough, King Island, Launceston City and Tasman Councils.

¹⁰ The 3 councils were Central Coast, Meander Valley, and Northern Midlands Councils.

¹¹ The 11 councils were Break O'Day, Brighton, Central Highlands, Derwent Valley, Dorset, Flinders, Glamorgan-Spring Bay, Hobart City, King Island, Sorell, and Southern Midlands Councils.

¹² The 6 councils were Circular Head, Devonport City, Latrobe, Launceston City, Kingborough, and Tasman Councils.

to significant business activities unless there is sufficient public interest in not applying the principles. Guidance from the Department of Treasury and Finance (Treasury) requires councils to document their reasoning as to whether an activity could be a significant business activity, given the judgement involved in making this determination. No council had documented its reasoning as to whether its private works were a significant business activity.

Works conducted for other government entities is not 'business' for competitive neutrality purposes. Approximately \$2.4m of the \$3.5m in 2021-22 private works revenue was from works undertaken for other Government entities rather than ratepayers or other private interests.

Recommendations

We recommend:

1. Councils that undertake or may undertake private works establish private works policies that:
 - are publicly available
 - establish clear and transparent decision-making processes
 - outline or reference existing dispute resolution and conflict of interest policies.
2. Councils implement appropriate controls to ensure compliance with private works policy requirements.
3. Councils that undertake or may undertake private works establish a list of fees and charges and make these available for public inspection.
4. Councils apply the Competitive Neutrality Policy and associated guidance to their private works activities. This includes regularly documenting their reasoning as to whether private works is a significant business activity.

Submissions and comments received

In accordance with section 30(2) of the *Audit Act 2008*, this report was provided to the relevant Minister, Heads of the audited entities, and other persons who in our opinion had a special interest in the report, with a request for submissions or comments.

Submissions and comments we receive are not subject to the audit nor the evidentiary standards required in reaching an audit conclusion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response. However, views expressed by the responders were considered in reaching audit conclusions. Section 30(3) of the *Audit Act 2008* requires this report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included below.

Response from Brighton Council

Council acknowledges and accepts the report.

James Dryburgh
General Manager

Response from Burnie City Council

I wish to advise that the Burnie City Council has read the information provided with regards to the audit pertaining to Private Works Undertaken by Councils. We have no feedback to provide and are satisfied with the report.

I would like to take the opportunity to thank the Tasmanian Audit Office for their assistance and support during this audit.

Bel Lynch
Director Corporate and Commercial Services

Response from Central Highlands Council

Council acknowledges and accepts the TAO's findings concerning Central Highlands. We will develop a Private Works Policy which will clearly cover a consistent approach to private works undertaken, include a dispute resolution process, management of conflicts of interest and associated costs. All fees & charges associated with private works will be listed per Section 206 of LGA and hence will be available to the public. Private Works will undertake an annual assessment, of whether it is a Significant Business Activity or not, and this will be provided as part of our annual Auditing of the Financial Statements.

Kim Hossack
General Manager

Response from Clarence City Council

With the undertaking of private works being an exception to our normal business practice, council is in agreement with the stated findings and recommendations. Council also supports the development of a guide or model policy, through the Local Government Association of Tasmania or some other body, to support councils to achieve compliance with legislation and promote consistency across the sector.

On behalf council I would also like to thank those involved in undertaking the review for the efficient and timely manner in which it was conducted.

Ian Nelson
Chief Executive Office

Response from Circular Head Council

Circular Head Council accepts the findings of the report and is taking the following actions:

- A policy to support private works has been drafted and will be adopted by Council in February. It will be publicly available alongside a transparent private works decision-making procedure and process.
- This will include consideration of the Competitive Neutrality Policy and associated guidance prior to undertaking private works and that decisions are documented.
- An associated fee schedule will be published on our website in the same time frame.

Thank you for the opportunity to provide a management response to your draft report.

Vanessa Adams
General Manager

Response from Derwent Valley Council

The Derwent Valley Council does not undertake public works. There were none undertaken in 2022/23 and one minor public works project was undertaken in 2021/22. It is acknowledged that the council was not compliant in managing a conflict of interest in this case.

Ron Sanderson
Acting General Manager

Response from Devonport Council

Devonport City Council is in agreement with the draft report findings and has taken the necessary action to close the gaps identified during the audit. Specifically, a Private Works Policy was adopted, by Council, at the September 2023 council meeting. The policy is now publicly available on Council's website.

Matthew Atkins
General Manager

Response from Flinders Council

Council has appreciated the opportunity to engage in the TAO Review of Private works undertaken by Councils.

Council fully accepts the recommendations of the TAO and welcomes the opportunities for improvement identified during this process.

Council is currently in the advanced stages of developing a Private Works Policy reflecting these learnings.

Warren Groves
General Manager

Response from George Town Council

Our management team have reviewed the report and have nothing further to add.

Shane Power
George Town Council

Response from Glenorchy City Council

Thank you for the opportunity to comment and for responding to Glenorchy City Council's comments earlier in the process.

Council has no further submission to make on the draft report.

Tony McMullen
General Manager

Response from Hobart City Council (City of Hobart)

The City of Hobart acknowledges the recommendations made in the report on private works undertaken by councils.

We will use the recommendations to further enhance our processes and decision making to ensure we effectively manage any future private works.

Neil Noye
Acting Chief Executive Office

Response from Kentish Council

In response to your request for comment, I note that the financial value of private works undertaken by Kentish Council is relatively low was in fact nil during the period covered by the audit.

I further advise that the Kentish Council has no objections to the findings or recommendations of this audits.

Gerald Monson
General Manager

Response from King Island Council

It is noted that we are referenced at several locations in your report and that the scale of our private works activities gives us some prominence in your report. It is the particular circumstances of King Island that give rise to Council's need to be involved in private works at the level referenced in your report. Council will carefully consider the report's final recommendations for improvement with a view to implementing those that are relevant to us. This will be done in a way that is appropriate to our circumstances.

Brian Barret
Acting General Manager

Response from Latrobe Council

In response to your request, I note that the financial value of private works undertaken by Latrobe Council is relatively low.

I further advise that Latrobe Council has no objections to the findings or recommendations of this audit.

Gerald Monson
General Manager

Response from Launceston City Council (City of Launceston)

The City of Launceston acknowledges the findings of the report regarding the shortcomings in respect of its private works documentation.

It is accepted that the relatively small volume of private works undertaken by the City of Launceston does not absolve it of the responsibility to develop, implement and review private works documentation.

The City of Launceston is committed to implementing the recommendations detailed in the Report. In respect of Council establishing and publishing fees and charges for private works, further work is required to determine whether this recommendation can be fully implemented in all instances.

Louise Foster
General Manger Organisational Services

Response from Meander Valley Council

No comments or response on the draft report from Meander Valley.

Jonathan Harmey
General Manager

Response from Northern Midlands Council

We appreciate the opportunity for feedback, but do not have any further comment at this stage.

Des Jennings
General Manager

Response from Southern Midlands Council

Council acknowledges the recommendations and findings provided in the report.

It is confirmed that Council, through its Audit Committee, will proceed to address the recommendations as a matter of priority.

