



FINANCIAL AUDIT

27 MAY 2021

Report on Local Government 2020

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 *Public Finance and 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 Total State Sector Accounts, a consolidation of all agencies' accounts.

Financial audits are designed to add credibility to financial statements, 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 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 examine whether an entity is carrying out its activities effectively and doing so economically and 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.

As well as financial and performance audits, the Auditor-General carries out special reviews and compliance engagements.

Performance audits are reported separately, with all other audits included in one of the regular volumes of the Auditor-General's Reports to Parliament – Financial Audits.

© Copyright reserved by the Audit Office of New South Wales. All rights reserved. No part of this publication may be reproduced without prior consent of the Audit Office of New South Wales. The Audit Office does not accept responsibility for loss or damage suffered by any person acting on or refraining from action as a result of any of this material.

Cover image: Forbes Town Hall, taken by asiaphoto. Report cover and chapter cover images purchased from iStock.



GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 421D of the *Local Government Act 1993*, I present a report titled '**Report on Local Government 2020**'.

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

Margaret Crawford

Auditor-General
27 May 2021

contents

Report on Local Government 2020

Section one – Report on Local Government 2020

At a glance	1
Introduction	3
Audit results	7
In focus: response to recent emergency events	20
Key audit findings	32
Looking forward	54

Section two – Appendices

Appendix one – Response from the Department of Planning, Industry and Environment	59
Appendix two – NSW Crown Solicitor’s advice	60
Appendix three – Status of 2019 recommendations	72
Appendix four – Status of audits	73

Section one

Report on Local Government 2020

This report analyses the results of our audits of local councils for the year ended 30 June 2020.

At a glance



128
local
councils

13
joint
organisations

9
county
councils

Audit results	FY19	FY20
Unqualified audit opinions	99%	99%
Qualified audit opinions	1	1
Incomplete audits	2%	0%
Audited financial statements submitted to OLG by statutory deadline	79%	89%
Number of prior year financial statement errors	59	61
Number of current year financial statement errors	407	490



2019–20 events



Councils were impacted by recent emergency events, including drought, bushfires, floods and the COVID-19 pandemic.



Councils changed governance, policies, systems and processes to respond to the recent emergency events.



Challenges were experienced adapting IT infrastructure and controls to enable staff to work from home.



Sixty-five per cent of councils updated business continuity plans and 42 per cent updated disaster recovery plans as a response to the recent emergency events.















Over half a billion dollars of stimulus funding was committed to councils to manage the impacts of COVID-19.



Councils supported their communities through the recent events by providing emergency funding and grants.

At a glance

Internal controls and governance findings			
Summary			Extreme and high risk findings
	2019	2020	
Findings raised	1,985	↓ 1,435	 Extreme risk finding One extreme risk finding reported at Central Coast Council relating to the spending of restricted funds for unrestricted purposes, without appropriate approval under the <i>Local Government Act 1993</i> .
Extreme risk	0	↑ 1	
High risk	82	↓ 53	 High risk findings The highest number of high risk findings related to information technology, asset management and financial reporting.
Moderate risk	1,323	↓ 951	
Low risk	580	↓ 430	
Common findings			
	Policies and procedures 110 councils have missing or outdated key policies and procedures.		
	Information technology Privileged users' activity not properly monitored at 68 councils.		
	Fixed assets registers Fixed asset registers were incomplete or inaccurate at 64 councils.		
	Fixed asset revaluations Key inputs for asset revaluations and management review should be better documented at 63 councils.		
	Cyber security Lack of appropriate cyber security controls at 58 councils.		
	Reconciliations Key account reconciliations were not prepared or reviewed at 55 councils.		
	Data management Changes to key data (e.g. employee and creditor details) in IT systems were not reviewed at 53 councils.		
	New accounting standards Incorrect or incomplete impact assessment of new accounting standards at 47 councils.		
	Procurement practices 35 councils have breaches of financial delegations or insufficient segregation of duties in procurement processes.		
	Financial statement preparation Poor quality or late submission of financial statements at 31 councils.		

Introduction



Suburban Sydney, New South Wales

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 2020, there were 128 local councils, nine county councils and 13 joint organisations in New South Wales.



Note: From 1 July 2019, the Central Murray County Council was dissolved. Its functions and operations were subsumed by Berrigan Shire Council, Edward River Council and Murray River Council.

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 and drains and enforce various laws. 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 are formed for specific purposes, such as to supply water, manage flood plains or to eradicate noxious weeds.

Joint organisations (JOs) are formed by councils in regional New South Wales. Core activities of JOs include regional strategic planning and priority setting, engaging in shared services with member councils and regional advocacy and collaboration with the State and Commonwealth Governments.

This report details the results of the:

- 2019–20 financial audits of 128 councils, nine county councils and 13 joint organisations
- 2018–19 financial audits of Hilltops Council, MidCoast Council and Murrumbidgee Council, which are now completed.

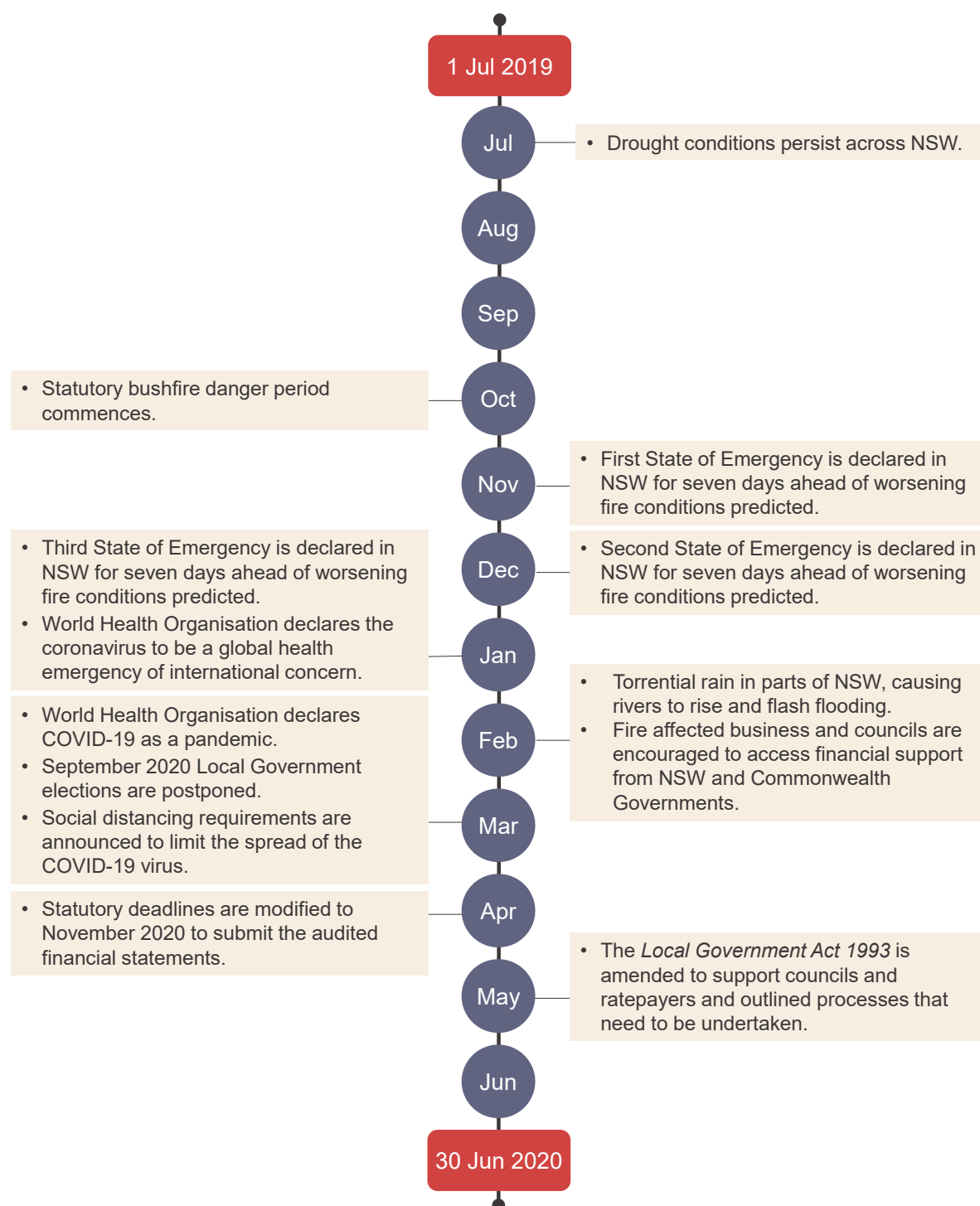
In preparing this report, the comments and analysis are drawn from:

- 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. Details of councils grouped into categories are provided in Appendix four.

1.2 Impact of emergency events during 2019–20

Councils were significantly impacted by emergency events, including drought, bushfires, floods and the COVID-19 pandemic. At 30 June 2019, the NSW Department of Primary Industry reported that 97.6 per cent of New South Wales was drought affected. These dry conditions combined with intense heat over the 2019–20 summer sparked a catastrophic bushfire season, which caused extensive damage across New South Wales. Following on from the bushfires, torrential rain fell on parts of New South Wales in February 2020, resulting in widespread flooding. Then in March 2020, COVID-19 was declared a pandemic by the World Health Organisation, resulting in restrictions to suppress the spread of this virus.



The impacts of these emergency events on councils are explored further in Chapter 3 'In focus: response to recent emergency events'.

1.3 Financial and performance audit key areas of focus

In addition to forming an opinion on the financial statements of councils, the 2019–20 audits also examined a number of specific topics across councils. The topics were selected based on the risks and challenges to councils, and consideration of opportunities to improve public-sector accountability, governance and administration.

The 2019–20 financial audits focused on:

- quality and timeliness of financial reporting (see Chapter 2)
- council response to recent emergency events (see Chapter 3), including:
 - financial implications
 - changes to operating models including processes and controls
 - accessibility to technology and the maturity of systems and controls to prevent unauthorised and fraudulent access to data
 - delivery of new or expanded projects, programs, or services at short notice
- information technology general controls (see Chapter 4)
- infrastructure, property, plant and equipment (see Chapter 4)
- landfill rehabilitation (see Chapter 4).

The 2019–20 performance audits focused on:

- governance and internal controls over local infrastructure contributions
- credit card management in Local Government
- procurement management in Local Government.

Audit results

2020

2019

5 6 7 8 9 10 11 12 13 14 15 16 17 18

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.

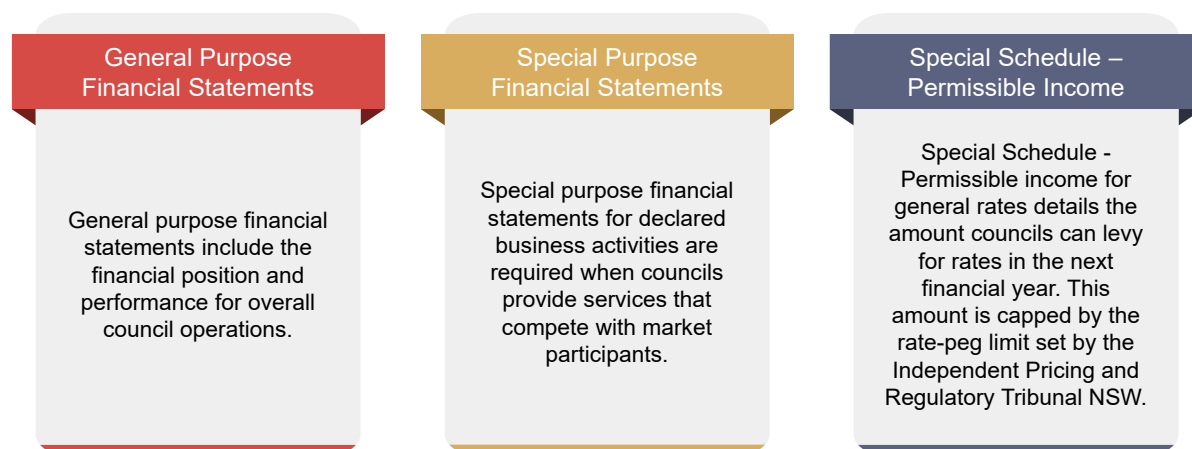
This chapter outlines audit observations related to the financial reporting of councils and joint organisations.

Highlights

- The Office of Local Government within the Department of Planning, Industry and Environment (OLG) extended the statutory deadline for councils and joint organisations to lodge their audited financial statements by an additional month to 30 November 2020 due to the COVID-19 pandemic.
- One hundred and thirty-three councils and joint organisations (2019: 117) lodged audited financial statements with the OLG by the revised statutory deadline of 30 November (2019: 30 October). Sixteen (2019: 30) councils received extensions to submit audited financial statements to OLG. Canberra Region Joint Organisation did not submit their audited financial statements by the statutory deadline and did not formally apply for extension before the deadline lapsed.
- Unqualified audit opinions were issued for 127 councils, nine county councils and 13 joint organisation audits in 2019–20. A qualified audit opinion was issued for Central Coast Council.
- Unqualified audit opinions were issued for the 2018–19 financial audits of Hilltops, MidCoast and Murrumbidgee Councils, which were not completed at the time of tabling the 'Local Government 2019' report in Parliament.
- The total number and dollar value of corrected and uncorrected financial statement errors increased compared with the prior year.
- Sixty-eight councils did not record rural fire fighting equipment in their financial statements worth \$119 million. The NSW Government has confirmed these assets are not controlled by the NSW Rural Fire Service and are not recognised in the financial records of the NSW Government.
- The total number of prior period financial statement errors increased from 59 in the prior year to 61, but the total dollar value of the errors decreased from \$1,272 million to \$813 million.
- Councils implemented three new accounting standards in 2019–20 relating to revenue and leases.

2.1 Quality of financial reporting

The Auditor-General is required under the *Local Government Act 1993* to issue an audit opinion on the following reports prepared by councils.



Indicators of quality financial reporting include:

- unqualified audit opinions
- number of errors in the financial statements
- timeliness in preparing financial statements.

Audit opinions

Unqualified audit opinions were issued for all but one council

Except for Central Coast Council, unqualified audit opinions were issued for all council and joint organisation audits in 2019–20. Sufficient audit evidence was obtained to conclude the financial statements were free of material misstatement and were prepared in accordance with accounting standards and the *Local Government Act 1993*.

Three unqualified opinions issued on the 2018–19 audits

Three financial audits from the previous year were not completed at the time of tabling the 'Local Government 2019' report in Parliament. We subsequently issued unqualified opinions for the 2018–19 financial audits of Hilltops, MidCoast and Murrumbidgee councils.

Bayside Council received an unqualified audit opinion for the first time in 2019–20

Council	Audit outcome
Bayside Council	Council was able to resolve the issues that resulted in disclaimed audit opinions in prior years, since the merger of the City of Botany Bay and Rockdale City councils on 9 September 2016. This included addressing significant control deficiencies in Council's financial systems and having sufficient evidence to support the completeness and accuracy of stormwater drainage assets.

Qualified audit opinion issued for Central Coast Council

A qualified audit opinion was issued for the 30 June 2020 financial statements of Central Coast Council. The audit opinion included two qualification matters:

Valuation of roads, bridges and footpath assets

Council recognised \$1.4 billion of roads, \$37.1 million of bridges and \$99.1 million of footpath assets within 'Infrastructure, property, plant and equipment' in the Statement of Financial Position at 30 June 2020. In the Statement by the Interim Administrator and Management, the council certified that they were unable to provide sufficient evidence to support the carrying value of these assets.

This is because the last valuation of these assets was in the year ended 30 June 2015, and the council has not conducted a more recent valuation in accordance with AASB 116 'Property, Plant and Equipment' (AASB 116). As a result, this is a limitation on the scope of the financial statement audit, which meant our audit was unable to obtain sufficient appropriate audit evidence to demonstrate the roads, bridges and footpath assets were measured at fair value in accordance with AASB 116 in the Statement of Financial Position at 30 June 2020, or determine the impact on the Statement of Comprehensive Income for the year ended 30 June 2020.

Correction of errors relating to a previous reporting period

Council disclosed a correction of error in Note 16(b) 'Correction of errors relating to a previous reporting period' of the financial statements. This disclosure resulted from a change in the council's interpretation of the relevant legislation. For the reasons described below, this is a change in accounting policy and not an error.

Accounting for water and sewerage restricted funds (restricted reserves)

The water, sewerage and drainage arrangements for Central Coast Council are unique compared to all councils in New South Wales, as they are regulated under the *Water Management Act 2000* (Water Management Act) when they operate as a water supply authority. For all other councils, these arrangements are regulated by the *Local Government Act 1993* (Local Government Act).

Prior to the 2017 merger, both the Wyong Shire and Gosford City Councils operated water supply authorities to deliver water, sewerage and drainage services. This continued when the councils were amalgamated, and the Central Coast Council was established as a water supply authority.

The former Wyong Shire and Gosford City Councils determined that cash, cash equivalents and investments associated with their Water Supply Authority's operations were 'unrestricted'. The former councils' final financial statements for the period ended 12 May 2016 disclosed these amounts as unrestricted cash, cash equivalents and investments in the relevant note disclosures.

The decision was based on the councils being regulated by the Water Management Act when operating as a water supply authority. The Water Management Act has no explicit restrictions stating how money raised through charges levied under the Water Management Act are to be used. This is in contrast to money raised through charges for water and sewerage levied under the Local Government Act.

On 21 December 2016, Central Coast Council formally adopted the audited 2015–16 financial statements for the former Wyong Shire Council and the former Wyong Shire Council Water Supply Authority. The resolution to adopt the financial statements included the following paragraph:

On review of Council's current restrictions for its water and sewer operations, Council has de-recognised certain cash, receivable and payable restrictions, in line with the current restriction disclosures recorded in the Financial Statements of Wyong Water. This change was corrected in the prior period in accordance with AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors.

These financial statements were then submitted to OLG in their capacity as the regulator of local councils.

The interim administrator's 30-day interim report on 2 December 2020 stated that, in his opinion, the Water Fund Externally Restricted Reserves and the Sewer Fund Externally Restricted Reserves were both understated. He appears to have taken this view because he did not believe that the approach taken by the former administrator in 2016 and formally adopted by the merged council was lawful. Because of these two different views, the Audit Office asked the NSW Crown Solicitor to provide an opinion on the following question:

Is the money received under the Water Management Act considered 'externally restricted funds' under s. 409(3) of the Local Government Act?

The NSW Crown Solicitor's preferred view, noting that view is not without doubt, is that 'monies received by the Central Coast Council as a result of charges levied in its capacity as a water supply authority under the Water Management Act should be held in the Council's consolidated fund as 'externally restricted funds'. The NSW Crown Solicitor said:

Whilst not without doubt, I prefer the view that money received under the WM Act is within the scope of s. 409(3) of the LG Act. The Central Coast Council is, as noted above, a WSA under the WM Act and specifically it is a statutory body named in Part 2 of Schedule 3 of that Act as such. Per s.287(2) of the WM Act, it therefore 'becomes a water supply authority but still has its other functions'. That is, it retains its character as a council under the LG Act.

