



FINANCIAL AUDIT

26 MARCH 2024

Local Government 2023

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to give reasonable assurance that financial statements are true and fair, enhancing their value to end users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to Parliament. In combination, these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These assess whether the activities of government entities are being carried out effectively, economically, efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities. Our performance audits may also extend to activities of non-government entities that receive money or resources, whether directly or indirectly, from or on behalf of government entities for a particular purpose.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Government Act 1993*.

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In accordance with section 421D of the *Local Government Act 1993*, I present a report titled '**Local Government 2023**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford PSM
Auditor-General for New South Wales
26 March 2024



RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

contents

Local Government 2023

Auditor-General's foreword	1
Section one – Local Government 2023	
Introduction	3
Audit results	6
Key audit findings	19
Section two – Appendices	
Appendix one – Response from the Office of Local Government within the Department of Planning, Housing and Infrastructure	45
Appendix two – NSW Crown Solicitor's advice	48
Appendix three – Status of previous recommendations	62
Appendix four – Status of audits	66
Appendix five – Councils received qualified audit opinions for non-recognition of rural firefighting equipment	72

Auditor-General's foreword

Pursuant to the *Local Government Act 1993* I am pleased to present my Auditor-General's report on Local Government 2023. My report provides the results of the 2022–23 financial audits of 121 councils, eight county councils and 12 joint organisations. It also includes the results of the 2021–22 audits for two councils and two joint organisations which were completed after tabling of the Auditor-General's report on Local Government 2022. The 2022–23 audits for eight councils, one county council and one joint organisation remain in progress due to significant accounting issues.

This will be my last consolidated report on local councils in NSW as my term as Auditor-General ends in April. Without a doubt, the change in mandate to make me the auditor of the local government sector has been the biggest challenge in my term. Challenging for councils as they adjust to consistent audit arrangements and for the staff of the Audit Office of NSW as they learn about the issues facing NSW councils.

The change in mandate aimed to improve the quality of financial management and reporting across the sector. This will take time. But this report does show some 'green shoots' with more councils submitting financial reports to the Office of Local Government by 31 October and more councils having Audit, Risk and Improvement Committees.

I also want to acknowledge that councils face significant challenges responding to and recovering from emergency events whilst cost and resourcing pressures have been persistent.

The findings from our audits identify opportunities to further improve timeliness and quality of financial reporting and integrity of systems and processes. The recommendations in this report are also intended to improve financial management and reporting capability, encourage sound governance, and boost cyber resilience.

Margaret Crawford PSM
Auditor-General for New South Wales

Section one

Local Government 2023

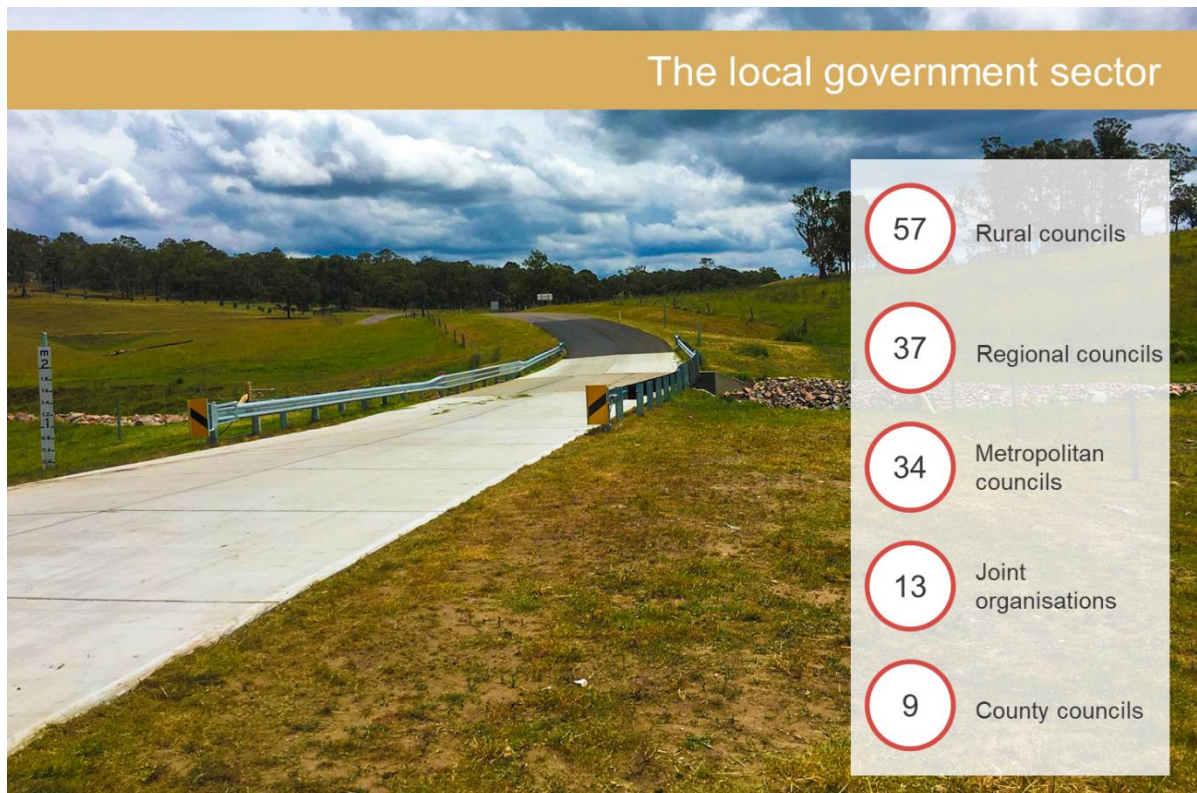
This report analyses the results of our audits of local councils for the year ended 30 June 2023.

1. Introduction

1.1 The local government sector

Local government is the third tier of government. It is established under state legislation, which defines the powers and geographical areas each council is responsible for.

At 30 June 2023, there were 128 local councils, 13 joint organisations and nine county councils in New South Wales.



Councils provide a range of services and infrastructure for a geographical area. Services include waste collection, planning, child and family day care, and recreational services. Councils also build and maintain infrastructure, including roads, footpaths, stormwater and in many regional and rural areas water and sewer. While core functions, such as waste collection, are similar across councils, the range of services each council provides can vary depending on the needs of each community.

County councils were established for specific purposes, such as to supply water, manage flood plains or eradicate noxious weeds.

Joint organisations were formed in regional New South Wales to improve infrastructure and service delivery in regional communities.

1.2 Financial audit

This report provides the results and findings of the completed 2022–23 financial audits of 121 councils, eight county councils and 12 joint organisations, and the completed 2021–22 financial audits of two councils and two joint organisations.

The audits for seven councils, one county council and one joint organisation remain in progress as at the date of this report.

In preparing this report, our observations and analyses were drawn from:

- audited financial statements
- performance audit reports
- data collected from councils
- audit findings reported to councils in audit management letters.

Each local council has unique characteristics such as its size, location and services provided to their communities. To enable comparison, we divided councils into three categories – metropolitan, regional and rural. County councils and joint organisations are separately identified in the report.

1.3 Performance audit

Our performance audits assess whether the activities of government entities are being carried out effectively, economically, efficiently, and in compliance with relevant laws. Our mandate to conduct these audits is provided under the *Local Government Act 1993* (LG Act).

The recent performance audits relevant to the local government sector included:

Financial management and governance in MidCoast Council

The *Local Government Act 1993* requires councils to apply sound financial management principles, including sustainable expenditure, effective financial management and regard to intergenerational equity.

This audit assessed whether MidCoast Council had effective financial management arrangements that support councillors and management to fulfill their responsibilities as financial stewards.

MidCoast Council did not meet all legislative and policy requirements for long-term financial planning.

From 2019–20 to 2020–21 financial years, the Council had financial management and governance gaps. Some gaps were addressed throughout 2021–22.

MidCoast Council experienced significant challenges in its implementation of a consolidated financial management system following amalgamation in 2016 and the merging of MidCoast Water in 2017. This led to gaps in finance processes and data quality.

We recommended MidCoast Council to:

- ensure its long-term financial plan meets legislative and policy requirements
- undertake service reviews to better understand net costs to inform budget and financial planning decisions
- improve the quality of asset management information to inform budget and financial planning decisions
- use the financial management components of the MC1 system to its full potential
- address control and process gaps identified in audits and reviews
- ensure competency of those responsible for finance and budget
- ensure financial sustainability initiatives account for the cost of services and asset management information.

Findings and recommendations around the effectiveness of long-term financial planning, comprehensive and timely financial reporting and financial management governance arrangements are relevant for all councils.

Cyber security in local government

Councils use various information systems and software to manage significant amounts of information and data relevant to their corporate functions, infrastructure and service delivery. This may include sensitive information about residents, customers and staff.

The threat from cyber security incidents continues to rise. Such incidents can harm local government service delivery and may include theft of information, denial of access to critical technology, or even the hijacking of systems for profit or malicious intent.

This audit assessed how effectively the City of Parramatta Council, Singleton Council and Warrumbungle Shire Council identified and managed cyber security risks. The audit considered whether the councils:

- effectively identify and plan for cyber security risks
- have controls in place to effectively manage identified cyber security risk
- have processes in place to detect, respond to, and recover from cyber security incidents.

Refer to [Cyber security in local government](#) for the findings and recommendations, which are relevant for all councils.

Performance audits planned or in progress

The following local government performance audit reports are either planned or in progress:

- **Road asset management**

New South Wales has over 180,000 km of roads across its network. Local councils manage over 85% of these roads.

This audit will consider how effectively three councils are managing their road assets. The audit will examine whether the selected councils have a strategic framework in place for road assets, have effective data and systems for managing road assets and whether they manage their road assets in line with planned service levels and quality outcomes.

The councils selected for this audit are Gwydir Shire Council, Wollondilly Shire Council and Clarence Valley Council.
- **Coastal management reforms**

The coast is one of our greatest assets in New South Wales and is home to nearly 85% of the state's population. The NSW Government has established a framework to manage the coastal environment in a sustainable way for the wellbeing of the people of New South Wales. This includes the *Coastal Management Act 2016*, which requires certain local councils to prepare a coastal management program, and the State Environmental Planning Policy (Resilience and Hazards) 2021. The Department of Planning, Housing and Infrastructure (the Department) is responsible for the Act and assists local councils in the coastal zone ('coastal councils') by administering grant funding and offering technical support and coordination for their coastal management programs.

This audit could assess how effectively the Department has overseen and implemented key elements of this reform package, and how effectively coastal councils have progressed coastal management planning and delivered coastal management programs.

2. Audit results

Financial reporting is an important element of good governance. Confidence in and transparency of public sector decision-making are enhanced when financial reporting is accurate and timely.

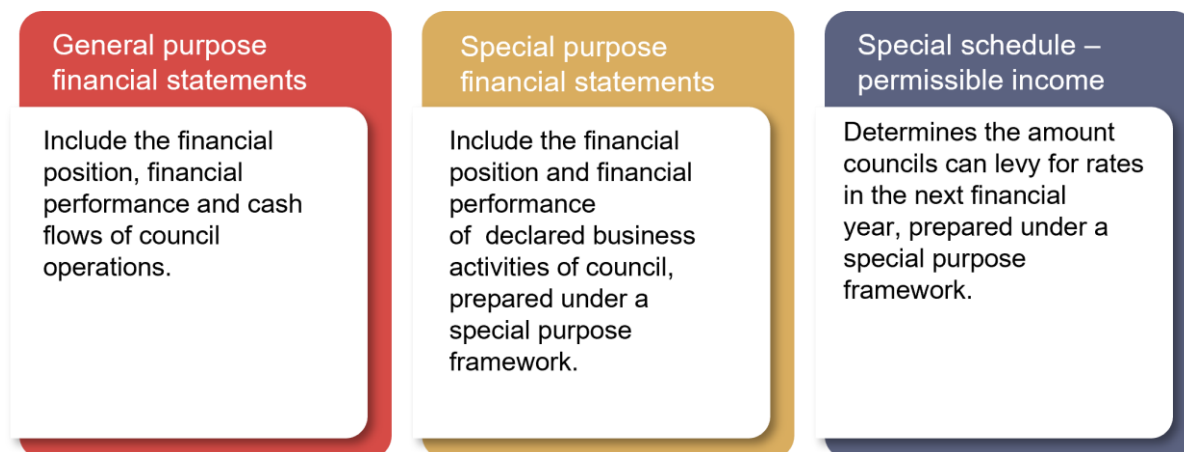
This chapter outlines audit observations related to the financial reporting audit results of councils, county councils and joint organisations.

Section highlights

- Unqualified audit opinions were issued for 85 councils, eight county councils and 12 joint organisation's 2022–23 financial statements.
- Disclaimers of opinion were issued to Kiama Municipal Council and Narrabri Shire Council for their 30 June 2022 financial statements.
- Qualified audit opinions were issued for 36 councils due to their financial statements not recognising rural firefighting equipment vested to councils under the *Rural Fires Act 1997*.
- The audits for seven councils, one county council and one joint organisation remain in progress at the date of this report due to significant accounting issues.
- Council financial statements include 242 uncorrected errors and 75 retrospective correction of prior period errors.
- One hundred councils, county councils and joint organisations (2021–22: 93) lodged audited financial statements with the Office of Local Government (OLG) by the statutory deadline of 31 October. Fifty councils, county councils and joint organisations missed the 31 October deadline.
- Three joint organisations and one council breached the *Local Government Act 1993* as they did not seek extensions from the OLG and missed the statutory deadline.
- Fifty-four per cent of councils performed some early financial reporting procedures, such as revaluing assets before the 30 June (2021–22: 82%).

2.1 Quality of financial reporting

The Auditor-General is required, under the *Local Government Act 1993* (LG Act), to issue an audit opinion on each of the following reports prepared by councils. The information in this chapter focusses on general purpose financial statements.



Indicators of quality financial reporting include:

- unqualified audit opinions
- low number of errors, including disclosure deficiencies, in financial statements.

Audit opinions

Unqualified audit opinions were issued for 105 councils and joint organisations

At the date of this report, we issued unqualified audit opinions for the 2022–23 financial statements of 85 councils, eight county councils and 12 joint organisations. This means sufficient audit evidence was obtained to conclude the financial statements were free of material misstatement and were prepared in accordance with Australian Accounting Standards and the LG Act.

Unqualified audit opinions were issued for the 2021–22 financial statements of Canberra Region Joint Organisation and Hunter Joint Organisation, after tabling of the 'Local Government 2022' report.

Disclaimer of opinion for Kiama Municipal Council's 30 June 2022 financial statements

Councillors and management declared, in the Statement required by Councillors and Management under Section 413(2)(c) of the LG Act, that they were unable to:

- rely on the prior year comparative information presented, which represent the opening balances for the 2021–22 financial statements
- warrant the completeness, accuracy and valuation of the net carrying values of infrastructure, property, plant and equipment (IPPE), excluding buildings and operational land
- attest to the completeness, accuracy and valuation of disclosures related to IPPE
- verify the accuracy of restricted cash, cash equivalents and investments
- certify the financial statements as a whole due to these issues.

A disclaimer of opinion was issued for the 30 June 2022 financial statements of the Kiama Municipal Council.

A disclaimed audit opinion is issued when the auditor is unable to obtain sufficient appropriate audit evidence upon which to form an opinion on the council's financial statements, and the auditor concludes that the possible effects of undetected misstatements in the financial statements could be both material and pervasive.

An emphasis of matter was also included to draw attention to externally restricted funds being used for a purpose other than their intended use without Ministerial approval.

In November 2022, the former Minister issued a performance improvement order setting out actions to be taken to improve Council's financial management.

Disclaimer of opinion for Narrabri Shire Council's 30 June 2022 financial statements

Councillors and management declared, in the Statement required by Councillors and Management under Section 413(2)(c) of the LG Act, that the underlying books and records were insufficient to support significant balances impacted by multiple flood events and disclosures. These included:

- carrying value of capital work in progress
- carrying value of road assets
- validity of prior period errors recorded in the financial statements.

A disclaimer of opinion was issued for the 30 June 2022 financial statements of Narrabri Shire Council.

Non-recognition of vested rural firefighting equipment by councils led to 36 qualified audit opinions

Thirty-six councils (2021–22: 43) received qualified audit opinions on their 2022–23 financial statements due to non-recognition of vested rural firefighting equipment as assets within their financial statements at 30 June 2023. These qualified audit opinions took different forms depending on the circumstances surrounding the non-recognition, as follows:

- 34 councils imposed a limitation of scope on the audit by not undertaking procedures to confirm the completeness, accuracy, existence or condition of the equipment
- 2 councils for omitting material assets in their financial statements, despite undertaking procedures to confirm the completeness, accuracy, existence, and condition of the equipment.

A qualified audit opinion is issued when the auditor:

- having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in aggregate, are material but not pervasive to the financial statements, or
- is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the possible effects of undetected misstatements on the financial statements are material but not pervasive.

The 2022 qualified opinions on six councils were removed as they addressed audit recommendations. The remaining council has an extension and is not reported in this chapter.

Refer to [Appendix five](#) for a list of councils with qualified audit opinions in 2022–23 relating to rural firefighting equipment.

The continued non-recognition of vested rural firefighting equipment in financial management systems of some councils increases the risk that these assets are not properly maintained and managed. Councils that have rural firefighting equipment vested under section 119(2) of the *Rural Fires Act 1997* (Rural Fires Act), should recognise these assets in their financial management systems and maintain the assets to the required standards in readiness for fire mitigation and prevention activities.

Councils have specific responsibilities for fire mitigation and safety works and bush fire hazard reduction under Part 4 of the Rural Fires Act. The Council obtains economic benefits from the rural firefighting equipment as these assets are used to fulfil Council's responsibilities.

In accordance with the Australian Accounting Standards, vested rural firefighting equipment is recorded as an asset and contribution revenue for assets acquired free of charge so there is no cash impact. Over the useful life of the asset, the revenue is offset by the depreciation charge. There is no impact on cash or net assets at the end of the asset's useful life.

Twenty councils performed sufficient procedures to confirm the value of these assets was not material to their financial statements and received unqualified audit opinions

Twenty councils do not record rural firefighting equipment in their financial statements, but performed sufficient procedures to demonstrate the value of unrecorded assets was not material to the financial statements taken as a whole. These omissions were reported as an uncorrected error. The risk of future qualifications remains as the value may become material to the financial statements as further firefighting equipment is vested to them in future years. There is also a heightened risk that these important assets are not being properly maintained and managed for operational purposes.

