



Tasmanian
Audit Office

Private works undertaken by Councils

Report of the Auditor-General

No.3 of 2023-24

Welcome and introductions

Review objective

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

Private works is the supply of services and works to external parties at their request

(s205, LGA 1993)

Key Takeaway

The amount of private works is relatively low and was nil for some councils. However, councils could improve how they manage private works.

Namely, they should establish with appropriate policies, ensure compliance with policies and legislative requirements on fee transparency, and apply the national competition policy.

This would improve transparency and consistency, while protecting councils from risks associated with undertaking these works.

Scope

The Review examined:

- all **29 councils**
- **policies, procedures, and financial information** related to the management of private works in **2021-22**.

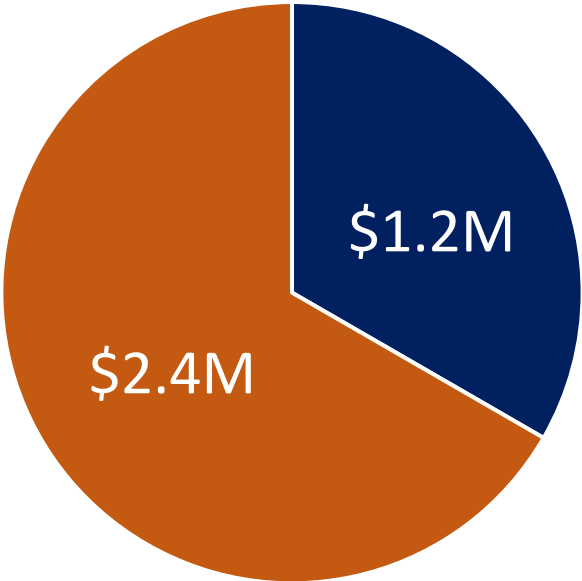
Review criteria

1. Are private works processes **transparent and consistent**?
2. Were councils' private works fees and processes **compliant** with relevant legislative requirements?

What we found

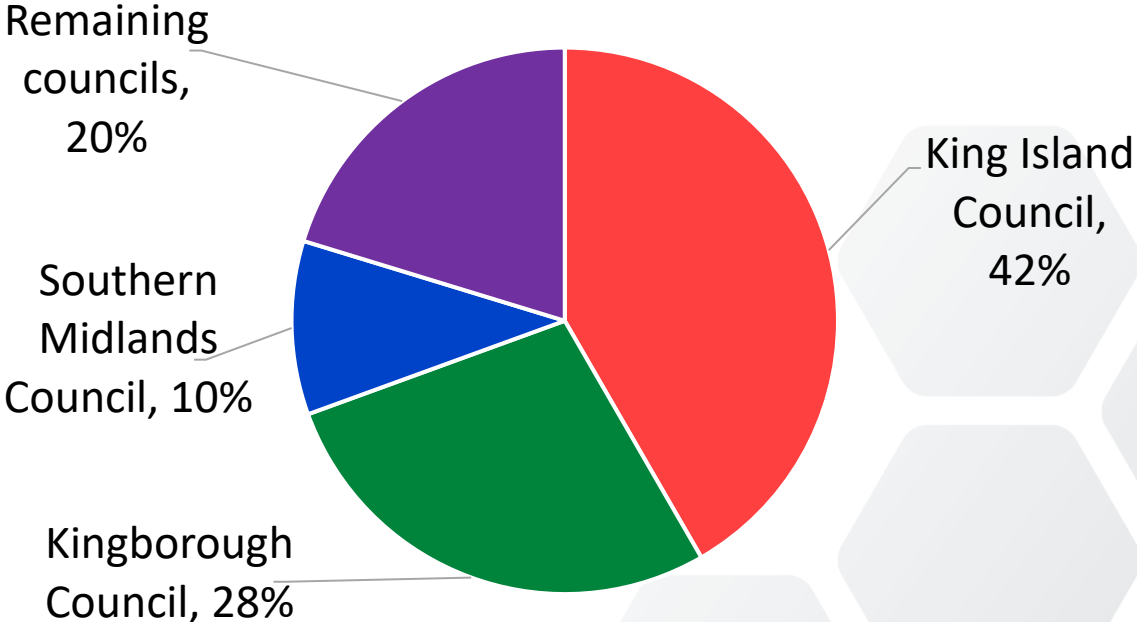
Volume of Private Works

Private Works Revenue 2021-22 by Source



■ From private interests ■ From government entities

Private Works Revenue 2021-22 by Council



Findings: Policies

- Private works is discretionary, so it is open to criticism and at risk of mismanagement
- Given this, we expected Councils to have policies which were:
 - publicly available
 - supported transparent, objective, and consistent decisions
 - gave priority to the Council's own work program.
- Councils did not meet these expectations.

Findings: Policies

| Met expectations | Mostly met expectations | Did not meet expectations |
|-----------------------------|---|--|
| 1 had an appropriate policy | 9 did not undertake private (3 nonetheless had some relevant internal policies) | 13 had policies which did not meet expectations 6 did private works without a policy. |

Findings: Policies Case Study

- West Tamar:
 - repealed its private works policy in 2016 to cease private works;
 - nonetheless undertook some in 2020-21
 - advised staff may have been 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.