For monies received under the Water Management Act by the Central Coast Council to be considered as 'externally restricted funds', the money must be captured by the provision in either section 409(3)(a) or section 409(3)(b) of the Local Government Act.

In support of her preferred view, the NSW Crown Solicitor notes in respect of s409(3)(a):

Although not without doubt, I prefer the view that s. 409(3)(a) should be read in its full generality and not confined as relating only to special rates or charges levied under the Local Government Act.

On balance, I prefer the view that s. 409(3)(a) could apply to money received pursuant to the Water Management Act.

Further the NSW Crown Solicitor notes in respect of section 409(3)(b):

Section 409(3)(b) of the Local Government Act may apply to monies collected pursuant to the Water Management Act if the conditions in that paragraph are satisfied.

...it is difficult to envisage that there is very much scope for discretion in the spending of monies collected pursuant to the Water Management Act.....the whole legislative scheme as applying to the Central Coast Council in its capacity as a water supply authority acts to restrain and control the ways in which it raises money for its operations.

This means that the NSW Crown Solicitor's preferred view supports the position taken by the current administrator.

However, the NSW Crown Solicitor's advice reflects the complexity of this issue and notes that the 'preferred view' is not without doubt. In doing so, the NSW Crown Solicitor also noted that there is an alternative view.

The NSW Crown Solicitor says in respect of section 409(3)(a):

However, the contrary view that s. 409(3)(a) is confined to special rates and charges levied under the LG Act, is not without merit. In particular, I have considered that the concept of a 'special rate' is a creature of the LG Act and a term with a clear meaning in the context of that Act specifically. Whilst this is not also true of the concept of a 'charge', for which many provisions in other Acts provide, I am not sure that a charge in any other Act would necessarily be associated with use for a specific purpose, in the way that paragraph (a) assumes and which I consider applies in the context of the LG Act.

The NSW Crown Solicitor goes on to say in respect of section 409(3)(b):

I have not located any express provisions in the Water Management Act which restrict the way that money collected under the Water Management Act can be spent, in a way which is comparable to the effect of s. 409(3) of the Local Government Act.

As outlined by the NSW Crown Solicitor, there is merit to the argument that money received under the Water Management Act is not externally restricted for the purposes of the Local Government Act.

The NSW Crown Solicitor has confirmed that the 2016 position adopted by Council was not without merit and that there was an arguable position that the water and sewer funds were not restricted.

The Audit Office met with staff from OLG to confirm if there were any other legal instruments or directions that could influence the facts as presented in the NSW Crown Solicitor's advice. OLG has confirmed that there are no other legal instruments or directions that would alter the Crown Solicitor's advice.

The current administrator has advised that they have received a legal opinion from a private sector firm. The private sector firm's opinion has not been made available to the Audit Office.

The full opinion of the NSW Crown Solicitor can be found at Appendix two.

Accounting implications for the financial statements for the periods ended 12 May 2016 and 30 June 2017, and years ended 30 June 2018 and 2019

It is the responsibility of management, with the oversight of those charged with governance, to prepare financial statements in accordance with the relevant requirements. A misstatement in the financial statements can occur when there is a clear non-compliance with a prevailing law or regulation that impacts the reported amounts or disclosures.

In the final Wyong Shire Council and Gosford City Council financial statements for the period ended 12 May 2016, the councils reasonably argued that water, sewerage, and drainage funds collected by Wyong Shire Council and Gosford City Council as water supply authorities were not restricted. The then auditors accepted this position. This interpretation of the relevant Acts was also applied in the Central Coast Council financial statements for the period ended 30 June 2017 and years ended 30 June 2018 and 30 June 2019.

As there are reasonably arguable interpretations of the relevant legislation, as described by the NSW Crown Solicitor in the preferred and alternative views, there was, in our view, no 'non-compliance' with the prevailing laws and regulations when Wyong Shire Council and Gosford City Council determined to treat certain funds as not 'restricted'. Therefore, the treatment in prior years was not an 'error' as defined by AASB 108 'Accounting Policies, Changes in Accounting Estimates and Errors', and the externally restricted funds disclosed in the financial statements of the Central Coast Council for the period ended 30 June 2017 and years ended 30 June 2018 and 30 June 2019 were not materially misstated.

The uncertainty created by more than one reasonably arguable legal interpretation is acknowledged. However, oversight of compliance with legislative requirements highlights a continuing governance risk for the Central Coast Council. Our recent performance audit '[Governance and internal controls over local infrastructure](#)' highlighted that Central Coast Council also breached the *Environmental Planning and Assessment Act 1979* between 2001 and 2019 when it used developer contributions for administration costs.

The ambiguity that exists by having two reasonably arguable interpretations of the relevant legislation should be clarified

Recommendation

The OLG 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.


Errors identified through audits

Increase in the number and dollar value of errors identified

Our audits identified more errors, both in number and value, compared to the prior year. It is important that councils have robust review processes to minimise the number of errors identified in financial statements. There were 20 councils (2018–19: 23 councils) where no errors were identified in their financial statements.

Corrected errors

A corrected error is an error identified by the auditor or council, which is subsequently corrected by council in the financial statements.

	Corrected errors		By council type (2020 only)				
	2019	2020	Metro	Regional	Rural	County	JO
Year ended 30 June							
Less than \$250,000	75	60	5	3	38	8	6
\$250,000 to \$500,000	20	25	7	2	15	--	1
\$500,000 to \$1 million	20	41	5	11	24	--	1
\$1 million to \$5 million	48	69	16	20	31	2	--
\$5 million to \$15 million	12	27	11	9	7	--	--
\$15 million to \$30 million	6	8	3	4	1	--	--
\$30 million to \$50 million	3	5	3	1	1	--	--
\$50 million and greater	1	3	--	1	2	--	--
Total number of errors	185	238	50	51	119	10	8
Total value of errors (\$ million)	547	1,070	345	392	327	4	2

Source: Engagement Closing Reports issued by the Audit Office.

Of the 238 corrected errors identified in the 30 June 2020 financial statements, eight were greater than \$30.0 million:


Council	Description of corrected error
Armidale Regional Council	Council incorrectly accounted for a \$40.4 million asset disposal as part of a boundary adjustment. It was recorded in retained earnings through other comprehensive income, rather than in the income statement.
Central Coast Council	Council did not update its crown and community land to reflect the most recent New South Wales Valuer-General's valuations as at 1 July 2019, resulting in an understatement of \$39.4 million.
City of Canada Bay Council	Council did not accurately assess the revenue recognition of a project in accordance with the Australian Accounting Standard, AASB 15 'Revenue from Contracts with Customers', resulting in an understatement of deferred revenue of \$41.5 million.
City of Parramatta Council	Council's revaluation of operational land was overstated by \$37.9 million as the incorrect methodology was used to value the land.
Gilgandra Shire Council	Council's revaluation of roads, bridges and footpaths was overstated by \$50.0 million due to the incorrect recording of revaluation journal entries into the financial system.
Narrandera Shire Council	Council's income statement was understated by \$30.2 million as the asset revaluation decrement for roads and footpaths was initially processed through the income statement rather than the asset revaluation reserve.
Upper Hunter Shire Council	Council's revaluation of bulk earthworks was overstated by \$72.6 million due to calculation errors identified in the asset revaluation workpapers.
Wingecarribee Shire Council	Council's revaluation of roads, bridges and footpaths was understated by \$117.0 million due to errors in recording asset information into the system.

The common areas where corrected errors were identified are outlined below.

Common corrected errors	Number of councils
Asset revaluation errors, such as:	49
<ul style="list-style-type: none"> incorrect data provided to the valuer valuation assumptions not appropriate (e.g. inappropriate unit rates applied, valuations did not reflect the physical and legislative restrictions on these assets) incorrectly recording of revaluation adjustments. 	
Incorrect application of the revenue accounting standards	42
Quality of asset records, such as:	32
<ul style="list-style-type: none"> unrecorded assets controlled by council asset recorded that are no longer controlled by council duplicated assets assets incorrectly classified. 	

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. There are various reasons why errors are not corrected, the most common being it is not material to the financial statements taken as a whole.

	Uncorrected errors		By council type (2020 only)				
	2019	2020	Metro	Regional	Rural	County	JO
Year ended 30 June							
Less than \$250,000	99	94	1	20	64	8	1
\$250,000 to \$500,000	31	43	3	14	25	1	--
\$500,000 to \$1 million	27	33	5	15	13	--	--
\$1 million to \$5 million	57	78	21	30	27	--	--
\$5 million to \$15 million	8	3	1	--	2	--	--
\$15 million to \$30 million	--	1	1	--	--	--	--
Total number of errors	222	252	32	79	131	9	1
Total value of errors (\$ million)	211	254	76	86	90	1	1

Source: Engagement Closing Reports issued by the Audit Office.

Twenty-seven per cent of uncorrected errors were due to unrecorded rural fire fighting equipment

In 2017, we recommended that OLG should address the different practices across the Local Government sector in accounting for rural fire fighting equipment.

In 2019–20, 68 councils did not record rural fire fighting equipment in their financial statements worth \$119 million.

The financial statements of the NSW Total State Sector and the NSW Rural Fire Service do not include these assets. NSW Treasury and the NSW Rural Fire Service have stated that rural fire fighting equipment is not controlled by the State.

The non-recording of rural fire fighting equipment in financial management systems increases the risk that these assets are not properly maintained and managed.

Recommendation

OLG should communicate the State's view that rural fire fighting equipment is controlled by Councils in the Local Government sector, and therefore this equipment should be properly recorded in their financial statements.

The Department of Planning, Industry and Environment, which includes OLG, has confirmed that the NSW Rural Fire Service does not control rural fire fighting equipment. It is now the responsibility of the OLG to determine what action will be taken to ensure that \$119 million of assets held by 68 councils are properly recorded and accounted for.

Number of prior year (prior period) financial statement errors increased, but the total dollar value has decreased compared to prior year

A prior period financial statement error is an error identified in the current year that relates to the previous year's audited financial statements.

<div> <div></div> </div> Year ended 30 June	Prior period errors		By council type (2020 only)				
	2019	2020	Metro	Regional	Rural	County	JO
Less than \$250,000	2	2	--	2	--	--	--
\$250,000 to \$500,000	2	4	1	2	1	--	--
\$500,000 to \$1 million	9	1	--	1	--	--	--
\$1 million to \$5 million	13	18	4	9	5	--	--
\$5 million to \$15 million	16	21	8	6	7	--	--
\$15 million to \$30 million	7	9	3	5	1	--	--
\$30 million to \$50 million	3	1	--	1	--	--	--
\$50 million and greater	7	5	4	1	--	--	--
Total number of errors	59	61	20	27	14	--	--
Total value of errors (\$ million)	1,272	813	424	286	103	--	--

Source: Engagement Closing Reports issued by the Audit Office.

In addition to the monetary prior period errors, a disclosure prior period error was reported in Central Coast Council's financial statements.

Of the 61 prior period errors, six were greater than \$30.0 million. All these errors were asset related.

Council	Description of prior period error
Blacktown City Council	Council's revaluation of stormwater drainage, roads, footpaths and other road assets was understated by \$98.3 million as council owned assets were identified but not previously recognised in the financial statements, impacting the prior period.
Byron Shire Council	<p>Council's revaluation of roads, bridges, footpaths, earthworks and stormwater drainage was understated by \$36.1 million as council owned assets were identified but not previously recognised in the financial statements, impacting the prior period.</p> <p>Council overstated operational land by \$9.1 million, as the land parcel was incorrectly split between operational and community land from the 2016 valuation, impacting the prior period.</p>
Canterbury-Bankstown Council	<p>The following errors impacting the prior period were identified from council's revaluation of land:</p> <ul style="list-style-type: none"> council owned assets were identified but not previously recorded in the financial statements assets were incorrectly classified assets were duplicated in the financial system. <p>This resulted in a net decrease to land assets of \$60.4 million.</p>

Council	Description of prior period error
City of Parramatta Council	<p>The following errors impacting the prior period were identified from council's revaluation of stormwater drainage assets:</p> <ul style="list-style-type: none"> council owned assets were identified which had not been previously recorded in the financial statements assets were incorrectly classified assets were duplicated in the financial system. <p>This resulted in a net increase in stormwater drainage assets of \$86.8 million. The error dated back to the council amalgamation.</p> <p>Council's comprehensive revaluation of operational land was overstated by \$15.4 million as land assets were recorded but not owned by council.</p>
Dubbo Regional Council	<p>Council's revaluation of stormwater drainage assets was overstated by \$75.1 million due to incorrect rates applied upon amalgamation of the former councils, inconsistent depreciation methodology and inconsistent condition assessments, impacting the prior period.</p> <p>Council's revaluation of airport runways was understated by \$16.8 million due to the identification of bulk earthworks that should have been recognised previously, impacting the prior period.</p>
Wollondilly Shire Council	<p>Council's revaluation of roads, bridges, footpaths, earthworks, carparks and stormwater drainage performed in 2015 was understated by \$56.0 million due to:</p> <ul style="list-style-type: none"> council owned assets identified which had not been previously recorded in the financial statements assets were measured with incorrect units of measurement and consumption patterns assets were duplicated in the financial system.

There were no prior period errors identified at county councils and joint organisations.

The common areas where prior period errors were identified are outlined below. Ninety per cent of the total prior period errors were asset related.

Common prior period errors	Number of councils
<p>Quality of asset records, such as:</p> <ul style="list-style-type: none"> unrecorded assets controlled by council assets recorded that are no longer controlled by council duplicated assets assets incorrectly classified. 	38
<p>Asset revaluation errors, such as:</p> <ul style="list-style-type: none"> incorrect data provided to the valuer valuation assumptions not appropriate (e.g. inappropriate unit rates applied, valuations did not reflect the physical and legislative restrictions on these assets) incorrectly recording of revaluation adjustments. 	14

2.2 Timeliness of financial reporting

The *Local Government Act 1993* requires councils to submit their audited financial reports to OLG by the statutory deadline of 31 October or apply for an extension. Natural disasters, COVID-19 pandemic and other factors impacted the 2019–20 reporting timetable. OLG extended the statutory deadline for councils and joint organisations to lodge their audited financial statements by an additional month to 30 November 2020.

Eighty-nine per cent of councils lodged their audited financial statements by the amended statutory deadline

One hundred and thirty-three councils and joint organisations lodged their audited financial statements by the amended statutory deadline. Canberra Region Joint Organisation did not submit their audited financial statements by the statutory deadline and did not apply for extension before the deadline lapsed. This matter was reported to the Minister for Local Government.

Sixteen councils and joint organisations (2019: 30) applied for an extension to lodge their financial statements which were met by them. The reasons why councils required extensions are summarised below.

Council or joint organisation	Reason for seeking extension
Armidale Regional Council	Additional time was required to: <ul style="list-style-type: none"> support the interim administrator and general manager following council's suspension prepare a special rate variation application for year 2021–22.
Balranald Shire Council	In January 2020, the Minister for Local Government suspended the council following a public inquiry due to: <ul style="list-style-type: none"> loss of confidence by the community failure to apply sound and consistent financial principles absence of transparency in decision making failure to act as a responsible employer failure to comply with obligations under the <i>Crown Land Management Act 2016</i>. <p>Council's finance team were unable to find a suitable replacement for the Finance Manager role vacated in March 2020.</p>
Berrigan Shire Council	Council indicated that key staff were severely impacted by the COVID-19 border restrictions.
Central Coast Council	In October 2020, the Minister for Local Government suspended the council due to: <ul style="list-style-type: none"> lack of oversight and control over council's budget and expenditure loss of community trust in the effective functioning of council.
Central Darling Shire Council	Council's IT servers experienced a three-week outage.
Cootamundra-Gundagai Regional Council	Additional time was required to: <ul style="list-style-type: none"> undertake work relating to harmonisation of rating structures respond to Local Government Boundaries Commission inquiry revalue transport assets.

Council or joint organisation	Reason for seeking extension
Dungog Shire Council	Key finance staff went on unplanned leave.
Hilltops Council	Council continues to face on going issues and complexities associated with the 2016 merger. This includes implementation of a single IT system from three former council systems into one. The delay in preparation of council's 2018–19 financial statements meant the audit opinion was provided on 1 May 2020.
Illawarra Shoalhaven Joint Organisation	Delay in financial services transition from a member council. New finance team did not have the capacity to complete the financial statements on time.
Lithgow City Council	Delays in resolving financial statement disclosures.
Orana Joint Organisation	Timing of council meeting delayed due to mayor's unavailability.
Parkes Shire Council	Resolving accounting issues and providing evidence to support the financial statements.
The Council of the Municipality of Kiama	Additional time was required due to: <ul style="list-style-type: none"> • new software implementation that delayed financial reporting • delays in the asset revaluation • change in council's finance team.
Walcha Council	Departure of key finance staff member and finance staff member going on extended leave.
Wollondilly Shire Council	Councils' review of asset valuations performed in 2015 identified material errors in the valuations.
Yass Valley Council	Delays in resolving financial data inconsistencies produced from a newly implemented IT system.

Source: Council extension letters submitted to OLG.

More councils performed early financial reporting procedures

Early close procedures allow financial reporting issues and risks to be addressed by management and audit early in the financial statement close process. This helps to improve the quality and timeliness of financial reporting.

This year, 76 per cent (2018–19: 62 per cent) of councils performed early financial reporting procedures, including:

- completing infrastructure, property, plant and equipment valuations before 30 June
- performing fair value assessment of infrastructure, property, plant and equipment
- preparing proforma financial statements and associated disclosures
- assessing the impact of material, complex and one-off significant transactions
- explaining all unresolved prior year audit issues, with a proposed action plan to resolve them
- assessing the impact of new accounting standards.

2.3 Implementation of new accounting standards

Councils and joint organisations implemented three new accounting standards for the first time in their 2019–20 financial statements. These impacted the financial position and operating results of councils.

AASB 16 ‘Leases’ changed how councils and joint organisations treat operating leases in 2019–20

AASB 16 became effective for all councils and joint organisations from 1 July 2019.

Collectively, the implementation of AASB 16 increased councils’ and joint organisations’ assets by \$187.2 million and liabilities by \$189.4 million. This is because leases relating to operating activities were recognised in the financial statements for the first time. Common examples include building leases, waste management agreements, maintenance agreements, motor vehicles and photocopiers. Councils also recognised a liability for the current value of all lease payments.

AASB 16 ‘Leases’ changed how lessees treat operating leases for financial reporting. Under AASB 16, operating leases are now recorded, with a few exceptions, in an entity’s Statement of Financial Position through the recognition of a right-of-use asset and a corresponding lease liability. It also changes the timing and pattern of expenses recorded in the Statement of Comprehensive Income by recognising depreciation on the asset and the financing cost of the lease.

AASB 16 requires different and more extensive disclosures about an entity’s leasing activities. The objective of the disclosures is to provide users of financial statements with a basis to assess the effect of leasing activities on an entity’s financial position, performance and cash flows.