Forty-nine councils recognised their rural firefighting equipment, two of these for the first time

Forty-nine (2021–22: 47) councils recognised vested rural firefighting equipment in their financial statements, with two councils recognising the equipment in their financial statements for the first time in 2022–23.

The continuing inconsistency in the recognition and management practices for rural firefighting equipment across the local government sector puts at risk the operational capability for the deployment of these assets.

The Office of Local Government has updated the 'Local Government Code of Accounting Practice for 2023–24' to require councils to recognise material rural firefighting equipment in the financial statements.

Two councils received qualified audit opinions

In addition to receiving qualified audit opinions for non-recognition of vested rural firefighting equipment, two councils received other qualifications in the Independent Auditor's Reports for the 2022–23 financial statements. The table below includes the reasons for these qualified audit opinions.

Council	Reason
Snowy Monaro Regional	Council certified it was unable to provide sufficient and appropriate audit evidence to support completeness and accuracy of road assets within its infrastructure, property, plant and equipment balance as at 30 June 2023.
Moree Plains Shire	Council certified it was unable to provide sufficient and appropriate audit evidence to support the carrying values of roads, water supply network and sewerage network assets within its infrastructure, property, plant and equipment balance as at 30 June 2023.

Emphasis of matter paragraphs were included in four audit opinions

An emphasis of matter paragraph is included in the Independent Auditor's Report to refer to a matter presented or disclosed in the financial statement that we deem is fundamental to the understanding of the financial statements. The table below details the emphasis of matter paragraphs reported in the Independent Auditor's Reports for the 2022–23 financial statements.

Council/Joint Organisation	Reason
Weddin Shire	Council acknowledged it had used the following funds for purposes other than their intended use during the year ended 30 June 2023: <ul style="list-style-type: none">externally restricted funds (non-compliance with s.409 of the LG Act)special rates and charges funds (non-compliance with s.410 of the LG Act).
Gwydir Shire	Council acknowledged it had used externally restricted funds for purposes other than their intended use between 1 July 2022 and 31 August 2022 (non-compliance with s.409 of the LG Act). Council is also unable to verify that special rates or charges funds were not used to pay for general expenses between 1 July 2022 and 31 August 2022 (non-compliance with s.410 of the LG Act).
New England	The financial statements were prepared on a non-going concern basis as the joint organisation intends to cease operations within the next 12 months.

Other matter paragraphs were included in two audit opinions

An other matter paragraph is included in the Independent Auditor's Report to refer to a matter not presented in the financial statements that we deem relevant to the understanding of the audit, the auditor's responsibilities or the auditor's report.

The table below details the other matter paragraph reported in the Independent Auditor's Report for the 2022–23 financial statements.

Joint Organisation	Reason
New England	The joint organisation did not comply with the following requirements of the LG Act and LG Regulation: <ul style="list-style-type: none">has not met more than four times per year (s.400T(9) of the LG Act)no financial contributions were paid to the joint organisation by member councils for the year ended 30 June 2023 (s.397L of the LG Regulation)has not published a statement of strategic regional priorities (s.397H of the LG Regulation), annual performance statement (s.397J of the LG Regulation) and annual statement of the revenue policy (s.397I of the LG Regulation).

The audit of the City of Ryde was delayed while we considered a significant audit matter relating to the use and management of restricted cash and investments

On 26 May 2023, Council wrote to the Auditor-General for NSW, highlighting several matters concerning the management of funds held in restricted cash and investments. The letter highlighted several potential breaches of legislation in relation to the movement and expenditure of funds collected under developer contribution plans, voluntary planning agreements and for domestic waste management, and set out the main steps Council was taking to address the matters noted. The matters raised ultimately did not impact our opinion on Council's 2023 financial statements, which was issued on 28 February 2024, but did require significant analysis as to interpretation of the legal view and the requirements of the accounting framework.

In 2020–21, Council moved \$88 million from its externally restricted cash and investments

Council adopted a new developer contributions plan (referred to as the 2020 Plan), effective 1 July 2020, and repealed its old plan (referred to as the 2014 Plan). Following the repeal of the 2014 Plan, Council moved \$88 million of funds collected under the 2014 Plan from its externally restricted cash and investments from developer contributions. Council moved:

- \$35.5 million to the Ryde Central Reserve, as an internal allocation, which was not spent
- \$52.5 million to the Asset Expansion Reserve, as an internal allocation. Council identified that the funds were largely spent on projects identified in the 2014 or 2020 Plans. However, \$11.6 million of these funds was spent on projects not identified in either of these plans, but provided amenities or services to the community in accordance with Council's Delivery Program.

In 2021–22, Council also transferred \$1.1 million from its externally restricted cash and investments to the employee leave entitlement reserve, as an internal allocation, which was not spent.

In 2020–21, Council provided the Audit Office with a piece of legal advice as evidence to support its disclosures within its 2020–21 and 2021–22 financial statements. This advice, from 2016, dealt with certain matters around expenditure of what were then section 94 contributions under the *Environmental Planning and Assessment Act 1979* (EPA Act). While this advice was on another matter, it specifically discusses the principles and case law that might apply to the future use of funds once a contributions plan has been repealed.

Council has received subsequent legal advice on the movement and expenditure of externally restricted cash and investments

Council obtained legal advice on the movements and use of the funds from a legal firm in 2022–23. Council's most recent legal advice, upon which it relied to inform the movements and disclosures within its 2023 financial statements, identified that the transfer of the developer contributions collected under the 2014 Plan and certain expenditures from prior years, noted above, were potential breaches of the EPA Act.

The advice also identified breaches of legislation relating to expenditure in 2020–21:

- \$3.7 million from voluntary planning agreement contributions to fund Council's operations in response to COVID-19 income reductions and software related purchases. This expenditure breached section 7.3 of the EPA Act and section 409(3) of the Act.
- \$1 million of domestic waste management funds to fund COVID-19 hardship rates. This expenditure breached sections 504 and 409(3) of the Act.

The Audit Office obtained advice from the Crown Solicitor

We concurred that the expenditure in prior years of the voluntary planning agreement contributions and domestic waste management funds for COVID-19 related purposes was inconsistent with relevant legislation. However, due to the lack of case law precedent and explicit guidance in the EPA Act or Regulation, the movement and use of repealed developer contribution funds is a more complex legal matter.

The Audit Office sought legal advice from the Crown Solicitor about the general application of the law on the use and management of funds collected under repealed development contributions plans (DCPs), and for domestic waste management.

In relation to the use and management of funds collected under repealed DCPs, the Crown Solicitor advised that:

Neither the EPA Act and the EPA regulation, nor present authorities, provide explicit or substantial guidance as to the extent to which a DCP may enable the carrying-over and application of contributions previously collected under a repealed plan. Nor by extension, do they provide significant assistance in determining whether a specific DCP is to be interpreted as permitting this practice.

Some of the principles expressed by the Crown Solicitor differed from those of Council. As a result of these differences and feedback from Council, we sought further advice from the Crown Solicitor on Council's specific circumstances.

Council's movement of these funds back to externally restricted reserves in 2023 is in accordance with its most recent legal advice

We note that to address the potential breaches in prior years detailed above, on 27 June 2023, Council resolved to return:

- \$35.5 million from the Ryde Central Reserve to the s7.11 Externally Restricted Reserves
- \$1.1 million from Employee Leave Entitlements Reserve to s7.11 Externally Restricted Reserves
- \$1.1 million from interest earned in prior years from the Accommodation Reserve to the s7.11 Externally Restricted Reserves.

The same resolution also reimbursed Council's externally restricted reserves for the following amounts:

- \$3.7 million related to funds collected under voluntary planning agreements from the Accommodation Reserve to the Voluntary Planning Agreement Reserve
- \$1 million of domestic waste management funds from the Accommodation Reserve to the Domestic Waste Management Reserve.

In consideration of Council's most recent legal advice and the Crown Solicitor's advice, we supported the transfers of the funds back to externally restricted reserves in 2022–23.

As noted above, we sought and received further specific advice from the Crown Solicitor, to inform our view on whether Council breached legislation in prior years. That advice confirmed the Crown Solicitor's previous general advice that merely transferring funds to council's internal reserves did not breach Council's legal obligations under s7.3(1) of the EPA Act. The Crown Solicitor's general advice is at appendix two to this report.

The potential for any breach of legislation did not impact the 2022–23 financial statement disclosures, namely Note C 1-3 'Restricted and allocated cash, cash equivalents and investments', Note F 3-1 'Summary of developer contributions', Note F 3-2 'Developer contributions by plan' and Note F 3-3 'Contributions not under plans', nor did it impact our Independent Auditor's Report thereon.

The legislative requirements regarding the use of funds from repealed contributions plans would benefit from clarification

One of the key issues highlighted by the matters above, is that there is no specific guidance in the EPA Act or the EPA Regulation that provides for how funds collected under one DCP are to be treated if a contributions plan is repealed, or repealed and replaced by a new contributions DCP. Council's legal advice noted a lack of clarity in the Local Government Code of Accounting Practice and Financial Reporting (the Code). The Crown Solicitor noted a lack of clarity in the legislation:

I nonetheless note that the question would benefit greatly from clarification by way of amendment of the EPA and/or its sundry regulations.

Our recommendations arise from the issues noted by the legal counsel engaged by Council and by the Crown Solicitor.

Recommendation to the Department

The Department of Planning, Housing and Infrastructure, as the principal department primarily responsible for administration of the EPA Act, specifically address how funds collected under one plan are to be treated if a contributions plan is repealed, or repealed and replaced by a new contributions plan.

The Department, through the Office of Local Government make more explicit in the Code how funds from Developer Contribution Plans are to be disclosed in councils' financial statements.

Errors identified through audits

Uncorrected errors

An uncorrected error is an error identified by the auditor or council in the financial statements, which has not been corrected by council. In our view, errors should be corrected. They are reported to management for this purpose. Management has determined not to correct some errors because they are not material, either individually or in aggregate.

The table below shows the number and value of uncorrected errors by council type for the past two years.

Year ended 30 June	Uncorrected errors		By council type (2023 only)				
	2023	2022	Metro	Regional	Rural	County	JO
Less than \$250,000	106	97	6	16	72	7	5
\$250,000 to \$500,000	59	47	6	25	27	--	1
\$500,000 to \$1 million	38	34	8	24	6	--	--
\$1 million to \$5 million	37	38	7	25	5	--	--
\$5 million to \$15 million	2	5	1	--	1	--	--
Total number of errors	242	221	28	90	111	7	6
Total value of errors (\$ million)	151	158	33.3	76.9	40.0	0.4	0.6

Source: Engagement Closing Reports issued by the Audit Office.

In 2022–23, 46 councils had no uncorrected errors in their financial statements (2021–22: 49).

Of the 242 uncorrected errors, 52 across 48 councils were related to non-financial assets. The common areas where errors were identified are outlined below.

Common errors	Number of errors
Councils making assets revaluation errors, such as:	26
<ul style="list-style-type: none">• providing incorrect data to the valuer• using inappropriate valuation assumptions:<ul style="list-style-type: none">– inappropriate and incorrect unit rates– not considering physical and legislative restrictions– not assessing impairment• incorrect calculations• recording incorrect valuation and/or impairment adjustments.	

Common errors	Number of errors
Council's poor record keeping of asset data, such as:	26
<ul style="list-style-type: none"> unrecorded assets recording assets no longer under council control duplicate assets incorrectly classified. 	

Prior period errors

A prior period error is a misstatement made by council in previous financial years, identified by the auditor or council in the current financial year, which was corrected retrospectively by restating the opening balances in the financial statements.

The table below shows the number and value of prior period errors by council type for the past two years.

Year ended 30 June	Prior period errors		By council type (2023 only)				
	2023	2022	Metro	Regional	Rural	County	JO
Less than \$250,000	4	6	1	--	1	1	1
\$250,000 to \$500,000	1	1	1	--	--	--	--
\$500,000 to \$1 million	11	6	1	3	7	--	--
\$1 million to \$5 million	24	29	10	7	6	1	--
\$5 million to \$15 million	19	12	10	6	3	--	--
\$15 million to \$30 million	6	8	1	2	3	--	--
\$30 million to \$50 million	6	2	6	--	--	--	--
\$50 million and greater	4	3	3	1	--	--	--
Total number of errors	75	67	33	19	20	2	1
Total value of errors (\$ million)	894	627	597	201	95.3	1.3	0.1

Source: Engagement Closing Reports issued by the Audit Office.

Of the 75 prior period errors, ten were greater than \$30 million and were asset related. These are detailed in the table below.

Council	Description of prior period error
Blacktown City	Incorrectly classified operational land as inventories – real estate (\$32.5 million).
Camden	Applied incorrect unit rates to sandstone retaining walls (\$35.4 million).
Cumberland	Found assets and incorrectly classified community land as operational land (\$35 million).
Liverpool City	Error in indexing of infrastructure, property, plant and equipment (\$33.9 million).
North Sydney	Omission of service concession assets for affordable housing portfolio (\$77.4 million).
Shellharbour City	Applied incorrect valuation methodology for land under roads (\$64.9 million).
Sutherland Shire	Incorrectly capitalised operating expense as stormwater drainage assets (\$34.4 million), omission and incorrect index applied for operational land assets (\$33.4 million) and error in indexing of water quality devices (\$73.7 million).
Willoughby City	Applied incorrect unit rates to community land assets (\$77.7 million).

Of the 75 prior period errors, 54 across 39 councils were related to non-financial assets. The common causes of prior period errors were similar to those causing current year uncorrected errors, which are reported on the previous page, namely revaluation errors and poor record keeping of asset data. Refer also to [Section 3.2](#), which details our findings in relation to asset management. Unresolved internal control deficiencies can lead to errors in the financial statements.

2.2 Timeliness of financial reporting

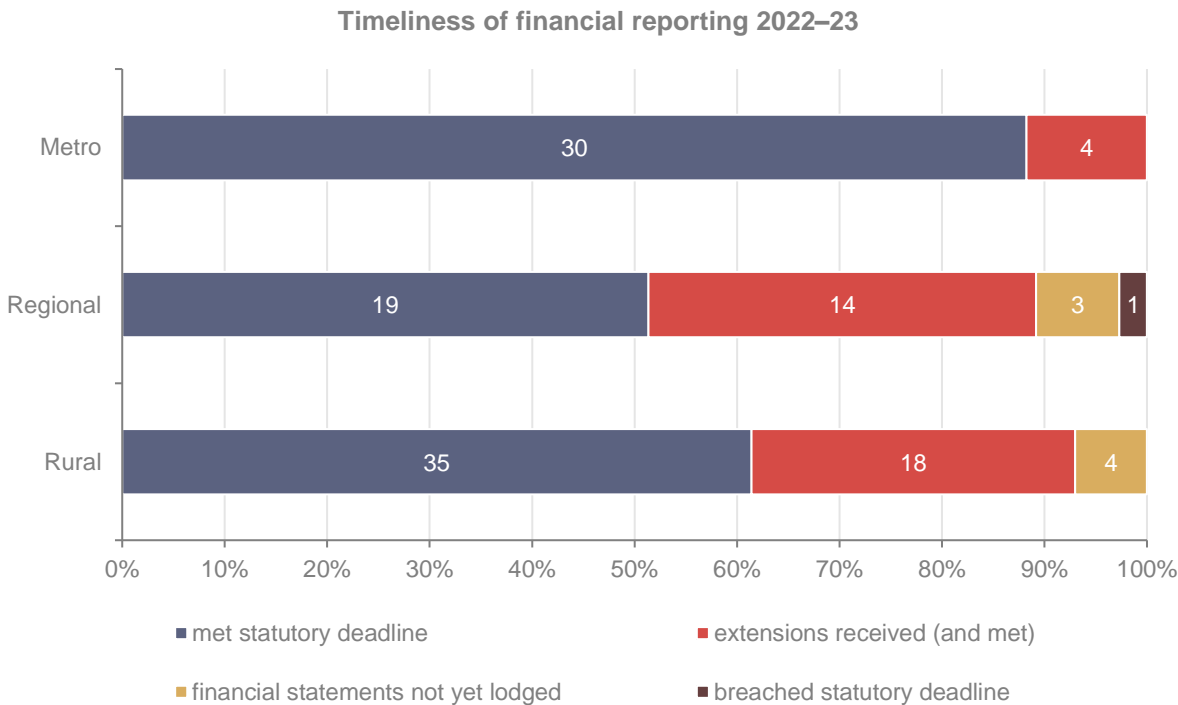
The LG Act requires councils to submit their audited financial reports to OLG by the statutory deadline of 31 October or apply for an extension from OLG.

Sixty-seven per cent of councils lodged their audited financial statements by the statutory deadline

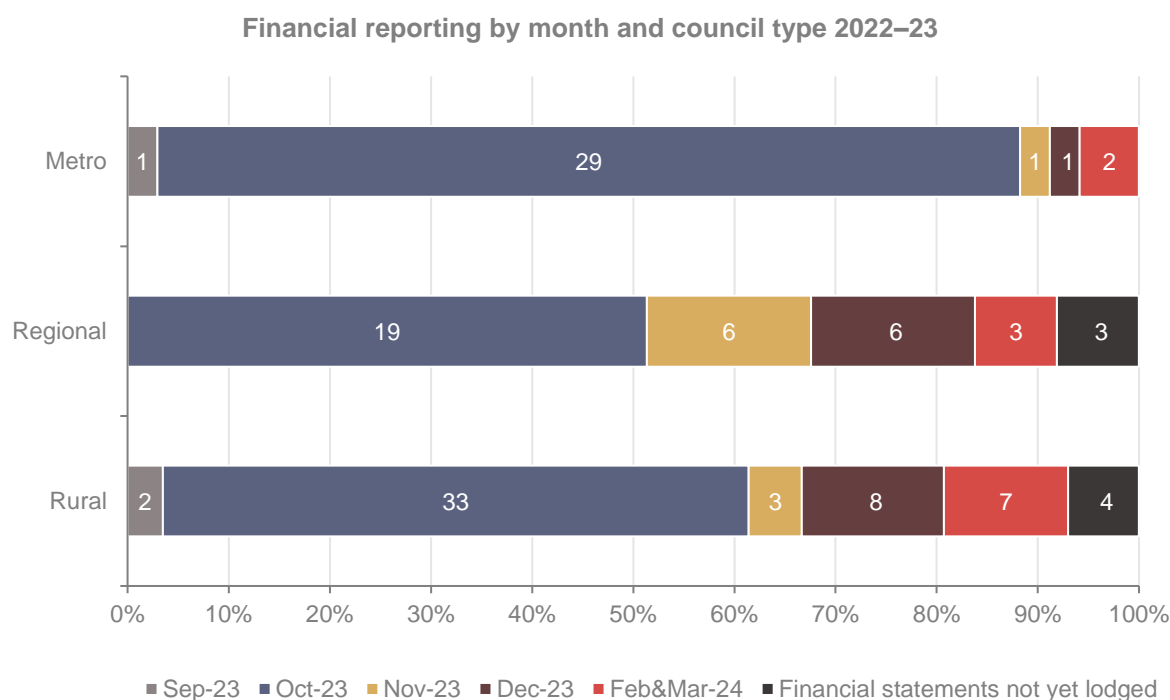
Of the 141 councils, county councils and joint organisations for which we have issued independent audit reports:

- 100 councils, county councils and joint organisations (2021–22: 93) met the statutory deadline
- 38 councils received one or more extension to lodge their audited financial statements at a later date
- 2 joint organisations and one council breached the LG Act by not requesting an extension and missing the statutory deadline.

