

Tasmanian Audit Office

Accountability on Your Behalf

Report of the Auditor-General

SPECIAL REPORT NO. 63

Environmental Management and
Pollution Control by Local Government

November 2006

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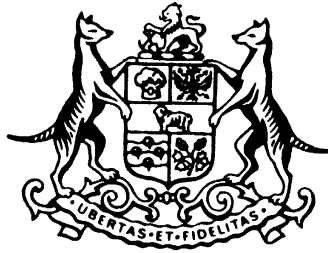
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Management of agencies are provided with opportunity to comment on any matters reported. Where they choose to do so, their responses are detailed within the reports.



2006

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL
SPECIAL REPORT No. 63**

**ENVIRONMENTAL MANAGEMENT
AND POLLUTION CONTROL BY
LOCAL GOVERNMENT**

November 2006

*Presented to both Houses of Parliament in accordance with the provisions of
Section 57 of the Financial Management and Audit Act 1990*

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30 November 2006

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Mr President
Dear Mr Speaker

SPECIAL REPORT NO. 63

Environmental management and pollution control by local government

This report has been prepared consequent to examinations conducted under section 44 of the *Financial Management and Audit Act 1990*, for submission to Parliament under the provisions of section 57 of the Act.

Compliance audits seek to provide Parliament with assurance that public sector entities are achieving compliance with statutory obligations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H M Blake', with a stylized flourish at the end.

H M Blake
AUDITOR-GENERAL

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Foreword

Tasmania's twenty-nine councils have wide ranging responsibilities under the *Environmental Management and Pollution Control Act 1994*. The Environment Division of the Department of Tourism, Arts, and the Environment provides limited guidance but in some respects councils have to chart their own course as to what to do and how to do it.

In this compliance audit, we based audit testing on our interpretation of what the Act requires and how councils performed in relation to that interpretation — a methodology developed in consultation with the Environment Division and Glenorchy City Council. To gain an overall impression of local governments' performance we selected six councils from around the state where we reviewed documents and met planners, Environmental Health Officers and managers.

With respect to what was required by the Act, we found that councils had ensured that planning processes were considering the environmental implications of development applications and were applying environmental conditions as necessary. However, we found that the Environment Division's *Environment Assessment Manual*, an important tool used by councils, was incomplete and in need of updating. Also, only one council had a register to help it keep track of Level 1 activities within its municipality.

We found a very low level of environmental complaints related to Level 1 activities. Councils took appropriate action, usually resolving problems by discussion or knowledge sharing. Follow up inspections occurred where necessary.

Although the extent of environment complaints was limited, this does not necessarily mean that pollution incidents were not occurring, hence the need for monitoring. However, we found very limited auditing by councils of Level 1 activities.

In the case of dealing with larger industries (whose environmental performance is monitored directly by the Environment Division) we found councils were working effectively with Environment Division.

The Report contains nine recommendations that aim to help councils meet their legislative responsibilities under the *Environmental Management and Pollution Control Act 1994*.

HM Blake

Auditor-General

30 November 2006

List of acronyms and abbreviations

Board	Board of Environmental Management and Pollution Control established under section 12 of EMPCA
DTAE	Department of Tourism, Arts, and the Environment
EHO	Environmental Health Officer
EMPCA	<i>Environmental Management and Pollution Control Act 1994</i>
EPN	Environmental Protection Notice
LUPAA	<i>Land Use Planning and Approvals Act 1993</i>

Executive summary

Executive summary

While the Department of Tourism, Arts, and the Environment monitors the environmental impacts of large-scale industry, smaller-scale industries (known as Level 1 activities) are the responsibility of the state's 29 local government councils.

In this audit we tested six councils to assess their compliance with the *Environmental Management and Pollution Control Act 1994* (EMPCA). Those councils were:

- Central Coast
- Glamorgan Spring Bay
- Glenorchy City
- Hobart City
- Kingborough
- West Coast.

The period that we focused on was from January to June 2006 although it was occasionally necessary to examine some earlier documents to satisfy our testing criteria.

The areas of compliance that we specifically addressed were:

- how councils recognise their EMPCA obligations
- councils monitoring obligations for Level 1 activities.

Audit opinion

How councils recognise their EMPCA obligations

Based on the samples that we reviewed during the audit, no development applications had bypassed the need for assessment for EMPCA purposes and our criterion of completeness was satisfied.

With respect to documentation used by councils to support the environmental assessment of development applications, we found varying standards. The Department of Tourism, Arts, and the Environment's *Environmental Assessment Manual* was incomplete and somewhat out of date.

While there is no statutory requirement for councils to have registers of Level 1s, we believe that it is an important management tool. Central Coast was the only council with a register.

Councils monitoring obligations for Level 1 activities

We found that, in the main, there was only very limited auditing of Level 1 activities by councils.

Trade waste policies were in place in the larger councils and supported their trade waste agreements or permits. Smaller councils did not have trade waste policies.

Overall, we found a very low level of environmental complaints related to Level 1 activities. Appropriate action had been taken in respect of complaints with problems usually resolved by discussion or knowledge sharing. Follow up inspections occurred where necessary.

Generally, we found that up scaling of Level 1 activities to Level 2 would only be likely to come to light through informal means.

Based on the samples that we reviewed, permit conditions from Environment Division in respect of Level 2 industries had been properly incorporated in council planning permits without amendment and in their entirety.

Although most councils were involved in some form of background environmental monitoring, with very few exceptions, operators of Level 1 activities were not required to undertake any such monitoring.

Recommendations

In all, we made 9 recommendations aimed at improving councils' level of compliance with *Environmental Management and Pollution Control Act 1994*.

Principally, these recommendations were targeted at:

- updating the guidelines available to councils for assessing environmental implications of development applications
- record-keeping for Level 1 activities
- developing audit programs to promote monitoring.

Recommendations and management response

List of recommendations

The following table reproduces the recommendations contained in the body of this report.