AASB 15 ‘Revenue from Contracts with Customers’ and AASB 1058 ‘Income of Not-for-Profit Entities’ changed how councils and joint organisations report income in 2019–20

AASB 15 and AASB 1058 became effective for councils and joint organisations from 1 July 2019.

Councils and joint organisations recorded the impact from the initial adoption of the new revenue standards, which in total amounted to a \$388.1 million adjustment to the opening retained earnings.

AASB 15 and AASB 1058 required councils and joint organisations to reassess the way they accounted for revenue, depending on whether it arises from contracts for sales of goods and services, grants and other contributions. Revenue from contracts for services is now recognised only when performance obligations have been satisfied.

The adoption of the new standards meant that councils and joint organisations reviewed their revenue contracts and adjusted how they had previously been accounted for. Councils and joint organisations were not required to restate their prior period figures. The cumulative effect of applying the standards on prior periods is presented as an adjustment to opening retained earnings at 1 July 2019.



In focus: response to recent emergency events



Bushfires in Balmoral Village, social distancing sign in Willoughby and flood waters in Lismore, New South Wales

3. In focus: response to recent emergency events

Recent emergency events, including drought, bushfires, floods and the COVID-19 pandemic have impacted councils.

This chapter will provide insights into how these events have impacted councils, including:

- financial implications of the emergency events
- changes to councils' operating models, processes and controls
- accessibility to technology and the maturity of councils' systems and controls to prevent unauthorised and fraudulent access to data
- receipt and delivery of stimulus packages or programs at short notice.

Highlights

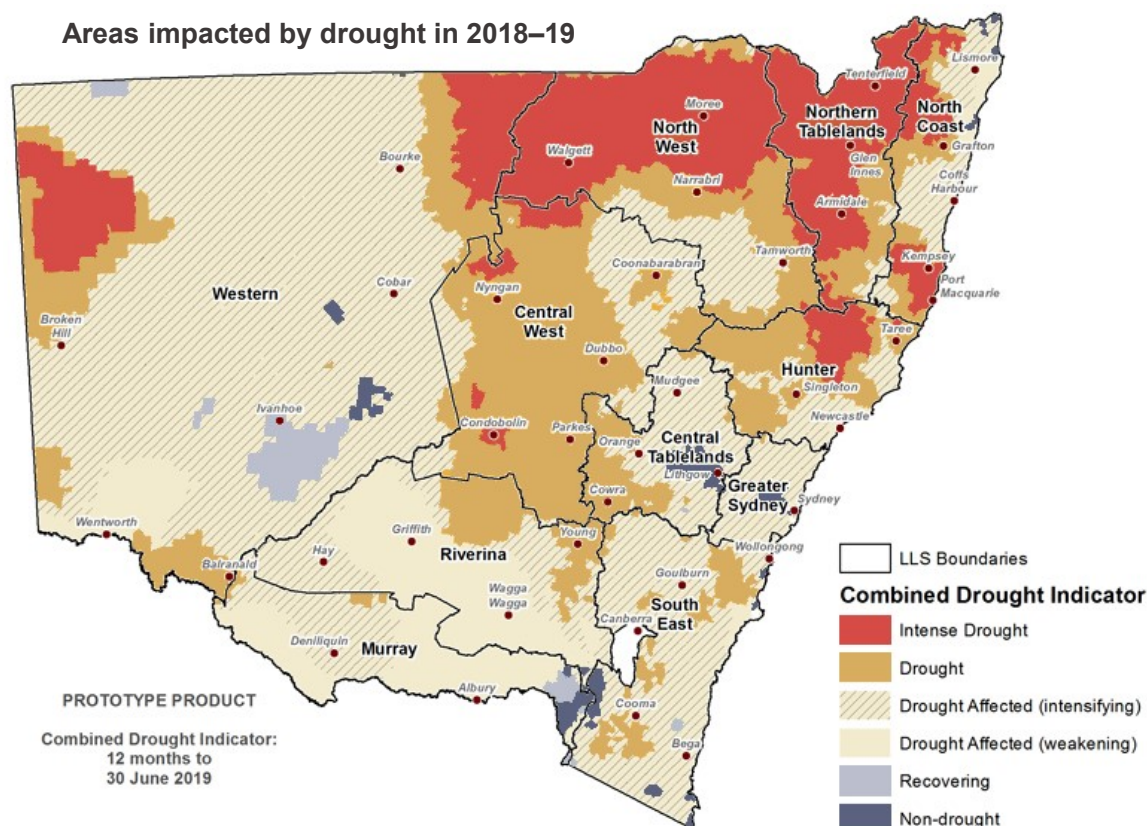
- All councils were impacted by the recent emergency events.
- Councils changed governance, policies, systems and processes to respond to the recent emergency events.
- Challenges were experienced adapting Information Technology (IT) infrastructure and controls to enable staff to work from home.
- Sixty-five per cent of councils updated business continuity plans and 42 per cent updated disaster recovery plans as a response to recent emergency events.
- Councils received various forms of assistance from government relating to the recent emergencies, which was used to provide support to local communities.

Recent emergency events significantly impacted councils

Recent emergencies, including drought, bushfires, floods and the COVID-19 pandemic have brought particular challenges for councils and their communities.



At the end of June 2019, the NSW Department of Primary Industries' Combined Drought Indicator showed that 97.6 per cent of New South Wales was in one of the three drought categories, 'intense drought', 'drought' and 'drought affected intensifying or weakening'. Intense drought conditions persisted in parts of western, south-east and northern New South Wales.



Source: The NSW Department of Primary Industries website (unaudited).

The dry vegetation and soil, combined with intense heat during the summer resulted in one of the worst bushfire seasons that New South Wales has ever experienced, with 55,230 square kilometres of land burnt, 11,566 structures damaged or destroyed, and 26 lives lost. This was followed by storms and torrential rain falling in parts of New South Wales, causing widespread flooding.

Local councils were included in 171 natural disaster declarations in 2019–20 (94 in 2018–19). Natural disasters are declared for events such as bushfires, floods or storms that cause significant damage or loss of life, where eligible state expenditure exceeds \$240,000.

Local Government areas impacted by bushfire, floods and storm declarations

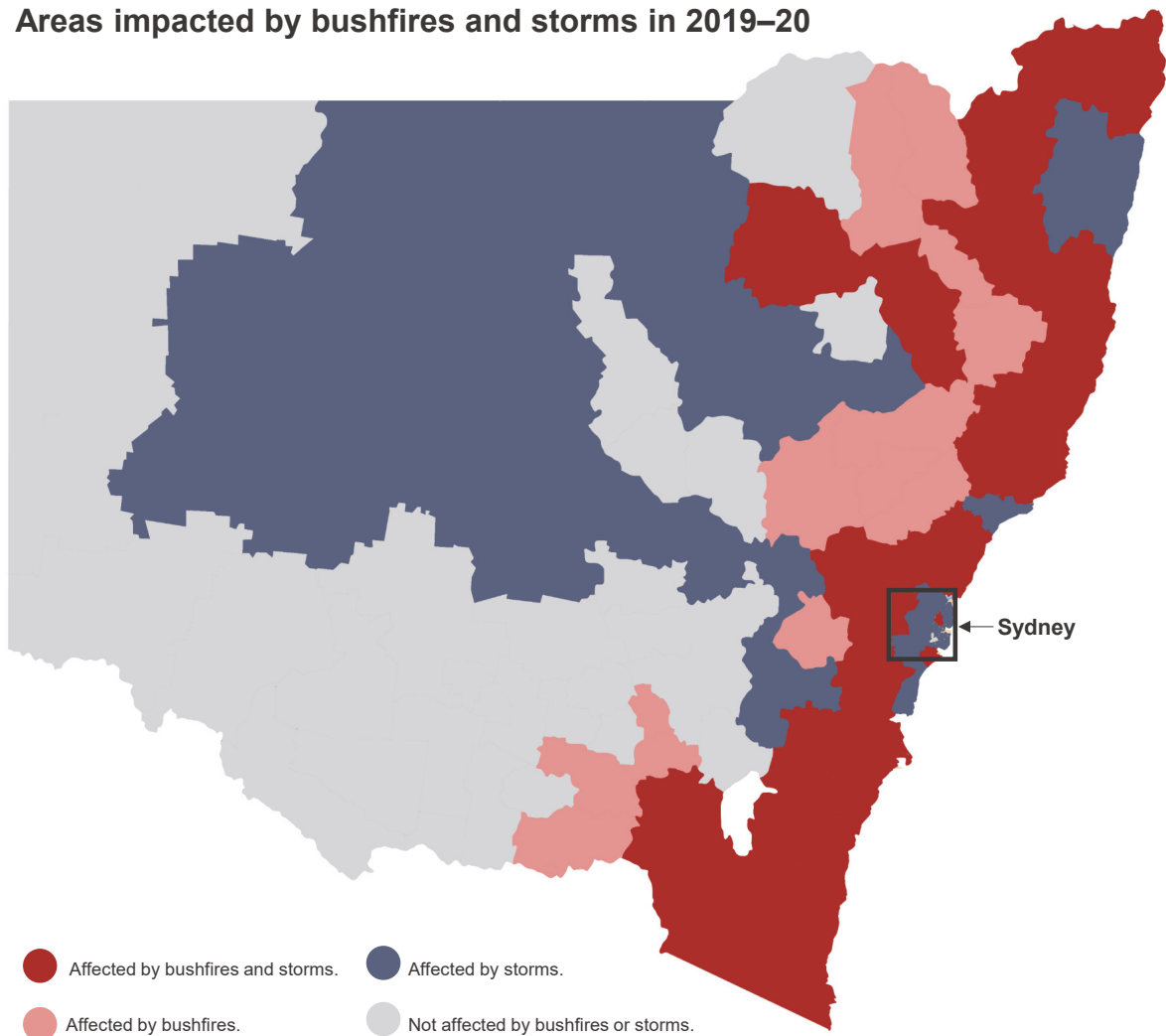
Year ended 30 June	2018	2019	2020
LGA included in bushfire declarations	36	29	57
LGA included in flood and storm declarations	18	65	114
Total LGA included in natural disaster declarations	54	94	171

Source: Provided by Resilience NSW (unaudited).

Declaration of bushfires, floods and storms enable councils to apply to recover costs associated with these disasters from Resilience NSW (the NSW Department of Communities and Justice prior to 1 May 2020), via administering agencies including Public Works Advisory and Transport for NSW. Resilience NSW now administers the NSW Disaster Assistance Arrangements.

The map below shows that 96 councils were impacted by bushfires and storms in 2019–20. Thirty-five councils were impacted by both bushfires and storms, with many of these councils in the North Coast and South East regions. Metropolitan councils were more impacted by floods and storms, while regional and rural councils were more impacted by bushfires.

Areas impacted by bushfires and storms in 2019–20



Source: Resilience NSW website (unaudited).

Following the natural disasters, the COVID-19 pandemic brought unprecedented challenges, impacting all councils. Infection control measures required by State Government Orders in response to COVID-19 disrupted the traditional means that councils use to deliver services to the community. Councils had to adapt to the new environment and make changes to how they operate as services were disrupted and facilities were closed.

3.1 Financial implications

The financial implications arising from the emergency events varied greatly across councils. We reviewed the impact on council operating results compared to original operating budgets¹, with consideration of both the revenue and expenditure impacts.

Metropolitan councils

The operating result for 56 per cent of metropolitan councils exceeded the original budget

Despite the recent emergency events, 56 per cent of metropolitan councils reported an operating result that was favourable compared with their operating budget set in May 2019.

For revenue, 91 per cent of metropolitan councils reported decreases in user charges and fees. This was due to councils cancelling public events, programs and closing revenue generating facilities and services during the lockdowns, including community halls, swimming pools, sports grounds, theatres, galleries, museums and other service centres.

This was offset by an increase in grants and contributions compared with budget for 68 per cent of councils, mainly due to:

- state and federal government stimulus packages and funding opportunities provided to councils in response to the emergency events
- some councils received more developer contributions than anticipated due to a higher volume of development activity occurring. The NSW Government offered incentives to encourage more homes to be built or to be substantially renovated to protect the construction sector during the pandemic.

For expenditure, 62 per cent of councils reported a decrease in employee costs and 74 per cent of councils reported a decrease in other expenses compared with budget. This was due to:

- a reduction in casual workers and contractors as services were suspended or delivered at a much-reduced capacity due to the restrictions
- a freeze on recruitment at some councils; vacant positions were put on hold and staff were redeployed to different areas of council
- reduction in costs for maintaining parks and other recreational facilities
- reduction in travel expenses for employees
- supply chain disruption as materials and products were more difficult to source.

This was offset by additional expenditure required for cleaning, upgrading facilities to be COVID-safe and IT equipment to enable staff to work from home.

¹ The original operating budget information is unaudited, and therefore no assurance is provided over the accuracy of this information.

Examples of the more significant impacts of the recent emergency events on individual metropolitan councils follow:

Council	Impact of emergency events
Council of the City of Sydney	Council provided rental relief to a large number of tenants in commercial properties who had suffered financial hardship due to the impacts of COVID-19 and applied for relief under the Federal Government Code of Conduct for commercial tenancies. This was largely responsible for a reduction in rental income of \$10.8 million or 14 per cent compared to the budget of \$66.9 million.
Blue Mountains City Council	User fees and charges were \$6.7 million less than the budget of \$21.0 million due to closure of council facilities.
Waverley Council	Council provided COVID-19 relief packages, including waiving various charges, rent reductions and a 'buy local' publicity campaign to encourage people to support local businesses during the downturn. This contributed to a \$4.7 million or 13 per cent reduction in income from user fees and charges. This impact was offset by the receipt of additional capital grants and contributions which were \$8.4 million or 66 per cent higher than budget.
Inner West Council	Due to the impact of COVID-19, council closed its aquatic centre and received less revenue from childcare. It also received less section 94 fees, parking fines and other fees. User fees and charges were \$32.7 million compared to the budget of \$46.0 million. However, this was partially offset by grants for childcare from the government. Council's operating grants and contributions were \$17.0 million compared to a budget of \$10.6 million.
Northern Beaches Council	Council was impacted by COVID-19 and storms. The damage from the storms were estimated by council to cost \$3.8 million and consisted of damage to seawalls, retaining walls and buildings including the Civic Centre. Council received \$74.5 million in user charges and fees income compared to a budget of \$84.0 million mainly due to the impact of COVID-19. Childcare revenue was significantly lower during the fee free period. However, council received additional grants to offset the fee free period from the government.

Regional councils

Fifty-four per cent of regional councils had an operating result that fell short of their original budget

Fifty-four per cent of regional councils reported an operating result that fell short of their original budget set in May 2019.

Regional councils were more impacted by bushfires than metropolitan councils. Regional councils also reported that certain revenue and expenditure items were directly impacted by the COVID-19 pandemic. Sixty-two per cent of regional councils reported a reduction in user fees and charges. While the services and facilities impacted were largely similar to metropolitan councils, regional councils with airports reported losses due to the disruption in airport operations, including a reduction in passengers and limited flight routes operating. Other decreases include a reduction in tourism related income, such as caravan parks, holiday parks and information centres.

This was offset by increases in grants and contributions as the Federal and State Governments provided a range of relief and funding opportunities. Seventy per cent of regional councils reported higher grants and contributions compared with budget.

Fifty-nine per cent of regional councils reported a reduction in other expenses as councils saved money on utility costs, such as electricity and water, due to operations being scaled back. Councils also saved money on costs due to projects being delayed as a result of the pandemic and supply chain issues.

Examples of the more significant impacts of the emergency events on individual regional councils follow:

Council	Impact of emergency events
Bega Valley Shire Council	<p>Council was impacted by numerous bushfire and flood natural disaster declarations.</p> <p>Council used an external expert to estimate the costs of restoring the damage done by these emergency events to be \$20.5 million for the damage caused by the bushfires and \$8.0 million for the flooding events in February, July and August 2020.</p> <p>Council received:</p> <ul style="list-style-type: none"> • \$1.3 million from the Disaster Recovery Funding Arrangement with the Federal and State Governments • \$250,000 from the Bushfire Community Resilience and Economic Recovery Fund • \$6.5 million was received by council from Department of Regional NSW to clean up waste from the bushfires • \$1.2 million from Resilience NSW for the Bega Valley Recovery Support Service which operated until April 2021.
Clarence Valley Council	<p>Council was impacted by the bushfires and floods, with a total estimated cost of \$19.0 million.</p> <p>Council had higher than budgeted operating grants and contributions of \$33.0 million compared to a budget of \$25.0 million. This was due to additional flood and storm damage grants of \$7.0 million and bushfire related grants of \$5.2 million.</p> <p>Council's material and contractor expenses was \$11.0 million higher than the budget of \$31.0 million, which is attributed to the response to the natural disasters.</p>
Eurobodalla Shire Council	<p>Council was impacted by the bushfires, with 79 per cent of the Local Government area directly impacted by the fires. Council lost 14 bridges, estimated to cost \$10.0 million to replace. Council reported it had already received \$6.8 million in additional funding and has made insurance claims.</p>
Coffs Harbour City Council	<p>The emergency events impacted airport operations, contributing to a decrease in income of \$1.9 million. Council also runs holiday parks which were impacted by the emergency events. This contributed to income decreasing by \$3.9 million. Council had to subsidise the airport and the holiday parks.</p>
Albury City Council	<p>Council was impacted by COVID-19 as it is on the border with Victoria where NSW Police implemented tight state border controls for various periods during the pandemic. The airport, run by the council, reported a loss of \$1.0 million, which had to be subsidised by council.</p>

Rural councils

Fifty-four per cent of rural councils had an operating result that fell short of their original budget

Fifty-four per cent of rural councils reported an operating result that fell short of their original budget set in May 2019.

Ninety-eight per cent of rural councils were impacted by one or more natural disasters. The higher costs of responding to bushfires, droughts and storms were offset by increases to grants and contributions for operating purposes. The Federal and State Governments offered assistance to councils impacted by the recent emergencies, along with a range of funding opportunities, which contributed to grants and contributions.

Rural councils' ability to collect user charges was impacted to a lesser degree compared with the metropolitan and regional councils. User charges and fees was less than budgeted for 40 per cent of councils. Seventy per cent of councils reported an increase in other expenses compared with budget to respond to natural disaster events.