The graph below breaks down the timeliness of financial reporting for 30 June 2023 by type of council. Eighty-eight per cent of metropolitan councils submitted their financial statements to OLG by 31 October 2023. Rural and regional councils had more challenges meeting the 31 October deadline achieving 61% and 51% respectively.



The graph below shows the submission of audited financial reports by month and type of council. Across all types of councils most were submitting in October 2023.



Refer to [Appendix four](#) for further details.

This report does not include the nine incomplete audits

The following audits remain outstanding and the outcomes will be reported in next year's report to Parliament.

Council/Joint Organisation	Reasons for delay
Canberra Region	Delays with preparing quality financial statements.
Glen Innes Severn	Ongoing system implementation issues and council resourcing issues.
Kiama Municipal	The commencement of the 2022–23 audit was delayed given the council signed its 2021–22 financial statements on 26 September 2023. We concluded on the 2021–22 audit in September 2023. The 2021–22 and 2020–21 audits were delayed due to significant accounting issues.
Liverpool Plains Shire	Outstanding valuation for a significant water infrastructure asset.
Narrabri Shire	The commencement of the 2022–23 audit was delayed given the council signed its 2021–22 financial statements on 22 August 2023. We concluded the audit in August 2023. The 2021–22 audit was delayed due to significant accounting issues.
New England Weeds Authority	Internal control issues have delayed the preparation of the financial statements.
Orange City	Accounting matters taking time to resolve along with council resourcing issues.
Singleton	Delay in valuations and council resourcing issues.
Upper Hunter Shire	Delay in valuations and council resourcing issues.

The reasons that councils, county councils and joint organisations sought extensions to submit their financial statements after the statutory deadline are shown below.



Source: Council extension letters submitted to OLG.

The most common reasons councils cited when applying for extensions related to:

- accounting or other matters that required more time to resolve
- resolving asset valuation issues
- council resourcing issues including turnover of key staff.

Refer to [Appendix four](#) for the names of each council or joint organisation that received extensions.

Some councils performed early financial reporting procedures

This year, 54% (2021–22: 82%) of councils performed at least some early financial reporting procedures, including:

- completing infrastructure, property, plant and equipment valuations before 30 June (43 councils, 2021–22: 45)
- completing fair value assessments of infrastructure, property, plant and equipment (22 councils, 2021–22: 36)
- assessing the impact of material, complex and one-off significant transactions (23 councils, 2021–22: 49)
- working through unresolved prior year audit issues, with an action plan to resolve them (37 councils, 2021–22: 69)
- documenting significant management judgements and assumptions for estimating transactions and balances (19 councils)
- preparing proforma financial statements and associated disclosures (27 councils, 2021–22: 46).

Early financial reporting procedures can assist councils to meet the statutory deadline and submit audited financial statements to OLG by 31 October. These procedures also help to improve quality of financial reporting by identifying and addressing significant risks, and resolving accounting issues before submitting the financial statements for audit.

Councils can work with the Audit Office to select financial reporting procedures to complete and have audited before 30 June. The planned approach should allow sufficient time for management review and involvement of Audit, Risk and Improvement Committees. This process will allow for audit observations and feedback in time for them to be considered in the year-end financial reporting process.

In addition to the procedures listed above, councils should consider the following early financial reporting procedures:

- quality review of the proforma financial statements and the supporting working papers
- reconciling all key account balances and clearing reconciling items
- assessing accounting implications of significant contracts
- assessing the impact of new and updated accounting standards and preparing supporting working papers.

Recommendation to the Department (repeat)

The Department of Planning, Housing and Infrastructure should consider requiring early financial reporting procedures across the local government sector.

It is generally accepted that timely year-end financial reporting is an indicator of sound financial management processes. Accordingly, measures aimed at earlier financial reporting should be a priority for both councils and the regulator.

For the past two years, about a third of councils, county councils and joint organisations have not lodged their audited financial statements with OLG by the statutory deadline. To assist with improving timeliness of financial reporting OLG should, after discussing policy changes with the key stakeholders within the sector to ensure benefits can be realised, require early financial reporting procedures.

Fewer councils performed early financial reporting procedures prior to 30 June 2023. Forty-three councils performed procedures over infrastructure, property, plant and equipment (IPPE) valuations. As IPPE is the largest financial statement balance and a significant estimate, coupled with the inflationary environment, early valuation procedures can improve quality and timeliness of financial reporting.

3. Key audit findings

A strong system of internal controls enables councils to operate effectively and efficiently, produce reliable financial reports, comply with laws and regulations, and support ethical government.

This chapter outlines the overall trends in governance and internal controls across councils, county councils and joint organisations in 2022–23.

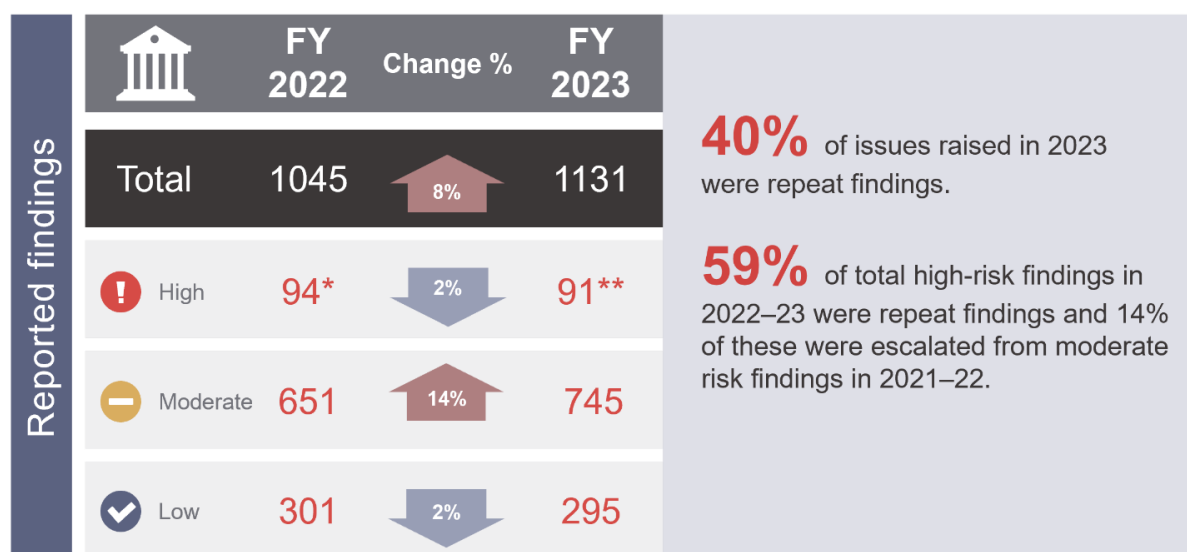
Financial audits focus on key governance matters and internal controls supporting the preparation of councils' financial statements. Breakdowns and weaknesses in internal controls increase the risk of fraud and error. Deficiencies in internal controls, matters of governance interest and unresolved issues are reported to management and those charged with governance through audit management letters. These letters include our observations with risk ratings, related implications, and recommendations.

Section highlights

- Total number of audit findings reported in audit management letters increased from 1,045 in 2021–22 to 1,131 in 2022–23.
- Governance, asset management and information technology comprise of 65% (2021–22: 65%) of findings and continue to be key areas requiring improvement.
- Total number of high-risk audit findings decreased from 94 in 2021–22 to 91 in 2022–23.
- Fifty-nine per cent of total high-risk findings in 2022–23 were repeat findings. Fourteen per cent of these high-risk findings were escalated from unactioned moderate risk findings in 2021–22. We continue to recommend councils and those charged with governance track progress of implementing recommendations from our audits.
- Fifty (2021–22: 63) councils do not have basic governance and internal controls to manage cyber security. We continue to recommend all councils create a cyber security plan to ensure cyber security risks over key data and IT assets are appropriately managed and key data is safeguarded. Councils should refer to the 'Cyber Security Guidelines – Local Government' released by the Office of Local Government.

Total number of findings reported in audit management letters increased

The following shows the overall findings of the 2022–23 audits reported in management letters compared with the previous year.



* Includes three findings relating to prior year audits finalised after 'Local Government 2021' was published.

** Includes three findings relating to prior year audits finalised after 'Local Government 2022' was published.

Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

Findings are classified as new, repeat or ongoing, based on:

- new findings first reported in 2022–23 audits
- repeat findings are those first reported in prior year audits, but remain unresolved in 2022–23
- ongoing findings first reported in prior year audits, but the dates to address the findings are after 2022–23.

In rating the risk of audit findings, we assess the likelihood and consequence of the finding having regard to the length of time the issue remains unresolved. The likelihood a weakness will be exploited increases the longer it remains unresolved. Additionally, the lack of timeliness in resolving issues may indicate systemic issues and/or poor governance practices that warrant an increase in the consequence level. Accordingly, unresolved issues from prior periods are reassessed annually. This reassessment may lead to an increase in the risk rating of audit findings.

Findings are categorised as:

- governance
- asset management*
- information technology
- financial reporting
- financial accounting
- purchases and payables
- payroll
- cash and banking
- revenue and receivables.

* Accounting for the recording and valuation of assets in accordance with Accounting Standards.

The following table shows the breakdown of audit findings for the 2022–23 audits based on the defined categories and risk ratings.

Category	Total findings	High	Moderate	Low
Governance*	210	13	125	72
Asset management	266	48	183	35
Information technology	262	17	204	41
Financial reporting	62	7	38	17
Financial accounting	76	1	51	24
Purchases and payables	71	4	44	23
Payroll	77	--	43	34
Cash and banking	42	--	24	18
Revenue and receivables	65	1	33	31
Total	1,131	91	745	295

* Includes three findings relating to the 2021–22 audit finalised after the 'Local Government 2022' was published.

The high-risk and common audit findings across these areas are explored further in this chapter.

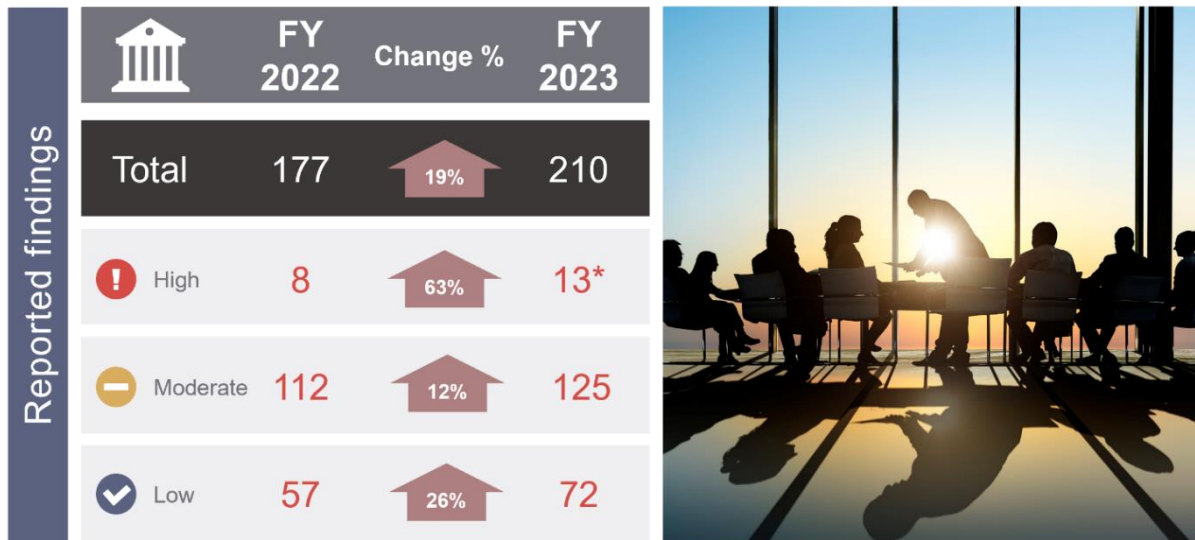
3.1 Governance

Governance is the framework of rules, processes and systems to enable organisations to achieve goals and comply with legal requirements. Good governance promotes public confidence in the integrity and effectiveness of councils' systems and operations. The [Annual Work Program 2023–26](#) highlights the following aspects of integrity expected in systems and processes to support good governance:

- maintain accurate and complete records, especially records of key decisions
- identify, manage and escalate risks
- manage conflicts of interest and implement fraud and corruption controls
- apply and document authorisations and delegations
- implement effective information technology controls including cyber security controls
- track and implement recommendations.

Governance findings increased from 177 to 210

Audit management letters reported 210 findings relating to governance (2021–22: 177 findings). Thirty-seven per cent were repeat findings (2021–22: 63%).









* Includes three findings relating to the 2021–22 audit finalised after the 'Local Government 2022' was published.

Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

Thirteen high-risk findings were reported across the control deficiency areas as detailed in the table below.

Control deficiency*	Council/Joint Organisation	Status
Business continuity plan		
Lack of formal business continuity plan	Weddin	–
Compliance with legislation/policy		
Missed statutory deadline/approved extension date	Cessnock City	+
Non-compliance with the LG Act and LG Regulation	New England	–
Inappropriate use of externally restricted cash	Kiama	+
	Weddin	+
	Gwydir Shire	↺
Breach of policy by not externally restricting enough of the residential aged care bonds	Kiama	+
Conflicts of interest		
Inappropriate conflicts of interest disclosure	Kiama	+
Fraud and corruption		
No fraud control policy and plan	Gwydir Shire	↺
	Moree Plains	↺
No fraud health checks/risk assessments	Moree Plains	↺
	Warren Shire	+

Control deficiency*	Council/Joint Organisation	Status
Staff not required to annually attest to compliance with the code of conduct	Moree Plains	
	Warren Shire	
Gifts and benefits		
Weak gifts and benefits policy	Warren Shire	
Legislative compliance register		
No centralised register of compliance obligations	Lismore	
Risk management framework/policy		
No robust risk and compliance processes and framework	Hunter	
	Warren Shire	

Key



New – first reported in current year.



Ongoing – prior year finding with due date after 30 June 2023.



Repeat – prior year finding not fully addressed.

* Additional audit procedures were performed to respond to and address the weakness identified.

Common findings

The common governance findings reported in audit management letters were deficiencies in corporate governance policies, fraud controls and legislative compliance.

Key governance policies were not in place or regularly updated

The common areas where councils and joint organisations had missing or out-dated governance policies are summarised below.

Governance policy areas (absent or out-dated)	Number of councils/ joint organisations
Risk management	15
Contract management	58
Legislative compliance policy	47
Business continuity plan	31
Crisis management plan	38
Gifts and benefits	17
Public interest disclosures	12
Policies not reviewed and updated	50

Corporate governance policies are essential for ensuring councils operate in accordance with external and internal requirements. It is important that the rules, standards and expectations are clearly outlined, and staff are provided adequate guidance to inform their actions.

Further issues were identified in contract management for 30 councils (2021–22: 23). While councils had contract management policies in place, we identified deficiencies in contract management practices and contract register management. These increase the risk of non-compliance with the *Government Information (Public Access) Act 2009* (GIPA Act) or contractual terms.

The Information and Privacy Commission issued its report on local government [GIPA compliance](#) report in June 2023. The Commission found most councils had improved compliance with mandatory reporting requirements, such as making returns of interest by councillors and designated persons publicly available and easy to access. However, it was reported six councils have wilful disregard for duties and the public's right to know.

Thirty-one councils have outdated or no business continuity plan

Thirty-one councils and joint organisations do not have a business continuity plan (BCP), or have an outdated business continuity plan. Ninety-five councils with BCPs in place recently tested the plans. However, testing at 17 councils was limited to testing information and technology elements of the BCPs. Twenty-three councils have not recently tested their BCPs.

Business continuity plans are a widespread mechanism used by organisations to ensure they are prepared to respond effectively to disruptions, such as natural disasters. Business continuity management involves developing, implementing and maintaining policies, frameworks and programs to assist an organisation to manage business disruptions. Plans should be tested regularly to provide confidence they will be reliable during an actual event, and to provide feedback for continuous improvement.

All councils are required to appropriately assess and manage risks under the *Local Government Act 1993*. The Department of Planning, Housing and Infrastructure published 'Risk Management and Internal Audit for Local Government in NSW' in December 2022. These guidelines are mandatory from 1 July 2024 and will require:

- the Audit Risk and Improvement Committee and internal audit to be responsible for the review of the effectiveness of business continuity arrangements, including business continuity plans, disaster recovery plans and the periodic testing of these plans
- risk management be a core responsibility of all senior management of council.

Forty councils do not have a crisis management plan in place

Forty councils and joint organisations do not have a separate crisis management plan in place or a BCP which covers crisis management.

A crisis management plan outlines how your business will react if a crisis occurs. The plan should identify who will act and what their roles will be. The goal of a crisis management plan is to minimise damage and restore business operations as quickly as possible. A crisis management plan can be within the business continuity plan or a separate plan.

Deficiencies in fraud control processes at councils and joint organisations

Deficiencies in fraud control processes identified at councils are summarised in the table below.

Fraud control deficiencies	Number of councils/joint organisations
No fraud awareness training	44
No fraud risk assessment	46
No fraud and corruption prevention policy, or it was outdated	21
Staff not required to annually attest to compliance with the code of conduct	85

Effective fraud controls and ethical frameworks help protect councils from events that risk serious reputational damage and financial loss.

One hundred and twenty-seven councils have an ARIC

Four councils, two county councils and eight joint organisations did not have an Audit, Risk and Improvement Committee (ARIC) in place at 30 June 2023. ARICs are an important contributor to good governance. They help councils to manage and mitigate their strategic risks. An effective committee helps councils to build community confidence, meet legislative and other requirements, and meet standards of probity, accountability and transparency.