Findings: Decision Making

- Private works is discretionary, so it is open to criticism and at risk of mismanagement
- Given this, we expected Councils to have and be compliant with decision making procedures which established a consistent decision-making process (even in the absence of a policy)
- Councils did not meet these expectations.

Findings: Decision Making

| Met expectations | Mostly met expectations | Did not meet expectations |
|---|-----------------------------------|--|
| 2 were compliant with own decision-making processes | 9 did not undertake private works | 8 of the councils that undertook private works were not compliant with their decision-making policies 10 of the councils that undertook private works had no decision-making process. |

Findings: Decision Making Case Study

- King Island had a relevant debt recovery policy:
 - Controls were not established to ensure that this policy was complied with.
 - This included requirements for deposit, and the requirement to not undertake work for people with a council debt.
- This example demonstrates the need to ensure policies meet current needs, and that there are processes to ensure compliance with the policies.

Findings: Dispute Resolution

- Private works involves discretionary customer service and project delivery on sometimes complex projects. In addition, the Act requires councils to establish customer service charters covering their activities
- Given this, we expected Councils to have complaints resolution procedures which established a consistent dispute resolution process, even in the absence of a policy
- Nearly all councils had some form of dispute resolution policy.

Findings: Dispute Resolution

| Met expectations | Mostly met expectations | Did not meet expectations |
|---------------------|-------------------------|---------------------------|
| 27 met expectations | 1 met some expectations | 1 was not fully compliant |

Findings: Dispute Resolution Case Study

- King Island had one dispute in the relevant year:
 - The Customer Service Charter was not applied
 - The Council advised this was because the requirements were not relevant to private works, leaving private works uncovered by a dispute resolution policy
- This example demonstrates the need to ensure policies meet current needs, and that there are processes to ensure compliance with the policies.

Findings: Conflicts of Interest

- Private works involves the use of council resources for a fee at a person's request
- Given this, we expected Councils to have ways of managing actual and perceived conflicts of interest
- Councils largely met these expectations with a small number some exceptions.

Findings: Conflicts of Interest

| Met expectations | Mostly met expectations | Did not meet expectations |
|--|-------------------------|---|
| <p>23 had a Col policy in place, and no identified Col's in relation to private works</p> <p>2 had a Col policies in place and managed identified conflicts in accordance with those policies.</p> | Nil | 4 had a Col policies in place but did not manage identified Col's in accordance with those policies |

Findings: Conflicts of Interest Case Study

- Derwent Valley Council was not compliant with its Code of Conduct for the one private works project it undertook in 2021-22
 - This project was for an employee, but appropriate authorisation was not recorded.
- This example demonstrates the need for councils to ensure policies and forms are supported by appropriate processes to ensure compliance.

Findings: Fees & Charges

- The *Local Government Act 1993* establishes council's powers and obligations
- Given this, we expected councils to comply with any relevant provisions in relation to private works
- Councils did not meet these expectations.

Findings: Fees & Charges

| Met expectations | Mostly met expectations | Did not meet expectations |
|---|--|--|
| <p>3 had a fees and charges schedule which was applied consistently and covered all the kinds of private works undertaken</p> | <p>9 did not undertake private works</p> | <p>6 had not established a fees and charges schedule</p> <p>11 had a schedule, but this was not applied consistently or did not cover all the kinds of private works undertaken.</p> |

Findings: Fees & Charges Case Study

- Launceston City Council had not established a publicly available private works fees and charges schedule.
- The Council was not recovering costs for one service which had been ongoing for approximately 10 years
- In response to the review, the Council revised its fees and charges to reflect all costs to the Council
- This demonstrates the importance of establishing and regularly reviewing private works charges.

Findings: National Competition Policy

- The National Competition Policy is intended to ensure equal competition between publicly owned and private businesses. It requires Councils to identify “significant business activity” and apply competitive neutrality principles (i.e, corporatise or apply full cost attribution)
- Given this, we expected councils to have considered and documented whether private works was a “significant business activity”
- Councils did not meet these expectations.

Findings: National Competition Policy

| Met expectations | Mostly met expectations | Did not meet expectations |
|------------------|---|---|
| Nil | 25 councils did not document whether it was a significant business activity, but had relevant revenue of less than \$50,000 | 4 did not document whether their private works could constitute a significant business activity, and had relevant revenue greater than \$50,000 |

Recommendations

We recommend the following:

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.

Recommendations (Cont)

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.

Review conclusion

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 work or complied fully with relevant legislative requirements.

Responses

Responses were received from 21 councils

Brighton

Flinders

Launceston

Burnie

George Town

Meander Valley

Central Highlands

Glenorchy

Northern Midlands

Clarence City

Hobart

Southern Midlands

Circular Head

Kentish

Sorell

Derwent Valley

King Island

Waratah-Wynyard

Devonport City

Latrobe

West Coast

Thank You – any questions?