Examples of the more significant impacts of emergency events on individual rural councils follow:

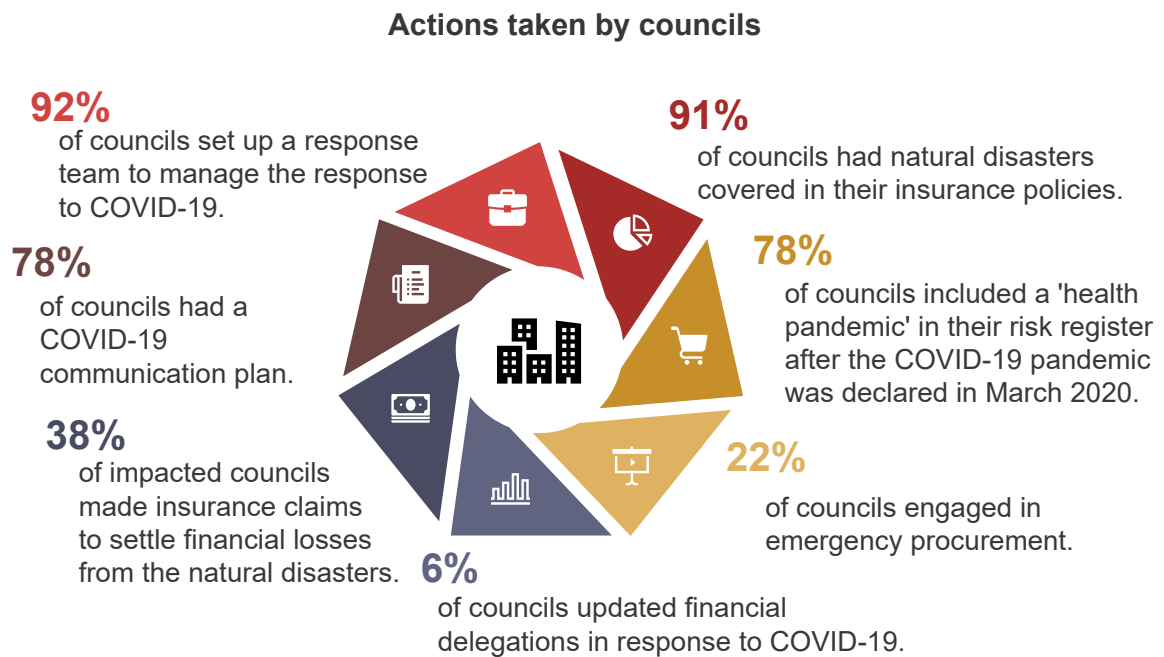
Council	Impact of emergency events
Glen Innes Severn Council	<p>Council was impacted by bushfires and floods, with an estimated cost of damage of \$2.8 million. A bridge was destroyed in the fires, roads were damaged and a council building damaged.</p> <p>Council received \$1.3 million from the federal government through the Bushfire Community Resilience and Economic Recovery Fund. Council used the grant to fund initiatives to assist the community and businesses to recover from the bushfires.</p>
Kyogle Council	<p>Council was impacted by bushfires and floods. Council estimated the cost of damage to be \$3.5 million, due to a bridge and a culvert being damaged.</p>
Tenterfield Shire Council	<p>Council recognised \$1.4 million in impairment to infrastructure assets due to natural disasters that occurred during the year. Council received operating grants of \$14.3 million compared to a budget of \$8.7 million mainly due to grants for bushfires and storm damage repairs.</p>
Narrabri Shire Council	<p>Council experienced drought and flooding, with the town's water supply being contaminated by floodwaters. Council estimated the cost of the flood event to be \$0.9 million.</p> <p>Income from council's theatre was down approximately \$0.3 million due to the impact of COVID-19. This impact was offset by an additional \$0.78 million in grant funding for drought relief and economic stimulus.</p>
Dungog Shire Council	<p>Council experienced heavy storms in January 2020 and estimated the damaged caused by the storm to be \$1.2 million.</p>

3.2 Controls and governance

Councils adapted their systems, policies and procedures to accommodate remote working environments. We considered how this affected the existing control environment and the mitigating controls established by councils to respond to these events.

Councils changed governance, policies, systems and processes to respond to the recent emergency events

Councils developed or changed their governance, policies, systems and processes to respond to the recent emergency events. Some of the actions taken by councils are summarised below.

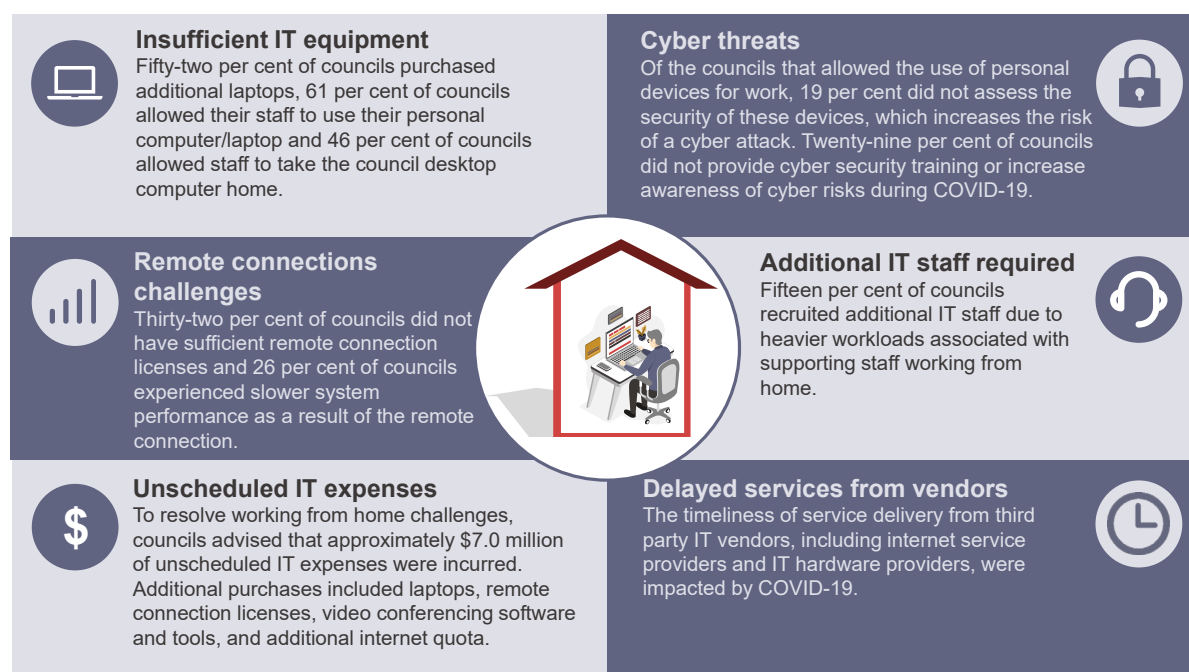


3.3 Technology

Councils experienced challenges adapting IT infrastructure and controls to enable staff to work from home

Many councils applied working from home arrangements during the COVID-19 lockdowns. Having a number of remotely connected employees for an extended period may strain council's IT infrastructure and control environment. It is important to ensure network connections and controls are secure to mitigate the data protection risk associated with communicating through mobile applications.

This new way of working resulted in some challenges during implementation and the impacts are described below.



3.4 Fraud and corruption risks

Past experience suggests that during economic downturns, the level of misconduct and corrupt conduct can increase. Recent emergency events have increased fraud and corruption risk as:

- there is less supervision and monitoring of staff in a working from home arrangement
- the effectiveness of controls may be compromised due to remote working
- the theft of assets is easier due to physical absence of employees in the workplace
- stimulus funding is delivered in a compressed timeframe
- it may be easier for employees to rationalise dishonest behaviour.

Twenty-two per cent of councils engaged in emergency procurement during the recent emergencies

In times of emergencies, there may be a need to engage in emergency procurement, using direct negotiations and other exemptions from the competitive procurement process to pay suppliers quickly, agree to contract variations and rely on staff to purchase items using purchasing cards. There is a risk that emergency procurement may not be processed appropriately.

Twenty-two per cent of councils engaged in emergency procurement during the recent emergencies. Of this, 15 per cent reported that the procurement could be better documented but was considered a lower risk as the goods or services being procured were not significant.

3.5 Business continuity and disaster recovery planning

Business continuity and disaster recovery planning assists organisations to prepare for and ensure they can respond to an incident or crisis. This includes natural disasters and pandemic events like COVID-19. Ideally, business continuity plans would ensure organisations are prepared to respond effectively to the impact of incidents or crises on a wide range of areas including service delivery, safety and availability of staff, availability of IT and other systems, financial management and governance.

Business continuity and disaster recovery plans need to be updated for recent emergency events

The recent emergency situations have highlighted the need for councils to have an updated business continuity and disaster recovery plans to capture lessons learned. Sixty-five per cent of councils updated their business continuity plan (BCP) and 42 per cent of councils updated their disaster recovery plan (DRP) to document how they would respond to a pandemic event. If these plans are not updated, councils may not adequately capture the lessons learned, and will not continuously improve the suitability, adequacy and effectiveness of business continuity and disaster recovery arrangements. While not all councils have updated their BCP and DRP, 80 per cent of councils have reviewed their system backup policy and practices.

The Audit Office is planning to undertake a performance audit over business continuity planning in 2021. This audit will examine the effectiveness of business continuity planning processes at a selection of local councils in preparing for emergency events.

3.6 Stimulus funding, programs and support for the community

Councils received funding from various sources for natural disasters

The government offered various forms of assistance to councils impacted by natural disasters. This included disaster relief funding and opportunities to apply for grants ranging from small projects to large infrastructure opportunities.

Resilience NSW administers the NSW Natural Disaster Assistance Arrangements through administering agencies including Public Works Advisory and Transport for NSW. Councils can apply for assistance to restore essential public assets damaged as a result of a natural disaster. In 2019–20, administering agencies reported total eligible expenditure of approximately \$81.7 million to Resilience NSW, for the restoration of Local Government essential public assets under the NSW Natural Disaster Assistance Arrangements. This amount represents the expenditure incurred and reported by councils to the administering agencies, and not total payments to the councils by the NSW Government.

The Commonwealth Government committed \$123 million under the Drought Communities Program to support 123 drought affected councils to invest in local community infrastructure, boosting local employment, addressing social and community needs and other projects such as emergency water supply.

There was also a NSW Drought Relief Heavy Vehicle Access Program where \$15.0 million of funds were allocated to improve local roads and communities through difficult drought conditions.

The Department of Regional NSW administered the Bushfire Community Resilience and Economic Recovery Fund (Phase 1) where \$7.6 million was provided to 49 bushfire affected local councils for immediate, locally led community and economic recovery activities. Phase 2 was administered by Resilience NSW, and the program was renamed to the Bushfire Community Recovery and Resilience Fund. Twenty-seven councils received \$250,000 grants and five councils received \$100,000 grants, with the total funding provided being \$7.3 million. These funds were used by councils to manage projects that support community recovery and help build resilience.

The NSW Rural Fire Service also provided funding to councils under the bushfire risk mitigation and resilience program. This funding was available to assist councils to perform bushfire mitigation works, provide access for firefighting and to deliver projects that increase the resilience of New South Wales communities to bushfires. In 2019–20, two councils received funding through this program to the value of \$388,000.

The State Government provided floodplain management grants to support Local Government to manage flood risk. The funding comes from two programs:

- NSW floodplain management program (funded by the NSW Department of Planning, Industry and Environment (DPIE))
- Floodplain grants scheme (funded by Resilience NSW).

In 2019–20, total funding of \$7.3 million was provided to 43 councils under the NSW floodplain management program and \$1.9 million was provided to four councils under the floodplain grants scheme.

Over half a billion dollars of stimulus funding was committed to councils to manage the impacts of COVID-19

To respond to the COVID-19 pandemic, the State Government announced a \$395 million Local Government economic stimulus package to safeguard jobs, services and infrastructure delivery.

The economic stimulus package included \$112.5 million job retention allowance, aimed at safeguarding jobs in the Local Government sector. Council employees were not eligible for the Commonwealth Government's Job Keeper payment. Eligible councils received \$1,500 per fortnight per employee for up to three months. Five councils received \$250,000 relating to the 2019–20 period. The program is still active and payments will continue to be made to eligible councils in the future.

The government also provided \$32.8 million to fully fund the increase in the emergency services levy in 2020–21 for all councils.

There was a further \$250 million increase to the NSW Treasury Corporation (TCorp) Local Government lending facility to make it easier for councils to access low interest loans to fund infrastructure. Three councils took out NSW Government TCorp loans worth \$25.5 million from this scheme. Councils were also able to obtain a NSW Government guarantee for commercial borrowings, subject to certain criteria being met.

On top of the \$395 million economic stimulus package, councils were provided with further relief and a range of funding opportunities. Some examples include:

- \$82.0 million to keep council operated childcare and family day care services running during the pandemic
- \$36.0 million to rebuild and refurbish infrastructure for up to 171 local showgrounds
- \$15.0 million to fund projects to benefit communities during COVID-19 by providing more space for the public to safely walk, cycle and exercise
- \$15.0 million to boost high street economic recovery, increase footfall and improve safety
- \$10.0 million to enhance ePlanning for councils, so that the community can lodge their development applications online
- COVID-19 Aged Care Workforce Retention Bonus Payment for residential and home care workers.

In 2020–21 Budget, the Commonwealth Government announced a new \$500 million Local Roads and Community Infrastructure Program to support councils to deliver priority local road and community infrastructure projects across Australia, supporting jobs and the resilience of local economies to help communities bounce back from the COVID-19 pandemic.

Councils supported their communities through the recent emergencies

The recent emergency events challenged local communities. Councils responded by providing support in different ways. Some examples include:

- helping local businesses, community groups and residents take simple steps to prepare for natural disasters through the 'Get Ready Local Councils' communications package
- providing emergency funding and grants to local communities to recover from the recent emergencies
- providing rental relief on commercial premises to support local businesses affected by the COVID-19 restrictions
- allowing ratepayers experiencing financial hardship to defer rate payments
- waiving or reducing fees for outdoor dining permit fees and food premise inspections and footpath usage for COVID-19 impacted businesses
- working with local businesses to be COVID-safe.

Key audit findings



4. 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 control findings across councils, county councils and joint organisations in 2019–20. It also includes the findings reported in the 2018–19 audits of Hilltops, MidCoast and Murrumbidgee councils as these audits were finalised after the [Report on Local Government 2019](#) was published.

Financial audits focus on key governance matters and internal controls supporting the preparation of councils' financial statements. Audit findings are reported to management and those charged with governance through audit management letters.

Highlights

- Total number of findings reported in audit management letters decreased from 1,985 in 2018–19 to 1,435 in 2019–20.
- One extreme risk finding was identified in 2019–20 (2018–19: nil).
- Total number of high-risk findings decreased from 82 in 2018–19 to 53 in 2019–20. Thirty per cent of the high-risk findings identified in 2018–19 were reported as high-risk findings in 2019–20.
- Forty-nine per cent of findings reported in audit management letters were repeat or partial repeat findings.
- Governance, asset management and information technology (IT) comprise over 61 per cent of findings and continue to be key areas requiring improvement.
- Fifty-six councils could strengthen their policies, processes and controls around fraud prevention and legislative compliance.
- Sixty-eight councils had deficiencies in their processes to revalue infrastructure assets.
- Fifty-eight councils have yet to implement basic governance and internal controls to manage cybersecurity.
- Sixty-four councils should formalise and periodically review their IT policies and procedures.

Total number of findings reported in audit management letters decreased

In 2019–20, 1,435 findings were reported in audit management letters (2018–19: 1,985 findings). An extreme risk finding was also identified this year related to Central Coast Council's use of restricted funds. The total number of high-risk findings decreased to 53 (2018–19: 82 high-risk findings).

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

- new findings were first reported in 2019–20 audits
- repeat findings were first reported in prior year audits, but remain unresolved in 2019–20
- ongoing findings were first reported in prior year audits, but the action due dates to address the findings are after 2019–20.




Findings are categorised as governance, financial reporting, financial accounting, asset management, purchases and payables, payroll, cash and banking, revenue and receivables, or information technology. The high-risk and common findings across these areas are explored further in this chapter.

4.1 Governance

Governance is the framework of rules, processes and systems that enables organisations to achieve goals and comply with legal requirements. Good governance promotes public confidence and satisfaction in councils' operations. Key governance areas include appropriate accountability mechanisms, operational and financial risk management and fraud prevention.

Governance findings decreased from 299 to 239

Audit management letters reported 239 findings relating to governance (2018–19: 299 findings). Fifty per cent were repeat or partial repeat findings.

Reported findings		FY 2019	Change %	FY 2020
	Total	299	↓ 20%	239
	 Extreme	0	↑ 100%	1
	 High	5	↓ 20%	4
	 Moderate	216	↓ 33%	144
	 Low	78	↑ 15%	90



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

Extreme risk finding

One extreme risk finding was reported at Central Coast Council. Further analysis on this finding is detailed in Chapter 2.1 'Quality of financial reporting'.

Council	Description
2019–20 finding	
Central Coast Council (partial repeat finding)	Council spent restricted funds for unrestricted purposes during 2019–20, without the appropriate approvals under the <i>Local Government Act 1993</i> . This indicated the council's oversight of its current and forecast cash flow situation was not always effective. Council used a monthly 'Investment Report' to understand its historical cash and investment position compared to restricted funds. However, these reports did not include forecasts of expected cash and investment positions compared to restricted funds, impacting effectiveness of cash flow management.

High-risk findings

High-risk findings, including repeat findings, were reported at the following councils. Three of the 2018–19 high-risk findings were not resolved, including one finding elevated to extreme risk.

Council	Description
2019–20 findings	
Bellingen Shire Council (repeat finding)	Council did not comply with the Environment Protection Authority's requirements for quarry operations, and workplace health and safety legislation.
Central Coast Council (new finding)	Council did not have a policy document or framework setting out legislative and operational requirements for each category of externally restricted funds. Council was unable to provide the basis for some externally restricted funds.
Liverpool City Council (new finding)	Council decided to proceed with the Liverpool Civic Place development, with an estimated cost of \$195 million. Recommendations were made for council to perform a comprehensive assessment over the contract to ensure accounting implications are appropriately considered, and to update the projected cashflows for major events that impact cashflow assumptions.
Mid-Western Regional Council (repeat finding)	Council did not fully comply with its obligations under the <i>Unclaimed Money Act 1995</i> . \$178,000 held by council for more than six years should be assessed for remittance to Revenue NSW.
2018–19 finding[^]	
Murrumbidgee Council (repeat finding)	Council did not periodically review suppliers where the cumulative annual expenditure exceeded \$150,000. Council should consider whether these goods and services would be more efficiently procured under a contract. Council's contract register was not complete and accurate. Key information was not in the register, including council's contract manager and supplier contact details.

[^] This audit was finalised after the 'Report on Local Government 2019' was published.

Common findings

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

Deficiencies in fraud control processes at 41 councils

The following fraud control deficiencies were reported in audit management letters.

Fraud control deficiencies	Number of councils
Council did not have a fraud and corruption prevention policy, or it was outdated	30
Council did not perform a fraud risk assessment	22
Council did not require staff to provide annual attestations to the Code of Conduct	20
Council did not provide fraud awareness training to staff	15

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

Lack of legislative compliance policies or register at 38 councils

Thirty-eight councils did not have a sufficient legislative compliance policy or register. Legislative compliance frameworks assist councils to monitor compliance with key laws and regulations. This is important as councils provide a broad range of services to the community and are subject to many legal requirements. A legislative breach can attract penalties, impact service delivery and cause significant reputational damage.