Without an effective ARIC, there is a lack of independent oversight on how a council is functioning and managing risk.

The Office of Local Government has issued comprehensive 'Guidelines for Risk Management and Internal Audit for Local Government in NSW' to assist councils and joint organisations to implement these requirements by 1 July 2024. Joint organisations can apply for an exemption from requirements.

ARICs can be more effective in discharging their functions

Whilst the guidelines are not mandatory till 1 July 2024 they provide a framework for ARICs to work towards so they are more effective in discharging their functions and managing councils' risks including:

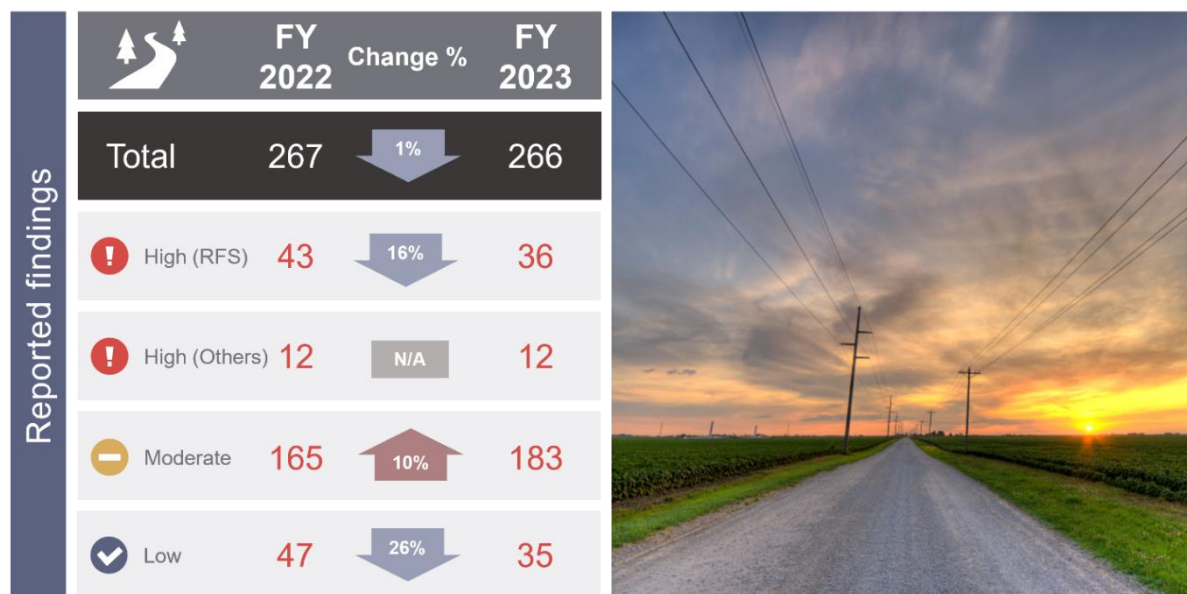
- cyber risk management (refer to [Section 3.3](#)) including 18% of councils that have not communicated cyber risk with those charged with governance or ARICs
- tracking the progress of implementing recommendations from financial audits, performance audits and public inquiries
- prioritising tracking of repeat and high-risk audit findings. The 2022–23 audit management letters highlighted that 40% of total audit findings from prior years had not been actioned
- ensuring management appropriately certify the effectiveness of internal controls supporting the financial statements. Only 49 ARICs obtained this certification
- reviewing the financial statements for quality prior to submission for audit. This was performed by 80 ARICs.

3.2 Asset management

Councils own and manage large infrastructure asset portfolios to support the delivery of community services. Asset management involves operational aspects such as maintenance and physical security, as well as accounting procedures such as recording and valuing assets in accordance with Australian Accounting Standards.

Asset management findings decreased from 267 to 266

Audit management letters reported 266 findings relating to asset management (2021–22: 267). Forty-three per cent (113 findings) were repeat findings, (2021–22: 52%, 157 repeat findings).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

High-risk findings decreased from 55 to 48 in 2022–23. There were 33 (2021: 45) repeat findings with no repeat moderate findings elevated to high risk.

Thirty-six councils with unrecorded vested rural firefighting equipment had a high-risk finding

Councils with unrecorded statutorily vested rural firefighting equipment, where insufficient procedures have been undertaken to verify the value, had a high-risk finding reported in their management letters. Six councils with high-risk findings in 2021–22 relating to the non-recognition of rural firefighting equipment either recognised the assets or addressed the issue in 2022–23 by performing sufficient procedures to verify that the value of these assets was not material to the financial statements taken as a whole.

2022–23 councils with high-risk findings for unrecorded rural firefighting equipment
















Bathurst Regional	Cootamundra-Gundagai Regional	Lachlan Shire	Snowy Valleys
Bega Valley Shire	Dungog Shire	Leeton Shire	Tamworth Regional
Bellingen Shire	Edward River	Lockhart Shire	Temora Shire
Bland Shire	Federation	Mid-Western Regional	Tenterfield Shire
Cabonne	Greater Hume Shire	Moree Plains Shire	Upper Lachlan Shire
Carrathool Shire	Griffith City	Murray River	Wagga Wagga City

2022–23 councils with high-risk findings for unrecorded rural firefighting equipment




Cessnock City	Hilltops	Murrumbidgee	Warrumbungle Shire
Clarence Valley	Junee Shire	Queanbeyan-Palerang Regional	Weddin Shire
Coolamon Shire	Kempsey Shire	Snowy Monaro Regional	Yass Valley

Other high-risk findings

Twelve (2021–22: 12) other high-risk findings across the control deficiency areas are detailed in the table below.

Control deficiency*	Council	Status
Asset management		
Untimely capitalisation of completed projects and no work-in-progress additions listing could be produced.	Shoalhaven City	
Insufficient evidence to support the completeness and accuracy of road assets	Snowy Monaro	
Infrastructure, property, plant and equipment valuation		
Incomplete fair value assessment	Bega Valley Shire	
Incorrect fair value calculation	Armidale Regional	
Outdated comprehensive valuation exercise	Bega Valley Shire	
	Cessnock City	
Insufficient evidence to support valuation key inputs (e.g. asset useful lives)	Cessnock City	
Insufficient management oversight of valuer's work, including lack of documentation to support key assumptions and judgements	Cessnock City	
	Shoalhaven City	
Inaccurate and incomplete asset records	Armidale Regional	
	Shoalhaven City	
	Strathfield Municipal**	
Inadequate impairment assessment for natural disaster	Tenterfield Shire	
Valuation of landfill/remediation provision		
Outdated key inputs to value the landfill remediation provision	Cobar Shire	
	Singleton	

Key

-  New – first reported in current year.
-  Ongoing – prior year finding with due date after 30 June 2023.
-  Repeat – prior year finding not fully addressed.

* Additional audit procedures were performed to respond to and address the weakness identified.

** Finding resolved post 30 June 2023.

Common findings

The common asset management findings reported in audit management letters were deficiencies in asset revaluation processes, maintenance of information in asset management systems and landfill rehabilitation accounting practices.

Fixed asset register issues at 43 councils

Maintaining accurate and up-to-date asset data helps councils to make appropriate decisions around asset management. The common issues reported in audit management letters relating to fixed asset registers are summarised below.

Fixed asset register issues reported in audit management letters	Number of councils
Council did not maintain an accurate and complete fixed asset register. This included: <ul style="list-style-type: none">• issues with duplicate or missing assets• incorrect categorisation of assets• incorrect componentisation of assets• issues with assessing useful lives• discrepancies between fixed asset register and other information records (technical asset registers).	26
Council did not regularly update the fixed asset register for additions and disposals.	23
Asset registers were not maintained in a secure format (for example, use of unlocked spreadsheets or multiple unreconciled systems).	10

We continue to identify weak processes over updating, maintaining and securing fixed asset registers. Asset registers are not accurate and complete, there are duplicate or missing assets, and asset registers are not being reconciled with the asset management systems.

Prior period errors continue to predominately relate to the quality of asset records and asset valuation errors such as found and duplicate assets.

Deficiencies in infrastructure asset revaluation processes at 48 councils

Councils manage a significant range and value of infrastructure, property, plant and equipment. These assets are significant to the financial statements of councils and are subject to management judgements and estimates when determining their fair values. These judgements and estimates often require the assistance of a qualified expert valuer.

Deficiencies were identified in infrastructure asset valuations at 48 councils, including:

- not annually assessing useful lives, condition and possible impairment, and fair value for all asset classes
- inadequate documentation to support key assumptions and judgements applied including:
 - useful life assessments
 - condition and impairment assessments
 - fair value assessments
 - unit rates
- incorrect classification of assets
- incorrect exclusion of some assets from valuations
- management not documenting their quality review over the asset valuation
- errors in annual fair value assessments when applying indices to adjust fair values
- deficiencies in the annual fair value assessment process.

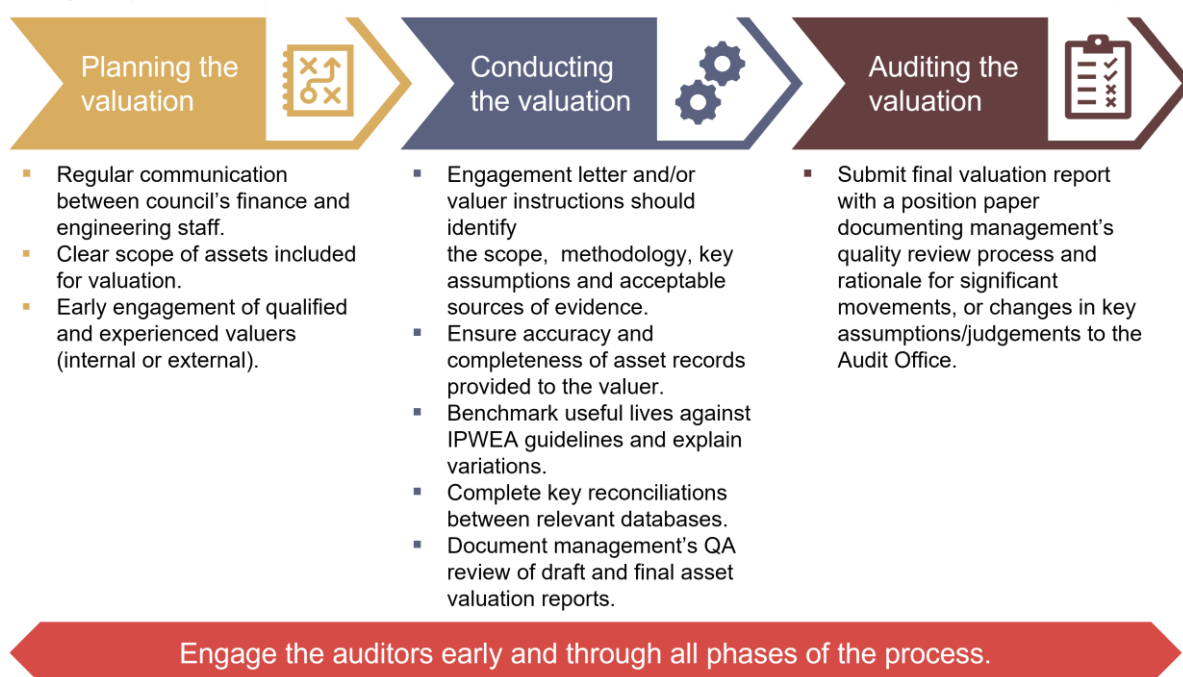
Councils need to improve their valuation process and perform valuations earlier

Performing asset valuations earlier gives time for management and auditors to complete procedures and identify potential issues before the financial statements are prepared, and can improve timeliness of financial reporting. The effective date of the valuation of any asset category can be at any point during the financial year subject to audit. As reported in Chapter 2 '[Audit results](#)':

- 43 (2021–22: 45) councils completed infrastructure, property, plant and equipment valuations before 30 June 2023
- 22 (2021–22: 36) councils performed fair value assessments of infrastructure, property, plant and equipment before 30 June 2023.

Councils should have a project plan in place to manage the asset valuation process. Suggested deliverables to be included in a timetable for council valuations may include the following:

Project plan asset valuations



Improvements to council landfill rehabilitation accounting practices required at 27 councils

Australian Accounting Standards require recognition of a provision for landfill remediation when the obligation to operate landfill sites would result in cash outflows for the council, and when those outflows can be reliably measured. Such provisions should be assessed annually for changes in assumptions, legal requirements and emergence of new landfill remediation techniques.

Common findings identified in council landfill rehabilitation accounting practices include:

- no formal assessment of legal and other obligations to rehabilitate landfill sites
- insufficient documentation of liability calculations to support inputs, assumptions and key data for accounting for rehabilitation provisions
- costs associated with post closure, aftercare and monitoring of landfill sites excluded from the assessment.

3.3 Information technology (IT)

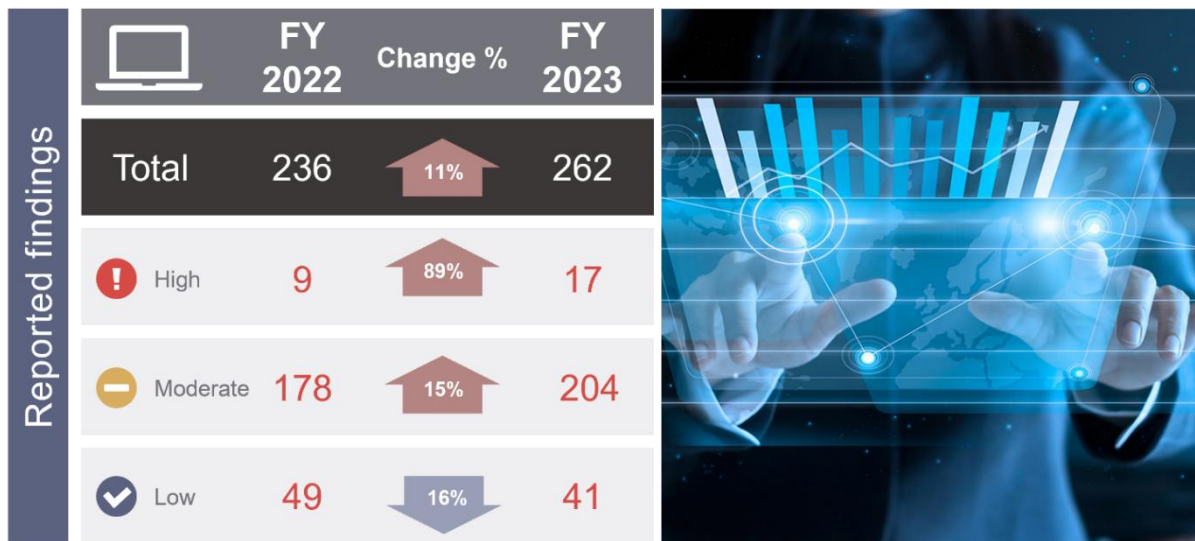
Councils rely on IT to deliver services and manage information. While IT delivers considerable benefits, it also presents risks that councils need to address. IT general controls relate to the procedures and activities designed to ensure confidentiality, and integrity of systems and data. These controls underpin the integrity of financial reporting.

Financial audits involve the review of IT general controls relating to key financial systems supporting the preparation of council financial statements, addressing:

- policies and procedures
- IT risk management
- privileged user access restriction and monitoring
- user access management
- system software acquisition, change and maintenance
- disaster recovery planning
- cyber security and patch management.

IT findings increased from 236 to 262



























Audit management letters reported 262 findings relating to IT (2021–22: 236). Fifty-one per cent (134 findings) were repeat or ongoing findings (2021–22: 73%).

























Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

Seventeen high-risk findings were reported across the control deficiency areas as detailed in the table below.

Control deficiency*	Council/Joint Organisation	Status
Policies and procedures		
Absence of or outdated policies and procedures	Dungog Shire	
	Hunter	
	Liverpool Plains Shire	
	Uralla Shire	
	Walcha	
	Warren Shire	
	Cootamundra-Gundagai Regional	
	Eurobodalla Shire	
	Upper Lachlan Shire	
	Yass Valley	
Privileged user restriction and monitoring		
No formal privileged user activity review	Bayside	
	City of Parramatta	
	Dubbo Regional	
	Dungog Shire	
	Mid-Coast	
	Sutherland Shire	
	Wagga Wagga City	
	Warren Shire	
	Cootamundra-Gundagai Regional	
	Eurobodalla Shire	
	Upper Lachlan Shire	
User access management		
No periodic review of user access rights to ensure access levels are commensurate with job responsibilities	Dungog Shire	
	Mid-Coast	
	Sutherland Shire	
	Warren Shire	
	Cootamundra-Gundagai Regional	

Control deficiency*	Council/Joint Organisation	Status
	Eurobodalla Shire	
	Upper Lachlan Shire	
	Yass Valley	
Password		
Inappropriate parameters and account lockout configurations	Dungog Shire	
	Warren Shire	
	Cootamundra-Gundagai Regional	
Backup and restoration		
Backups are performed but no formal periodic checking if they can be restored	Maitland City	
Disaster recovery planning		
Absence of or outdated disaster recovery planning policies and procedures	Cootamundra-Gundagai Regional	
	Eurobodalla Shire	
	Maitland City	
Cybersecurity		
Absence of or outdated cyber risk policy or framework	Dungog Shire	
	Hunter	
	Uralla Shire	
	Warren Shire	
	Walcha	
No established formal roles and responsibility over cyber security	Dungog Shire	
	Warren Shire	
Cyberattack not included in risk register	Warren Shire	
	Eurobodalla Shire	
No cyber incidents register	Dungog Shire	
No cybersecurity penetration testing	Warren Shire	
No training provided to staff	Warren Shire	

Key



New – first reported in current year.



Ongoing – prior year finding with due date after 30 June 2023.



Repeat – prior year finding not fully addressed.

* Additional audit procedures were performed to respond to and address the weakness identified.

Common findings

The common IT findings reported in audit management letters were deficiencies in IT policies and procedures, lack of a cyber security framework, and missing controls and gaps in user access management processes.

IT policies and procedures were outdated or not in place at 53 councils

Fifty-three councils (2021–22: 43) did not formalise and/or regularly review their key IT policies and procedures. It is important for key IT policies to be formalised and regularly reviewed to ensure emerging risks are considered and policies are reflective of changes to the IT environment. Lack of formal IT policies and procedures may result in inconsistent and inappropriate practices and an increased likelihood of inappropriate access to key systems.