Specifically in relation to the references to the Southern Midlands Council, no further comments are required as the commentary is an accurate reflection of current practices.

Tim Kirkwood
General Manager

Response from Sorell Council

The extent to which Sorell Council has an appetite to engage in private works has been minimal in scope and value for the past 10 years. This position is indicated by the audit findings.

Council will undertake to adopt a private works policy by EOFY 23/24 that further specifies and clarifies the organisation's limited and reducing appetite.

Such a policy will include any necessary procedures, fees and charges.

Robert Higgins
General Manager

Response from Waratah-Wynyard Council

I wish to advise that Waratah-Wynyard Council has reviewed the draft report and has no comment or submission to make.

Shane Crawford
General Manager

Response from West Coast Council

Council acknowledges and accepts the report.

David Midson
General Manager

1. Introduction

Context

- 1.1 Private works occur under Division 7 of Part 12 – Special Powers in the *Local Government Act 1993*. While the Act does not use the term ‘private works,’ section 205 allows councils to supply services and to undertake work at a person’s request.¹³ This is in addition to any other powers to impose fees and charges, such as powers to make and levy rates.
- 1.2 Some examples of the types of private works undertaken in 2021-22 included road works on state- and privately-owned roads; upgrading and grading of private driveways; commercial rubbish collection; and cleaning of the Tasman Bridge.
- 1.3 In some instances, private works are isolated and used to resolve ad hoc local issues. For some councils in 2021-22, this included single instances of coordinating exhumation and reinterment, retrieving a deceased animal from a private creek, and the removal of a dangerous tree over a state-owned road. In other instances, private works were of a more recurrent and regular nature.
- 1.4 The amounts of money involved in private works are relatively small. The total revenue from private works in 2021-22 across all councils was approximately \$3.5m. Approximately \$2.4m of this was from works undertaken at the request of other Government entities, rather than ratepayers or other private interests.
- 1.5 The revenue varied across councils as summarised in Table 1 below.

Table 1: Approximate private works revenue in the 2021-22 financial year

	Council name	Approximate private works revenue in 2021-22
1	King Island Council	\$1,500,000
2	Kingborough Council	\$1,000,000
3	Southern Midlands Council	\$370,000
4	Break O'Day, Central Highlands, Flinders, Hobart City and Northern Midlands Councils	between \$60,000 and \$140,000
5	Remaining councils	between \$0 and \$50,000

Source: Tasmanian Audit Office

¹³ Tasmanian Government (2023), [Local Government Act 1993](#), Tasmanian Government, accessed 30 October 2023. This is in line with the Northern Territory, Queensland, South Australian, and Victorian legislation, which also do not use the term ‘private works’. In contrast, New South Wales’s *Local Government Act 1993* uses the term private works and provides explanatory examples.

Definitional issues

- 1.6 As noted above, section 205 of the *Local Government Act 1993* allows councils to undertake and charge fees for works at a person's request. This power is in addition to any other powers to impose fees and charges.
- 1.7 Seven councils recorded fire abatement and other compliance related works as private works in their ledgers.¹⁴ However, given these works occur under a different section of the Act, they are not considered private works.¹⁵ Revenue from fire abatements and other compliance-related works has been excluded from revenue in this report.
- 1.8 Similarly, 2 councils recorded the installation of stormwater connection points as private works in their ledgers or financial statements.¹⁶ Given these occur under the *Urban Drainage Act 2013*, they are not considered private works. Revenue from the installation of stormwater connection points has been excluded from revenue in this report.¹⁷

Competitive neutrality in private works

- 1.9 The objective of Tasmania's Competitive Neutrality Policy (CNP) is to 'eliminate resource allocation distortions arising out of the public ownership of entities engaged in significant business activities.'¹⁸ It requires the application of a competitive neutrality principle, being 'government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership and should compete on fair and equal terms with businesses in the private and community sector.'¹⁹
- 1.10 The final chapter of this report considers the application of the CNP to private works, given the provision of private works may entail competition with the private sector.

The risks of not managing private works effectively

- 1.11 While the sums of money involved in council private works are often not substantial, there are probity and transparency risks in relation to private works. Failure to adopt a transparent and defensible process can result in reputational damage to or loss of

¹⁴ The 7 councils were Brighton, Circular Head, Hobart, Kingborough, Northern Midlands, Sorell and Tasman Councils.

¹⁵ Section 201 of the Act grants the power for councils to abate public nuisances including fire risks and other nuisances. Where a private property fails to comply with a nuisance notice, councils are entitled to undertake the work themselves or engage a private contractor. Councils are then able to levy charges to abate nuisances in the same manner as rates and charges.

¹⁶ The 2 councils were Glenorchy City and Hobart City Councils.

¹⁷ While stormwater connection *points* are not considered private works, stormwater connections on a private property undertaken by a council at the request of a person would be.

¹⁸ Treasury (Department of Treasury and Finance) (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury accessed 30 October 2023. <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

¹⁹ Treasury (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023.

<https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

confidence in the council, if it can be shown that a party related to the council (such as a council member, employee, or family associate) received benefits from private works.

- 1.12 In extreme cases, this could result in an investigation from an integrity body or criminal charges. The Integrity Commission inquired into a complaint related to private works in 2018 (Investigation Weld), and referred process-related issues to the Auditor-General to increase transparency and accountability for managing private works.²⁰ In Victoria, Local Government Inspectorate also investigated alleged offences and breaches in November 2019 which identified that private works were being conducted by staff for cash or in-kind payments.²¹ All parties are better protected where there is a well-defined and transparent process.

Better practice

- 1.13 In the absence of existing guidance, 7 councils raised the need for a ‘better practice guide’ for the management of private works. We engaged with the Local Government Association of Tasmania to discuss the possibility of developing a model private works policy. While councils would not be obligated to adopt this policy, it would provide them with guidance and direction towards developing and adopting a private works policy.

²⁰ IC (2023), [Annual Report 2018-19](#), p62, IC, accessed 1 November 2023.

https://www.integrity.tas.gov.au/__data/assets/pdf_file/0006/546738/Integrity-Commission-Annual-Report-2018-19.pdf

²¹ LGI (2019), [Protecting Integrity: Yarriambiack Shire Council Investigation](#), LGI, accessed September 2023.
<https://www.lgi.vic.gov.au/protecting-integrity-yarriambiack-shire-council-investigation>

2. Private works policies and processes

In this chapter we assess whether councils are effectively managing private works. In making our assessment, we considered whether councils had:

- established transparent private works policies
- complied with decision-making processes and procedures
- established and applied processes for managing disputes and complaints
- established and applied processes for managing conflicts of interest.

Chapter summary

Councils had largely not established effective and transparent processes for managing private works in the 2021-22 financial year.

Policies

Only Glamorgan-Spring Bay Council had a policy that was publicly available, had established a transparent private works decision-making process, and gave priority to the council's own work program. Thirteen councils which undertook private works had other procedures, forms, or other policies for the management of private works, although these did not fully meet our expectations.²² Six councils which undertook private works had not established documented private works policies or procedures.²³ Of the 9 councils which did not undertake any private works in 2021-22, 3 nonetheless had documented private works policies or procedures.^{24, 25}

Decision-making processes

Of the 20 councils that undertook private works during 2021-22, only Latrobe and Meander Councils were compliant with their own internal processes for making decisions to undertake private works. Eight councils were not fully compliant with internal or publicised decision-making processes.²⁶ Ten councils had not established a consistent process for making decisions to undertake private works.²⁷ Of these 10, King Island Council had established a debt recovery policy which included some requirements in relation to private works but did not comply with these requirements.