Other key corporate governance policies were not in place or regularly updated at 61 councils

The common areas where councils were missing governance policies are summarised below.

Area of corporate governance with absent or outdated policies	Number of councils
Risk management	31
Contract management	33
Public interest disclosures	12
Gifts and benefits	6

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.

Governance and internal controls over local infrastructure contributions could be improved

The Audit Office's recent performance audit '[Governance and internal controls over local infrastructure](#)' assessed the effectiveness of governance and internal controls over local infrastructure contributions (developer contributions) collected by four councils during the 2017–18 and 2018–19 financial years.

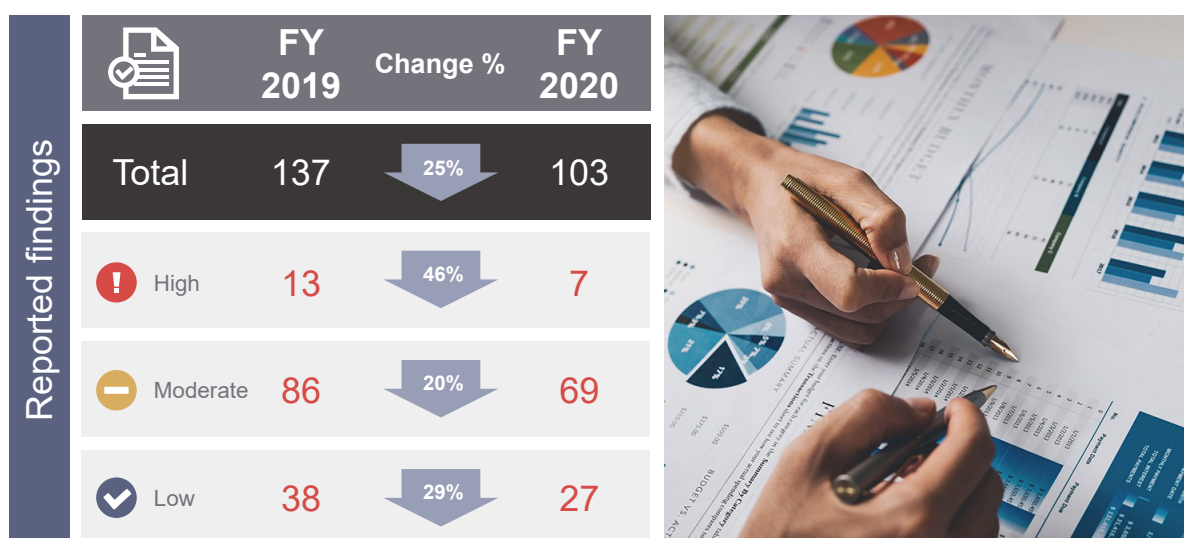
The audit identified that Blacktown City Council and City of Sydney Council provided effective governance over their developer contributions whereas Central Coast and Liverpool City councils' governance arrangements required improvement. Central Coast Council also breached the *Environmental Planning and Assessment Act 1979* between 2001 and 2019 when it used developer contributions for administration costs. These funds were repaid in late 2019.

4.2 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 decreased from 137 to 103

Audit management letters reported 103 findings relating to financial reporting (2018–19: 137 findings). Thirty-nine per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings, including repeat findings, were reported at the following councils. Four of the 2018–19 high-risk findings were not resolved, and four findings were reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks.

Council	Description
2019–20 findings	
Berrigan Shire Council (repeat finding)	Due to the impact of border restrictions on key finance staff, the financial statements submitted for audit were incomplete. A number of errors and disclosure deficiencies were identified and corrected. Key documents to support infrastructure, property, plant and equipment balance were provided late.
Bland Shire Council (new finding)	Due to resourcing issues in the finance team, the financial statements submitted for audit were incomplete. A number of errors and disclosure deficiencies were identified and corrected. Some key documents including accounting position papers and reconciliations for key account balances were provided late.
Central Coast Council (repeat finding)	Council submitted the financial statements for the audit on 13 November 2020, one month after the initially agreed date. The financial statements included significant presentation issues, material misstatements and disclosure deficiencies. There was no documented evidence of timely quality review of the financial statements and associated supporting workpapers.
The Council of the Municipality of Kiama (new finding)	Council was significantly delayed in providing documentation for the interim audit due to resourcing issues, migration of financial information to the new accounting system and the impact of COVID-19 on council operations.
Mid-Western Regional Council (new finding)	Council submitted the accounting position paper for the impact assessment of the new accounting standards AASB 15 and AASB 1058 late. The failure to provide the assessment in a timely manner increases the risk that critical deadlines may not be met.
Murray River Council (repeat finding)	Council continues to experience issues in the financial statement preparation process and audit readiness. This has resulted in: <ul style="list-style-type: none"> multiple draft versions of the financial statements submitted for audit, requiring review, feedback and subsequent adjustments delayed submission of key accounting position papers to the audit team delays to the audit process and additional audit costs.
Murrumbidgee Council (repeat finding)	Council submitted draft financial statements for audit on 22 October 2020, one week after the scheduled due date. Council engaged an external contractor to assist with the preparation of the financial statements, but the financial statements required further updates after submission. Key documents including the accounting position paper on new accounting standards were not ready by agreed audit dates.

Council	Description
2018–19 findings[^]	
Hilltops Council (repeat finding)	<p>Council submitted draft financial statements for audit on 4 February 2020, three months after the statutory reporting deadline of 31 October 2019.</p> <p>The financial statements submitted for audit were based on draft financial information, were incomplete, and contained numerous errors and disclosure deficiencies. This included insufficient disclosures for new accounting standards and interpretations issued but not yet effective.</p>
MidCoast Council (new finding)	<p>Council submitted draft financial statements for audit on 16 October 2019, one month after the scheduled audit start date. Council advised the delay was due to:</p> <ul style="list-style-type: none"> the implementation of the new accounting system council resources redirected away from the financial statement preparation process due to the bushfires. <p>The financial statements contained numerous errors and disclosure deficiencies. Extensive consultation and direction were necessary to ensure that the financial statements were compliant with the Australian Accounting Standards and relevant directions prescribed by the OLG.</p>
Murrumbidgee Council (repeat finding)	<p>Council submitted draft financial statements for audit late. The audit was scheduled to start on 30 September 2019, but it was rescheduled several times as council was not prepared. Council advised the delay was due to inadequate resourcing in the finance team and migration of financial information to the new accounting system. This is a repeat finding first raised in the 2016–17 audit.</p>
Murrumbidgee Council (new finding)	<p>One staff member was responsible for the financial statement close process and audit preparation. This resulted in significant delays to the audit, and there is a key-person risk.</p>

[^] These audits were finalised after the 'Report on Local Government 2019' was published.

Common findings

Common findings across councils include:

- 47 councils did not appropriately apply or adequately assess the impact of the new accounting standards
- lack of preparation for the audit, such as having a financial reporting plan, impacted the timeliness of financial reporting at 22 councils
- financial statements submitted for audit for 21 councils contained numerous errors and disclosure deficiencies
- 14 councils did not have sufficient processes to ensure related party transactions were appropriately disclosed in the financial statements in line with AASB 124 'Related Party Disclosures'. A related party transaction involves the council and another party with a pre-existing relationship with the council.

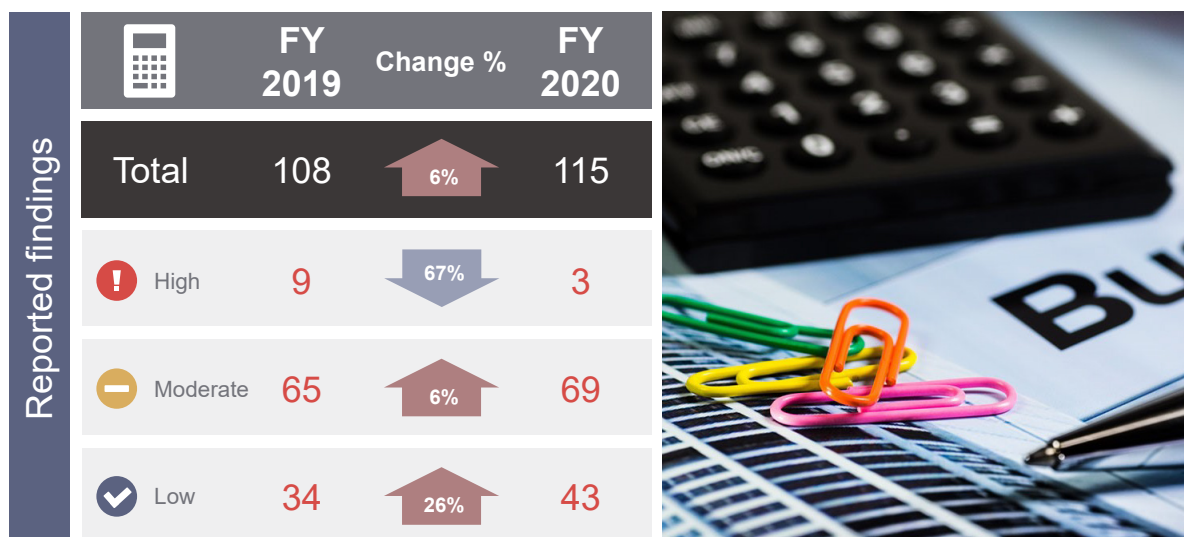
Further analysis and insights on financial reporting findings are detailed in Chapter 2 'Audit results'.

4.3 Financial accounting

Financial accounting is 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 108 to 115

Audit management letters reported 115 findings relating to financial accounting (2018–19: 108 findings). Fifty-three per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings, including repeat findings, were reported at the following councils. Two of the 2018–19 high-risk findings were not resolved, and three findings were reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks.

Council	Description
2019–20 findings	
Central Coast Council (new finding)	<p>Some monthly account reconciliations were not prepared and reviewed on a timely basis. Supporting documentation was not consistently attached to explain reconciling items, and some reconciling items were not explained.</p> <p>Council maintains several information systems for processing revenue transactions. Each day, the sub-ledger systems interface with the general ledger to transfer and update revenue data. Findings identified:</p> <ul style="list-style-type: none"> reconciliations were not performed between the general ledger and sub-ledger systems to ensure all transactions were reflected correctly in the general ledger the interface transfer often required manual intervention to ensure the transfer occurred. There is no audit trail, or evidence of review of changes made to these transfers.

Council	Description
Central Darling Shire Council (two repeat findings)	Two high-risk findings were reported: <ul style="list-style-type: none"> lack of segregation of duties as key finance officers have broad access to make changes in the finance system and have access to the bank account. There were limited independent reviews of finance officer functions to mitigate this risk manual journals were processed to adjust financial information without adequate supporting documentation. Furthermore, manual adjustments were not consistently signed off by the preparer and independent reviewer.
2018–19 finding[^]	
MidCoast Council (new finding)	Council's records management practices relating to information to support balances and disclosures in the 2019 financial statements were not sufficiently embedded to enable the timely preparation of the financial statements.

[^] This audit was finalised after the 'Report on Local Government 2019' was published.

Common findings

The common financial accounting findings reported in audit management letters related to deficiencies in key account reconciliations and processing of manual journal adjustments.

Key account reconciliations were not prepared in a timely manner or independently reviewed at 55 councils

Regular reconciliation of financial information ensures timely identification of errors, and also facilitates a more efficient audit process. It was reported in audit management letters that:

- 36 councils did not reconcile all key balances in the financial statements in a timely manner
- there was no evidence of independent review of key account reconciliations at 33 councils.

Lack of segregation of duties with manual journal adjustments at 28 councils

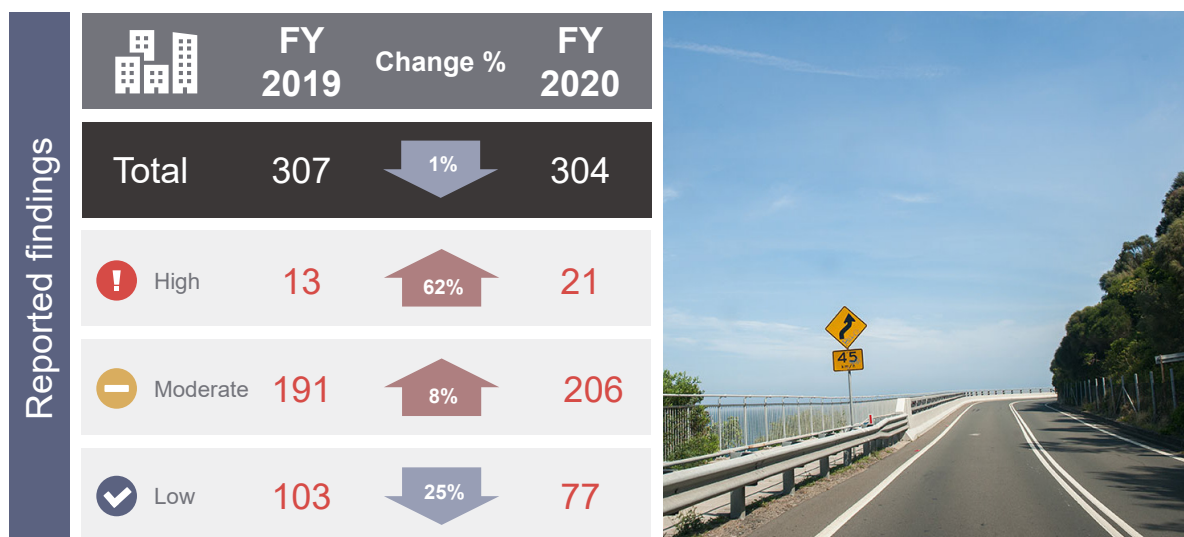
There was a lack of segregation of duties over the posting of manual journal adjustments to financial information at 28 councils. An independent review of manual journal adjustments is important to reduce the risk of fraud or error in the financial statements.

4.4 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 valuing assets in accordance with accounting standards.

Asset management findings decreased from 307 to 304

Audit management letters reported 304 findings relating to asset management (2018–19: 307 findings). Forty per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings, including repeat and ongoing findings, were reported at the following councils. Five of the 2018–19 high-risk findings were not resolved, and four findings were reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks. There was an increase in the number of high-risk findings reported this year in asset management.

Council	Description
2019–20 findings	
Bellingen Shire Council (new finding)	<p>Council identified road and bulk earthwork assets not previously recorded in the financial statements, resulting in prior period errors in:</p> <ul style="list-style-type: none"> roads assets of \$2.0 million associated bulk earthworks of \$4.4 million. <p>Council's fixed assets register (FAR) is not sufficiently secured from unauthorised changes as it is maintained in excel spreadsheet. The FAR did not include key information fields such as acquisition date.</p>

Council	Description
Berrigan Shire Council (repeat finding)	<ul style="list-style-type: none"> Council engaged an external valuer to perform a revaluation of other open space, other structure assets, water and sewerage, operational land, community land, and buildings. The revaluation excluded 41 other assets due to the timing of information provided to the external valuer. Work papers supporting the fair value of assets contained errors. \$1.9 million of road assets and capital work-in-progress (WIP) were incorrectly recorded as material and contract expenses. Disclosure deficiencies were reported in the financial statements, including transfers from capital WIP to completed assets not netting off.
Byron Shire Council (new finding)	<ul style="list-style-type: none"> The asset revaluation process for transport and stormwater infrastructure identified assets not previously recorded in council's asset registers. This resulted in a \$36.1 million prior period error. Duplicated land assets were recorded in the asset management system. This resulted in a \$9.1 million prior period error. There was limited quality control and documentation of management's review of the asset revaluation. Significant movements in the asset revaluations were not analysed.
Central Coast Council (two new findings)	<p>Two high-risk findings were reported:</p> <ul style="list-style-type: none"> Council certified that they were unable to provide sufficient evidence to support the carrying value of roads, bridges and footpath assets. This is because the last valuation of these assets was in the year ended 30 June 2015, and council has not conducted a more recent valuation in accordance with AASB 116 'Property, Plant and Equipment' (AASB 116). This qualification could have been avoided if council had performed a timely full revaluation of these asset classes. Council did not have a formal process to regularly review the carrying values of Community and Crown Land assets against valuations from the Valuer-General of New South Wales (VG). As a result, the carrying values of these assets did not reflect the most recent VG valuation as at 1 July 2019. Council processed an increment of \$39.4 million to correct the carrying values of these assets.
Dubbo Regional Council (partial repeat finding)	<p>The asset revaluation process identified prior period errors due to:</p> <ul style="list-style-type: none"> incorrect unit rates adopted for valuing stormwater assets in previous years, amounting to \$75.1 million non-depreciable bulk earthworks assets not previously recognised in council's asset register, amounting to \$16.8 million.
Gilgandra Shire Council (new finding)	<p>Council's revaluation process over roads, bridges and footpaths identified errors due to differences in the recorded length of the road network, amounting to \$11.8 million.</p> <p>Asset valuation reports were not available until late during the final audit.</p>
Inner West Council (ongoing finding)	<p>In 2018–19, council did not sufficiently complete a quality review of the asset revaluation process.</p> <p>In 2019–20, council was not required to perform a comprehensive revaluation for any asset classes, so council could not address the finding during 2019–20. The finding will remain ongoing until the next revaluation is performed.</p>

Council	Description
Kempsey Shire Council (new finding)	Council identified transport assets with a written down value of \$11.6 million not previously recorded in the financial statements, resulting in a prior period error.
Lane Cove Municipal Council (new finding)	Council did not have a robust process to review restrictions associated with land holdings in the prior year land revaluation process, resulting in a \$9.8 million prior period error.
Liverpool City Council (new finding)	Council controlled 61 parcels of community land valued at \$104 million that were contaminated but did not account for any impairment in the comprehensive revaluation. The subsequent impairment assessment resulted in an \$11.0 million reduction to the fair value of the land.
Lockhart Shire Council (new finding)	<p>Council's valuation methodology for roads, bridges, footpaths and bulk earthworks:</p> <ul style="list-style-type: none"> • was not documented until after the valuation was completed • comprised desktop procedures that are insufficient for comprehensive revaluations, and did not include condition assessments or update of all unit rates used to value infrastructure assets • did not include all relevant classes of assets.
Murray River Council (new and repeat finding)	<ul style="list-style-type: none"> • Asset reconciliation was not completed appropriately or independently reviewed. • On-costs were inappropriately capitalised, resulting in a corrected error of \$2.4 million. • The dates that assets were first in use were not recorded, resulting in incomplete records and errors in the depreciation expense. • Fair value assessment of transportation assets was not robust.
North Sydney Council (new finding)	<p>Council prepared a position paper for the major redevelopment of North Sydney Olympic Pool assets. From the review of the position paper, it was recommended the council apply accelerated depreciation charges to account for the reduction in useful life of the assets, as required by AASB 116 'Property, Plant and Equipment'. Council subsequently applied appropriate depreciation rates for 30 June 2020.</p>
Orange City Council (repeat finding)	<p>Council's revaluation process over roads, bridges, footpaths and stormwater assets identified errors with a net impact of \$14.8 million, subsequently corrected by council. The errors were due to:</p> <ul style="list-style-type: none"> • applying incorrect unit rates and useful lives • duplicated assets recorded in the asset register • including roads not controlled by council in the revaluation. <p>There was a lack of robust quality review of the asset revaluation to confirm the reasonableness of revaluation movements.</p>
Queanbeyan-Palerang Regional Council (new finding)	Council identified a number of developer contributed assets not previously recorded in the financial statements, resulting in a prior period error of \$18.2 million.
Strathfield Municipal Council (new finding)	<p>A high-risk finding was reported relating to council's comprehensive revaluation of road infrastructure assets, including:</p> <ul style="list-style-type: none"> • work papers submitted late to the auditor • inadequate documentation to support key assumptions including the condition assessments and unit rates applied to assets • no documented review of the fixed asset reconciliation and other calculations • no documented quality review of the revaluation process.