Lack of periodic user access review at 55 councils and insufficient control over privileged users at 38 councils

The following common access management findings were identified:

- 55 councils (2021–22: 28) did not perform a periodic user access review to ensure users' access to key IT systems was appropriate and commensurate with their roles and responsibilities
- 38 councils (2021–22: 46) had gaps in privileged users' management process. This includes gaps in restricting privileged users' access and monitoring logs of privileged users' activity.

The number of councils with insufficient control over privileged users reduced by 17% as councils addressed previously reported matters.

Where robust access management processes are not in place, inappropriate access may exist. This increases the risk of the unauthorised processing or modifying of transactions, or of sensitive data being stolen. These common findings may be rated high-risk when there are no mitigating controls to prevent or detect unauthorised activity.

Cyber security frameworks and related internal controls were not in place at 50 councils

The NSW Cyber Security Policy states that the term 'cyber security' covers all measures used to protect systems and information processed, stored or communicated on systems from compromise of confidentiality, integrity and availability.

The Office of Local Government (OLG) issued 'Cyber Security Guidelines – Local Government' referencing the cyber security standards recommended by Cyber Security NSW. OLG strongly encourages compliance with the guidelines, but has not made compliance mandatory. Unlike state sector agencies, there is no requirement to annually report maturity assessments to Cyber Security NSW or to another regulatory body such as the OLG.

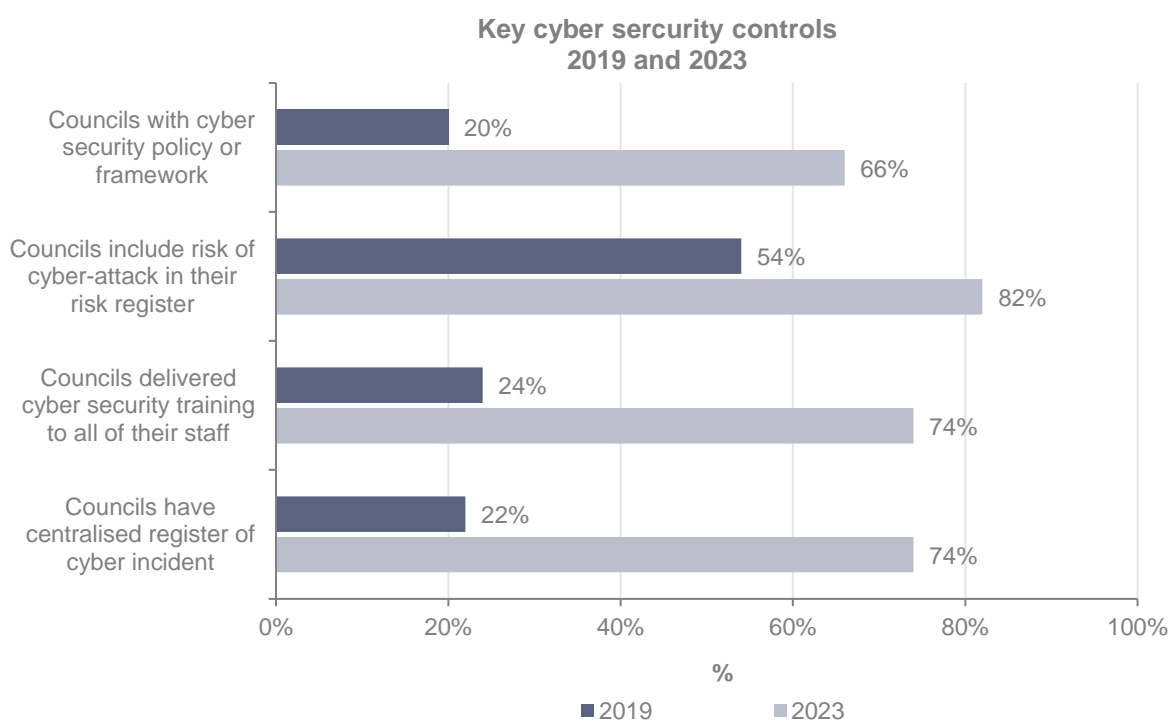
As part the Audit Office's financial audits, cyber security findings were reported for 50 councils (2022–23: 63). Councils should implement the following basic governance and internal controls to help identify and manage cyber security risks:

- having in place a cyber security framework, policy and procedures
- performing regular cyber maturity assessments and gap analysis
- maintaining a register of cyber incidents
- conducting simulated cyber-attack testing (penetration testing)
- having an ongoing cyber security training and awareness program for all staff.

Poor management of cyber security can expose councils to a broad range of risks, including:

- theft of corporate and financial information and intellectual property or money
- service interruptions from a denial-of-service attack
- destruction of data
- costs of repairing affected systems, networks and devices
- legal fees and/or legal action from losses arising from denial-of-service attacks causing system downtime in critical systems
- third-party losses when personal information stored on councils' government systems is used for criminal purposes
- reputational damage.

Our audits have been reporting cyber security findings in management letters since 2019. The table below is limited to the high-level gaps in cyber security controls where we have focussed our audit procedures. While it does not mean all risks are mitigated, it is encouraging that councils have focussed on these gaps and improved cyber security management in these areas. Around two thirds of councils have implemented some of these key cyber security controls since 2019.



Source: Data collection from 30 June 2023 audits.

Fifty councils do not have in place any formal cyber security planning and governance. These councils need to prioritise planning and governing cyber security, based on the OLG's '[Cyber Security Guidelines – Local Government](#)', to ensure cyber security risks over key data and IT assets are appropriately managed and key data is safeguarded.

The risks associated with poor cyber security maturity are compounded where councils also have deficiencies in their information technology controls and poor information systems security hygiene.

Recommendation to councils (repeat issue)

Councils should prioritise planning and governing cyber security to ensure cyber security risks over key data and IT assets are appropriately managed and key data is safeguarded.


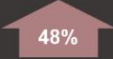





Councils should refer to the 'Cyber Security Guidelines – Local Government' released by the OLG.

3.4 Financial reporting

Financial reporting is an important element of good governance. Confidence in, and transparency of public sector decision-making is enhanced when financial reporting is accurate and timely.

Financial reporting findings increase from 42 to 62

Audit management letters reported 62 findings relating to financial reporting (2021–22: 42). Thirty-five per cent were repeat findings (2021–22: 55%).







Reported findings		FY 2022	Change %	FY 2023
	Total	42	 48%	62
	 High	7	N/A	7
	 Moderate	27	 41%	38
	 Low	8	 113%	17



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

Seven high-risk findings were reported at the following councils.

Control deficiency*	Council/Joint Organisation	Status
Poor quality financial statements submitted for audit	Cessnock City	
	Clarence Valley	
	Kempsey Shire	
	Shoalhaven City	
	Snowy Monaro	
	Canberra Region	
Lack of documentation and management review of judgements and assumptions used in financial reporting.	Hilltops	

Key



New – first reported in current year.



Ongoing – prior year finding with due date after 30 June 2023.



Repeat – prior year finding not fully addressed.

* Additional audit procedures were performed to respond to and address the weakness identified.

Common findings

Common findings across councils include:

- Financial statements submitted for audit contained numerous errors and disclosure deficiencies.
- Lack of preparation for the audit, such as not having a financial reporting plan, impacted the timeliness of financial reporting at 15 (2021–22: 18) councils.
- Two (2021–22: 8) councils had deficiencies in related parties' policies and disclosures.
- Five (2021–22: 2) councils had deficiencies in infrastructure, property, plant and equipment note disclosure.

Further analysis and insights on financial reporting findings are detailed in Chapter 2 '[Audit results](#)'.

3.5 Financial accounting

Financial accounting refers to the processes adopted by management to record and review financial information across the business. Councils use a combination of manual and automated processes and digital information systems to process financial information. Effective processes support the accuracy and completeness of information presented in the financial statements.

Financial accounting findings increased from 66 to 76

Audit management letters reported 76 findings relating to financial accounting (2021–22: 66). Thirty per cent were repeat findings (2021–22: 50%).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

One repeat high-risk finding was reported at the following council.

Control deficiency	Council	Status
Segregation of duties over the preparation and review of manual journals	Dungog Shire	

- Key**
- New – first reported in current year.
 - Ongoing – prior year finding with due date after 30 June 2023.
 - Repeat – prior year finding not fully addressed.

Common findings

The common financial accounting findings reported in audit management letters were control deficiencies performing key account reconciliations and processing manual journal adjustments.

Lack of segregation of duties with manual journal adjustments at 12 councils

There was a lack of segregation of duties over the posting of manual journal adjustments to financial ledgers at 12 councils. An independent review and authorisation of manual journal adjustments is important to reduce the risk of fraud or error in the financial statements.

Key account reconciliations were not prepared in a timely manner or independently reviewed

Regular reconciliations of financial information, with appropriate review processes help to identify and resolve discrepancies between different systems and records, preserves integrity of financial statements and can identify fraud. Our audits identified:

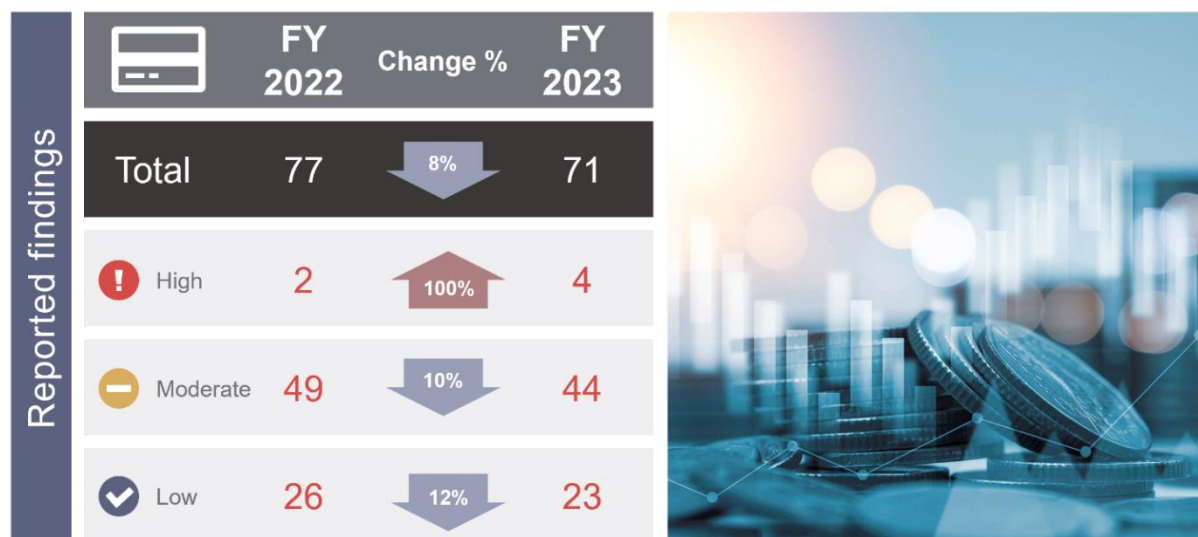
- There was no evidence of independent review of key account reconciliations at 18 councils.
- Twenty-eight councils did not perform timely reconciliations of all key balances in the financial statements.

3.6 Purchases and payables

Councils spend substantial funds each year to procure goods and services. It is important there is appropriate probity, accountability and transparency in procurement to reduce the risk of unauthorised purchases, corrupt and fraudulent behaviour, and value for money not being achieved.

Purchases and payables findings decreased from 77 to 71





Audit management letters reported 71 findings relating to purchases and payables (2021–22: 77). Forty-seven per cent were repeat findings (2021–22: 49%).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

Four high-risk findings as detailed in the table below.

Control deficiency	Council/Joint Organisation	Status
Lack of segregation of duties	Liverpool Plains Shire	
Approved transactions above delegation limit	Albury City	
Lack of robust controls and governance in procurement	Hunter	
Non-compliance with the LGA Act tendering requirements	Hunter	

Key



New – first reported in current year.



Ongoing – prior year finding with due date after 30 June 2023.



Repeat – prior year finding not fully addressed.

Common findings

The common purchases and payables findings reported in audit management letters were weak purchase order controls and a lack of review of vendor master file changes.

At three councils (2021–22: 35), employees could approve their own purchase orders. At four councils (2021–22: 44), purchase orders were approved without appropriate delegation. Segregation of duties and appropriate delegation in procurement help to reduce the risk of fraud and misuse of public money.

Purchase orders were approved after the receipt of goods or services at 19 councils (2021–22: 56). Purchase orders should be generated and approved before staff order goods or services to reduce the risk of unauthorised or fraudulent transactions.

Insufficient review of changes to creditor information at six councils

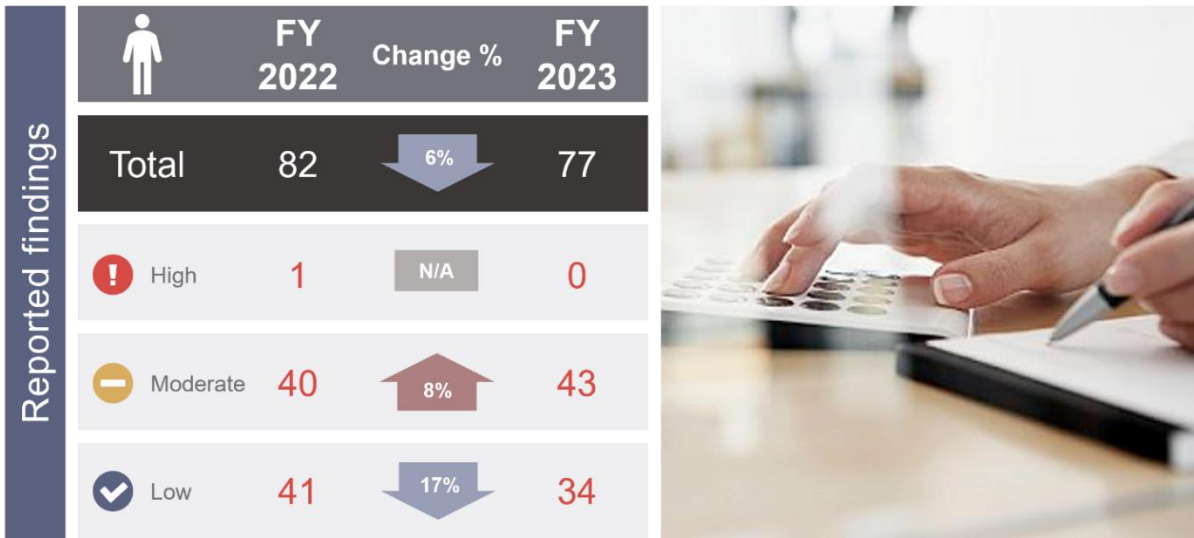
Six (2021–22: 13) councils did not perform sufficient review of changes to creditor information in the supplier master file, including bank account details. This increases the risk of transactions paid to incorrect accounts, resulting in financial losses for councils. Cyber-crime is on the rise increasing the risk of control weaknesses being exploited.

3.7 Payroll

Effective payroll processes ensure councils manage their workforce in compliance with legislation, employment agreements and the Local Government Award. Payroll processes and information systems should protect the integrity of employee records and timesheet data to ensure accurate payments to employees and leave entitlement calculations.

Payroll findings decreased from 82 to 77

Audit management letters reported 77 findings relating to payroll processes (2021–22: 82). Forty-seven per cent were repeat findings (2021–22: 65%).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

There were no high-risk findings related to payroll in 2022–23 (2021–22: nil).

Common findings

The common payroll findings reported in audit management letters were deficiencies in the review of employee payroll data.

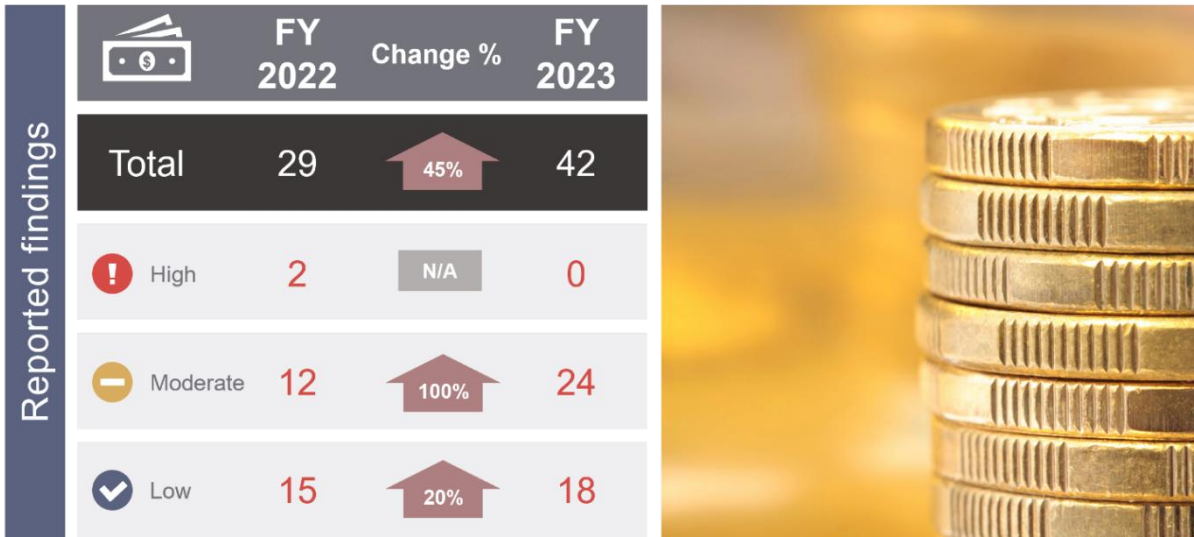
Twelve councils are not reviewing changes to employee payroll data

Twelve councils did not have adequate processes in place to review changes to employee payroll data. This includes instances where changes are reviewed, but not by an independent person. This increases the risk of unauthorised changes or errors remaining undetected, resulting in financial loss to councils. Cyber criminals are increasingly attempting to exploit vulnerabilities in payroll processes and controls.

3.8 Cash and banking

Councils process a high volume of transactions each year. Effective controls over cash collection, disbursements and reconciliations reduce the risk of fraud and error.

Audit management letters reported 42 findings relating to cash and banking (2021–22: 29). Twenty-four per cent were repeat findings (2021–22: 41%).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

There were no high-risk findings related to cash and banking in 2022–23 (2021–22: 2).

Common findings

The common cash and banking findings reported in audit management letters were outdated bank signatories, the lack of segregation of duties in the cash handling process and the lack of security of payment files.