²² The 13 councils were Break O'Day, Central Coast, Central Highlands, Derwent Valley, Devonport City, Dorset, Hobart City, Kingborough, Latrobe, Meander Valley, Northern Midlands, Sorell and Southern Midlands Councils.

²³ The 6 councils were Brighton, Circular Head, Flinders, King Island, Launceston City, and Tasman Councils.

²⁴ The 9 councils were Burnie City, Clarence City, George Town, Glenorchy City, Huon Valley, Kentish, Waratah-Wynyard West Coast Councils and West Tamar Councils.

²⁵ The 3 councils were George Town, Kentish, and Waratah-Wynyard Councils.

²⁶ The 8 councils were Break O'Day, Central Coast, Derwent Valley, Dorset, Glamorgan-Spring Bay, Sorell, Northern Midlands and Southern Midlands Councils.

²⁷ The 10 councils were Brighton, Central Highlands, Circular Head, Devonport City, Flinders, Hobart City, Kingborough, King Island, Launceston City and Tasman Councils.

Dispute resolution

Almost all 29 councils established publicly available dispute resolution policies and processes applicable to private works. Launceston City Council had established a Customer Service Charter but did not outline a complaints management procedure. Only King Island Council had a dispute in relation to private works in 2021-22. This was not managed in accordance with its generic dispute resolution policies, and an alternative mechanism for managing private works disputes had not been established.

Management of conflicts of interest

All 29 councils had established publicly available conflict of interest policies applicable to private works. Six undertook private works for Councillors, employees, or related parties. Two councils – Devonport City and Meander Valley Councils – were fully compliant with their own processes for managing these conflicts. Six councils – King Island, Tasman, Glamorgan-Spring Bay, and Derwent Valley Councils – were not.

Councils had largely not established policies to support private works

2.1 We expected to find that councils had private works policies in the 2021-22 financial year that:

- were publicly available
- ensured decisions to undertake private works are made transparently, objectively, and consistently
- gave priority to the council's own work program.

2.2 The Department of Premier and Cabinet *Good Governance Guide* states that transparent decision-making and effective planning for the use of resources is a key requirement of the *Local Government Act 1993*. By establishing a policy with these elements as a minimum, councils would improve transparency, consistency, and prioritisation in relation to private works. This is further explored in the case studies included throughout this chapter.²⁸

2.3 We found private works policies and procedures varied significantly, and only one council had established a policy which met all 3 expectations.

Councils with appropriate private works policies

2.4 Only Glamorgan-Spring Bay Council had established a policy which met all 3 expectations in the 2021-22 financial year. This policy was publicised on the Council's website, specified the circumstances in which private works were to be considered

²⁸ DPAC (Department of Premier and Cabinet and the Office of Local Government) (2022), DPAC, [Good Governance Guide for Local Government in Tasmania](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0019/222157/Good-Governance-Guide-4-August-2022.pdf), accessed 30 October 2023.
https://www.dpac.tas.gov.au/__data/assets/pdf_file/0019/222157/Good-Governance-Guide-4-August-2022.pdf

and at whose discretion, and explicitly stated priority would be given to the Council's own work program.

Table 2: Councils with appropriate private works policies in 2021-22

Council Name	Value of private works in 2021-22	Publicly available policy	Public policy set decision-making process	Public policy prioritised council's own work program
1 Glamorgan-Spring Bay	\$39,000	✓	✓	✓
Table Key ✓ Yes to test question. ✗ No to test question.				

Source: Tasmanian Audit Office

Councils with policies or procedures

2.5 The 13 councils shown in Table 3 undertook private works in 2021-22 and had procedures, forms, or other policies for the management of private works. However, these did not fully meet our expectations as they were not publicly available policies that clearly documented a transparent decision-making process and prioritised the councils' own work program.

Table 3: Councils with some private works policies or procedures in 2021-22

Council name	Value of private works in 2021-22	Publicly available policy	Public policy set a decision-making process	Public policy prioritised council's own work program
1 Break O'Day	\$87,000	✓	✗	✗
2 Central Coast	\$5,000	✗	✗	✗
3 Central Highlands	\$136,000	✗	✗	✗
4 Derwent Valley	Indeterminate ²⁹	✗	✗	✗
5 Devonport City	\$17,000	✗	✗	✗
6 Dorset	\$33,000	✗	✗	✗
7 Hobart City	\$100,000	✓	✗	✗

²⁹ The value of Derwent Valley's private works is explored further in [Case Study 4: Derwent Valley Council Conflict of Interest Management – Example of Non-Compliance](#).

	Council name	Value of private works in 2021-22	Publicly available policy	Public policy set a decision-making process	Public policy prioritised council's own work program
8	Kingborough	\$1,000,000	✘	✘	✘
9	Latrobe	\$12,000	✘	✘	✘
10	Meander Valley	\$800	✘	✘	✘
11	Northern Midlands	\$61,000	✓	✘	✘
12	Sorell	\$4,000	✘	✘	✘
13	Southern Midlands	\$370,000	✘	✘	✘
Table Key					
✓ Yes to test question. ✘ No to test question.					

Source: Tasmanian Audit Office

- 2.6 While not in place in the year under review (2021-22 financial year), Kingborough and Devonport City Councils developed policies which met the 3 expectations during the review. Kingborough Council publicised its policy in August 2023.

Councils without policies or procedures

- 2.7 The 6 councils shown in Table 4 undertook private works but had not established documented private works policies or procedures.

Table 4: Councils without private works policies or procedures in 2021-22

	Council name	Value of private works in 2021-22	Publicly available policy	Public policy set decision-making process	Public policy prioritised council's own work program
1	Brighton	\$47,000	✘	✘	✘
2	Circular Head	\$10,000	✘	✘	✘
3	Flinders	\$98,000	✘	✘	✘
4	King Island	\$1,500,000	✘	✘	✘
5	Launceston City	\$27,000	✘	✘	✘
6	Tasman	\$2,000	✘	✘	✘

Table Key

✓ Yes to test question. ✗ No to test question. N/A Did not undertake private works.

Source: Tasmanian Audit Office

- 2.8 Of the 6 shown in Table 4, 4 had less than \$50,000 in private works revenue in the 2021-22 financial year.

Case Study 1: West Tamar Council Private Works Policy – Example of Non-Compliance**West Tamar Council Private Works Policy**

West Tamar Council did not undertake any private works in 2021-22. However, it undertook \$19,000 in private works in the previous financial year 2020-21 and did not have a private works policy in place at that time. The Council had repealed its policy in 2016 following a decision to cease private works. The repealed policy had stated that:

- The Council would encourage landholders to use reputable contractors to carry out works on private property.
- Before any private works were undertaken, the property owner was to sign the necessary authority.
- All private works would be done based on actual cost plus a margin of 15%.