Council	Description
Willoughby City Council (new finding)	<p>Council reported a \$5.4 million prior period error due to the overstatement of assets. This arose from:</p> <ul style="list-style-type: none"> inability to verify the existence of open space and recreational assets in the fixed asset register buildings that were not previously included in the fixed asset register.
Wingecarribee Shire Council (new finding)	<p>Council corrected a material misstatement of \$117 million arising from the comprehensive revaluation of roads, bridges and footpaths. The error arose primarily due to system limitations in council's asset management system in processing a revaluation of this size and nature.</p>
Wollondilly Shire Council (new finding)	<p>Council's revaluation process over roads, bridges, footpaths, drainage infrastructure, carparks and other infrastructure assets identified errors due to:</p> <ul style="list-style-type: none"> applying incorrect unit rates and measurements since 2014–15 assets recorded in the asset register but not the general ledger duplicated assets volume errors application of inaccurate consumption pattern of the assets.
2018–19 finding[^]	
MidCoast Council (new finding)	<ul style="list-style-type: none"> Council lacked documentary evidence to support unit rates applied for assets revalued under the replacement cost method. There was insufficient documentation to support council's rationale, method and approach in conducting the revaluation. There was a lack of quality review performed over the valuation, resulting in an additional \$47.7 million error. Accounting implications for revaluation increments and decrements did not reflect the not-for-profit requirements of AASB 116 Property, Plant and Equipment. There were multiple versions of financial statements and supporting schedules provided to the audit team, as management adjusted information originally supplied.

[^] This audit was finalised after the 'Report on Local Government 2019' was published.

Common findings

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

Deficiencies in infrastructure asset revaluation processes at 68 councils

Deficiencies were identified in infrastructure asset valuations at 68 councils, including:

- inadequate documentation to support key assumptions and judgements applied including:
 - useful lives and condition assessments
 - unit rates used to value infrastructure assets
- incorrect classification of assets
- incorrect exclusion of some assets from valuations
- management not documenting their quality review over the asset valuation.

Weak processes over maintenance and security of fixed asset registers at 68 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.

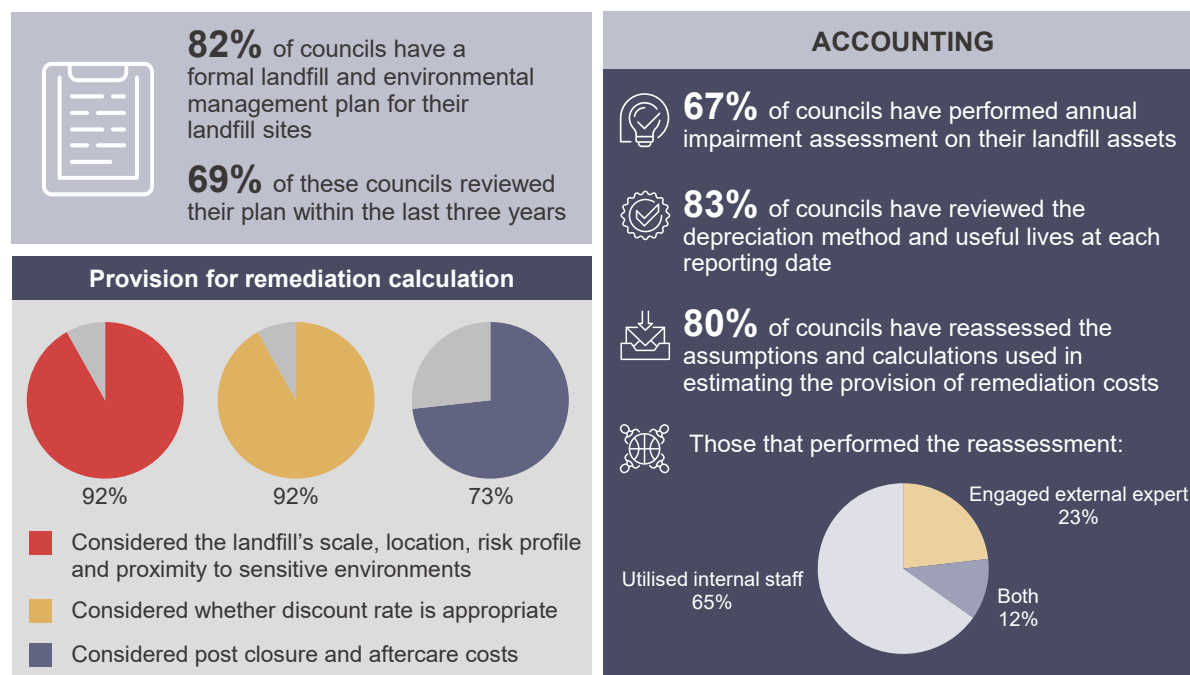
Fixed asset register issues reported in audit management letters	Number of councils
Council did not maintain an accurate and complete fixed register. This included: <ul style="list-style-type: none"> issues with duplicated or missing assets incorrect categorisation of assets incorrect componentisation of assets. 	49
Council did not regularly update their fixed asset register for additions and disposals.	41
Asset registers were not maintained in a secure format (e.g. use of unlocked spreadsheets or multiple systems).	13

Improvements to council landfill rehabilitation accounting practices required at 44 councils

Common findings identified in council landfill rehabilitation accounting practices include:

- 12 councils did not formally assess the obligations required to rehabilitate landfill sites
- 11 councils could improve formal documentation of provision calculations to support inputs, assumptions and key data for accounting of the provisions
- 23 councils did not include costs associated with post-closure, aftercare and monitoring of landfill sites in their provisions.

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

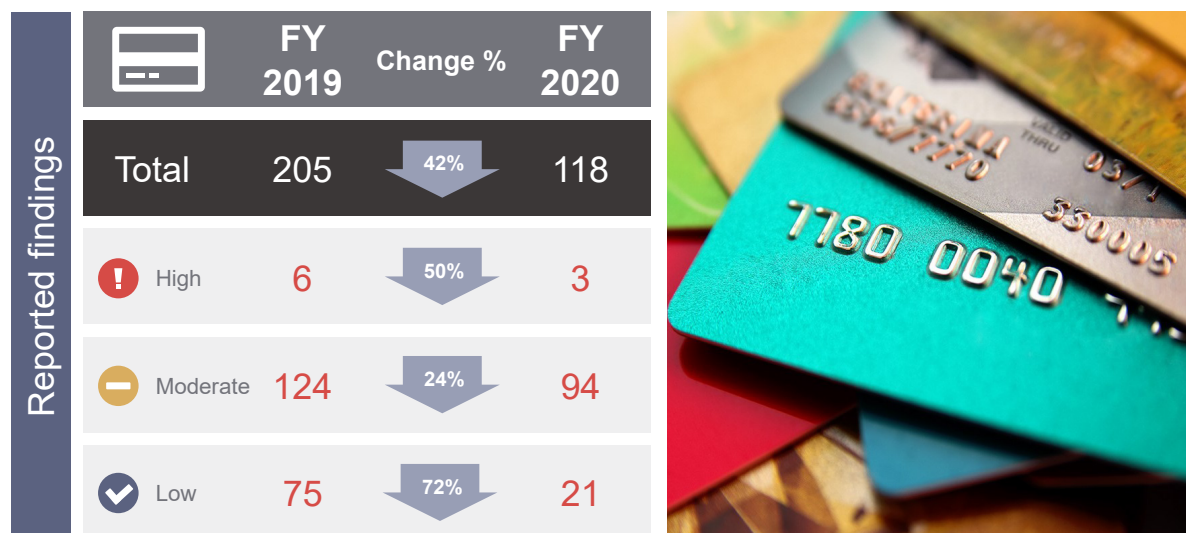


4.5 Purchases and payables

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 205 to 118

Audit management letters reported 118 findings relating to purchases and payables (2018–19: 205 findings). Forty-five per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings were reported at the following councils. Three of the 2018–19 high-risk findings were resolved, and three findings were reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks.

Council	Description
2019–20 findings	
Gilgandra Shire Council (new finding)	A senior officer had superuser access to the finance system and was also an authorised signatory for the bank account. The lack of segregation of duties increases the risk of inappropriate transactions.
Lismore City Council (new finding)	The system-based workflows for approving purchase orders did not match the approved limits in the delegations manual. Some officers had the ability to revise purchase orders to amounts above their delegation without requiring further approval.
Mid-Western Regional Council (new finding)	Non-compliance with the <i>Local Government Act 1993</i> and the <i>Local Government (General) Regulation 2005</i> for one contract over \$250,000 in value for landfill management services. The contract was not subject to a competitive tender in accordance with procurement rules.

Common findings

The common purchases and payables findings reported in audit management letters related to controls around purchase orders, review of creditor information and deficiencies in credit card management practices.

Controls around purchase orders were not enforced or absent at 32 councils

At 11 councils, it was identified that employees could approve their own purchase orders. It is important there is segregation of duties in procurement to reduce the risk of fraud and misuse of public money.

Purchase orders were approved after the receipt of goods or services at 25 councils. Purchase orders should be issued before requesting goods or services to reduce the risk of unauthorised transactions.

Insufficient review of changes to creditor information at 32 councils

Thirty councils did not perform sufficient review of changes to creditor information, including bank account details. This increases the risk of transactions paid to incorrect accounts, resulting in financial losses for councils. Councils should review each change or perform regular collective review of changes.

Deficiencies in credit card management practices

The Audit Office's recent performance audit '[Credit card management in Local Government](#)' identified gaps in credit card management practices for all six audited councils, including:

- lack of explicit alignment between credit card limits and financial delegations
- no requirement to check purchases were for valid purposes in the process for reconciling credit card transactions
- card holders sharing credit cards with other employees
- incomplete or inaccurate record keeping.

Procurement processes do not fully support transparent use of public money

In December 2020, the '[Procurement management in Local Government](#)' performance audit assessed the effectiveness of procurement practices in six councils and identified:





- procurement needs were not consistently documented at the planning stage
- staff training on procurement was not adequate
- procurement outcomes were not required to be evaluated
- discrepancies in contract values between contract registers and annual reports.

4.6 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 136 to 112

Audit management letters reported 112 findings relating to payroll processes (2018–19: 136 findings). Thirty-nine per cent were repeat or partial repeat findings.

Reported findings		FY 2019	Change %	FY 2020
	Total	136	18%	112
	 High	0	0%	0
	 Moderate	73	21%	58
	 Low	63	14%	54



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

There were no high-risk findings related to payroll processes in 2019–20 (2018–19: Nil).

Common findings

The common payroll findings reported in audit management letters related to deficiencies in the review of employee payroll data and excessive annual leave balances.

Changes to employee payroll data are not reviewed at 35 councils

Thirty-five 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.

Excessive annual leave balances were reported at 46 councils

Managing excess annual leave was a challenge for councils given the recent emergency events. Councils continued to deliver essential services in uncertain times and in a disrupted work environment. Many council employees, particularly in frontline roles, deferred leave plans and have taken little or no annual leave. To support council employees during the COVID-19 pandemic, legislative amendments were made to allow councils and their employees to agree to:

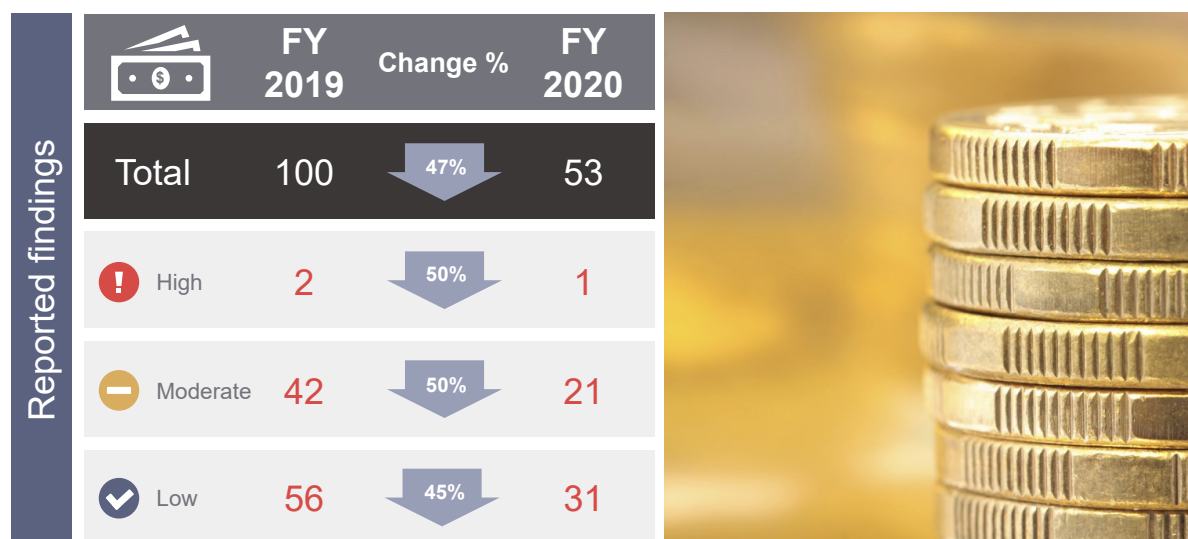
- council making a payment to an employee in lieu of annual leave, provided the employee will still have a balance of at least four weeks of leave remaining
- an employee taking annual leave at double or half pay.

4.7 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.

Cash and banking findings decreased from 100 to 53

Audit management letters reported 53 findings relating to cash and banking (2018–19: 100 findings). Twenty-six per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings related to cash and banking were reported at the following councils. All 2018–19 high-risk findings were resolved.

Council	Description
2019–20 finding	
Wingecarribee Shire Council (new finding)	<p>Under section 355 of the <i>Local Government Act 1993</i>, council delegated the management of a number of its halls and sporting fields to volunteer committees. Committees' cash balances were reported to the council as at 31 May 2020, rather than 30 June 2020 and bank confirmations were not provided for committee bank accounts as at 30 June 2020 for the audit.</p> <p>Furthermore, council did not comply with their internal policy for at least one employee to be a signatory on committee bank accounts.</p>
2018–19 finding[^]	
MidCoast Council (new finding)	<p>Council did not reconcile external confirmations from financial institutions to their investment register. Furthermore, confirmations:</p> <ul style="list-style-type: none"> were incomplete and did not cover all investments in council's register included balances that were not recorded in council's register. <p>From review of council's external confirmations, council did not record balances totalling \$110,000 as they were unaware of its existence. The bank account was for loan repayments made by a former constituent council (pre-amalgamation).</p>

[^] This audit was finalised after the 'Report on Local Government 2019' was published.

Common findings

The common cash and banking findings reported in audit management letters related to the lack of security of payment files and the lack of segregation of duties in the cash handling process.

Lack of security of payment files for pay runs at 12 councils

Twelve councils did not encrypt Electronic Funds Transfer (EFT) 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.

Lack of segregation of duties in the cash handling processes at 16 councils

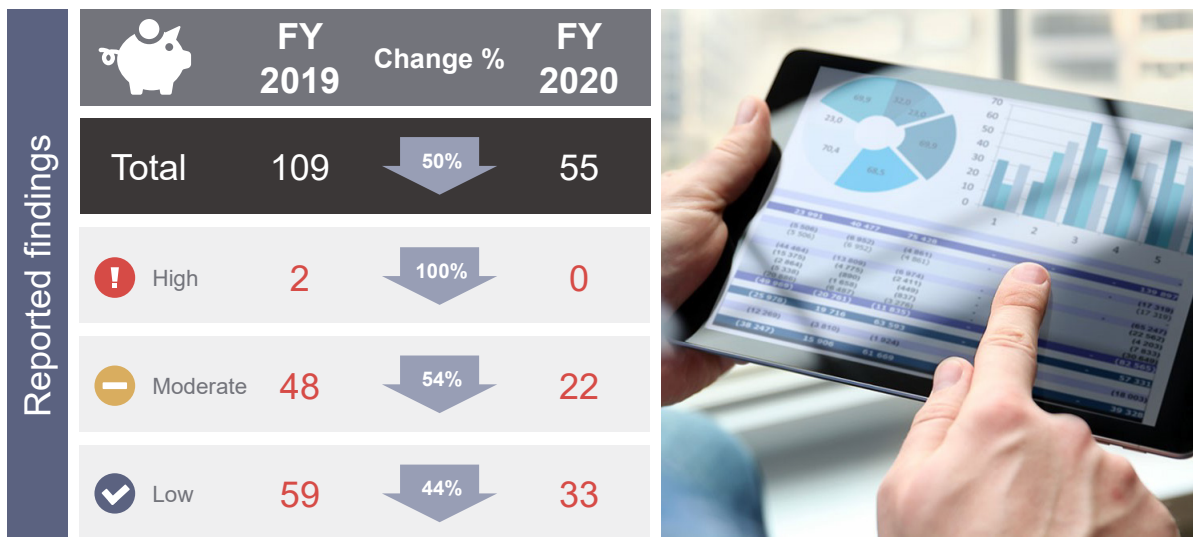
There was a lack of segregation of duties in the cash handling process at 16 councils, including daily cashier balancing and recording mail remittances. There was no independent recount of balances or review of mailed cheque receipts. This increases the risk of undetected balancing errors and misappropriation of cash or cheques.

4.8 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). It is important that councils have appropriate internal controls to accurately record revenue and receivables in compliance with accounting standards and legal requirements.

Revenue and receivable findings decreased from 109 to 55

Audit management letters reported 55 findings relating to revenue and receivables (2018–19: 109 findings). Forty-seven per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

There were no high-risk findings related to revenue and receivables processes in 2019–20. One of the high-risk findings reported in 2018–19 was resolved, and the other was reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks.

Common findings

The common revenue and receivables findings reported in audit management letters related to deficiencies in the review of changes to fee tables and property data in council rates systems and inappropriate revenue recognition practices.

Lack of review of changes to fee tables and property data in the rating system at 18 councils

Council systems contain fee tables and property information, which is used to determine rates and annual charges levied on different properties. Eighteen councils do not adequately review changes for accuracy and appropriateness. This increases the risk of errors in recording rates and annual charges in the financial statements.