No	Report section	Recommendation
1	1.3	Environment Division should consider updating and completing the 1996 <i>Environmental Assessment Manual</i> to provide guidance to councils for assessing activities and setting appropriate permit or EPN conditions. The addition of standard permit/EPN conditions (similar to those used by the Environment Division for level 2 activities) should be included to ensure legal and technical rigour.
2	1.3	To ensure that all development applications are vetted for environmental implications, councils should include EHOs directly in the initial assessment process.
3	1.3	Planning permits should contain environmental conditions that are capable of being enforced.
4	1.4.1	Evidence of environmental assessment of planning documents should be noted in council records.
5	1.4.2	Registers of Level 1 activities should be compiled beginning with relevant new development applications. From that starting point, existing activities (that would be classified as Level 1 if submitted now) should be added to councils' registers to facilitate targeted reviews.
6	2.2	Councils should conduct environmental audits of Level 1 activities at regular time intervals to establish compliance by operators with permit conditions. As well as advising business operators of industry standards of best practice, audits would enable EMPCA enforcement action to be initiated as necessary.
7	2.3	Where future developments at smaller councils will lead to substantial generation of trade wastes, councils should prepare a trade waste policy framework to manage agreements or permits.
8	2.5	Councils should consider annual returns of production levels for those Level 1 activities where there is a possibility that they could exceed the Level 2 threshold if their business operations expand.

9	2.7	Where forestry operations on private timber reserves may have negative consequences for local communities and industries, councils should actively explore mechanisms through existing consultative bodies, including the Local Government Forestry Consultative Committee and Forest Practices Advisory Council to mitigate adverse effects.
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Management response

Central Coast Council

Thank you for the final draft of the Compliance Audit – Environmental Management and Pollution Control by Local Government. I have discussed it with our staff and we agree with the recommendations and findings of the audit.

We also appreciate the opportunity to participate in this kind of project, as we see it as a valuable way of benchmarking our processes and activities, as well as an ideal way of reviewing our systems.

Glamorgan Spring Bay Council

We have reviewed the draft Environmental Management and Pollution Control Compliance by Local Government report and offer the following comments.

The content and methodology of the report reflect our understanding of the intent and purpose of the audit.

Recommendation 1

We support the recommendation to update and complete the 1996 *Environment Assessment Manual* and to include recommended standard conditions. However, the varied and specialised nature of many smaller activities generally demands a case-by-case assessment and the imposition of specialised conditions. Therefore the preparation of "standard conditions" may prove problematic in practice.

Recommendation 2

We support the involvement of EHOs in the assessment process but have some difficulty finding a meaningful process of ensuring that this occurs universally.

Recommendation 3

We do have some difficulty with the enforcement of environmental conditions on planning permits. Planning Permits are open ended in the sense that while there are limits on commencement, there are no statutory limits on completion. Furthermore, permit conditions may be invalid if the condition relies on the discretion or actions of a third party.

Recommendation 8

The provision of annual returns would greatly assist in the monitoring of Level 1 operations. However, there will be resource implications (for Councils and private developers) in relation to the provision, assessment and proofing of annual returns.

Recommendation 9

There is a perception that with forestry operations the Forest Practices Legislation is geared toward ensuring that adverse environmental effects are mitigated during forestry operations rather than providing any mechanism for determining whether such operations are appropriate at all.

Glenorchy City Council

Firstly, your office should be congratulated on undertaking this audit as it will assist in understanding the issues that face local government when dealing with Level 1 activities under the *Environmental Management and Pollution Control Act 1994* (EMPCA) and it will assist in achieving uniformity in the application of EMPCA.

I wish to make comment on what constitutes the definition of a Level 1 activity under EMPCA as this is a large part of the problem. A Level 1 activity is an activity that requires a planning permit other than a Level 2 or 3 activity. Hence, depending on the Council's Planning Scheme provisions this may include a residence with a variation to the standard setback requirements or an existing commercial building with a proposal to erect a new sign. These are Level 1 activities, but clearly not ones necessarily falling within the intent of the EMPCA application. However this is part of the problem that local government faces as it does not have suitable guidelines on the type of activity that should invoke the provisions of EMPCA.

Recommendation 1

Agree with this recommendation, however this should read "Environment Division in consultation with local government...". Also in the manual should be the types of Level 1 activities that require the application of EMPCA as discussed above. For example this could include the automotive industries. If this guidance is not provided in the manual then the councils will be inconsistently applying provisions of EMPCA to those activities that may not warrant the attention and therefore divert human resources away from the real issues.

Recommendation 2

Support this recommendation.

Recommendation 3

Agree with the recommendation, but the commentary leading to this recommendation is not necessarily logical. The suggestion that the GCC advice clause should be a condition as it is a specific legislative requirement, overlooks the fact that the provisions of EMPCA can be enforced without the necessity to include all the relevant provisions as a permit condition.

Recommendation 4

Agree with the recommendation, however unsure of the reference to GCC “conditions procedures” and how this relates to the keeping of appropriate records and inconsistencies found at Glenorchy.

Recommendation 5

Disagree with recommendation unless Level 1 activities are more clearly defined than currently exists under EMPCA. If a register is to be kept then clear guidelines must be developed by the Environment Division in consultation with local government to define what Level 1 activities. If this does not occur and the register is to include all Level 1 activities then the resources required to undertake this would be prohibitive.

Recommendation 6

Disagree with recommendation unless Level 1 activities are more clearly defined. Similar comments to Recommendation 5 apply. In principle, audits should be undertaken, however it is the fundamental issue of defining what activities should be audited.

Recommendation 7

Support recommendation.

Recommendation 8

Support recommendation and this can be achieved by a more rigorous approach at the time of assessment of the development application.

Recommendation 9

Support recommendation.

Hobart City Council

Firstly, the review is a welcome opportunity to highlight a number of difficulties with EMPCA that Local Government are currently experiencing.

Given that you are restricting this response to one page I will not comment on the matters that I support within the draft report and

will concentrate on the areas that I consider require amendment or further explanation.

Recommendation 2

In the case of the Hobart City Council the relatively small number of Level 1 planning applications would not justify tying up an EHO resource to vet all applications. This is simply unnecessary in Hobart's case. It is also relevant to note that the Hobart City Council employs an Environmental Development Planner that comments on environmental impacts associated with planning applications and therefore referral to EHO's are generally confined to health related issues. The senior development appraisal staff at the Hobart City Council are appropriately experienced to determine whether an environment impact is likely to occur in which case a referral to the relevant officer for detailed comment would be initiated. It is therefore considered appropriate to recognise the Hobart City Council's unique planning environment and staffing arrangements as opposed to the blanket recommendation.