Outdated bank signatories at eight councils

Expired bank signatories are not being removed on a timely basis. Eight councils had former employees listed as an account signatory for bank accounts. This increases the risk of unauthorised transactions.

Deficiencies in the cash handling processes at five councils

Deficiencies in the cash handling process were identified at five councils, including lack of daily cashier reconciliation and lack of segregation of duties. This increases the risk of undetected balancing errors and misappropriation of cash or cheques.

Lack of security of payment files for pay runs at one council

One council did not encrypt Electronic Funds Transfer payment files from editing or sufficiently restrict access to payment files on the network before they were uploaded to online banking portals. This increases the risk of unauthorised or fraudulent transactions.

3.9 Revenue and receivables

Councils receive revenue from a range of different sources, including rates and annual charges, user charges and fees, operating and capital grants and contributions, and other revenue (such as interest, investments and asset disposals). Councils require appropriate internal controls to accurately record revenue and receivables in compliance with accounting standards and legal requirements.

Revenue and receivable findings decreased from 69 to 65

Audit management letters reported 65 findings relating to revenue and receivables (2021–22: 69). Thirty per cent were repeat findings (2021–22: 42%).



Source: Audit management letters for 30 June 2022 and 30 June 2023 audits.

High-risk findings

One high-risk finding was reported at the following joint organisation.

Control deficiency	Joint Organisation	Status
Lack of assessment of revenue recognition for each significant grant	Illawarra Shoalhaven	

Key

- New – first reported in current year.
- Ongoing – prior year finding with due date after 30 June 2023.
- Repeat – prior year finding not fully addressed.

Common findings

The common revenue and receivables findings reported in audit management letters were deficiencies in revenue recognition, weak revenue processes such as lack of review when updating of fees and charges resulting in undercharging customers and ratepayers, and not reconciling subsidiary and general ledgers.

Inappropriate revenue recognition at 35 councils

Thirty-five councils (2021–22: 16) had gaps in revenue recognition practices, including:

- not formally assessing grant funding against measurement criteria under AASB 15 'Revenue from Contracts with Customers' and AASB 1058 'Income of Not-for-Profit-Entities' leading to errors in the financial statements
- not reconciling the grant register and not keeping it up to date
- errors in applying AASB 16 'Leases' for rental income recognition.

Deficiencies in revenue recognition practices resulted in 25 errors identified in councils' financial statements, totalling \$22 million.

Section two

Appendices

Appendix one – Response from the Office of Local Government within the Department of Planning, Housing and Infrastructure

Department of Planning, Housing and Infrastructure



Ref: A891070

Ms Margaret Crawford
Auditor General for New South Wales
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford,

Thank you for your email of 12 February 2024 and the opportunity to respond to your draft Report on Local Government 2023 (the Report). I would like to recognise the contribution of the Audit Office towards strengthening governance, financial management, and reporting in the local government sector. I note the report's recommendations to the Department of Planning, Housing, and Infrastructure and provide a response to these below (the Department).

Rural firefighting assets

As you would be aware the Office of Local Government (OLG) amended the Local Government Code of Accounting 2023-24 to require councils to recognise material Rural Fire Service (RFS) assets in their financial statements. Councils are required to prepare financial statements in accordance with the *Local Government Act 1993* (the Act), the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board and the Local Government Code of Accounting Practice and Financial Reporting.

I note that you report a number of councils' financial statements were qualified in the 2022 - 2023 financial year because they did not recognise RFS assets or were unable to determine the carrying value of roads, water and sewerage assets.

OLG will continue to communicate to the local government sector that councils should recognise material RFS assets.

I also note that the Minister for Local Government has asked the Public Accounts Committee to examine the arrangement for assets, premises, and funding of the RFS.

Developer Contributions

Developer contributions are governed by the *Environmental Planning and Assessment Act 1979*. The administration of policy regarding the collection and expenditure of these contributions falls under the responsibility of the Planning Group within the Department.

Section 7.3 of the *Environmental Planning and Assessment Act 1979* states that all contribution funds, including interest earned on those funds, must be held for the purpose for which they were paid and must be applied towards that purpose within a reasonable time. This makes it clear that money collected under councils' contributions plans must be held as an externally restricted asset. The revenue can only be used to fund infrastructure identified in a plan.

The legislation does not specifically refer to repealed funds, which is revenue collected under a contributions plan that has been repealed by a council. The Audit Offices' recommendation for more clarity on the classification and use of these funds is supported. The Planning Group of the Department will work closely with OLG to develop and publish this advice. It is expected that it will be delivered through the Department's policy guidance to councils, the Infrastructure Contributions Practice Notes and any necessary updates to the Local Government Code of Accounting Practice and Financial Reporting.

Early financial reporting procedures

The Department continues to support, in principle, the recommendation that councils adopt early financial reporting procedures and recognises a number of councils continue to be unable to meet the statutory deadline for the lodgement of their annual financial statements without applying for an extension. The adoption of a practice will assist councils in meeting the reporting timetable and it is to be encouraged.

A council's Audit and Risk and Improvement Committee remains the most suitable body to identify and implement measures to ensure regulatory requirements are met. Councils are, and will continue to be, encouraged to commence earlier processes for financial reporting activities including asset valuations.

However, to support the move to wider early close procedures OLG will include key steps/stages for Councils in the Compliance Calendar. The calendar is provided to Councils early to assist the identification of key regulatory and governance actions.

Cyber Security

In December 2022, OLG released the 'Cyber Security Guidelines – Local Government'. Compliance with the Guidelines is voluntary, but strongly encouraged. The Report mentions that 47 councils did not have in place any formal cyber security planning and governance.

I understand that the Audit Office is undertaking a performance audit of cyber security in local government. Given this, OLG will await the results from that audit before deciding additional actions that may be taken to encourage councils to have appropriate cyber security measures in place.

Status of previous recommendations

I note Appendix 3 sets out the status of previous recommendations. In relation to the previous recommendation to the Department about the legal framework relating to restrictions of water, sewerage, and drainage funds (restricted reserves), I can advise that OLG has met with the NSW Department of Climate Change, Environment, Energy and Water and is considering regulatory options which may be available.

Finally, I note the report refers to the issue of a Performance Improvement Order for Kiama Council. It should be noted the Minister for Local Government has publicly identified and issued Council with a notice of intent to vary the Order to extend its timeframes and continue to hold Council to its roadmap for financial improvement. OLG has also identified a number of minor amendments that are listed in the attached.

Should you require further assistance in relation to these matters, please do not hesitate to contact Brett Whitworth, Deputy Secretary, Office of Local Government on or by email at olg@olg.nsw.gov.au

Sincerely,



Kiersten Fishburn
Secretary

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Locked Bag 5022, Parramatta NSW 2124

dphi.nsw.gov.au

4

Appendix two – NSW Crown Solicitor's advice

Sensitive: Legal

Crown Solicitor's Office



ADVICE

USE OF RESTRICTED FUNDS COLLECTED BY A COUNCIL

Executive summary

1. You seek my advice concerning the application of certain monies paid to local councils under the *Environmental Planning and Assessment Act 1979* ("the *EPA Act*") and the *Local Government Act 1993* ("the *LG Act*").

Question 1: Application of development contributions where DCP repealed

2. I have addressed the three scenarios set out in your instructions at [29]-[31] (Scenario 1), [32]-[36] (Scenario 2), and [37]-[39] (Scenario 3).
3. In each case, my answer in respect of the scenario in question is governed by my view (attended by not insubstantial doubt) that:
 - (a) contributions under a repealed Development Contributions Plan ("DCP") may ordinarily be expended under a subsequent DCP by which it is repealed; and
 - (b) absent any clear indication to the contrary in the DCP itself, the subsequent DCP should be construed as permitting this outcome.

Question 2: Transition of funds between development plans

4. I do not think that a practice involving transfer of funds collected under s. 7.3 of the *EPA Act* to a council's internal reserves would give rise to non-compliance with the *EPA Act*, if the funds concerned are not in fact expended.

Question 3: Expenditure of money charged for domestic waste management services

5. Funds collected for domestic waste management services by a council may, in principle, be spent on advertising concerning, and information related to, domestic waste management. However, whether such expenditure is permissible will ultimately depend on an assessment of the particular advertising or information.
6. On the other hand, there is no ready basis for characterising expenditure for non-domestic waste management rebates as being within the purposive limitation identified by s. 409(2) of the *LG Act*. There are nonetheless two scenarios where the application of funds collected for domestic waste management services might be applied for that purpose:
 - (a) where it is expended on the basis of an internal loan within the council pending its expenditure on domestic waste management services, and the loan is approved by the Minister; or

Prepared for: AUD018 Audit Office of NSW
Client ref: Nathan Carter
Author: Michael Granziera

Date: 20 September 2023

Sensitive: Legal

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- (b) where the charge for domestic waste management services under which the money was obtained has been discontinued, the purpose of that charge has been achieved or is no longer required to be achieved, *and* the procedural requirements of s. 410(2) have been satisfied.

Analysis

Question 1: Application of development contributions where DCP repealed

- 7. You ask me to advise on the ability of a local council to apply funds collected under the *EPA Act* in accordance with a DCP in several scenarios involving the repeal of that DCP.
- 8. It is convenient to consider the overall operation of the DCP regime in relevant respects, before addressing the individual scenarios. In considering those scenarios, I have assumed, in each case, that the council has repealed an existing DCP by making a subsequent DCP in accordance with either cl. 215 of the *Environmental Planning and Assessment Regulation 2021* ("the *EPA Regulation*") or its immediate predecessor.¹

Development contributions under the *EPA Act*

- 9. Division 7.1 of the *EPA Act* provides for the imposition of development contributions in connection with development consents. A consent authority, including a local council,² may impose a condition on a development consent requiring, relevantly:
 - (a) under s. 7.11(1)(b) – the payment of a monetary contribution, where the consent authority is satisfied that development for which consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area. That contribution may be imposed to require "a reasonable... contribution for the provision, extension or augmentation of the public amenities and public services concerned" (per s. 7.11(2));
 - (b) under s. 7.11(3) – the payment of a monetary contribution towards recoupment of the cost of providing public amenities or public services, where the development will benefit from the provision of those amenities and services, and they were provided by the consent authority within the area in preparation for, or to facilitate the carrying out of development in the area; or
 - (c) under s. 7.12(1) – a levy of the percentage (authorised by a contributions plan) of the proposed cost of carrying out the development. Money paid under s. 7.12(1) is, subject to any relevant provisions of the applicable contributions plan, "to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation)" (per s. 7.12(3)).

¹ Clause 32 of the *Environmental Planning and Assessment Regulation 2000*

² See generally, s. 4.5 of the *EPA Act*

10. A consent authority that is a council may impose conditions requiring payments and levies as set out above *only* if it is a condition of a kind allowed by, and is determined in accordance with, a contributions plan, subject to any applicable Ministerial direction (s. 7.13(1)). Sections 7.18 and 7.19 provide for the making of contributions plans.
11. Section 7.3 addresses the manner in which a consent authority, including a council, is to hold and apply certain monies collected under Div. 7.1:

"7.3 Provisions relating to money etc contributed under this Division (other than Subdivision 4) (cf previous s 93E)

 - (1) A consent authority or planning authority is to hold any monetary contribution or levy that is paid under this Division (other than Subdivision 4) in accordance with the conditions of a development consent or with a planning agreement **for the purpose for which the payment was required, and apply the money towards that purpose within a reasonable time.**
 - (2) However, money paid under this Division (other than Subdivision 4) for different purposes in accordance with the conditions of development consents may be pooled and applied progressively for those purposes, subject to the requirements of any relevant contributions plan or ministerial direction under this Division (other than Subdivision 4)
 - ...
 - (4) A reference in this section to a monetary contribution or levy includes a reference to any additional amount earned from its investment."

(my emphasis)
 12. The effect of s. 7.3 is that monetary contributions and levies collected under ss 7.11 and 7.12 must be held and applied by a council for a public purpose, being the purpose for which their payment was required.³ The extent of that purposive limitation and, more particularly, the manner in which it is conditioned by the terms of the DCP under which the contribution or levy was collected, are central to addressing the questions you have raised.
 13. The current *EPA Act* arrangements whereby imposition of a condition requiring the payment of a contribution or levy itself requires authorisation under a DCP commenced on 1 July 1993,⁴ and were considered in some detail in *Frevcourt v Wingecarribee Shire Council* (2005) 139 LGERA 140. I note at the outset that the scheme of the *EPA Act* and sundry regulations considered in *Frevcourt* was identical in material respects to the present scheme, notwithstanding some subsequent amendments and the renumbering of the constituent provisions of the *EPA Act*.
 14. The appellants in *Frevcourt* relevantly contended that the respondent council was obliged to repay contributions made under a DCP on the basis that the council had

³ *Frevcourt v Wingecarribee Shire Council* (2005) 139 LGERA 140 at 150 per Beazley JA, Ipp and McCall JJA agreeing, considering s. 93E (now s. 7.3)

⁴ Following the commencement of the *Environmental Planning and Assessment (Contributions Plan) Amendment Act 1991*; discussed in *Frevcourt* at 155.

abandoned the works for which the contributions were first required.⁵ In support of this position, they advanced a restrictive construction of ss 93E and 94 (predecessors of ss 7.3 and 7.11). On the appellants' argument, a council was unable to abandon works specified in a DCP;⁶ was limited to varying those works by making a new DCP, and only if the new works related to works specified in the plan under which the initial contributions were collected;⁷ and was unable to "carry across" contributions made under a DCP into an amended or substituted plan.⁸

15. The lead judgement in *Frevcourt* was delivered by Beazley JA (Ipp and McColl JJA agreeing).⁹ In rejecting the appellants' contentions, her Honour described the "overall thrust" of the DCP scheme as being that:¹⁰

"[A] council must expend s. 94 contributions on the amenities for which the contributions were required. This is subject to any amendment of the Contributions Plan".

16. Her Honour continued:¹¹

"Given the absence of any restriction in the type or extent of amendments that may be made, **I am of the opinion that a council can amend a plan so as to alter both the extent and type of public amenity or service that is reasonably required by the development and apply existing s 94 funds to those amenities or services.**

In my opinion, and it follows from what I have said, a council's entitlement to amend a Contributions Plan encompasses a right to reduce the scope of works specified in a Contributions Plan, even if this means that some works stipulated in the original Contributions Plan are no longer to be carried out. **I should add that as this case is concerned with a reduction in the scope of roadworks, and not with the substitution of different works, it is not necessary to reach a final conclusion on whether a Council can amend the type of amenity or service so as to substitute different work and use existing s 94 contributions for that different purpose.** I would further add that if the right to amend did not encompass the ability to eliminate or abandon (or indeed to substitute different amenities), a Council arguably would be limited to being able to make minimal changes of the detail of the work originally proposed. Amendments of that type would, in my view, be variations of a type in respect of which a council has a continuing discretion in any event. In this regard, I agree with the trial judge that a limited discretion remains after the 1 July 1993 amendments." (citations omitted)

(my emphasis)

17. There is an apparent tension between the two highlighted passages in the foregoing quote, insofar as the first suggests her Honour formed a definitive conclusion that a council enjoys a broad latitude to apply existing contributions to amenities of a "different extent or type" through amendment of a DCP, while the second indicates that no

⁵ At 158

⁶ Ibid

⁷ At 159

⁸ Ibid

⁹ At 166

¹⁰ At 159

¹¹ Ibid

conclusion was intended on the question of substitution. However, her Honour subsequently characterised her conclusion as being that:¹²

"[T]he power to amend a Contributions Plan involves the ability to use funds (initially required for a particular amenity or service) for the amenity or service substituted, changed or varied in the amended Plan".

Reading these statements together, the safer approach is to treat her Honour's statement that the right to amend a DCP extends to *reducing or altering* the scope of works as part of the judgement's *ratio*, while treating her comments concerning the ability to *substitute* works by way of amendment as *obiter*.

18. Beazley JA disposed of the appellants' contention on the basis that (inter alia) the council legitimately altered the scope of works for which contributions had been made pursuant to an amendment to the relevant DCP, such that no breach of the *EPA Act* giving rise to a putative right of recovery had arisen. Her Honour nonetheless proceeded to consider (in *obiter*) the appellants' argument that, in the event of a breach of the Act, they were entitled to a refund of the relevant contribution. In holding that no power arose under the *EPA Act* to repay contributions previously made,¹³ several points of her Honour's reasoning are worth noting for present purposes:
 - (a) Where a DCP is repealed without replacement after contributions have been made, there is no breach of the *EPA Act* involved in a council continuing to hold contributions previously made.¹⁴ At the same time, while there is no longer a public purpose for which monies are held in event of the repeal of a DCP without replacement, a contributor has no right analogous to that of the beneficiary of a trust for recovery purposes, although the prospect of recovery based on a general law monies had and received claim cannot be excluded.¹⁵
 - (b) As contributions are able to be combined as a part of a fund and expended progressively on different amenities provided for under a DCP,¹⁶ significant difficulties would arise in separating and identifying individual contributors' rights to the corpus.¹⁷
 - (c) In light of these difficulties, it may be that the only remedy available to a party in the event of a breach of the Act would be a right to compel the council to use funds for the purposes for which they had been paid, albeit that proposition would itself create difficulties in the event that a surplus of monies remained after all amenities covered by a DCP were paid for.¹⁸

¹² At 162

¹³ While this conclusion is strictly *obiter*, it was subsequently endorsed by the Court of Appeal (again, in *obiter*) in *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177.

¹⁴ At 162

¹⁵ *Ibid*

¹⁶ A position now made explicit in s. 7.3(2).