Inappropriate revenue recognition at 11 councils

Eleven councils had findings raised relating to their revenue recognition practices, including:

- recognising revenue in the financial statements for construction projects on receipt, rather than on progress
- use of cash accounting basis to recognise some revenue transactions, rather than accruals.

Deficiencies in revenue recognition practices resulted in 66 errors identified in council financial statements, totalling \$103.2 million.

4.9 Information technology (IT)

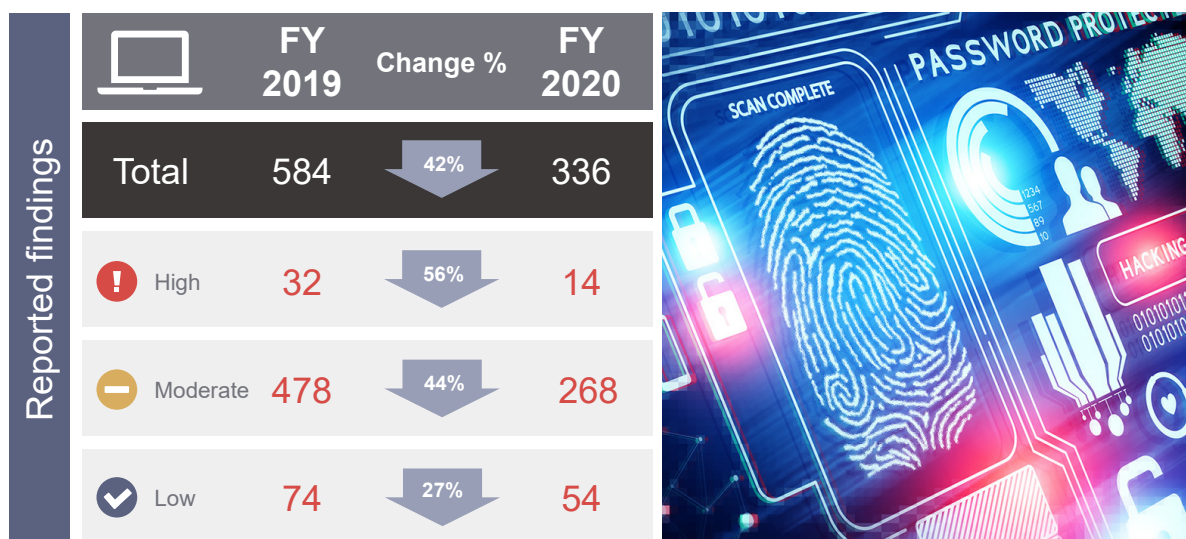
Councils rely on IT to deliver services and manage information. While IT delivers considerable benefits, it also presents risks that councils need to address. IT general controls relate to the procedures and activities designed to ensure confidentiality and integrity of systems and data. These controls 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
- user access management
- privileged user access restriction and monitoring
- system software acquisition, change and maintenance
- disaster recovery planning.

IT findings decreased from 584 to 336

Audit management letters reported 336 findings relating to IT (2018–19: 584 findings). Sixty-eight per cent were repeat or partial repeat findings.



Source: Audit management letters for 30 June 2019 and 30 June 2020 audits.

High-risk findings

High-risk findings, including repeat and ongoing findings, were reported at the following councils. Ten of the 2018–19 high-risk findings were not resolved, and six findings were reclassified to moderate risk in 2019–20 as management has taken action to mitigate the risks.

Council	Description
2019–20 findings	
Bellingen Shire Council (three repeat findings)	Three high-risk findings were reported relating to: <ul style="list-style-type: none"> lack of cyber risk framework and policy no policies and procedures for IT security or change management enterprise wide business continuity and disaster recovery plan has not been reviewed and updated since 2016.
Central Coast Council (two new findings)	Two high-risk findings were reported relating to: <ul style="list-style-type: none"> privileged user access review was not performed for one of the key financial system privileged user accounts' activity logs were not reviewed.
Coolamon Shire Council (new finding)	There is no formal process to grant and remove access to financial systems. Privileged accounts' activity logs were not maintained and monitored.
Greater Hume Shire Council (repeat finding)	Privileged accounts' activity logs were not maintained and reviewed.
Hilltops Council (ongoing finding)	Council did not have an implemented IT strategic plan and IT policies and procedures over security, change management, backup, storage and retrieval, business continuity and disaster recovery plan.

Council	Description
Maitland City Council (one new finding and two repeat findings)	Three high-risk findings were reported relating to: <ul style="list-style-type: none"> lack of formal approval and implementation of IT policies and procedures over multiple areas, no cybersecurity awareness program, gaps in IT risk register and lack of Service Level Agreement (SLA) between IT and the business, communication of IT risks to the Audit Committee and resolution of the IT issues to be addressed during the planned restructure (repeat finding) independent review of changes to employee master data and invoice data entry were not consistently performed during 2019–20 (repeat finding) gaps in the cybersecurity controls (new finding).
Murrumbidgee Council (ongoing finding)	High-risk finding relating to the migration to a new financial system. See 2018–19 findings section below for more information.
Newcastle City Council (ongoing finding)	One ongoing (resolution date not due) high-risk finding reported relating to: <ul style="list-style-type: none"> no formal IT policies and procedures in place over multiple areas such as access management, incident management, cybersecurity, etc no cybersecurity awareness program which will include periodic training of users on cybersecurity IT risk register shows uncompleted and past due actions for certain risk items no documented SLA between IT and the business.
Woollahra Municipal Council (repeat finding)	Privileged user accounts' activity logs were not reviewed.

2018–19 findings[^]

MidCoast Council (new finding)	Management could only provide limited evidence to demonstrate how it performs its oversight function for IT general controls over the key systems relevant to financial reporting. There were deficiencies in IT policies, IT risk management, user access management, segregation of duties, backup and monitoring and disaster recovery.
Murrumbidgee Council (one new finding and two repeat findings)	One new high-risk finding was reported, relating to the migration to a new financial system (Civica Authority). There was a lack of planning, project management and inadequate resourcing for the project. The internal audit review highlighted exceptions and scope limitations where they were unable to conclude on the accuracy and completeness of 31 October 2018 balances transferred from Jerilderie and Darlington Point standalone systems to Civica Authority. Council did not appropriately document the system conversion process, including the opening balances transfer. Two repeat high-risk findings were reported, relating to: <ul style="list-style-type: none"> lack of an IT risk assessment and IT risk register lack of formal policies and procedures across most IT processes.

[^] These audits were finalised after the 'Report on Local Government 2019' was published.

Common findings

The common IT findings reported in audit management letters related to deficiencies in IT policies and procedures, lack of a cybersecurity framework and controls and gaps in user access management processes.

IT policies and procedures were outdated or not in place at 64 councils

Sixty-four councils did not formalise and/or regularly reviewed 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.

Cybersecurity frameworks and related controls were not in place at 58 councils

At a State Government level, the NSW Cybersecurity Policy states that 'strong cybersecurity is an important component of the NSW Digital Government Strategy. The term cybersecurity covers all measures used to protect systems and information processed, stored or communicated on these systems from compromise of confidentiality, integrity and availability'. While there is currently no requirement for councils to comply with the State Government's Cybersecurity Policy, councils may find it useful to refer to the policy for further guidance.

The Report on Local Government 2019 recommended for the Office of Local Government (OLG) within the Department of Planning, Industry and Environment to develop a cybersecurity policy by 30 June 2021 to ensure a consistent response to cybersecurity risks across councils. OLG have indicated that they are working with Cybersecurity NSW to develop a draft cybersecurity policy to share with councils by 30 June 2021. Refer to Appendix three.

Fifty-eight councils did not have the basic governance and internal controls to manage cybersecurity such as a cybersecurity framework, policy and procedure, register or cyber incidents, penetrations testing and training.

Poor management of cybersecurity can expose councils to a broad range of risks, including financial loss, reputational damage and data breaches. The potential impacts include:

- theft of corporate and financial information and intellectual property
- theft of money
- denial of service
- 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 government systems is used for criminal purposes.

Gaps in user access management process, including inadequate periodic review of user access at 43 councils and insufficient monitoring of privileged account activities at 68 councils

The following common access management findings were identified:

- 43 councils did not perform a periodic user access review to ensure users' access to key IT systems are appropriate and commensurate with their roles and responsibilities
- 68 councils did not monitor privileged accounts' activity logs.

Where robust access management processes are not in place, inappropriate access may exist, increasing the risk of unauthorised transaction or modification of sensitive data and transactions. The common findings above were rated high risk when there was mitigating controls to prevent or detect any unauthorised access.

Looking forward



Rural outback, New South Wales

5. Looking forward

Audit Office's work plan for 2020–21 onwards

Focus on local council's response and recovery from recent emergencies

Local councils and their communities will continue to experience the effects of recent emergency events, including the bushfires, floods and the COVID-19 pandemic for some time. The full extent of some of these events remain unclear and will continue to have an impact into the future. The recovery is likely to take many years.

The Office of Local Government (OLG) within the Department of Planning, Industry and Environment is working with other state agencies to assist local councils and their communities to recover from these unprecedented events.

These events have created additional risks and challenges, and changed the way that councils deliver their services.

We will take a phased approach to ensure our financial and performance audits address the following elements of the emergencies and the Local Government's responses:



- local councils' preparedness for emergencies
- its initial responses to support people and communities impacted by the 2019–20 bushfires and floods, and COVID-19
- the governance and oversight risks that arise from the need for quick decision making and responsiveness to emergencies
- the effectiveness and robustness of processes to direct resources toward recovery efforts and ensure good governance and transparency in doing so
- the mid to long-term impact of government responses to the natural disasters and COVID-19
- whether government investment has achieved desired outcomes.

Planned financial audit focus areas in Local Government

During 2020–21, the financial audits will focus on the following key areas:

- cybersecurity, including:
 - cybersecurity framework, policies and procedures
 - assessing the controls management has to address the risk of cybersecurity incidents
 - whether cybersecurity risks represent a risk of material misstatement to council's financial statements
- budget management
- financial sustainability
- quality and timeliness of financial reporting
- infrastructure, property, plant and equipment
- information technology general controls.

Audit, risk and improvement committees

All councils are required to have an audit, risk and improvement committee by March 2022

The requirement for all councils to establish an audit, risk and improvement committee was deferred by 12 months to March 2022 due to the COVID-19 pandemic.

Audit, risk and improvement committees are an important contributor to good governance. They help councils to understand strategic risks and how they can mitigate them. An effective committee helps councils to build community confidence, meet legislative and other requirements and meet standards of probity, accountability and transparency.

Local Government elections

Local Government elections were postponed for one year due to the COVID-19 pandemic

The Local Government elections were deferred for one year due to the COVID-19 pandemic and will now be held on 4 September 2021. As the statutory deadline for the 2020–21 financial statements is 30 October 2021, some of the newly elected councillors will be required to endorse them.

Implementation of AASB 1059

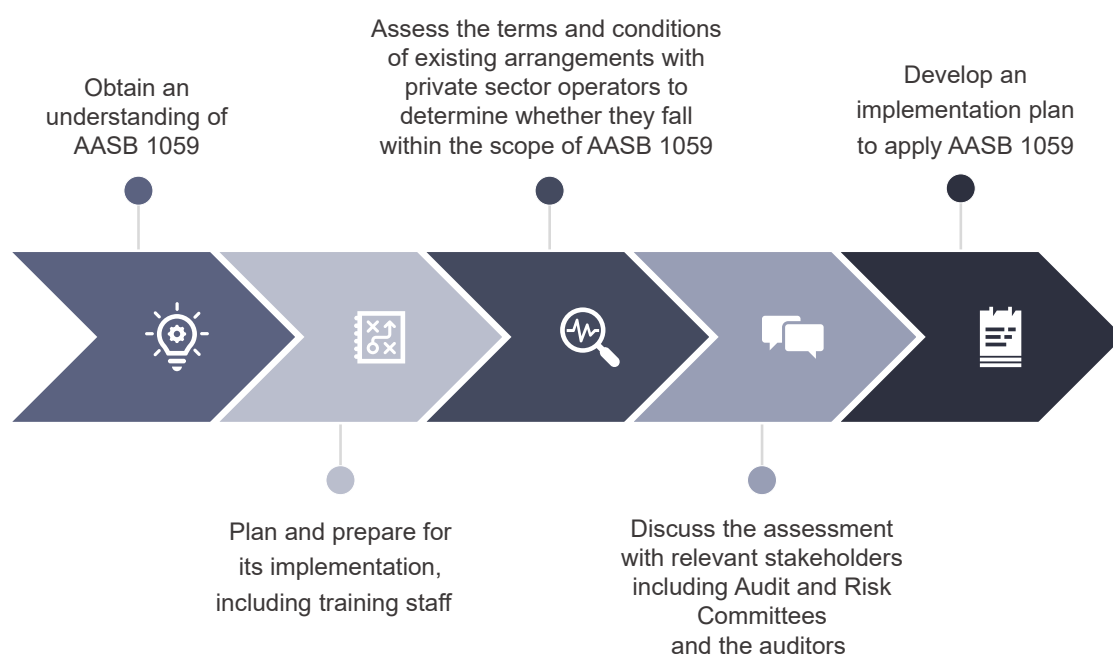
Accounting standards implementation continue next year

AASB 1059 is effective for councils for the 2020–21 financial year.

A service concession arrangement typically involves a private sector operator that is involved with designing, constructing or upgrading assets used to provide public services. They then operate and maintain those assets for a specified period of time and is compensated by the public sector entity in return. Examples of potential service concession arrangements impacting councils include roads, community housing, childcare services and nursing homes.

AASB 1059 may result in councils recognising more service concession assets and liabilities in their financial statements.

To effectively implement AASB 1059 councils will need to:



These tasks should be completed well before the balance date so that they do not impact on the timely preparation of the financial statements at year end.

Appendices



Appendix one – Response from the Department of Planning, Industry and Environment



Planning,
Industry &
Environment

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

26 May 2021

Dear Ms Crawford

Thank you for your letter of 14 April 2021 and for the opportunity to respond to your *Report on Local Government 2020*. I would like to recognise the contribution of the Audit Office towards strengthening governance, financial management and reporting in the local government sector.

The Department notes the report's recommendation, that the Department '*should communicate the State's view that rural fire-fighting equipment is controlled by Councils in the local government sector, and therefore this equipment should be properly recorded in their financial statements*'.

The Department will communicate to the local government sector the State position that the Rural Fire Service (RFS) should not recognise these assets notwithstanding that councils generally enter into agreements with the RFS for the management of this council owned fire fighting equipment.

I also note the recommendation that the Department should provide certainty regarding the legal framework relating to restrictions of water, sewerage and drainage funds (restricted reserves). It is also noted that the preferred view of the Crown Solicitor is that monies received under the *Water Management Act 2000* reside within the scope of s.409(3) of the *Local Government Act 1993*. The Department proposes to issue guidance consistent with the preferred view above, to support Councils in preparing their financial statements.

Throughout the past year the Department has worked towards addressing the recommendations from your *Report on Local Government 2019*, with particular regard to cyber security. The Department is continuing to work with Cyber Security NSW and the local government sector to identify the best way to address this issue.

I am encouraged by the constructive feedback provided by the Audit Office and look forward to continuing this important work to ensure that both local and state government work together to best serve local communities in NSW.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Betts'.

Jim Betts
Secretary

Appendix two – NSW Crown Solicitor's advice

Sensitive: Legal

ADVICE



Crown
Solicitor's
Office

LOCAL GOVERNMENT RATES AND CHARGES

Executive summary

Question 1 Special rates and charges

1. The reference in s. 409(3)(a) of the *Local Government Act 1993* ("the *LG Act*") to a "special rate or charge" is a reference to a special rate or a 'charge' and not to a special rate or a 'special charge'.
2. I have identified, in the body of this advice, sections of the *LG Act* which provide for the making of charges and special rates.

Question 2 Central Coast Council

3. Money received pursuant to provisions of the *Water Management Act 2000* ("the *WM Act*") is received by the Central Coast Council in its capacity as a water supply authority ("WSA") under that Act.
4. Section 409(3)(b) of the *LG Act* may apply to monies collected pursuant to the *WM Act*, if the conditions in that paragraph are satisfied. Although not without doubt, I prefer a view that s. 409(3)(a) of the *LG Act* could also apply to such monies.
5. As a general proposition, monies received by the Central Coast Council as a result of charges levied in its capacity as a water supply authority under the *WM Act* should be held in the council's consolidated fund as "externally restricted funds" to be used only for purposes associated with the exercise of the council's functions as a water supply authority under the *WM Act* or purposes authorised under the *LG Act* (such as the payment of dividends under s.409(5) of the *LG Act*).
6. I have not located any provisions in the *WM Act* which expressly restrict the way that money collected under that Act may be spent.

Background

7. You seek my advice as to interpretation of provisions of the *LG Act* and the *WM Act*. I understand these to be questions of general application, although Question 2 relates to Central Coast Council specifically and has arisen in the broader context of that Council being under administration (though I am instructed no further as to any specific facts or circumstances).

Prepared for: AUD018 Auditor General of NSW
Client ref: Liz Basey D2030574
Author: Sally Johnston/Karen Smith

Date: 13 February 2021

Sensitive: Legal

202004064 D2021/53260

Analysis

Question 1 Special rates and charges

1.1 Do the provisions in s. 409(3) of the LG Act extend to 'any charges' levied by the council or only to 'special charges' levied by a council?

8. Chapter 13 of the *LG Act* is titled "How are councils made accountable for their actions?" and Part 3 of that Chapter "Financial management". Division 1 ("Funds"), provides at s. 408 that a council must have two separate funds: a consolidated fund and a trust fund (as to which, see s. 411). Section 409 provides for the consolidated fund as follows:

"409 The consolidated fund

(1) 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.

(2) Money and property held in the council's consolidated fund may be applied towards any purpose allowed by this or any other Act.

(3) However—

(a) money that has been received as a result of the levying of a special rate or charge may not be used otherwise than for the purpose for which the rate or charge was levied, and

(b) money that is subject to the provisions of this or any other Act (being provisions that state that the money may be used only for a specific purpose) may be used only for that purpose, and

(c) money that has been received from the Government or from a public authority by way of a specific purpose advance or grant may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose.

(d) (Repealed)

(4) Pending its expenditure for the purpose for which it is held, money of the kind referred to in subsection (3)(a), (b) or (c) 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, by or under this or any other Act, authorised to be invested.

(5) Despite subsections (3) and (4), a council may—

(a) deduct, from the money required by subsection (3) to be used only for the specific purpose of water supply or sewerage services, an amount in the nature of a return on capital invested payment (dividend), and

(b) apply that amount towards any purpose allowed for the expenditure of money by councils by this Act or any other Act.

(6) The Minister for Water, Property and Housing, with the concurrence of the Minister administering this Act—

(a) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and

(b) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).

(7) Before making a deduction under subsection (5), a council must—

(a) comply with the guidelines published under subsection (6) and any direction given under that subsection, and

(b) indicate in an open meeting of the council that the guidelines and any such direction have been complied with in relation to the making of the deduction.