Recording For New Development Applications

The reference to Hobart City having "inconsistent or inadequate documentation of an environmental health referral" needs to be balanced with the fact that Hobart has the services of an Environmental Development Planner that provide comments on environmental matters and that we have an electronic database of referrals and responses and therefore hard copies of referrals may not always be present within the planning envelop that may have been audited.

Recommendation 4

It is assumed that this is only applicable where an environmental assessment is necessary.

Recommendation 5

The critical aspect of this recommendation is determining what constitutes a Level 1 activity. The current definition in EMPCA i.e. "means an activity which may cause environmental harm and in respect of which a permit under the Land Use Planning and Approvals Act 1993 is required but does not include a level 2 activity or a level 3 activity"

is relatively open to interpretation and if literally interpreted would involve most development applications. This open definition is likely to lead to inconsistencies between Local Governments. It is recommended that clear guidelines be issued by the State Government as to what constitutes a Level 1 activity prior to Local Governments being required to compile this register. It should,

however, be recognised that the compilation of this register and more importantly the "targeted reviews" are likely to be a significant resource issue for some local governments.

Recommendation 6

Before putting local government to an expensive and blanket auditing regime it is considered more efficient and effective for State Government to first establish a priority list based on the type of Level 1 activity at the same time as providing the necessary "industry standards and best practice examples" for Local Government to disseminate. Local Government can then work with both the State Government and the peak industry bodies to deliver the message. The suggested recommendation will entail a rather ad hoc and inconsistent approach with the associated and varying outcomes on the ground.

Environmental Background Monitoring

The Hobart City Council is involved in the following background environmental monitoring in addition to the decommissioning of service stations:

- ★ monitors all major rivulets within the municipal boundary on a monthly basis
- ★ recently undertook an air quality monitoring program within two of its commercial strips
- ★ is in the process of updating the State of the Environment Report for the City

Kingborough Council

A general comment relates to the extensive and diverse nature of Level 1 activities under EMPCA. As indicated by Council staff during the interview process, this could range from a very large forestry coupe with numerous potential environmental issues or impacts to a new house with a heat pump that could create a noise nuisance. Therefore any consideration of a generic approach to Level 1 environmental impact assessments and environmental performance audits is not realistic for local government from a logistical and resourcing perspective.

As requested, Council management has considered the report and wishes to provide the following comments.

Recommendation 1

Agreed. This document has proved a useful assessment tool for local government in the past but is in serious need of being updated by the Environment Division in consultation with local government.

Recommendation 2

Agreed. This is an important issue. Kingborough Council already has a good system in place although procedural improvements are always being considered.

Recommendation 3

Agreed.

Recommendation 4

Agreed. This is an essential component of any Council planning system. Kingborough Council's existing application based software system requires this to be done.

Recommendation 5

A complete register of all potential Level 1 activities is not a realistic proposition and the emphasis should be on those potentially large environmental impact Level 1 activities. In that sense the Recommendation is agreed with and a more targeted approach could be phased in and implemented. It is not realistically possible or necessary for all small-scale level 1 activities (such as the abovementioned heat pump example or every septic tank). How such a register would be actually used (i.e. the "targeted reviews") should be the focus of this Recommendation and so those activities that are listed should not include those where the environmental risk is relatively low. Specific guidelines from the Environment Division (see Rec. 1) would be useful in this regard.

Recommendation 6

Council currently undertakes environmental audits on an as-needed basis. The process is driven by complaints, issues that arise and the identification of genuine environmental risk. This may then result in EMPCA enforcement action. To advocate a comprehensive audit approach for all Level 1 activities at this stage is unrealistic due to limited resources. In this regard, other options should also be explored that involve cost recovery. This might involve self-auditing by industry in accordance with a statewide program that has been jointly developed between local government and the Environment Division (see Rec. 1).

Recommendation 7

Agreed. Currently being undertaken by Kingborough Council.

Recommendation 8

Agreed in principle, although a uniform statewide approach to this matter would need to be facilitated by the Environment Division. Consistent guidelines are necessary for this to occur — noting that

Council's legal ability to require such annual returns (by EPNs?) would need to be clarified.

Recommendation 9

This Recommendation is too vague to be of assistance in potential conflict situations. The two consultative bodies referred to do not deal with individual cases. They respectively consider issues that have broader relationship or technical implications. These bodies will not be able to assist in resolving the specific environmental problems that might be associated with a particular forestry activity on private land. Local Government does have the ability to utilise the existing EMPCA enforcement provisions, should an environmental nuisance or environmental harm occur as a result of such forestry activities. Utilising these provisions is however extremely problematic and, to our knowledge, has not occurred to date.

West Coast Council

In relation to the above report I advise that West Coast Council management concur with the findings and recommendations in general and provide the following comment.

Recommendation 1

Upgrading of the *Environmental Assessment Manual* is essential as a major tool for Local Government

Department of Tourism, Arts, and the Environment

The audit has provided valuable information in respect of Level 1 activities. However, in only targeting Level 1 activities, the audit implies that council responsibility under EMPCA is restricted to Level 1 activities. These activities are defined in EMPCA as activities that may cause environmental harm, and that require a permit under the *Land Use Planning and Approvals Act 1993*. Council responsibility is defined in section 20A of the Act:

‘In relation to activities other than prescribed activities, a council must use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution’.

Forest Practices Authority

I believe that the report adequately recognises the relevant issues relating to the regulation of forest practices-

1. That forestry operations are covered by a statewide planning system that provides a comprehensive framework for delivering sustainable forest management, with rigorous planning, monitoring and enforcement provisions.

2. That forestry operations need to be conducted in a manner that is sympathetic to the objectives of local planning schemes and that this is best achieved through the Forest Practices Code and consultative mechanisms, including the Local Government Forestry Consultative Committee and the Forest Practices Advisory Council.