Nonetheless, some private works were undertaken in 2020-21. The Council advised the smallest of these works was authorised by a staff member who was likely unaware of the informal policy to not undertake private works.

This example demonstrates that even councils not planning to undertake private works may benefit from having a policy and processes to enforce the policy in place.

Source: Tasmanian Audit Office

Councils that did not undertake private works

- 2.9 Nine councils did not undertake any private works in the 2021-22 financial year. These were Burnie City, Clarence City, George Town, Glenorchy City, Huon Valley, Kentish, Waratah-Wynyard, West Coast and West Tamar Councils.

- 2.10 Three of the 9 had nonetheless established relevant internal policies and procedures:

- George Town Council had an internal private works form which required signoff by the works area, demonstrating priority for the Council's own work program.
- Kentish Council had a standard operating procedure and associated authority form requiring different approvals in proportion to the value of the private works project.
- Waratah-Wynyard Council had a quotation procedure, quotation form, and a costing estimate calculation sheet.

- 2.11 Four of the 9 – Burnie City, Clarence City, Waratah-Wynyard, and West Coast Councils – did indicate they may undertake private works in exceptional circumstances.

Therefore, councils who did not undertake private works in the 2021-22 financial year may still benefit from adopting a private works policy. This policy could establish the circumstances in which private works would be considered, and at whose discretion.

Councils had largely not established effective decision-making processes to manage private works

2.12 We expected to find that in 2021-22, councils were compliant with their own private works policies or procedures which established a consistent decision-making process.

2.13 We found decisions to undertake private works broadly took one of 4 forms. Councils either:

- fully complied with an established decision-making process
- did not fully comply with an established decision-making process
- did not have an established decision-making process, or
- did not undertake private works.

Councils that fully complied with an established decision-making process

2.14 Two councils – Latrobe and Meander Valley Council – had established a private works form that outlined who had delegation to approve private works. The forms were consistently completed for all private works projects undertaken in 2021-22. These councils would nonetheless benefit from publicising their decision-making process in a private works policy.

Councils that did not fully comply with an established decision-making process

2.15 Eight councils had established private works decision-making processes but were not fully compliant for various reasons.³⁰

2.16 As noted previously, only Glamorgan-Spring Bay Council had established a publicly available policy which documented how decisions to undertake private works were to be made. However, the Council was not fully compliant with this policy. It required approval by council resolution for projects valued at over \$10,000. There was one project over this value in the 2021-22 financial year. Although councillors were made aware of the project, it was not approved by council resolution in accordance with the policy.

2.17 Break O’Day Council had a policy which required plant hire to be approved by a manager, but it did not outline how decisions to undertake other kinds of private works were to be managed.

³⁰ The 8 councils were Break O’Day, Central Coast, Derwent Valley, Dorset, Glamorgan-Spring Bay, Sorell, Northern Midlands and Southern Midlands Councils.

2.18 Central Coast, Derwent Valley, Dorset, Sorell, Northern Midlands and Southern Midlands Councils had internal forms which were not sufficient for various reasons. While Central Coast, Derwent, and Northern Midlands forms required approval by a council officer, they were not accompanied by a policy outlining who had delegation to approve private works. Dorset, Sorell, and Southern Midlands forms did not require approval. Derwent Valley did not fully complete the form for the one private works project it undertook.³¹ Dorset, Northern, and Southern Midlands did not complete a form for all tested private works projects.

Councils that did not have an established decision-making process

2.19 Ten councils had not established a process for private works decisions. Therefore, it was unclear how decisions to undertake private works were made. These included Brighton, Central Highlands, Circular Head, Devonport City, Flinders, Hobart City, Kingborough, King Island, Launceston City and Tasman Councils.

³¹ This is explored further in [Case Study 4: Derwent Valley Council Conflict of Interest Management – Example of Non-Compliance](#).

Case Study 2: King Island Council Private Works Decisions Making – Example of Non-Compliance

King Island Council Private Works Decision Making

While King Island Council had not established a decision-making process related to private works, it did have a debt recovery policy which included relevant private works provisions. It required a 100% deposit, bond or guarantee, or similar appropriate assurance for private works over \$50,000. A 50% deposit was required for works between \$10,000 and \$49,999, and no deposit was required for works under \$10,000.

In December 2020, the Council provided a quotation via email for the construction of a private access road (discussed further in [Non-compliance Case Study 3: King Island Council Dispute Resolution – Example of Non-Compliance](#)). In the absence of an established private works policy, the Tasmanian Audit Office considered whether the debt recovery policy was applied.

The work was originally estimated at over \$140,000, but a deposit was not taken. The Council advised this provision ‘seems to be impractical and with little likelihood of acceptance’ and that it was being reviewed as of November 2023. However, the policy was in place at the time the works commenced, having been adopted in December 2017. The project eventually led to a loss of over \$60,000 to the Council which was accepted by both parties due to complications with the proposed clearing.

The debt recovery policy also required the Council to not carry out private works for entities indebted to Council for private works for an amount exceeding \$500. The Council has not established a process to ensure compliance with this policy provision.

This example demonstrates the need to ensure policies meet current needs, and that there are processes to ensure compliance with the policies.

Source: Tasmanian Audit Office

Councils had established, but not fully complied with, dispute resolution processes

2.20 We expected to find that in 2021-22, councils had established processes to manage disputes and complaints in relation to private works. Councils are required to establish customer service charters by section 339F of the *Local Government Act 1993*. These charters are to specify a procedure for dealing with complaints relating to services provided by the council and be made publicly available.³²

Dispute resolution processes

2.21 We found councils had established and publicised dispute resolution processes that could be applied to private works. The dispute resolution processes covered various

³² Tasmanian Government (2023), [Local Government Act 1993](#), Tasmanian Government, accessed 30 October 2023.

kinds of engagements with councils and were not specific to managing private works disputes.

- 2.22 Almost all policies established complaints management procedures, options for escalation, and references to external oversight bodies who could conduct investigations. Launceston City Council had established a Customer Service Charter, but it did not outline a complaints management procedure.

Compliance with resolution processes

- 2.23 Only King Island Council identified a dispute in relation to private works in the 2021-22 financial year.³³

Case Study 3: King Island Council Dispute Resolution – Example of Non-Compliance

King Island Council 2021-22 Dispute

The King Island Customer Service Charter had established requirements for managing general complaints. Complaints were to be registered in a central complaints database, reported monthly to the Council, and the complainant was to be kept informed of disputes that take longer than 10 days to resolve.

The Council identified one complaint in relation to private works in 2021-22. It related to the same project referred to in [Case Study 2: King Island Council Private Works Decisions Making – Example of Non-Compliance](#), for private access construction. The matter in question was not recorded in the complaints register or reported monthly to the Council as required by the Customer Service Charter. The Council was also not able to provide any evidence the complainant was kept informed past the initial 10 days.

The Council advised the complaints process was not intended to apply to complaints about private works. They further advised that the database was not seen as an appropriate mechanism for this matter, and that senior management was aware of the issue. Finally, they noted it was not realistic for the private works customers to ‘register any issues through our front of office customer service staff’ and that ‘they would raise these issues directly with the management staff.’ However, as noted above, section 339F of the Act requires councils to establish procedures for dealing with complaints relating to services it provides.