¹⁷ At 162

¹⁸ *Ibid*

19. *Frevcourt* remains the leading authority to date with respect to the latitude enjoyed by councils in applying monies collected under conditions authorised by DCPs. It stands clearly for the proposition that a consent authority may alter the scope of work for which a contribution was provided by amending a DCP. As appellate level *obiter*, the conclusion that existing contributions may be applied to new or substituted works following amendment of DCP should also be afforded considerable weight, and I do not discern any clear reason, as a matter of construction of the *EPA Act* and sundry regulations, to depart from that view.
20. That does not, however, answer the question of how monies collected under one plan are to be treated if a plan is repealed *in toto*, or repealed and replaced. That issue has not been addressed in any subsequent authority I have been able to identify.
21. It is not a matter that is addressed in any provision of Div. 7.1 of the *EPA Act*. Nor is it expressly addressed in Pt 9 of the *EPA Regulation 2021*, which deals with (amongst matters) the making of contributions plan, or (based on my review) under any predecessor regulation. Relevantly, with respect to the constituent provisions of Pt 9:
 - (a) in setting out the content of a contributions plan, cl. 212 does not require a plan to explicitly address whether the plan extends to funds carried over from a prior plan;
 - (b) in stipulating the records to be kept in relation to DCPs, Div. 4 makes reference to records relevant to expenditure of any "carry over" of funds from a previous plan;
22. Nor does Pt 9 make express provision for DCPs to include savings and transitional provisions addressed to the consequences of amendments or repeals. It is, however, of some significance for present purposes that cl. 215 of the *EPA Regulation* contemplates that (i) the amendment of plan will occur by way of the making of a subsequent plan, subject to limited exceptions,¹⁹ and (ii) the repeal of a plan will occur by way of the making of a subsequent plan, or by notice.²⁰
23. It follows that neither the *EPA Act* and the *EPA Regulation*, nor present authorities, provide explicit or substantial guidance as to the extent to which a DCP may enable the carrying-over and application of contributions previously collected under a repealed plan. Nor, by extension, do they provide significant assistance in determining whether a specific DCP is to be interpreted as permitting this practice.
24. However, on balance, and while it is attended by not insubstantial doubt, I prefer the view that, in principle:
 - (a) contributions under a repealed DCP may be expended under a subsequent DCP by which it is repealed; and
 - (b) absent any clear indication to the contrary in the DCP itself, the subsequent DCP should be construed as permitting this outcome.

¹⁹ Clause 215(1) and (5)

²⁰ Clause 215(2)

25. I reach this view on the following bases:

- (a) Consistent with the position adopted in *Frevcourt*, the better view is that a DCP may be amended so as to alter the works for which contributions collected under the plan may be expended.
- (b) Insofar as both may be effected by the making of a subsequent plan, cl. 215 of the *EPA Regulation* does not draw a material distinction between the amendment of a plan, on the one hand, and the repeal of a plan, on the other.
- (c) In these circumstances, there is some difficulty in drawing a distinction of substance between the two outcomes. In both cases, the *EPA Regulation* appears to proceed on the basis that the later plan will supersede the earlier one, with revisions to authorised works as a council may consider appropriate.
- (d) To construe the Act and Regulation as precluding a "carry over" in the event of repeal and substitution would give rise to complexities of the kind discussed in *obiter* in *Frevcourt* with respect to consequential obligations with respect to monies collected to date. It is apparent from the terms of s. 7.3 of the *EPA Act* and the reasoning in *Frevcourt* that the expenditure of collected funds remains subject to the obligation to hold expend them for a limited purpose.²¹ At the same time, however, no power to repay funds arises under the Act. To read the Act and Regulation as precluding this practice would effectively create a financial lacuna, leaving a body of funds "frozen" without clear legal direction as to their ultimate disposition.
- (e) More broadly, authorities concerning the scope of a council's obligation to expend contributions for the purposes for which they are collected under different iterations of the contributions regime have acknowledged that councils must necessarily enjoy some latitude and discretion with respect to contributions expenditure to address changes in infrastructure priorities.²² It appears to me to be consistent with that underlying premise to allow councils some discretion with respect to the allocation of existing contributions in the event of the repeal of a DCP, by permitting a carry over of funds and their application to revised programs of works, at the same time avoiding difficulties associated with the "freezing" of funds to the extent possible.
- (f) In the absence of any requirement under the *EPA Regulation* for a subsequent DCP to address expenditure of funds under the DCP it is repealing, I do not think that there are compelling grounds for construing a subsequent DCP as precluding carry-over expenditure unless it provides for this explicitly. It would instead be consistent with the scope of the power under which the DCP is made to proceed on the basis that such a carry-over is impliedly permitted.

²¹ The fundamental limitation on the expenditure of contributions imposed by s. 7.3 and its predecessors (that is, that the funds must be held and expended only for the purposes for which they were collected, whatever the precise ambit of that concept) has been consistently emphasised in authorities concerning the various iterations of the contributions scheme under the *EPA Act*; see, for example, *Levadetes v Hawkesbury Shire Council* (1988) 67 LRA 190 at 195; *Idameneo (No 9) Pty Ltd v Great Lakes Shire Council* (1990) 70 LGRA 26 at 30-31.

²² *Denham Pty Ltd v Manly Council* (1995) 89 LGERA 108 at 114-115; *Frevcourt* at 160

26. That in-principle view is subject to the general caveat that it would still be necessary to demonstrate some connection between the development for which the contribution was made, on the one hand, and the requirement for the amenity or service on which it was expended, on the other. That flows from the bases on which contributions are levied under ss 7.11 and 7.12, and the framing of the scope of the amendment power in the passage from *Frevcourt* quoted at [16] above. This being said, I note that the statutory provision for pooling of funds under s. 7.3(2) creates considerable difficulty in identifying a direct connection between any given amount of levy and particular work it is ultimately expended upon. As a result, it seems to me that, as a matter of practice, not insubstantial weight needs to be accorded to a DCP as a measure of the connection between the body of contributions collected by a council and the matters on which they may ultimately be expended.²³
27. In reaching this general position, I nonetheless note that the question would benefit greatly from clarification by way of amendment of the *EPA Act* and/or its sundry regulations.
28. I now turn to the three scenarios identified in your instructions.

Scenario 1

29. You have identified a scenario where:
- (a) a council repeals a previous DCP, and adopts a new DCP; and
 - (b) the new DCP is silent as to how funds collected under the repealed plan should be applied.
30. You ask whether, in this scenario:
- (a) the remaining funds collected under the repealed DCP can be used for any purpose determined by the council, or whether they remain restricted under s. 7.3; and
 - (b) if they remain restricted under s. 7.3 – those funds can be applied towards any public purpose, a similar public purpose to that identified in the repealed plan, or in accordance with the new plan?
31. Consistent with my reasoning above, I prefer the view that the expenditure of the funds collected under the repealed DCP would remain restricted by s. 7.3, but those funds could be applied in accordance with the new DCP.

²³ In this context, I note that the imposition of a condition requiring a contribution is itself subject to a test of validity, and must meet criteria of (amongst matters) being reasonable for the provision, extension or augmentation of identified public services or amenities, and being fairly and reasonably related to the development concerned (*Lake Macquarie City Council v Hammersmith Management Pty Ltd* [2003] NSWCA 313 at [52]). There is a degree of tension between the relative stringency attending the purposes for which a contribution may be collected, on the one hand, and the conclusion that a DCP may nonetheless substantially alter the purpose of expenditure, on the other. However, for the reasons cited at [25], I lean towards the view that the *EPA Act* should be taken to allow some latitude in determining expenditure post-collection through the DCP-making process.

Scenario 2

32. You have identified a scenario where:
- (a) a council repeals a previous DCP, and adopts a new DCP; and
 - (b) the new DCP includes a clause that specifies that funds collected under the repealed plan will be applied towards a particular purpose, such as the council's delivery program. The programs in the delivery program may or may not be identified specifically in the new DCP.
33. You ask whether, in this scenario:
- (a) the remaining funds collected under the repealed DCP can be used towards the adopted delivery program, even where they are not programs included in the repealed or new contributions plan;
 - (b) if so – whether they are still restricted by s. 7.3; or
 - (c) if not – how those funds may be used.
34. Consistent with my reasoning above, I prefer the view that the expenditure of the funds collected under the repealed DCP would remain restricted by s. 7.3, but those funds could be applied in accordance with the new DCP.
35. It is not clear to me that a DCP which contemplates the application of contributions to works not specified in the DCP itself would be strictly consistent with the *EPA Regulation*. Clause 212(1) requires a DCP to include fairly specific identification of the public amenities and services to be provided by a council (para. (f)), a works schedule containing an estimate of the cost and staging of those amenities and services (para. (g)), and the priorities for expenditure of pooled funds, by reference to that works schedule (para. (h)). It is difficult to see how that level of specificity could appear when the DCP merely cross-refers to a program of works specified in another document, and those works may or may not themselves be identified in the DCP.
36. This notwithstanding, there appear to me to be grounds (based on the way in which the situation is described) for saying that the works not specified in the DCP itself are, at least, incorporated by reference as services and amenities it is contemplated will be funded under the plan. In these circumstances, and while it is subject to an appreciable level of doubt, I prefer the view that the carried-over funds could be applied to fund the works specified in the delivery program.

Scenario 3

37. You have identified a scenario where:
- (a) a council repeals a previous DCP, and adopts a new DCP; and
 - (b) the new DCP provides that funds collected under the previous DCP will be applied under the new DCP.

38. You ask whether, in this scenario:
- (a) the remaining funds collected under the repealed DCP can be used under the new DCP, even where expenditure is not for programs included in the repealed DCP; and
 - (b) if not – how those funds may be used.
39. Consistent with my reasoning above, in this scenario, the funds collected under the repealed DCP may be applied under the new DCP. That position is made clearest, in this case, by the terms of the new DCP.

Question 2: Transition of funds between development plans

40. You ask whether, if funds collected in the scenarios discussed in Question 1 remain restricted by s. 7.3 and are transferred to a council's internal reserves, but are not spent, non-compliance with the *EPA Act* would result if they were subsequently transferred back.
41. Consistent with the foregoing discussion, the obligations imposed by s. 7.3 are to "hold" and "apply" contributions for a specific statutory purpose. Where those funds continue to be held by the council as part of its general monetary reserves and are not expended for any purpose, I do not think they could be said to have been "applied" within the meaning of s. 7.3.
42. In terms of how such funds are to be held, cl. 218(1) of the *EPA Regulation* requires a council to keep accounting records that allow development contributions or development levies received in the form of money, and any addition amounts earned from the investment of that money, to be distinguished from all other money held by the council. In *Frevcourt*, Beazley JA observed (in respect of materially identical predecessor to cl. 218(1)) that the regulations did not require a council to hold contributions in a separate fund, but rather to ensure that they were distinguished as an accounting matter.²⁴
43. That approach suggests that a council has some discretion as to how contributions are banked pending expenditure, provided that they continue to be accounted for as restricted funds and cannot be said to have been expended for an extraneous purpose.²⁵ Assuming that this is the case, there does not appear to me to be a basis for saying that a council would breach its obligation to "hold" funds under s. 7.3 in the event that it temporarily transferred funds to its internal reserves in the manner suggested.

²⁴ At 156

²⁵ I note, in this context, that monies held under s. 7.3 are not subject to a trust obligation at general law (*Frevcourt* at 150). They are not accordingly subject to obligations with respect to the segregation of trust monies that attach to a "true" trust.

Question 3: Expenditure of money charged for domestic waste management services

44. You ask whether funds collected for domestic waste management services by a council may be spent on:
- (a) advertising and promotion of, and information concerning or related to, domestic waste management; or
 - (b) providing ratepayers with COVID-19 hardship rebates for non-domestic waste rates.
45. Chapter 15 of the *LG Act* is entitled "How are councils financed?". The means by which a council may obtain income are broadly summarised in s. 491, and then prescribed with a greater degree of specificity in the body of the Chapter. Those sources of income include both "rates" and "charges" (as adverted to in s. 491). Relevantly, for present purposes:
- (a) A council must make and levy an "ordinary rate" for each year on all rateable land in its area (s. 494(1)), subject to other provisions of the Chapter.
 - (b) A council must also make and levy an annual charge for the provision of "domestic waste management services" for each parcel of land for which the service is available (s. 496(1)).²⁶ "Domestic waste management services" are "services comprising the periodic collection of domestic waste for individual parcels of land rateable land and services that are associated with those services" (per the Dictionary to the Act").
46. Within Ch. 15, a council's ability to raise income for domestic waste management services is constrained by s. 504 (cited in my instructions), which provides:
- "504 Domestic waste management services**
- (1) A council must not apply income from an ordinary rate towards the cost of providing domestic waste management services.
 - (1A) Subsection (1) does not prevent income from an ordinary rate from being lent (by way of internal loan) for use by the council in meeting the cost of providing domestic waste management services.
 - (2) Income to be applied by a council towards the cost of providing domestic waste management services must be obtained from the making and levying of annual charges or the imposition of charges for the actual use of the service, or both.
 - (3) Income obtained from charges for domestic waste management must be calculated so as to not exceed the reasonable cost to the council of providing those services."

²⁶ A charge levied under s. 496 may be made according to the actual use of domestic waste management services (per s. 502), and/or may be made in addition to an ordinary rate, or in addition to or instead of a "special rate", subject to exceptions (s. 503). The calculation of annual charges for domestic waste management services (amongst other charges and rates) is constrained by Pt 2 ("Limit of annual income from rates and charges").

47. The constraints imposed by s. 504 are not directed, in their terms, to the purpose for which funds collected by way of a charge collected for domestic waste management may be applied. Instead, the section:
- (a) prescribes the manner in which income collected for that purpose is to be obtained and calculated (subs (2) and (3)), regulating the manner of exercise of the charging functions conferred by s. 496; and
 - (b) limits the extent to which funds collected from an ordinary rate may be applied for the purpose of funding those services (subs. (1), subject to the qualification in subs. (1A)).
48. Funds collected by way of charges for domestic waste management are nonetheless subject to the general provisions of the Act concerning financial management and, in particular, those of Ch. 13 ("How are councils made accountable for their actions?"). Relevantly, under Pt 3 ("Financial management"):
- (a) A council must have both a consolidated fund and a trust fund (s. 408).
 - (b) All money and property received by a council must be held in the council's consolidated fund, unless it is required to be held in the council's trust fund (s. 409(1)).
 - (c) While money held in the consolidated fund may be applied towards any purpose allowed by legislation (s. 409(2)), that is subject to the specific limitation that money received as a result of the levying of (relevantly) a "charge" may not be used otherwise than for the purpose for which it was levied (s. 409(3)(a)).
 - (d) Pending its expenditure for that purpose, such money may not be held otherwise than in an account with a bank, building society or credit union, or in an investment in which such money is authorised to be invested under an Act (s. 409(4)). It may also be lent, by way of "internal loan", for use by council for any other purpose if (and only if) its use for that other purpose is approved by the Minister.
 - (e) Section 410(2) provides that:
 - "(2) If the special rate or charge has been discontinued and the purpose for which the money was received has been achieved, or is no longer required to be achieved, any remaining money may be used by the council for any other purpose if, and only if—
 - (a) a proposal to that effect has been included in a draft operational plan for the current year or for a previous year, and
 - (b) notice of the fact that the proposal was included in the operational plan adopted by the council for that year has been published in a manner that the council is satisfied is likely to bring the notice to the attention of members of the public in the area."
49. In circumstances where the primary limitation on the expenditure on money collected by way of a charge for domestic waste management services – namely, that it not be used otherwise than for the purpose of those services – is expressed in peremptory terms and subject to a limited range of exceptions, the *LG Act* should be approached on the basis

that the expressed exceptions are a complete statement and other exceptions are excluded.²⁷

50. As to whether particular expenditure can be characterised as being for the purpose for which the charge is collected – the “provision of domestic waste management services”, I note the following:
- (a) “Domestic waste management services” encompass both the services comprising the periodic collection of domestic waste (as defined in the Dictionary) from parcels of land, and services that are “associated with” those services.
 - (b) The concept of a “service” is not defined in the *LG Act*, and should take its ordinary meaning understood with regard to the context and purpose of the provisions in which it appears.²⁸ That context suggests the connotation of the supply of a need to the public.²⁹
 - (c) Relational terms such as “associated with” carry a broad connotation of connection or relationship between subject matters,³⁰ the ambit of which is ultimately to be determined from the context in which it appears.³¹ In the present case, the words “associated with” periodic collection services appear to connote services bearing a functional connection with those services.
 - (d) Reading the applicable provisions together, expenditure will need to be for the “purpose... of the provision of” those services.
 - (e) The concept of the “purpose” of should be understood as the object or function for which action (in this case expenditure) is undertaken.
51. I turn to the characterisation of the expenditure described in your instructions.
52. While reasonable minds may differ and there is an element of impression involved, I am of the view that expenditure on advertising concerning, and the dissemination of information related to, domestic waste management is generally something on which such funds may be expended. It may, in a given case, involve an “associated” service insofar as it is a service involving the provision of information which informs beneficiaries of the periodic collection services and thereby assists in the efficacy of its provision. The functional linkage is an appreciably close one. Equally, it could be said funding such advertising or information provision is directed to the end of the provision of periodic collection of domestic waste on similar grounds.

²⁷ Reflecting the principle *expressio unius est exclusio alterius*; an express reference to one matter indicates that other matters are excluded (see Pearce, *Statutory Interpretation in Australia* (9th Edition) at [4.43])

²⁸ *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362 at [14]

²⁹ Noting the relevant definition of the term in the *Macquarie Dictionary*, albeit as a guide to its range of grammatical meanings (cf *South Western Sydney Local Health District v Gould* [2018] NSWCA 69 at [77]–[79])

³⁰ See, for example, *Trustees Executors & Agency Co Ltd v Reilly* [1941] VLR 110

³¹ See, for example, *Technical Products Pty Ltd v State Government Insurance Office* (1989) 167 CLR 45 at 47


53. Hence, while it will ultimately be a matter of understanding the role played by particular advertising or information, there are grounds for characterising that broad class of expenditure as permissible.
54. On the other hand, there is no ready basis for characterising expenditure for non-domestic waste management rebates as being within the purposive limitation identified by s. 409(2) of the *LG Act*. There is no apparent functional or subject matter-derived connection between that expenditure, on the one hand, and provision of services comprising the periodic collection of domestic waste, on the other.
55. That is not a complete answer to whether charges collected for domestic waste management services may be expended for the that purpose. There are two scenarios where the application of funds for that purpose is possible; namely, where:
- (a) it is expended on the basis of an internal loan within the council pending its expenditure on domestic waste management services, and the loan is approved by the Minister (see [48(d)], above); or
 - (b) the charge for domestic waste management services under which the money was obtained has been discontinued, the purpose of that charge has been achieved or is no longer required to be achieved, *and* the procedural requirements of s. 410(2) have been satisfied (see [48(e)] above).
56. Whether either of these situations applies or applied in the context of particular expenditure on rebates will be a question of fact.











Karen Smith
Crown Solicitor






Appendix three – Status of previous recommendations

Our previous reports to Parliament focusing on Local Government made recommendations to the Department of Planning, Housing and Infrastructure and councils. The current status of implementation of our recommendations is summarised below with the relevant audit findings for 2022–23.