Introduction

Introduction

Background

The *Environmental Management and Pollution Control Act 1994* (EMPCA) is part of a suite of legislation enacted to underpin resource management and planning in Tasmania. EMPCA's objectives include:

- protection and enhancement of the environment
- prevention of degradation and adverse risks to human and ecosystem health
- regulation, reduction or elimination of the discharge of pollutants and hazardous substances to air, land or water.

Activities with the potential to produce environmental harm are classified under the legislation as Levels 1, 2 or 3.

Level 1, 2 and 3 activities

First, Level 3 activities are Projects of State Significance that fall outside of EMPCA and are assessed by a separate statutory body.

Next, there are Level 2 industries that generally involve medium- to large-scale industrial projects with the potential to cause material or serious environmental harm. These activities are assessed and regulated by the Environment Division of the Department of Tourism, Arts, and the Environment (DTAE). Such industries — categorised in a schedule of EMPCA — are subject to regular monitoring by specialists from the Environment Division.

Councils assess new development applications to ensure that adequate and appropriate information is provided. In the case of a proposed Level 2 industry¹, councils refer the application to the Board of Environmental Management and Pollution Control (the Board) that then undertakes assessment. Environmental conditions imposed by the Board then are included in councils' planning permit that will often contain other kinds of permit conditions.

Lastly, a Level 1 activity² is one that requires a permit under the *Land Use Planning and Approvals Act 1993* — a central piece of legislation in Tasmania's planning system. For Level 1 activities, councils grant planning permits subject to specific conditions that take account of

¹ Environment Division's management of Level 2 activities was the subject of our Special Report No. 40 'Environmental Management and Pollution Control' tabled in June 2002.

² *Environmental Management and Pollution Control Act 1994* section 3(1): "'level 1 activity" means an activity which may cause environmental harm and in respect of which a permit under the *Land Use Planning and Approvals Act 1993* is required but does not include a level 2 activity or a level 3 activity..."

the activity itself and its possible impact on the environment. Usually, these activities are viewed as small-scale or low-impact with limited potential to cause environmental harm (in terms of both frequency and magnitude). Although local government assesses environmental impacts of Level 1 activities, a formal environmental impact statement is not necessarily required. Regulation of Level 1 activities does not normally require a high level of specialised expertise or continual inspection. The Board also has the authority to call in a Level 1 activity for assessment where it is deemed appropriate.

Local government's role in Level 1 activities

While Level 1 activities are smaller than large-scale Level 2 industries they are more plentiful and cumulatively could pose an environmental risk.

EMPCA's inclusion of Level 1 activities essentially followed on the previous regulatory framework for councils but without the previous requirement to register or licence the business or activity. The emphasis of EMPCA is primarily on Level 2 industries and Environment Division has no jurisdiction to direct councils that they ought to maintain a centralised record of all permits issued.

For Level 1 activities, each council is responsible for developing its own processes, systems and documentation. The assessment and decision-making procedure for Level 1s is mainly the responsibility of the Planning Authority (i.e. local government when it is undertaking that statutory role).

Councils' responsibilities for ongoing oversight of Level 1 activities are stated in EMPCA³:

In relation to activities other than prescribed activities [i.e. Level 2s and Level 3s], a council must use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution.

In relation to development applications, councils may have discretion to either refuse permits, or grant permits — either unconditionally or subject to conditions — as 'permissible Level 1 activities'.

Objective

The objective of the audit was to review management practices by councils to determine whether the requirements of the *Environmental Management and Pollution Control Act 1994* were being complied with in respect of Level 1 activities.

³ *Environmental Management and Pollution Control Act 1994* section 20A(2)

Scope

To gain a statewide perspective, we selected six councils from around the state: three large metropolitan, one medium-sized and two smaller councils. The councils selected were:

- Hobart City
- Glenorchy City
- Kingborough
- Central Coast
- West Coast
- Glamorgan Spring Bay.

When reviewing the assessment of development applications, we focused on the period from January to June 2006 although it was occasionally necessary to examine older examples to satisfy some of the audit criteria.

EMPCA imposes regulatory responsibilities on councils for pollution control for activities that are not Level 2 or Level 3. So, in addition to Level 1 activities, it also includes many minor industrial or commercial premises that are not subject to permits. Also included are environmental nuisances that may be caused by activities conducted at such premises or at private and domestic premises. This aspect of environmental management and pollution control by councils was not considered as part of the audit.

Criteria

Table 1 shows the criteria that we applied in conducting the audit. In essence, the audit aimed to cover a wide range of council responsibilities in the field of environmental management and pollution control.

Table 1: Audit criteria

Criterion	Requirement considered
How councils recognise their EMPCA obligations	Completeness Guidelines Recording
Councils' monitoring obligations for Level 1 activities	Monitoring - Audit interpretation of <i>Environmental Management and Pollution Control Act 1994</i> Environmental audits Trade waste agreements

Complaint handling
Potential up scaling of Level 1 activities
Treatment of permit conditions for
Level 2 industries
Environmental background monitoring

Audit methodology

Through field visits to each of the above councils, we met relevant staff, gathered data and reviewed documentation.

In applying the audit criteria we recognised the diverse nature of the councils that we tested. The management model that is appropriate for a densely populated urban council that provides its services in a small geographical area cannot be applied in a large rural municipality with a small and widely dispersed population and low levels of commercial and industrial activity. Accordingly, in making our findings and framing recommendations we have focused on the principles of EMPCA and not on details of process.

Appendix 1 provides an overview of the six councils.

Timing

Planning of the audit commenced in May 2006. The fieldwork was conducted from June through to September with this Report being finalised in November 2006.

Acknowledgement

We acknowledge the assistance given by the Environment Division (of DTAE) and Glenorchy City Council in planning for the audit.

Resources

The total cost of the audit excluding report production costs was approximately \$54 000.

1 How councils recognise their EMPCA obligations

1 How councils recognise their EMPCA obligations

1.1 *Recognition — Audit interpretation of Act*

In order to achieve the requirements of the Act, we considered that councils have to provide the following functionality for development applications:

- ensure that all are assessed for EMPCA purposes (completeness)
- are assessed with clear guidelines (guidelines)
- assessment information is recorded and maintained (recording).