The Council therefore was either not compliant with its Customer Service Charter in relation to this complaint or had not established a customer service charter which covered private works. The Council advised that there were no other complaints in relation to private works for several years.

This example demonstrates the importance of establishing or referencing procedures that will be used to deal with private works complaints, and making sure processes meet current needs.

Source: Tasmanian Audit Office

³³ Councils were asked to identify whether there were any disputes in the 2021-22 financial year. An assessment of the efficacy of complaints management procedures to ensure all private works complaints were captured was outside the scope of this review.

2.24 Northern Midlands Council had one complaint in the 2022-23 financial year. This complaint was managed in accordance with its Customer Service Charter, as it was investigated by the relevant Manager and further escalated to the General Manager for resolution.

Councils had established, but not fully complied with, conflict of interest processes

2.25 We expected to find that in 2021-22, councils had established processes to manage conflicts of interest in relation to private works.

2.26 The Department of Premier and Cabinet *Good Governance Guide* states that managing conflicts of interest is a key requirement of the *Local Government Act 1993*. Appropriate conflict of interest policies minimises the risk of misuse of council resources. Establishing a conflict management process and associated controls would improve transparency and ensure the appropriate use of council resources. This is further explored in the case studies included in this section.³⁴

Conflict of interest policies

2.27 All 29 councils had established and publicised appropriate conflict of interest policies which were applicable to private works. Thirteen councils identified ‘performance of private works using Council assets in return for a benefit’ or ‘unauthorised use of Council assets’ as examples of corruption in available policies.³⁵ All councils had a councillor code of conduct specifying that ‘a Councillor must not use Council resources for private purposes except as provided by Council policies and procedures.’³⁶ All councils excluding King Island have an employee code of conduct with a similar provision, 3 of which were publicly available.

Conflict of interest practices

2.28 Six councils, shown in Table 5, provided some works to councillors, employees, or related parties in the 2021-22 financial year. These potential conflicts were largely identified by the councils.

³⁴ DPAC (Department of Premier and Cabinet and the Office of Local Government) (2022), [Good Governance Guide for Local Government in Tasmania](#), DPAC, accessed 30 October 2023.

https://www.dpac.tas.gov.au/__data/assets/pdf_file/0019/222157/Good-Governance-Guide-4-August-2022.pdf

³⁵ The 13 councils were Break O’Day, Central Coast, Flinders, George Town, Glamorgan-Spring Bay, Glenorchy City, Kentish, Kingborough, Latrobe, Sorell, Southern Midlands, Tasman and West Tamar Councils.

³⁶ Adopting the Minister’s model code of conduct for councillor is a requirement of Division 3A, Subdivision 2 of the *Local Government Act 1993*.

Table 5: Application of conflict-of-interest managements processes

	Council name	Undertook private works for Councillors, employees, or related parties in 2021-22	Approximate value	Was fully compliant with own policies or procedures
1	Devonport City	✓	\$4,000	✓
2	Meander Valley	✓	\$300	✓
3	King Island	✓	\$55,000	✗
4	Derwent Valley	✓	Indeterminate ³⁷	✗
5	Tasman	✓	\$100	✗
6	Glamorgan-Spring Bay	✓	\$30	✗
Table Key ✓ Yes to test question. ✗ No to test question. N/A Did not undertake private works.				

Source: Tasmanian Audit Office

Councils fully compliant with own conflict of interest processes

Devonport City Council

2.29 Devonport City Council had established an employee code of conduct which required authorisation for the use of council equipment. Approximately \$4,000 of the private works revenue in the 2021-22 financial year was for the hire of equipment to staff. To support this, the Council had established a hire and deduction agreement form. This form required sign off from the staff in the works area to ensure priority was given to use of equipment for council purposes. The forms sampled were all signed by staff and an appropriate delegate.

Meander Valley Council

2.30 Meander Valley Council had also established an employee code of conduct which required authorisation, which was supported by a private works application form. Approximately \$300 of the private works revenue in the 2021-22 financial year was for the hire of equipment to staff. A private works application form was completed for each instance and approved by the works team.

³⁷ The value of Derwent Valley's private works is explored further in [Case Study 4: Derwent Valley Council Conflict of Interest Management – Example of Non-Compliance](#).

Councils not fully compliant with their own conflict of interest processes

King Island Council

- 2.31 King Island Council had 4 key documents related to the management of conflicts of interest, including a Related Parties Disclosure Policy. In accordance with this policy, the Council disclosed related party transactions in its 2021-22 financial statements. Seven of these transactions were private works undertaken for related parties. The financial statements noted the charges for these works were based on 'approved fees and charges.'
- 2.32 However, the majority of the works were not covered by the 2021-22 fees and charges schedule. For example, related parties were charged for truck and excavator hire and driveway sealing which were not on the fee schedule. Where the service or product was on a fee schedule, the related party was charged in accordance with it. For example, invoices for the sale of gravel to related parties reflected the fees and charges schedule.

Derwent Valley Council

- 2.33 Derwent Valley Council was not complaint with its processes for managing conflicts of interest.

Case Study 4: Derwent Valley Council Conflict of Interest Management – Example of Non-Compliance

Derwent Valley Council Conflict of Interest Management

Derwent Valley Council had established an employee code of conduct. It required authorisation by a manager or supervisor for the use of council property.

The Council undertook one private works project for an employee in the 2021-22 financial year. The Council was unable to provide an invoice or any other documents relating to this project, other than the private works instruction form. This instruction form was incomplete and did not record a fee. As such, whether the employee was charged, what the overall value of private works was in 2021-22, and whether this project was authorised in accordance with the employee code of conduct could not be established.

This example demonstrates the need for councils to ensure policies and forms are supported by appropriate processes to ensure compliance.

Source: Tasmanian Audit Office

Tasman Council

- 2.34 Tasman Council had established a code of conduct for employees which required authorisation to use council resources. The Council hired equipment to an employee in 2021-22 following a severe weather event, for which they were charged approximately \$100. However, there was no recorded authorisation.

Glamorgan-Spring Bay Council

- 2.35 Glamorgan-Spring Bay Council undertook one very minor private works project valued at approximately \$30 for an employee in the 2021-22 financial year. This was approved by a supervisor in accordance with the code of conduct requirements for the use of Council resources. However, this did not align with the Council's private works policy, which required private works requests from councillors and employees to be approved by the General Manager.

3. Compliance with the *Local Government Act 1993* and the National Competition Policy

In this chapter we assess whether councils were compliant with 2 key policy requirements relevant to the management of private works outlined in Chapter 1. The first is the *Local Government Act 1993*, which establishes councils' power to undertake private works, and requirements in relation to fees and charges. The second is the National Competition Policy, a national framework which was established to ensure publicly owned and private businesses compete on equal terms.³⁸

Chapter summary

Councils had largely not complied with the 2 key policy requirements in the 2021-22 financial year.