Recommendations to the department	Comment	Current status
Rural firefighting equipment (repeat issue)		
Consistent with the NSW Government's accounting position on the control of vested rural firefighting equipment and the department's role to assess council's compliance with legislative responsibilities, standards or guidelines, the department should intervene where councils do not recognise rural firefighting equipment vested to them under section 119(2) of the <i>Rural Fires Act 1997</i> .	<p>We continue to recommend the department should intervene where councils do not recognise vested rural firefighting equipment.</p> <p>Since 2017, the Audit Office has recommended that the Office of Local Government (OLG) and then the department address the different practices across the local government sector in accounting for rural firefighting equipment.</p> <p>It is the department's role to assess whether intervention is appropriate with respect to councils' compliance with and performance against legislative responsibilities, standards or guidelines.</p> <p>The department has communicated the Government's position to the sector and confirmed it will take a stronger regulatory stance to require councils to include rural firefighting equipment in their future financial statements. The 'Local Government Code of Accounting Practice and Financial Reporting for 2023–24' requires councils to recognise material rural firefighting equipment in their financial statements.</p> <p>The department has worked with NSW Treasury, the NSW Rural Fire Service (RFS) and the Audit Office of NSW on the following:</p> <ul style="list-style-type: none"> • NSW Treasury shared its position paper and guidance with the local government sector • RFS shared its asset listing and costings, and encouraged its brigades to provide councils with access to the assets • The department delivered an information webinar, to provide Treasury, the RFS and the Audit Office the opportunity to provide advice and guidance to the sector about reporting vested rural firefighting equipment 	

Recommendations to the department	Comment	Current status
	<ul style="list-style-type: none"> wrote to all councils that had received a qualified independent audit opinion on their 2021–22 financial statements requesting these councils provide the OLG with the strategies implemented to address the qualified audit opinion, to address any significant audit risks raised and provide a copy of the Audit Office's 2021–22 management letter and Council's response. <p>Thirty-six councils with completed audits received qualified audit opinions on their 2023 financial statements in relation to this issue.</p> <p>It is our view that this situation is unlikely to be resolved in the absence of regulatory intervention.</p> <p>Refer to Section 2.1 for further information on this issue.</p>	
Early financial reporting procedures (repeat issue)		
The department should consider requiring early financial reporting procedures across the local government sector.	<p>We continue to recommend the department consider requiring early financial reporting procedures across the local government sector.</p> <p>In February 2024, the department reminded councils to start the asset valuation process earlier, to ensure it is completed prior to the commencement of the audit.</p>	
Legal framework (repeat issue)		
The department should clarify the legal framework relating to restrictions of water, sewerage and drainage funds (restricted reserves) by either seeking an amendment to the relevant legislation or by issuing a policy instrument to remove ambiguity from the current framework.	This recommendation has not been implemented.	
Key:  Fully addressed  Partially addressed  Not addressed		

Recommendations to councils	Comment	Current status
Rural firefighting equipment (repeat issue)		
<p>Councils should perform a full asset stocktake of rural firefighting equipment, including a condition assessment for financial reporting purposes.</p> <p>Consistent with the requirements of the Australian Accounting Standards and the 'Local Government Code of Accounting Practice and Financial Reporting for 2023–24', councils should recognise this equipment as assets in their financial statements.</p>	<p>We continue to recommend councils perform procedures to confirm completeness, accuracy and condition of rural firefighting equipment and recognise this as assets in their financial statements.</p> <p>Forty-nine councils out of the 106 councils with vested rural firefighting equipment have recognised these assets in their 2022–23 financial statements. One audit is in progress.</p> <p>Seventy-one councils performed some procedures to confirm the accuracy and completeness of rural firefighting equipment.</p> <p>Refer to Section 2.1 and Appendix three for further details.</p>	
Asset valuations (repeat issue)		
<p>Councils should complete asset revaluations before financial year-end.</p>	<p>We continue to recommend councils complete asset valuations before financial year-end to help improve quality and timeliness of financial reporting.</p> <p>Common issues with asset valuation include:</p> <ul style="list-style-type: none"> • using inappropriate valuation assumptions • inadequate documentation to support key assumptions and judgements including useful lives, condition assessments and unit rates • inaccurate calculations and/or recording of adjustments • incorrect classifications • providing incorrect data to the valuer • no quality review performed by management • commencing valuation process too late which delayed the preparation of the financial statements. <p>Forty-three of the 121 completed audits of councils have partially implemented these recommendations in 2022–23.</p>	
Asset source records (repeat issue)		
<p>Councils should improve controls and processed to ensure integrity and completeness of asset source records.</p>	<p>We continue to recommend councils improve controls and processes to ensure integrity and completeness of asset source records.</p> <p>Forty-three councils had weak processes over maintenance, completeness and security of fixed asset registers as reported in Section 3.2.</p>	

Recommendations to councils	Comment	Current status
	<p>Common issues identified include:</p> <ul style="list-style-type: none"> • inaccurate and incomplete data in asset registers such as duplicate or missing assets • assets recorded that are no longer controlled • asset incorrectly classified. 	
Tracking recommendations (repeat issue)		
Councils should focus on tracking audit recommendations and prioritise high-risk repeat issues.	<p>We continue to recommend councils track audit recommendations and prioritise high-risk repeat issues.</p> <p>More councils are tracking audit recommendations.</p> <p>Forty per cent (2021–22: 52%) of total findings reported in 2022–23 audit management letters were repeat findings from prior years, tracking of status and implementation plans continues to be important.</p>	
Cyber security (repeat issue)		
<p>Councils should prioritise planning and governing cyber security to ensure cyber security risks over key data and IT assets are appropriately managed and key data is safeguarded.</p> <p>Councils should refer to the 'Cyber Security Guidelines – Local Government' released by the Office of Local Government.</p>	<p>We continue to recommend councils focus on improving cyber security governance and controls.</p> <p>Cyber security findings were reported in 50 councils (2021–22: 63 councils) as they did not have at least one of the following basic governance and internal controls to manage cyber security such as having a:</p> <ul style="list-style-type: none"> • cyber security framework, policy and procedure • register of cyber incidents • simulated cyber-attack testing (penetration testing) • cyber security training and awareness program. 	
<p>Key:  Fully addressed  Partially addressed  Not addressed</p>		

Appendix four – Status of audits

Below is a summary of the status of the 2022–23 financial statement audits, including the type of audit opinion and the date it was issued.

2022–23 audits

Key

Type of audit opinion		Date of audit opinion	
Unmodified opinion	✓	Financial statements were lodged by the statutory deadline of 31 October 2023	✓
Unmodified opinion with emphasis of matter	—	Extensions to the statutory deadline (and met)	✓
Modified opinion: Qualified opinion, an adverse opinion, or a disclaimer of opinion	!	Breached statutory deadline	!
		Financial statements not lodged as at tabling date	!

Council classifications

We adopted the following methodology when classifying councils in our report.

OLG classification	Audit Office grouping
Metropolitan	Metropolitan
Regional town/city	Regional
Metropolitan fringe	Metropolitan
Rural	Rural
Large rural	Rural

Source: OLG classifications and Audit Office.

Metropolitan councils

Council	Type of opinion		Date of audit opinion	
Bayside	Unmodified	✓	27 October 2023	✓
Blacktown City	Unmodified	✓	23 November 2023	✓
Blue Mountains City	Unmodified	✓	27 October 2023	✓
Burwood	Unmodified	✓	26 October 2023	✓
Camden	Unmodified	✓	1 December 2023	✓
Campbelltown	Unmodified	✓	24 October 2023	✓
Canterbury-Bankstown	Unmodified	✓	30 October 2023	✓
Central Coast Council	Unmodified	✓	31 October 2023	✓
City of Canada Bay	Unmodified	✓	30 October 2023	✓
Cumberland City	Unmodified	✓	25 October 2023	✓

Council	Type of opinion		Date of audit opinion	
Fairfield City	Unmodified	✓	30 October 2023	✓
Georges River	Unmodified	✓	31 October 2023	✓
Hawkesbury City	Unmodified	✓	31 October 2023	✓
Hornsby Shire	Unmodified	✓	26 October 2023	✓
The Municipality of Hunters Hill	Unmodified	✓	18 October 2023	✓
Inner West	Unmodified	✓	16 October 2023	✓
Ku-ring-gai	Unmodified	✓	22 September 2023	✓
Lane Cove Municipal	Unmodified	✓	26 October 2023	✓
Liverpool City	Unmodified	✓	31 October 2023	✓
Mosman Municipal	Unmodified	✓	26 October 2023	✓
North Sydney	Unmodified	✓	26 October 2023	✓
Northern Beaches	Unmodified	✓	25 October 2023	✓
City of Parramatta	Unmodified	✓	30 October 2023	✓
Penrith City	Unmodified	✓	31 October 2023	✓
Randwick City	Unmodified	✓	4 October 2023	✓
City of Ryde	Unmodified	✓	28 February 2024	✓
Strathfield Municipal	Unmodified	✓	7 March 2024	✓
Sutherland Shire	Unmodified	✓	18 October 2023	✓
City of Sydney	Unmodified	✓	30 October 2023	✓
The Hills Shire	Unmodified	✓	30 October 2023	✓
Waverley	Unmodified	✓	26 October 2023	✓
Willoughby City	Unmodified	✓	31 October 2023	✓
Wollondilly Shire	Unmodified	✓	31 October 2023	✓
Woollahra Municipal	Unmodified	✓	10 October 2023	✓

Regional councils

Council	Type of opinion		Date of audit opinion	
Albury City	Unmodified	✓	31 October 2023	✓
Armidale Regional	Unmodified	✓	21 December 2023	✓
Ballina Shire	Unmodified	✓	27 October 2023	✓
Bathurst Regional	Modified	!	31 October 2023	✓
Bega Valley Shire	Modified	!	31 October 2023	✓
Broken Hill City	Unmodified	✓	25 October 2023	✓
Byron Shire	Unmodified	✓	29 October 2023	✓

Council	Type of opinion		Date of audit opinion	
Cessnock City	Modified	!	20 December 2023	!
Clarence Valley	Modified	!	29 February 2024	✓
Coffs Harbour City	Unmodified	✓	31 October 2023	✓
Dubbo Regional	Unmodified	✓	27 October 2023	✓
Eurobodalla Shire	Unmodified	✓	31 October 2023	✓
Goulburn Mulwaree	Unmodified	✓	20 December 2023	✓
Griffith City	Modified	!	27 November 2023	✓
Kempsey Shire	Modified	!	13 February 2024	✓
Kiama Municipal	--		Financial statements not lodged as at tabling date	!
Lake Macquarie City	Unmodified	✓	20 November 2023	✓
Lismore City	Unmodified	✓	22 December 2023	✓
Lithgow City	Unmodified	✓	21 February 2024	✓
Maitland City	Unmodified	✓	31 October 2023	✓
Mid-Coast	Unmodified	✓	31 October 2023	✓
Mid-Western Regional	Modified	!	31 October 2023	✓
Newcastle City	Unmodified	✓	31 October 2023	✓
Orange City	--		Financial statements not lodged as at tabling date	!
Port Macquarie-Hastings	Unmodified	✓	31 October 2023	✓
Port Stephens	Unmodified	✓	10 October 2023	✓
Queanbeyan-Palerang Regional	Modified	!	30 November 2023	✓
Richmond Valley	Unmodified	✓	18 October 2023	✓
Shellharbour City	Unmodified	✓	30 November 2023	✓
Shoalhaven City	Unmodified	✓	13 December 2023	✓
Singleton	--		Financial statements not lodged as at tabling date	!
Snowy Monaro Regional	Modified	!	19 December 2023	✓
Tamworth Regional	Modified	!	30 November 2023	✓
Tweed Shire	Unmodified	✓	30 October 2023	✓
Wagga Wagga City	Modified	!	30 November 2023	✓
Wingecarribee Shire	Unmodified	✓	31 October 2023	✓
Wollongong City	Unmodified	✓	31 October 2023	✓

Rural councils

Council	Type of opinion		Date of audit opinion	
Balranald Shire	Unmodified	✓	31 October 2023	✓
Bellingen Shire	Modified	!	30 October 2023	✓
Berrigan Shire	Unmodified	✓	30 October 2023	✓
Bland Shire	Modified	!	31 October 2023	✓
Blayney Shire	Unmodified	✓	31 October 2023	✓
Bogan Shire	Unmodified	✓	6 October 2023	✓
Bourke Shire	Unmodified	✓	26 October 2023	✓
Brewarrina Shire	Unmodified	✓	26 October 2023	✓
Cabonne	Modified	!	8 February 2024	✓
Carrathool Shire	Modified	!	31 October 2023	✓
Central Darling Shire	Unmodified	✓	30 November 2023	✓
Cobar Shire	Unmodified	✓	27 October 2023	✓
Coolamon Shire	Modified	!	30 October 2023	✓
Coonamble Shire	Unmodified	✓	31 October 2023	✓
Cootamundra-Gundagai Regional	Modified	!	30 October 2023	✓
Cowra Shire	Unmodified	✓	28 October 2023	✓
Dungog Shire	Modified	!	9 February 2024	✓
Edward River	Modified	!	25 October 2023	✓
Federation	Modified	!	13 December 2023	✓
Forbes Shire	Unmodified	✓	31 October 2023	✓
Gilgandra Shire	Unmodified	✓	27 October 2023	✓
Glen Innes Severn	--		Financial statements not lodged as at tabling date	!
Greater Hume Shire	Modified	!	18 October 2023	✓
Gunnedah Shire	Unmodified	✓	31 October 2023	✓
Gwydir Shire	Unmodified	—	21 December 2023	✓
Hay Shire	Unmodified	✓	31 October 2023	✓
Hilltops	Modified	!	27 February 2024	✓
Inverell Shire	Unmodified	✓	31 October 2023	✓
Junee Shire	Modified	!	24 October 2023	✓
Kyogle	Unmodified	✓	12 December 2023	✓
Lachlan Shire	Modified	!	31 October 2023	✓

Council	Type of opinion		Date of audit opinion	
Leeton Shire	Modified	!	21 February 2024	✓
Liverpool Plains Shire	--		Financial statements not lodged as at tabling date	!
Lockhart Shire	Modified	!	12 December 2023	✓
Moree Plains Shire	Modified	!	16 February 2024	✓
Murray River	Modified	!	31 October 2023	✓
Murrumbidgee	Modified	!	15 December 2023	✓
Muswellbrook Shire	Unmodified	✓	29 February 2024	✓
Nambucca Valley	Unmodified	✓	31 October 2023	✓
Narrabri Shire	--		Financial statements not lodged as at tabling date	!
Narrandera Shire	Unmodified	✓	18 September 2023	✓
Narromine Shire	Unmodified	✓	31 October 2023	✓
Oberon	Unmodified	✓	31 October 2023	✓
Parkes Shire	Unmodified	✓	29 September 2023	✓
Snowy Valleys	Modified	!	31 October 2023	✓
Temora Shire	Modified	!	30 October 2023	✓
Tenterfield Shire	Modified	!	21 December 2023	✓
Upper Hunter Shire	--		Financial statements not lodged as at tabling date	!
Upper Lachlan Shire	Modified	!	28 November 2023	✓
Uralla Shire	Unmodified	✓	24 November 2023	✓
Walcha	Unmodified	✓	31 October 2023	✓
Walgett Shire	Unmodified	✓	28 February 2024	✓
Warren Shire	Unmodified	✓	31 October 2023	✓
Warrumbungle Shire	Modified	!	26 October 2023	✓
Weddin Shire	Modified	!	21 December 2023	✓
Wentworth Shire	Unmodified	✓	30 October 2023	✓
Yass Valley	Modified	!	21 December 2023	✓

County councils

County council	Type of opinion	Date of audit opinion		
Castlereagh Macquarie	Unmodified	✓	31 October 2023	✓
Central Tablelands	Unmodified	✓	24 October 2023	✓
Goldenfields Water	Unmodified	✓	31 October 2023	✓
Hawkesbury River	Unmodified	✓	25 October 2023	✓
New England Weeds Authority	--		Financial statements not lodged as at tabling date	!
Riverina Water	Unmodified	✓	12 October 2023	✓
Rous	Unmodified	✓	24 October 2023	✓
Upper Hunter	Unmodified	✓	18 December 2023	✓
Upper Macquarie	Unmodified	✓	5 September 2023	✓

Joint organisations

Joint organisation	Type of opinion	Date of audit opinion		
Canberra Region	--		Financial statements not lodged as at tabling date	!
Central NSW	Unmodified	✓	26 October 2023	✓
Far North West	Unmodified	✓	20 October 2023	✓
Far South West	Unmodified	✓	26 October 2023	✓
Hunter	Unmodified	✓	31 October 2023	✓
Illawarra Shoalhaven	Unmodified	✓	20 December 2023	✓
Mid North Coast	Unmodified	✓	30 October 2023	✓
Namoi	Unmodified	✓	31 October 2023	✓
New England	Unmodified	—	19 December 2023	!
Northern Rivers	Unmodified	✓	31 October 2023	✓
Orana	Unmodified	✓	31 October 2023*	✓
Riverina and Murray	Unmodified	✓	31 October 2023	✓
Riverina	Unmodified	✓	30 October 2023	✓

* Audit Opinion issued on 31 October 2023 but not submitted to OLG till 20 November 2023, breaching statutory requirements.

Appendix five – Councils received qualified audit opinions for non-recognition of rural firefighting equipment

Qualification: Non-recognition of rural firefighting equipment (and no evidence to support fair value)

Bathurst Regional	Cootamundra-Gundagai Regional	Lachlan Shire	Snowy Monaro Regional
Bega Valley Shire	Dungog Shire	Leeton Shire	Tamworth Regional
Bellingen Shire	Edward River	Lockhart Shire	Temora Shire
Bland Shire	Federation	Mid-Western Regional	Upper Lachlan Shire
Cabonne	Greater Hume Shire	Moree Plains Shire	Wagga Wagga City
Carrathool Shire	Griffith City	Murray River	Warrumbungle Shire
Cessnock City	Hilltops	Murrumbidgee	Weddin Shire
Coolamon Shire	Kempsey Shire	Queanbeyan-Palerang Regional	Yass Valley

Qualification: Non-recognition of rural firefighting equipment and buildings (and no evidence to support fair value)

Junee Shire	Snowy Valleys
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Qualification: Non-recognition of rural firefighting equipment (and evidence to support fair value exceeds materiality)

Clarence Valley

Qualification: Non-recognition of rural firefighting equipment and buildings (and evidence to support fair value exceeds materiality)

Tenterfield Shire

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose
Curious and open-minded
Valuing people
Contagious integrity
Courage (even when it's uncomfortable)

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