1.2 *Completeness*

In line with our interpretation of councils' obligations, we reviewed the ways that councils handled new development applications and exercised their powers to refuse or grant them either unconditionally or subject to conditions.

Understandably, development applications can span a very wide range of possibilities without crossing the scheduled limits that would make them Level 2 industries.

In the case of large-scale or multifaceted proposals it is usual for the proponent to liaise with council planners before the development application is lodged officially. As a result, there is normally advance notice for such projects that provides an alert for later environmental assessment.

Strict timelines for processing development applications are a crucial part of the state's planning system. Accordingly, councils have guidelines ensuring that all development applications are logged in the records management system and promptly forwarded to planning officers for assessment.

Most of the councils we visited held regular meetings to systematically review new development applications. In addition to representatives from planning, building, plumbing etc, the assessment meetings often directly involved an Environmental Health Officer (EHO). Where the EHO did not attend assessment team meetings, development applications were later forwarded for the EHO's attention.

Based on the samples that we reviewed during the audit, no development applications had bypassed the need for assessment for EMPCA purposes and our criterion of completeness was satisfied.

1.3 Guidelines

We examined documentation used by councils to support the environmental assessment of development applications.

As we noted in the Introduction, EMPCA does not define what constitutes Level 1 activities. However, advice as to what Level 1 activities could be, and how they should be managed, is available from the *Environmental Assessment Manual* issued by the former Department of Environment and Land Management in January 1996. However, the *Environmental Assessment Manual* is incomplete and somewhat out of date. Updating and completion of the manual would provide councils with the guidance required for assessing activities and setting appropriate permit or EPN conditions. A set of standard permit/EPN conditions (similar to those used by the Environment Division for level 2 activities) should be included in the manual and would ensure both legal and technical rigour.

Recommendation 1

Environment Division should consider updating and completing the 1996 *Environmental Assessment Manual* to provide guidance to councils for assessing activities and setting appropriate permit or EPN conditions.

The addition of standard permit/EPN conditions (similar to those used by the Environment Division for level 2 activities) should be included to ensure legal and technical rigour.

Some industry associations (e.g. Australian Institute of Petroleum) produce information regarding environmental best practice for their members and these are sometimes used to frame planning conditions.

Glenorchy and Central Coast had environmental policies that provided a comprehensive network for councils' environmental performance.

Central Coast's policy framework was very well developed and expressed council's goals and objectives. That structure was supported by detailed annual plans and procedures. Linkages were evident at the strategic level between the planning cycle and public reporting of performance that was articulated in the 'Environmental Health and Environmental Management Plan'.

At the remaining councils, management of new Level 1 proposals centred on council officers relying directly on their experience in

dealing with provisions of EMPCA (and its subordinate legislation⁴). Amongst the councils that we audited, scrutiny of development applications from an environment standpoint occurred in one of two ways. Either the EHO was directly involved as a member of the assessment team or received development applications that Planning Officers had identified as having environmental implications. Where planning officers are the sole filter and make decisions without the direct input from EHOs there could be omissions.

Recommendation 2

To ensure that all development applications are vetted for environmental implications, councils should include EHOs directly in the initial assessment process.

For such development applications (i.e. that could be regarded as Level 1 activities) the role of the EHO, or Environmental Health Section in the case of larger councils, was to:

- verify the adequacy of information provided by the applicant
- request additional information if required
- conduct a site visit (maybe accompanied by the relevant Planning Officer) to identify any likely problems and to gauge other activities in the vicinity
- determine and apply appropriate permit conditions for the proposed activity approval using either the *Environmental Assessment Manual* or industry codes of practice published by the Environment Division
- return the completed environmental report to the Planning Officer by the due date.

Where councils proceeded to grant planning permission, any environmental conditions were included in the advice that was sent to the applicant. From our sample testing, we noted cases where development applications that related to existing Level 2s were referred to the Board as required by the Act.

At Glenorchy City we observed the use of 'advisory' conditions that were attached to, but not part of the planning permit: a planning document indicated: "This advice does not form part of the permit but is provided for the information of the applicant." In another

⁴ Subordinate legislation includes *Environmental Management and Pollution Control (Waste Management) Amendment Regulations 2005*, *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*.

planning permit with advisory conditions that we reviewed, there was no such advice. In the former instance, one of the advisory points put the onus on the applicant for a Level 1 activity to take specific action in the event of environmental nuisance or serious or material environmental harm being caused. As this was a specific legislative requirement⁵, we consider that this should be a condition under which the planning permit is issued.

Recommendation 3

Planning permits should contain environmental conditions that are capable of being enforced.

1.4 *Recording*

1.4.1 *For new development applications*

We considered that it was necessary for assessment decisions to be recorded and maintained in order to demonstrate compliance with the Act.

The state's planning system is complex and supported by large and detailed Acts. Planners, and their administrative support staff, were immersed in assessing development applications that laid emphasis on the *Land Use Planning and Approvals Act 1993* and their own council's planning scheme. As a result, at most councils, we found that the concept of 'Level 1 activities' as such tended to be viewed as solely the concern of EHOs who were very knowledgeable about EMPCA.

In the main, councils did not have records for Level 1 activities separately available. Therefore, we were unable to examine development applications for those activities and drew our testing samples from across the board.

Wherever possible, we selected development applications for 2006 although for completeness of our testing we sometimes needed to examine older samples. At some councils there were separate planning files, while for others completed development applications were held on property files. Regardless of the system in use, pertinent documentation that we reviewed included environmental health referrals, reports back to council's planning staff, final planning permits together with advice to the applicant.

We found that EHOs were involved in the assessment of development applications — whether as part of a regularly convened

⁵ *Environmental Management and Pollution Control Act 1994* section 32

team or later by appropriate referrals from Planning Officers. Although councils had systems that ensured there was oversight of development applications, we noted some instances at the larger councils where recording of information was incomplete, e.g.

- at Kingborough where records had not been properly noted (e.g. a blank signoff sheet scanned into the electronic records system)
- at Hobart City inconsistent or inadequate documentation of an environmental health referral
- at Glenorchy City there were inconsistencies in the ‘conditions procedures’ applied to some planning permits.