Local Government Act 1993 compliance

The *Local Government Act 1993* requires councils to establish a list of fees and charges for private works, which must be made available for public inspection. Approaches to calculating fees and charges varied significantly. Of the 20 council's that undertook private works, 3 had approved fee schedules which were applied consistently.³⁹ Eleven had some combination of approved fee schedule or documented method for calculating private works charges, but they were not applied consistently or did not cover all the kinds of private works being undertaken.⁴⁰ The remaining 6 had no fee schedule or documented method for calculating private works charges.⁴¹

National Competition Policy compliance

Tasmania's Competitive Neutrality Policy requires councils to consider whether their activities constitute significant business activities. The national competition principles should be applied to significant business activities, unless there is sufficient public interest in not applying the principles. Guidance from the Treasury requires councils to document their reasoning as to whether an activity could be a significant business activity, given the judgement involved in making this determination. No council had documented its reasoning as to whether its private works were a significant business activity.

³⁸ OTTER (Office of the Tasmanian Economic Regulator) (2022), [Competitive Neutrality](https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality), OTTER accessed 1 November 2023. <https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality>

³⁹ The 3 councils were Central Coast, Meander Valley, and Northern Midlands Councils.

⁴⁰ The 11 councils were Break O'Day, Brighton, Central Highlands, Derwent Valley, Dorset, Flinders, Glamorgan-Spring Bay, Hobart City, King Island, Sorell, and Southern Midlands Councils.

⁴¹ The 6 councils were Circular Head, Devonport City, Latrobe, Launceston City, Kingborough, and Tasman Councils.

Councils had not established or consistently applied fee schedules

3.1 As noted in Chapter 1, section 205 of the *Local Government Act 1993* allows councils to impose fees and charges for services supplied or works carried out at a person's request. Section 206 of the Act states that the general manager is to keep a list of all fees and charges and make the list available for public inspection.

3.2 We assessed all 29 councils to determine whether:

- they had established fees and charges for their private works in 2021-22
- they had applied those consistently in 2021-22
- their fees and charges would have been available for public inspection.

3.3 We found the approach to managing fees and charges for private works varied significantly between councils. Fourteen had some combination of a fee schedule or method for calculating private works charges, which were largely not applied consistently, and did not cover all the kinds of private works being undertaken.

Table 6 summarises overall compliance with the relevant sections of the *Local Government Act 1993*.

Table 6: Private works fee schedule compliance in 2021-22

	Council name	Value of private works in 2021-22	Established fees and charges for all private works which was consistently applied in 2021-22, and would have been available for public inspection
1	Break O'Day	\$87,000	✘
2	Brighton	\$47,000	✘
3	Burnie City	\$0	N/A
4	Central Coast	\$5,000	✓
5	Central Highlands	\$136,000	✘
6	Circular Head	\$10,000	✘
7	Clarence City	\$0	N/A
8	Derwent Valley	Indeterminate ⁴²	✘
9	Devonport City	\$17,000	✘

⁴² The value of Derwent Valley's private works is explored further in [Noncompliance Case Study 4: Derwent Valley Council Conflict of Interest Management](#).

Council name		Value of private works in 2021-22	Established fees and charges for all private works which was consistently applied in 2021-22, and would have been available for public inspection
10	Dorset	\$33,000	✘
11	Flinders	\$98,000	✘
12	George Town	\$0	N/A
13	Glamorgan-Spring Bay	\$39,000	✘
14	Glenorchy City	\$0	N/A
15	Hobart City	\$100,000	✘
16	Huon Valley	\$0	N/A
17	Kentish	\$0	N/A
18	Kingborough	\$1,000,000	✘
19	King Island	\$1,500,000	✘
20	Latrobe	\$12,000	✘
21	Launceston City	\$27,000	✘
22	Meander Valley	\$800	✓
23	Northern Midlands	\$61,000	✓
24	Sorell	\$4,000	✘
25	Southern Midlands	\$370,000	✘
26	Tasman	\$2,000	✘
27	Waratah-Wynyard	\$0	N/A
28	West Coast	\$0	N/A
29	West Tamar	\$0	N/A
Table Key ✓ Consistently applied a fee schedule or method for calculating private works charges which would have been available for public inspection. ✘ Did not consistently apply a fee schedule or method for calculating private works charges which would have been available for public inspection. N/A Did not undertake any private works.			

Source: Tasmanian Audit Office

Fully compliant councils

- 3.4 Three of the councils that undertook private works in 2021-22 had a method for calculating charges that was consistently applied, and would have been available for public inspection. These were Central Coast, Meander Valley, and Northern Midlands Councils. Each had fees and charges schedules or policies which stated private works would be charged at cost plus an administration fee.⁴³ In 2021-22, these fees were consistently applied to tracked project costs.
- 3.5 As previously stated, 9 councils did not undertake private works and were therefore compliant.

Case Study 5: Burnie City Council Private Works Fee Schedule – Example of Better Practice

Burnie City Council Private Works Fee Schedule

Burnie City Council did not undertake any private works in 2021-22. Nonetheless, it had a publicly available private works fee schedule and had recorded how it arrived at these fees. The Council documented known internal costs such as plant and equipment hire costs, labour cost estimates, and material costs. This process supported establishing a 'per metre' costing for works like footpath and kerb reinstatements. The Council then applied a profit margin to these documented internal costs to arrive at its private works fee, which it made publicly available.

This increased the transparency of its private works fee process, complied with the relevant sections of the *Local Government Act 1993*, and was an example of better practice.

Source: Tasmanian Audit Office

Partially compliant councils

- 3.6 The remaining 17 councils that undertook private works in 2021-22 were not fully compliant with section 206 of the *Local Government Act 1993*.
- 3.7 Two councils – Break O'Day and Glamorgan-Spring Bay – had established both a fee schedule covering some private works, and a method for calculating private works fees and charges. However, these were not consistently applied to all projects in 2021-22.
- 3.8 Five councils – Brighton, Central Highlands, Flinders, King Island and Southern Midlands Councils – had established a fee schedule which covered and was applied to some private works projects. However, the schedule did not cover all private works projects. For example, Flinders Council had established and applied a public fee for road grading machine hire, but did not have an established fee for other kinds of private works it undertook, such as safety fence hire and the sale of emulsion. King Island has since established a spreadsheet for developing quotations for these private

⁴³ The administration charge did vary between Councils. Central Coast Council's was 25 per cent, Northern Midlands was 15 per cent, and Meander Valley's was 10 per cent.

works, but were unable to confirm how they arrived at the established fees for job components.

- 3.9 Four councils – Derwent Valley, Dorset, Hobart City and Sorell Councils – had established a method for calculating fees and charges, but this was not applied fully to all projects. For example, Sorell Council had established a private works quotation sheet which required an estimation of costs and the addition of a \$110 administration fee. However, this form was not used for the 2 private works projects undertaken in the 2021-22 financial year.

Case Study 6: Hobart City and Glamorgan-Spring Bay Councils' Fee Schedule – Example of Non-Compliance

Hobart City and Glamorgan-Spring Bay Councils' Fee Schedule Compliance

Hobart City Council's method for calculating private works fees was documented in its private works policy. It required private works charges to include all costs incurred and an appropriate margin. However, the policy did not define an appropriate profit margin. Based on tracked costs for the projects undertaken in 2021-22, margins varied from an approximate 10% loss to an approximate 50% profit. The Council advised that this variance in margin may be due to costs not being captured consistently.