Recommendation 4

Evidence of environmental assessment of planning documents should be noted in council records.

1.4.2 For existing Level 1 activities

As stated in the Introduction to this Report, there is no statutory requirement for councils to register or licence Level 1 activities. Nevertheless, without records there is no easy way for councils to pinpoint the location, number and type of Level 1 activities that could be operating within the municipal boundaries — particularly where these activities may be of long standing or intermittent.

The only council with a register of Level 1s was Central Coast. The approach used in constructing the register was based on the idea that if a development application were submitted now, would the activity be classed as a Level 1.

The lack of centralised data on Level 1 activities at other councils would require them to compile a list from other council records, in effect to undertake a census exercise in order to record Level 1 activities operating within the municipal area.

Recommendation 5

Registers of Level 1 activities should be compiled beginning with relevant new development applications. From that starting point, existing activities (that would be classified as Level 1 if submitted now) should be added to councils’ registers to facilitate targeted reviews.

2 Councils' monitoring obligations for Level 1 activities

2 Councils' monitoring obligations for Level 1 activities

As stated in the Introduction, EMPCA⁶ requires a council to: “... use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution.” There is a risk that failure by councils to adequately monitor Level 1 activities could lead to significant environmental problems. Considerably more businesses operate at this level than in either Levels 2 or 3 and the cumulative effect of these smaller businesses has the potential to undermine management of the environment.

2.1 *Monitoring — Audit interpretation of the Act*

To achieve the requirements of the Act in relation to monitoring, we considered that there are actions that councils need to take. Accordingly, in this part of the audit we examined the following aspects:

- environmental audits
- trade waste agreements
- complaint handling
- potential up scaling of Level 1 activities
- treatment of permit conditions for Level 2 industries
- background monitoring of environmental conditions.

2.2 *Environmental audits*

With a range of smaller scale commercial and industrial activities occurring in their municipalities, we tested to determine whether councils undertook environmental audits of Level 1 activities. The results are shown below in Table 2.

Table 2: Environmental audits of Level 1 activities

Council	Audits conducted
Hobart City	No environmental audit program for Level 1s. However, consultants were engaged to perform a one-off environmental audit in May 2006.
Glenorchy City	The first audit (of auto wrecking businesses) was conducted in 2002 — only two of the nine businesses audited were found to be satisfactory, with the remainder well below established industry

⁶ *Environmental Management and Pollution Control Act 1994* section 20A(2)

best practice. Consultation with defaulting business operators followed, with a set of recommendations being developed to assist them to implement change and adopt best practice environmental management.

Other industries were identified under an environmental audit program. So far, audits have not commenced due to resource constraints.

Kingborough No environmental audit program for Level 1s.

Central Coast Full programme of annual audits that were either performed against environmental conditions imposed during planning assessment or, in the case of activities that were already established, set out in an Environmental Protection Notice.

Level 1-type activities were audited against industry standards and codes of practice (e.g. service stations have been audited against the Australian Institute of Petroleum Code's of Practice).

West Coast No environmental audit program for Level 1s.

Glamorgan Spring Bay No environmental audit program for Level 1s.

Recommendation 6

Councils should conduct environmental audits of Level 1 activities at regular time intervals to establish compliance by operators with permit conditions. As well as advising business operators of industry standards of best practice, audits would enable EMPCA enforcement action to be initiated as necessary.

2.3 Trade waste agreements

Under EMPCA, councils have to meet all environmental requirements relating to the collection, disposal or re-use of effluent and sludges from their sewerage systems. Waste discharges to receiving waters should be treated to a standard that maintains or enhances water quality.

Trade wastes are classified according to the nature of effluents discharged. Generally, smaller volume discharges (and those having lower concentrations of suspended solids) are subject to permits while discharges with higher levels of suspended solids or containing pollutants that could adversely affect wastewater treatment plants are subject to agreements.

Table 3 indicates the councils where there were trade waste policies and the numbers of agreements or permits in force.

Table 3: Trade waste policies, agreements/permits

Council	Trade waste policy	Approximate number of agreements and permits
Hobart City	Y	1 000
Glenorchy City	Y	400
Kingborough	Y	40
Central Coast	N	Nil*
West Coast	N	Nil**
Glamorgan Spring Bay	N	Nil***

- * Plumbing regulations provide the framework to control trade waste discharges through design and incorporation of features such as grease traps and filtration systems.
- ** No significant trade waste generators currently connected to council's (five) sewerage schemes.
- *** No significant trade waste generators currently connected to council's (four) sewerage schemes.

The existence of trade waste policies at councils reflected the situation as to whether there were businesses that generated significant discharges. At the time of our fieldwork, West Coast had neither policy nor agreements/permits. However, work was under way to produce an agreement for aquaculture businesses (three fish farms) located at Macquarie harbour although council did not currently have a trade waste policy.

Recommendation 7

Where future developments at smaller councils will lead to substantial generation of trade wastes, councils should prepare a trade waste policy framework to manage agreements or permits.

2.4 Complaint handling

Complaints made to councils may be the first sign that there is likely risk of environmental harm or that a pollution incident has occurred. For that reason, councils need processes in place to handle complaints from the community, industry or ratepayers.

For this audit test we examined:

- council complaint handling mechanisms
- whether environmental concerns were readily identified and notified to relevant council officers.

Hobart City, Glenorchy City and Central Coast had policies for handling complaints while Kingborough outlined its approach to complaint handling in its Customer Service Charter. West Coast and Glamorgan Spring Bay did not have written policies but nevertheless procedures were well established. All councils had complaint registers that encompassed the spectrum of councils' dealings with the community — including environmental matters.

From our sampling of entries in complaint registers, and ensuing documents raised by councils, it was evident that environmental matters were easily identified and had been appropriately referred to an EHO for attention. Appropriate action had been taken in respect of complaints with problems usually resolved by discussion or knowledge sharing. Follow up inspections occurred where necessary.

Overall, we found a very low level of environmental complaints related to Level 1 activities. While there may be pollution incidents that go unreported, it was clear that when councils received complaints they were effectively dealt with.