Similarly, Glamorgan-Spring Bay Council's policy required private works fees and charges to be at market prices with a reasonable profit margin. It had also not specified a reasonable margin and had not established a process for determining market prices. Actual profit margins varied between 18% and 25%.

These examples demonstrate the value of establishing policies which are specific, reviewed regularly, and supported by appropriate processes to ensure compliance.

Source: Tasmanian Audit Office

- 3.10 Six councils – Circular Head, Devonport City, Latrobe, Launceston City, Kingborough, and Tasman Councils – had no fee schedule for private works or a documented method for calculating private works fees. However, 5 of the 6 councils – Circular Head, Devonport City, Latrobe, Launceston, and Tasman Councils – undertook less than \$30,000 in private works. Devonport City Council began developing a private works policy which defines a method for developing quotations during this review.

Case Study 7: Kingborough Council Fee Schedule Compliance – Context

Kingborough Council Fee Schedule Compliance

As noted above, Kingborough Council was not fully compliant with the *Local Government Act 1993* as they had not established a fee schedule for private works, or a process for calculating private works fees which would have been publicly available in 2021-22.

However, all but approximately \$5,000 of the \$1m in private works revenue was from works for other government entities. These included the Department of State Growth, Tasmania Parks and Wildlife Service, TasWater, and the Huon Valley Council. The Council had documented associated contractual arrangements which established fees and charges, largely in the form of detailed work orders or purchase orders.

Source: Tasmanian Audit Office

Case Study 8: Launceston City Council Fee Calculation – Example of Non-Compliance

Launceston City Council's Fee Schedule Compliance

As noted above, Launceston City Council was not fully compliant with the requirements of the *Local Government Act 1993* as they had not established a fee schedule for private works or a process for calculating private works fees which would have been publicly available in 2021-22.

The Council had established agreements with the business to whom they were providing services. However, in 2021-22, costs were not being recovered for one of the private works services which had been ongoing for approximately 10 years. In response to this review, the Council identified that best practice in terms of competitive neutrality (see below) is to ensure fees for private works reflect all costs to the Council. Given this, it recalculated its fees and charges and increased the costs to the customer.

This example demonstrates the importance of establishing and regularly reviewing rates for private works.

Source: Tasmanian Audit Office

Councils had not considered the Competitive Neutrality Policy

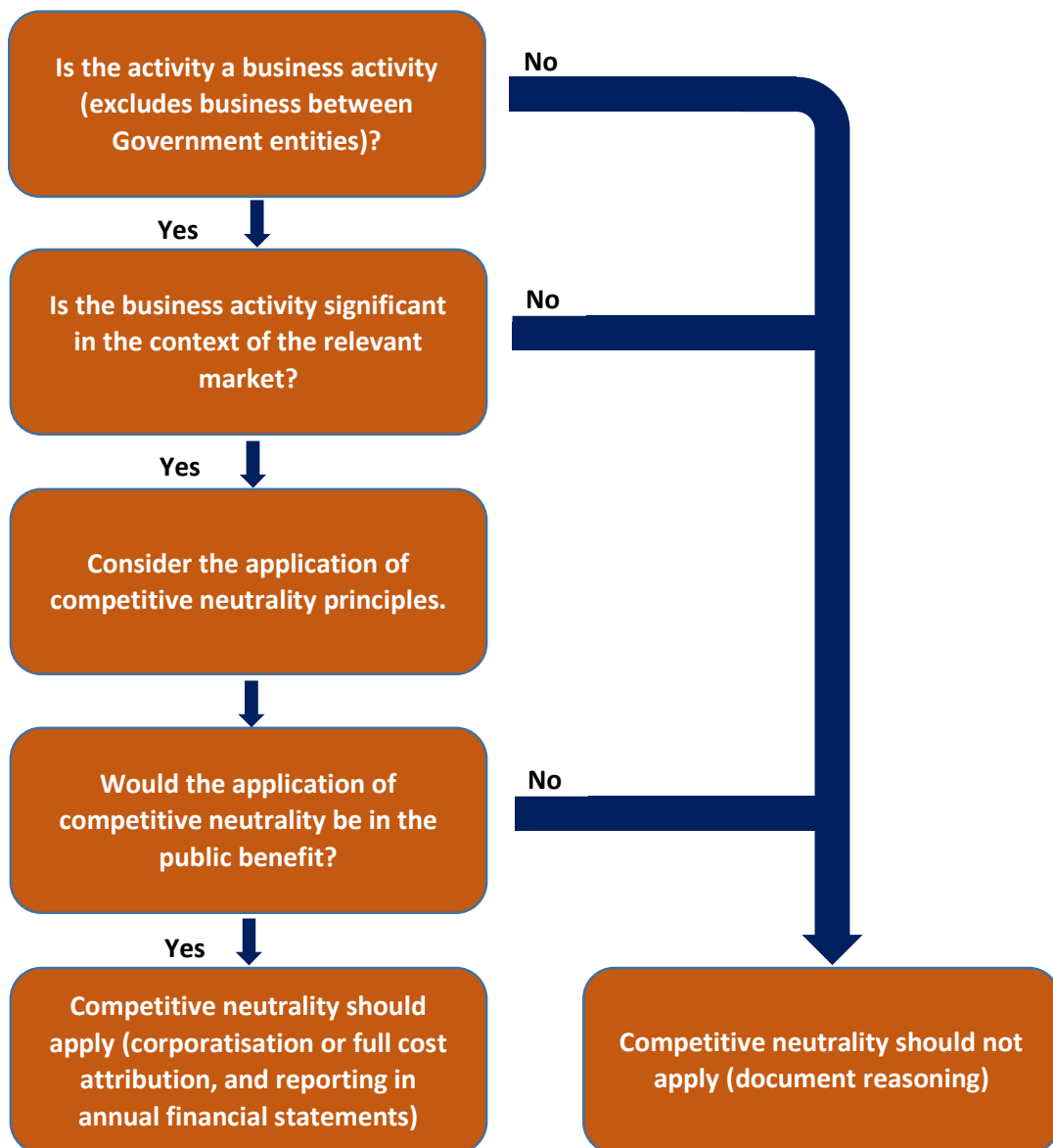
- 3.11 We assessed all 29 councils to determine whether they had applied requirements of the Competitive Neutrality Policy (CNP) to private works activities.
- 3.12 We found that none of the councils that undertook private works had documented their consideration of whether these works constituted a significant business activity.

The Competitive Neutrality Policy

- 3.13 As noted in Chapter 1, Tasmania's CNP is intended to ensure equal competition between publicly owned and private businesses.⁴⁴
- 3.14 Treasury and the Office of the Tasmanian Economic Regulator (OTTER) have publicised guidance for applying the CNP's principles in local government. The chart below summarises the guidance for determining whether the competitive neutrality principles should be applied to an activity.