2.5 *Potential up-scaling of Level 1 activities*

Schedule 2 of EMPCA defines Level 2 industries: some (such as smelters, cement works and oil refineries) are so classified regardless of their capacity or production volume. For others there are thresholds that determine whether the activity is Level 1 or 2. For instance, the next examples would only be classified at Level 2 if they exceed the prescribed limits:

- quarries — the extraction of any rock or gravel and producing 5 000 cubic metres or more of rock or gravel per year
- wood processing works — at which timber is sawn, cut, compressed, milled or machined, with a total production of 1 000 cubic metres or more per year
- sewage treatment works — works with a design capacity to treat an average dry-weather flow of 100 kilolitres or more per day of sewage.

Local government regulates businesses that operate below the thresholds in Schedule 2. However, where expanded operations lead to those limits being exceeded, these activities should then be referred to the Board for Level 2 assessment. In our testing, we

wanted to confirm whether councils had procedures to monitor growth 'creep' in those activities where it could be an issue.

At each of the six councils, staff confirmed that where approval had been given for a development application (that was clearly not a Level 2) there were no procedures in place to subsequently monitor the extent of its business operations that could indicate an escalation to Level 2. Similarly, there was no requirement under EMPCA for businesses undertaking Level 1 activities to report their annual production to councils.

An environmental audit program may be one way that potential up scaling of an activity could be addressed. However, in the absence of an audit program, 'bracket creep' may only be discovered through the complaints process, by observation, or some other reactive measure.

Depending on their nature, substantial growth in some Level 1 operations would require a physical expansion of the business premises that would be subject to a further development application. In such cases, councils would become aware and could refer the matter to the Board for assessment as a Level 2.

However, where a business could expand in its existing premises, up scaling to Level 2 may still come to light. Often, a Level 2 operation is quite sizable and in smaller rural communities it would be noticed due to increased traffic movements, noise, dust, increased wastes or similar signs.

However, in an urban setting an increase may pass undetected as was illustrated by an example at Hobart City. There, a seafood processor had increased the scale of its operations to the point that it became a Level 2 industry. Council had only become aware of that situation when the business had changed ownership.

Recommendation 8

Councils should consider annual returns of production levels for those Level 1 activities where there is a possibility that they could exceed the Level 2 threshold if their business operations expand.

A register of Level 1 activities would be a useful tool to allow monitoring of 'bracket creep' for those activities that have the possibility to expand to the status of Level 2 industries. As we stated in Recommendation 5:

Registers of Level 1 activities should be compiled beginning with relevant new development applications. From that starting point, existing activities (that would be classified as Level 1 if submitted

now) should be added to councils' registers to facilitate targeted reviews.

2.6 *Treatment of permit conditions for Level 2 industries*

As planning authorities, councils are required by EMPCA⁷ to refer applications for Level 2 industries to the Board. Environmental conditions imposed by the Board then are included in the councils' planning permit that will often contain other kinds of permit conditions.

In the planning phase of our audit, Environment Division advised us of instances where councils re-drafted or in other ways amended the original environmental conditions. That situation had created gratuitous difficulties later for staff in their dealings with owners and operators of industrial facilities.

Accordingly, we reviewed a sample of council planning documentation for Level 2 industries to ascertain whether Board environmental conditions were unamended.

Permit conditions from Environment Division in respect of Level 2 industries had been incorporated in council planning permits without amendment and in their entirety.

2.7 *Environmental background monitoring*

Environmental management is supported by monitoring of background conditions such as air, water quality in rivers and streams. For example, the *Public Health Act 1997* requires councils to monitor water quality to ensure that there is no danger to public health and to report to the Director of Public Health regularly.

We sought to ascertain whether councils routinely required Level 1 activities to undertake any monitoring of background conditions. With very few exceptions, councils did not require Level 1 activities to undertake any such monitoring.

Nevertheless, most councils are involved in some form of background monitoring and that is detailed in Table 4 for the six councils. We have not included monitoring of councils' own Level 2 activities (e.g. wastewater treatment plants) that are regulated by Environment Division.

⁷ *Environmental Management and Pollution Control Act 1994* section 25

Table 4: Background environmental monitoring

Council	Audits conducted
Hobart City*	Owners of decommissioned service station sites have been required to conduct regular environmental monitoring before additional development can proceed.
Glenorchy City*	Some monitoring of air quality.
Kingborough*	Monitors the following areas: <ul style="list-style-type: none"> ▪ beaches ▪ catchment management ▪ Kingston and Woodbridge wetlands systems
Central Coast	Undertakes sampling of landfill sites to ensure that there is no contamination of surrounding environment by leachate from these sites. For specific development applications council may require a noise-monitoring program by the applicants that may result in noise restrictions being incorporated into the planning approval conditions.
West Coast	West Strahan beach: recreational water monitoring Gormanston Creek: environmental monitoring Zeehan Landfill site: environmental monitoring of ground water and surface waters.
Glamorgan Spring Bay	Council monitors water catchments, waterways and recreational waters.

* These councils are involved in the state-coordinated *Derwent Estuary Environmental Management Plan*. Aspects of the plan (aimed at preserving and improving the values of the Derwent Estuary) include ongoing monitoring and reporting on ambient conditions and recreational water quality.

In connection with background environmental monitoring, at Glamorgan Spring Bay we were informed of incidents (allegedly caused by run off from forestry operations) where shellfish aquaculture industries, that are particularly susceptible to changes in water quality, have suffered damage.

In Tasmania, an administrative difficulty arises in this area where forestry, local government and the environment come together.

Forestry specifically falls outside of the RMPS — as does marine farming (although they are not exempt from the provisions of EMPCA). As the situation currently exists, if landowners have their property classed as a private timber reserve by the Forest Practices Authority future operations on that land (whether establishing or harvesting tree plantations) are covered by a separate statewide planning system that falls outside the scope of council control.

The *Forest Practices Act 1985* prescribes that Forest Practices Plans must be in accordance with the Forest Practices Code, which contains comprehensive procedures for the protection of natural and cultural values, including soils and water, biodiversity, geomorphology, visual landscape and cultural heritage. The Forest Practices Code aims to ensure that forest practices are conducted in a sustainable manner with due protection of the environment.