⁴⁴ OTTER (2022), [Competitive Neutrality](https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality), OTTER, accessed 1 November 2023.
<https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality>

Figure 1: Summary of Competitive Neutrality Policy guidance



Source: Recreated from Treasury and OTTER guidance⁴⁵

3.15 In accordance with this guidance, councils are to identify whether any of its activities constitute a business activity in the first instance. A business activity is ‘one that involves the production of goods and/or services in a market that is, or has the

⁴⁵ Treasury (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023. <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>; Treasury (Department of Treasury and Finance) (2013), [Identification and management of significant business activities by local government in Tasmania to comply with competitive neutrality principle](https://www.treasury.tas.gov.au/Documents/SigBusApp-Local-Gov.PDF), Treasury, accessed 21 August 2023. <https://www.treasury.tas.gov.au/Documents/SigBusApp-Local-Gov.PDF>; OTTER (2022), [Competitive Neutrality](https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality), OTTER, accessed 1 November 2023. <https://www.economicregulator.tas.gov.au/other-industries/competitive-neutrality>

potential to be, competitive'.⁴⁶ Importantly for the management of private works, business between government entities is excluded.⁴⁷

- 3.16 Councils must then consider whether it is a significant business activity. The guidance states a defined financial threshold measure like turnover is not a satisfactory indicator of significance. This is because it may not reflect the actual or potential impact of an activity on other businesses, particularly in small markets. In addition, a lack of other available suppliers is an insufficient measure of significance. The guidance instead requires councils to consider if other suppliers would emerge were they to operate differently.
- 3.17 Councils must then apply the competitive neutrality principles to any identified significant business activities, unless the activity provides a net benefit to society.⁴⁸ To apply the principles, the councils must either incorporate all the costs including any additional costs a private sector provider would incur to provide the same services, or corporatise the activity.
- 3.18 The OTTER guidance notes that, given the degree of judgement involved in the above assessment, it is critical for councils to document their reasoning as to whether an activity is a significant business activity. Finally, councils are required to report significant business activities in their financial statements.
- 3.19 On this basis, the primary assessment for compliance with the competitive neutrality principles was whether the council had documented its reasoning and reported any significant business activity.

Compliance with the Competitive Neutrality Policy

- 3.20 We found that, of those councils that did undertake private works, none had documented their consideration of whether their private works constituted a significant business activity.

Entities with lower volumes of private works

- 3.21 As noted above, Treasury guidance states a defined financial threshold is an insufficient measure of significance, given the potential impact in small markets.⁴⁹ Given this, all councils should document their consideration of whether their private works are a significant business activity, including the potential impact on the relevant market.

⁴⁶ Treasury (2013), [Identification and management of significant business activities by local government in Tasmania to comply with competitive neutrality principle](https://www.treasury.tas.gov.au/Documents/SigBusApp-Local-Gov.PDF), Treasury, accessed 21 August 2023.

<https://www.treasury.tas.gov.au/Documents/SigBusApp-Local-Gov.PDF>

⁴⁷ Treasury (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023.

<https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

⁴⁸ The concept of a public benefit is further explored in Treasury's [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy) guidance. It includes, among other things, consideration of ecologically sustainable development, social welfare and equity, and economic and regional development.

⁴⁹ Treasury (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023.

<https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

3.22 Nonetheless, 12 of the councils that did private works had less than \$50,000 in revenue in the 2021-22 financial year.⁵⁰ These councils advised they refer requests for private works to the market where possible. Evidence of this was only available in 3 instances, which councils consistently advised was because referrals occurred verbally.

Entities with higher volumes of private works

3.23 Eight councils undertook more than \$50,000 of private works. These are shown in Table 7.

Table 7: Higher value private works, by works for government and private entities

	Council name	Approximate private works revenue in 2021-22	Approximate revenue from other government entities	Approximate revenue from private entities
1	Break O'Day	\$87,000	\$62,000	\$25,000
2	Central Highlands	\$136,000	\$7,000	\$129,000
3	Flinders	\$98,000	\$83,000	\$15,000
4	Hobart City	\$100,000	\$78,000	\$22,000
5	King Island	\$1,500,000	\$910,000	\$597,000
6	Kingborough	\$1,000,000	\$1,000,000	\$5,000
7	Northern Midlands	\$61,000	\$47,000	\$14,000
8	Southern Midlands	\$370,000	\$202,000	\$168,000

Source: Tasmanian Audit Office

3.24 As noted above, Treasury guidance excludes business between government entities from the definition of business for the purposes of the CNP.⁵¹ For 5 of the 8 councils, less than \$50,000 of the private work's revenue was from private entities. Therefore, in 2021-22 only 3 councils had private works revenue over \$50,000 to which the competitive neutrality principles could have applied.

3.25 These councils (Central Highlands, King Island and Southern Midlands Councils) advised that the services they provided were not available from private contractors in the area, or that they referred requests for private works to private contractors where they were available. However, as noted above, the guidance states that 'the absence of current competition with other providers of the same goods or services does not

⁵⁰ The 12 councils were Brighton, Central Coast, Circular Head, Derwent Valley, Devonport City, Dorset, Glamorgan-Spring Bay, Latrobe, Launceston City, Meander Valley, Sorell and Tasman Councils.

⁵¹ Treasury (Department of Treasury and Finance) (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023. <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

automatically imply that an activity is not a business activity.’⁵² Councils are therefore required to document their reasoning, including any consideration of whether competitors *would* emerge if they operated differently.⁵³ If competitors would not emerge, it may be the case that the provision of these services is a public benefit, and therefore the competitive neutrality principles should not be applied. However, this reasoning should be documented by the councils in accordance with the relevant guidance.

3.26 Hobart City Council has advised that a review of its activities to identify significant business activities – including consideration of private works – is on its forward work plan.

3.27 The identification of significant business activities should occur annually, as any identified significant business activity must be reported in councils’ financial statements.

Reporting of significant business activity

3.28 As noted above, councils are required to report significant business activity in their financial statements.

3.29 Flinders Council was the only Council to report private works as a significant business activity in its 2021-22 financial statements. It originally reported \$123,000 in private works revenue. However, we found that its actual revenue from private works was \$98,000.⁵⁴ When the \$83,000 of that revenue for services to other government entities is removed, only the remaining \$15,000 of the revenue could have constituted a significant business activity. The Council also did not document its consideration as to why this work constituted a significant business activity.

⁵² Treasury (2021), [Competitive Neutrality Policy](https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy), Treasury, accessed 30 October 2023.

<https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

⁵³ Ibid.

⁵⁴ This does not constitute a material misstatement.

Acronyms and abbreviations

CNP	Competition Neutrality Policy
OTTER	Office of the Tasmanian Economic Regulator
Treasury	Department of Treasury and Finance

Audit Mandate and Standards Applied

Mandate

Section 23 of the *Audit Act 2008* states that:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:
 - (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
 - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
 - (c) investigating any matter relating to public money or other money, or to public property or other property;
 - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
 - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
 - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
 - (i) on behalf of the State entity; or
 - (ii) in partnership or jointly with the State entity; or
 - (iii) as the delegate or agent of the State entity;
 - (g) examining the performance and exercise of the Employer's functions and powers under the *State Service Act 2000*.
- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act

Standards Applied

Section 31 specifies that:

'The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to -

- (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
- (b) the Australian Auditing and Assurance Standards.'

The auditing standards referred to are Australian Auditing Standards as issued by the Australian Auditing and Assurance Standards Board.



*Front cover image: Grading of Prossers Road, Nunamara
Photography: Shaw Contracting*

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