Although councils can make a representation to the Forest Practices Authority, it is the Authority that makes the statutory recommendation to the Governor on whether land should be declared a private timber reserve. Councils, and other prescribed parties may appeal the granting of a private timber reserve to an independent tribunal.

Forums for local government to engage with the Forest Practices Authority currently exist in the form of two bodies, namely the Forest Practices Advisory Council and the Local Government Forestry Consultative Committee.

Recommendation 9

Where forestry operations on private timber reserves may have negative consequences for local communities and industries, councils should actively explore mechanisms through existing consultative bodies, including the Local Government Forestry Consultative Committee and Forest Practices Advisory Council to mitigate adverse effects.

3 Recent reports

3 Recent reports

Year	Special Report No.	Title
2001	36	Collection of receivables and loans in Tasmanian government departments
2001	37	Archives Office of Tasmania
2001	38	The implementation of Goods and Services Tax in government agencies and local government entities
2001	39	Bank account reconciliations
2002	40	Environmental management and pollution control
2002	41	Keeping schools safe
2002	42	Follow up of performance audits
2002	43	Oral health service: Something to smile about?
2002	44	Managing community service orders
2003	45	Business names and incorporated associations: What's in a name?
2003	46	Leave in government departments
2003	47	Public sector web sites
2003	48	Grants to the community sector
2003	49	Staff selection in government agencies
2003	50	Police response times
2004	-	Ex-gratia payment to the former Governor Mr R W Butler AC
2004	51	Special purpose and trust funds: Department of Health and Human Services
2004	52	Internal audit in the public sector
2005	53	Follow-up audits
2005	54	Compliance audits
2005	55	Gun control in Tasmania
2005	56	TT-Line: Governance review
2005	57	Public housing: Meeting the need?
2005	58	FBT, Payment of Accounts and Bridges
2006	59	Delegations in government agencies, Local government delegations and Overseas Travel
2006	60	Building Security and Contracts appointing Global Value Management
2006	61	Elective surgery in public hospitals
2006	62	Training and development

4 Future projects

4 Future projects

Details of performance and compliance audits that the Auditor-General is considering are:

PERFORMANCE AUDITS:

Business case and recurrent funding for new Risdon Prison

Examines:

some economic aspects of the business case for the new prison

adequacy of planning and provision of recurrent funding to run the new prison.

Follow up of previous performance audits

Examines the degree of implementation of recommendations in selected performance audits between July 2001 and December 2004:

No 37: Archives Office of Tasmania

No 40: Environmental management and pollution control

No 43: Oral health services: Something to smile about?

No 44: Managing community service orders

No 45: Business names and incorporated associations: What's in a name?

No 50: Police response times

No 52: Internal audit in the public sector.

COMPLIANCE AUDITS:

Building security part 2

Continuing on from Special Report No. 60, the audit will examine physical security at public access sites such as schools, hospitals and libraries.

Selected allowances and nurses' overtime

Examines allowances paid to Ambulance Officers, Visiting Medical Officers and Custodial Officers. Also reviews trends in nurses' overtime at the Royal Hobart Hospital over a three-year period.

Appendix

Appendix: Overview of the councils audited

We selected councils across the state and of differing sizes for audit sampling. Table 5 compares and contrasts the physical area, population (with population density) and industrialisation of each municipal area. As a result, the rating base and regions within which councils deliver their services vary widely.

Table 5: Comparison of the councils in our sample

Council*	Area (km²)	Population (Population density)	Description
Central Coast	900	21 000 (23.3 / km ²)	In the heart of Tasmania's Northwest. Largely urban but rich farmlands support agriculture and related value-adding industries.
Glamorgan Spring Bay	2 500	4 080 (1.6 / km ²)	Municipality stretches along the east coast encompassing towns of Buckland, Orford, Maria Island, Triabunna, Swansea, Bicheno and Coles Bay. Includes Freycinet National Park.
Glenorchy City	121	44 615 (368.7 / km ²)	Tasmania's fourth largest city. Industry from metal refining and fabrication, shipbuilding, retailing, footwear manufacture, food and wine production. Also centre for high technology enterprise.
Hobart City	78	47 319 (606.6 / km ²)	Capital city, business and commercial centre of Tasmania and seat of State Government.
Kingborough	717	30 500 (42.5 / km ²)	Essentially residential in nature. Local industries include fish processing, aquaculture, tourism, viticulture, boat building and civil engineering.
West Coast	9 575	5 500 (0.57 / km ²)	Major industries are tourism, mining and fishing. Population centres: Queenstown, Zeehan, Tullah and Rosebery (all inland); and coastal tourist centre of Strahan. Includes part of the Southwest National Park.

*Information sourced from council web sites.

AUDIT MANDATE AND STANDARDS APPLIED

MANDATE

Section 39 of the *Financial Management and Audit Act 1990* states that the Auditor-General is:

'... the auditor of the accounts of the Treasurer, of all Government departments and public bodies and of the financial administration of each appropriation referred to in Column 1 of Schedule 2. ...'

The conduct of such audits is generally known as financial auditing.

Under the provisions of section 40, the Auditor-General:

'... (1) On performing an audit under this or any other Act of the financial statements of the Treasurer, a Government department, a public body or the financial administration of an appropriation referred to in Column 1 of Schedule 2, the Auditor-General must, except as provided by any other written law, make a report on those financial statements in accordance with this section.

(2) Subject to subsection (3), a report made under subsection (1) -

(a) is to include an opinion as to whether the financial statements have been drawn up so as to present fairly the financial transactions during the period specified in the statements and the financial position at the end of that period; and

(b) may include particulars of any other matter arising from the audit which the Auditor-General considers should be included in the report.

(3) Where, under this or any other Act, the financial statements are not required to make full disclosure of financial position, the Auditor-General's opinion as to financial position may be limited to such components of financial position as may be specified in the Treasurer's Instructions and such other components of financial position as are included in those statements. ...'

STANDARDS

Section 43 specifies that:

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

(a) this Act and any other relevant written law relating to the financial management of the Government department or public body concerned; and

(b) recognised professional auditing standards and practices. ...'

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



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