(8) Subsections (5)–(7) extend to a council that is a water supply authority within the meaning of the *Water Management Act 2000*.

(9) This section does not affect the requirements of the *Fire and Emergency Services Levy Act 2017* with respect to the payment of collection instalments to the Treasurer.

9. You instruct me that the provisions in subsection (3), which are the focus of your question for advice, are known colloquially as "externally restricted funds". The question for my advice is whether the reference in s. 409(3)(a) to a "special rate or charge" should be interpreted as 'a special rate or (any) charge' or as a 'special rate or *special* charge'.
10. The task of statutory construction is to determine the meaning of the text of the statute whilst, at the same time, having regard to its context and purpose: see generally *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 at [14] and the *Interpretation Act 1987* s. 33. Section 409(3) addresses the use, or 'spending', of monies that are associated with a "specific purpose". The provisions of subparagraphs (a)–(c) are all concerned with the spending of monies for the purpose, also referred to as the specific purpose, for which they are received or kept.
11. In the context of that purpose, of restricting expenditure of monies to the purpose for which that money was received, the meaning of the reference to a "special rate" is clear, because of the nature of such a rate. A special rate is a rate for or towards the cost of any works, services, facilities or activities of the council, other than domestic waste management services: see s. 495. That work, service, facility or activity would constitute the purpose of the special rate for purposes of s. 409(3).
12. It is also clear, when considering the statutory scheme, that a "special rate" is a standalone concept in the *LG Act*. There are, throughout the *LG Act*, other references to "special rates": see especially s. 492, which provides that councils can make ordinary *or* special rates, and s. 495 ("making and levying of special rates"). Broadly speaking, ordinary rates are levied annually on rateable land by reference to the categorisation of that land (see generally ss. 493, 494 and Part 3 of Chapter 15); whilst (as noted) special rates go "for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken... other than domestic waste management services" (at s. 495).
13. By contrast, there is no reference to or concept of a 'special charge' elsewhere in the *LG Act*. Many provisions of the Act refer to 'charges'. These all relate to the provision of a service. For example, a charge may be made pursuant to s. 501 for services specified therein, which are to be provided by the council. The making and levying of annual charges for domestic waste management services, for stormwater management services and for coastal protection services are provided at ss. 496, 496A and 496B. Other provisions addressing charges are found generally in Chapter 15, especially in Part 3A (Charges), in Part 4 (Making of rates and charges) and in Part 5 (Levying of rates and charges). In particular, s. 539 is instructive in that it sets out the criteria relevant to determining the amount of a charge. Each of the criteria (albeit non exhaustive) referred to in s. 539(1) to which the council may have regard in setting the amount of the charge are referable to

the "service" to which the charge relates: for example, the cost of providing the service, the area of land to which the service is provided, the frequency of the service etc. In that way, the section underscores that the charge must be linked directly to the provision of a service.

14. One instance of a 'charge' under the *LG Act* that less obviously evidences this link between provision of a service and a charge is s. 611. Section 611 provides for the making of a charge in relation to the possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure which pertains to a public place. In that instance, it is harder to identify a service and therefore the purpose for which that money is received, to employ the language of s. 409(3)(a). It seems to me arguable that the charge is for the purpose of the person's enjoyment of the benefit of possession, occupation or enjoyment of the rail etc. and therefore concerned with the maintenance or similar of that enjoyment. Alternatively, it may be an exceptional charge. Section 611(2) provides that the annual charge may be made, levied and recorded in accordance with the *LG Act* "as if it were a rate" but is not to be regarded as such for the purposes of calculating the council's general income. There are also specific and bespoke provisions about avenues of appeal for an aggrieved person to challenge the amount of the charge. To the extent that it might be necessary, I think that in the context of a large scheme such as the *LG Act*, the sui generis features of this section can set aside in settling a preferable construction of the terms of s. 409(3)(a).
15. I also note that at s. 543, there is a requirement that each form of rate and each charge have its own name. This section is organised in three subsections: for an "ordinary rate", a "special rate" and for "a charge". Again, that tells against the suggestion that there is a fourth category or a concept of a 'special charge' in the *LG Act*.
16. Considered against this background, it seems clear that a charge must relate to a service, and indeed be named and its amount determined by reference to that service. So too a special rate is for a work, service, facility or activity (see s. 495). By contrast, an ordinary rate is paid by reference to a parcel of rateable land. When so understood, s. 409(3)(a) is sensible when it is read on its plain terms as "a special rate" or a "charge". It makes sense to speak of both those types of council income by reference to their specific purpose. A charge under the *LG Act* is not a means of revenue raising for general purposes and appropriations. Rather, a charge under that Act is by its nature associated with a purpose. For this reason, it would be unnecessary to refer to a 'special charge', in the way that it is necessary to refer to a "special rate" which is associated with a purpose as distinct from an ordinary rate which is not associated with such a purpose.
17. I find further support for this construction in s. 503, which addresses the relationship between rates and charges. It provides that:

"503 What is the relationship between rates and charges?

(1) A charge may be made:

(a) in addition to an ordinary rate, and

(b) in addition to *or instead of* a special rate.

(emphasis added)

18. In this section, the Act provides that a charge can be made "instead of" a special rate. Again, this suggests to me that the concept of a 'special charge' has no work to do in the legislative scheme of the *LG Act*, rather there are ordinary rates, special rates and charges, and it would be appropriate to speak of a "special rate" and a "charge" interchangeably, as occurs in s. 409(3)(a) and the phrase "special rate or charge".
19. Another consideration is that a construction of the words "special rate or charge" which promotes a harmonious interpretation of the same words and phrases throughout the legislation should be preferred: that is, words are assumed to be used consistently in the legislation (although this is readily rebutted, and, it should be noted, more frequently rebutted in large and extensively amended legislation such as the *LG Act*¹). This principle can extend to interpretation of a phrase or expression: see, for example, the discussion as to interpretation of the phrase "property offence" in *McMillan v Pryce* (1997) 115 NTR 19 at 23. I have therefore considered the use of the expression "special rate or charge" as it appears in other provisions of the *LG Act*.
20. For example, s. 410 also applies to money that has been received by a council as a result of the levying of a "special rate or charge". Section 410 provides that where a special rate or charge has been discontinued and the purpose achieved, or no longer required to be achieved, any remaining money may be used by the council for other purposes providing that certain conditions specified in subsection (2) are met. It also provides that money which is not yet required for the purpose for which it was received may be lent (by way of internal loan) for use by the council for another purpose, if that purpose is approved by the Minister: see subsections (3) and (4).
21. Indeed, in s. 410(1) the reference is to "a special rate or *a* charge" (emphasis added), though subsection (2) refers to the "special rate or charge". Whilst this is far from determinative, it does indicate that the phrase "special rate or charge" is used interchangeably with "special rate or *a* charge" in at least one other provision of the Act, and so is supportive of my preferred construction.
22. The other places in the *LG Act* where the expression "special rate or charge" appears are in Division 2 ("Special rates and charges relating to water supply, sewerage and drainage") of Part 5 ("Levying of rates and charges") of Chapter 15 ("How are councils financed?"): see especially ss. 551, 552, 553, 553A. The phrase also appears in s. 565 ("capital contributions instead of payment of special rates or charges"). I find nothing in these sections which suggests that my preferred construction should be displaced, and that it was intended that the reference was to some concept of a 'special charge'.
23. Finally, I note an additional question about the interpretation of s. 409(3)(a), whether the reference to "special rate or charge" should be construed as a reference to a special rate or charge raised pursuant to the *LG Act*, or pursuant to the *LG Act* or any other Act. I will return to this question at [2.2] below.

¹ See generally Pearce, D., *Statutory Interpretation in Australia* (9th ed, 2019), Reed International Books Australia at [4.9].

1.2 If s. 409(3) is read as 'special charge', which sections of the LG Act provide for the making of special, as distinct from general, charges?

24. In light of my answer to question 1.1., this question does not arise.

1.3 If s. 409(3) is read as 'any charge', which sections of the LG Act provide for the making of such charges?

25. The making of rates and charges is addressed in Chapter 15 ("How are councils financed?"). Part 1 of that Chapter sets out general provisions about the making of rates and charges. In particular, s. 501 provides for the making of charges as follows:

"501 For what services can a council impose an annual charge?

(1) A council may make an annual charge for any of the following services provided, or proposed to be provided, on an annual basis by the council—

- water supply services
- sewerage services
- drainage services
- waste management services (other than domestic waste management services)
- any services prescribed by the regulations.

(2) A council may make a single charge for two or more such services.

(3) An annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided."

26. For the purposes of s. 501(1), the regulations currently prescribe emergency services within the area of the Blue Mountains City Council: see cl. 125 *Local Government (General) Regulation 2005*.

27. Other provisions which provide for the levying of charges are:

- (a) Sections 496, 496A and 496B which provide for the making of charges for domestic waste management services, stormwater management services and coastal protection services respectively,
- (b) Section 552 which provides for the making of charges relating to water supply, sewerage and drainage,
- (c) Section 553B(2) which provides for the making of a charge in relation to coastal protection services, and
- (d) Section 611 which provides for the making of a charge in relation to the possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure which pertains to a public place.

28. Other provisions relevant to the making of charges are in Part 3A (charges), Part 4 (making of rates and charges) and Part 5 (levying of rates and charges) of Chapter 15, which address matters such as the form of a charge, naming charges, and the priority of charges on land over other encumbrances on the land. Other parts of Chapter 15 address matters such as liability to pay charges and concessions for pensioners.

1.4 Which sections of the LG Act provide for the making of 'special rates'?

29. As noted above, it is generally relevant to consider Chapter 15 as to the making of rates and charges. The making of special rates is provided for in s. 495, as follows:

"495 Making and levying of special rates

(1) A council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services.

(2) The special rate is to be levied on such rateable land in the council's area as, in the council's opinion—

- (a) benefits or will benefit from the works, services, facilities or activities, or
- (b) contributes or will contribute to the need for the works, services, facilities or activities, or
- (c) has or will have access to the works, services, facilities or activities.

Note—

Under section 495, a council could, for example make and levy—

- different special rates for different kinds of works, services, facilities or activities
- different special rates for the same kind of work, service, facility or activity in different parts of its area
- different special rates for the same work in different parts of its area.

The amount of special rate will be determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity."

30. Division 2 of Part 5 also provides for the making of special rates or charges relating to water supply, sewerage and drainage (see s. 552 for the making of the special rate).

Question 2 Central Coast Council

2.1 With regards to Central Coast Council established as a water supply authority under the WMA, who receives money collected under the WMA? It is the Central Coast Council (the Council) in its capacity as a water supply authority, or is it some other separate entity such as the Central Coast Council Water Supply Authority (CCCWSA)?

31. The *WM Act* provides for water supply authorities in s. 285 and Schedule 3. Gosford City Council and Wyong Council are each named as a water supply authority ("WSA"): see Part 2 of Schedule 3.
32. As you are aware, but for sake of completeness, I note that in 2016, pursuant to s. 4 and Schedule 3 of the *Local Government (Council Amalgamations) Proclamation 2016*, Gosford City Council and Wyong Council were amalgamated and renamed Central Coast Council. Section 6 of the Proclamation provides:

"6 References to former areas and councils

A reference in any Act or instrument to:

-
- (a) a former council whose former area is incorporated in one new area by this Proclamation, or to a predecessor of the former council, is taken to be a reference to the new council, or
- (b) a former area that is incorporated in one new area by this Proclamation, or to a predecessor of the former area, is taken to be a reference to that part of the new area that consists of the former area or the predecessor area incorporated in the new area."
33. Section 53(1) of the *Interpretation Act* also applies where the name of a body or office is altered by statute. It provides:
- "(1) If an Act or statutory rule alters the name of a body or office:
- (a) the body or office continues in existence under its new name so that its identity is not affected, and
- (b) a reference in any Act or instrument, or in any other document, to the body or office under its former name shall, except in relation to matters that occurred before the alteration took place, be read as a reference to the body or office under its new name."
34. Accordingly, the reference to the former Gosford City and Wyong Councils in the *WM Act* is to be read as a reference to Central Coast Council, which retains its status as a WSA. See also the *Water Management (General) Regulation 2018* ("the *WM Regulation*"), at cl. 117(2), by which Central Coast Council has and may exercise all the functions of a WSA.
35. As such, the Central Coast Council is both a council and a WSA. The Central Coast Council is constituted under the *LG Act* (s. 219) and is given the status of a WSA under the *WM Act*. There is not a separate legal entity such as the 'Central Coast Council Water Supply Authority'. The *LG Act* regulates the operations of the Council as a council, whilst the *WM Act* regulates the operations of the Council as a WSA.
36. In relation to any specific function, operation or activity of the Central Coast Council it will be important to identify in what capacity it acts. For example, in levying a charge or rate, it will be a question of statutory construction whether it is a council or a WSA which has the relevant power to levy that charge or rate, and that in turn will determine whether the Central Coast Council may act in its capacity as a council or as a WSA in so doing. In some cases, such as in relation to drainage services or the construction of water management works, both the *LG Act* and *WM Act* may make provision. It will be necessary to construe those Acts to determine which provisions apply.
37. I have not located any provisions of the *WM Act* which provide a statutory basis for a council (in its capacity as a council) to raise monies. However, the *WM Act* does contain financing provisions for WSAs in Division 6, Part 2 ("Water supply authorities") of Chapter 5. A WSA may levy service charges within its area of operations for the services listed in s. 310(1) and impose other fees and charges in accordance with the regulations. There are extensive provisions about such service charges and other charges in Division 7 of Part 9 of the *WM Regulation*. None of these arise specifically for my advice. Rather, the premise of the question for my advice is merely that money is collected pursuant to the *WM Act*.

38. It seems reasonable therefore to assume that money received pursuant to provisions of the *WM Act* will almost certainly be received by the Central Coast Council in its capacity as a water supply authority under that Act.

2.2 Following on from the answer to question 2.1 above, is the money received under the WMA considered 'externally restricted funds' under s. 409(3) of the LG Act?

39. Whilst not without doubt, I prefer the view that money received under the *WM Act* is within the scope of s. 409(3) of the *LG Act*. The Central Coast Council is, as noted above, a WSA under the *WM Act* and specifically it is a statutory body named in Part 2 of Schedule 3 of that Act as such. Per s. 287(2) of the *WM Act*, it therefore "becomes a water supply authority but still has its other functions". That is, it retains its character as a council under the *LG Act*.
40. In my view, monies received by the Central Coast Council pursuant to the *WM Act* are within scope of s. 409(1) and (2) of the *LG Act*, being "money and property received by a council", which is required to be held in the council's consolidated fund. I am supported in this view in relation to the Central Coast Council because the *WM Act* and *WM Regulation* do not make provision for what is to be done with charges levied, as in s. 409(1) *LG Act*. The question then arises whether subsection (3) also applies to such money. Subsection (3) is comprised of three paragraphs, as extracted above. Despite the use of the conjunctive 'and' between each paragraph, it is plain on their terms in my view that each of these paragraphs operates independently in the sense that each contains a condition and then a requirement which follows if that condition is met.
41. It does not appear that paragraph (c), being for "money that has been received from the Government or from a public authority by way of a specific purpose advance or grant..." arises on the terms of the question, and so I will set that aside, although I would be happy to consider it in more detail on your further instructions.
42. I also think it is clear that paragraph (b) could apply, being for money "that is subject to the provisions of this or any other Act...". "Any other Act" would encompass the *WM Act*, so that if provisions of the *WM Act* state that the money may be used only for a specific purpose, then s. 409(3)(b) would apply to provide that it may only be used for that purpose.
43. It is less clear whether paragraph (a) applies in relation to monies received pursuant to the *WM Act*. The question is whether "money that has been received as a result of the levying of a special rate or charge" means money levied under the *LG Act*, or money levied under that or any other Act. Although not without doubt, I prefer the view that s. 409(3)(a) should be read in its full generality and not confined as relating only to special rates or charges levied under the *LG Act*.
44. Although express reference is made in s. 409(2) to a purpose allowed "by this or any other Act" and similarly s. 409(3)(b) refers to money subject to provisions of "this or any other Act" (as noted above), I do not think that the omission of such express reference in s. 409(3)(a) should be taken to confine the operation of that provision only to the *LG Act*. In my view, s. 409(3)(a) is intended to apply to monies held in the consolidated fund by virtue of subsection (1), with both sections applying to monies "received" by the council. As noted above, in my view s. 409(1) applies to all

- money received by a council under the *LG Act* or any other Act, and s. 409(3)(a) should have a corresponding scope. Thus, both sections refer, in my view, to the same concept of money received under 'this or any other Act'.
45. I note that this interpretation should also, in my view, be applied to s. 410(1), which provides for alternative use of money raised by special rates or charges and refers, in almost identical language to s. 409(3)(a), to "money that has been received by a council as a result of the levying of a special rate or a charge". In my view, there would similarly be no reason to imply a restriction or to read down the full generality of this section to confine it to money levied under the *LG Act*. Indeed, I think s. 410(1) is intended to address the situation where monies received by a council in its consolidated account are no longer required for the purpose for which they were levied, and the purpose of that section in ensuring that monies are not left in the council's consolidated account unable to be used suggests that the section should be read in its full generality.
46. However, the contrary view that s. 409(3)(a) is confined to special rates and charges levied under the *LG Act*, is not without merit. In particular, I have considered that the concept of a "special rate" is a creature of the *LG Act* and a term with a clear meaning in the context of that Act specifically. Whilst this is not also true of the concept of a "charge", for which many provisions in other Acts provide, I am not sure that a charge in any other Act would necessarily be associated with use for a specific purpose, in the way that paragraph (a) assumes and which I consider applies in the context of the *LG Act*. For example, it may be difficult in some cases to ascertain the purpose for which a charge is levied under the *WM Act*. In my view, although again this is not without doubt, the purpose for which a charge was levied might be found in the provisions as to the basis for levying charges, the assessment of those charges and the functions of the WSA which the charge supports (see, for example, s. 310(2) of the *WM Act*). I have also considered whether other provisions of the *LG Act* relating to special rates or charges apply to charges levied under other Acts, and found these of little assistance, although some provisions expressly refer to charges levied under "this Act" or "this Act and the regulations": see e.g. s. 496B, which suggests that such a restriction should not be read into a provision such as s. 409(3)(a) which is silent on that point. Equally, but contrary, the lack of express reference to "any other Act" in s. 409(3)(a) can be instead seen as a deliberate omission, in light of the use of those words elsewhere in the section (see subsections (2), (3)(b), (4) and (5)(b)). Such equivocal and contrary indicators incline me not to restrict the full generality of s. 409(3)(a) on its own terms.
47. I have also considered the effect of cl. 223 of the *WM Regulation*, which provides:
- "223 Central Coast Council
- (1) The provisions of the *Local Government Act 1993* (and the regulations under that Act) that apply to the reduction and postponement of rates and charges under that Act apply to the reduction and postponement of service charges and other charges levied or imposed by Central Coast Council under the *Water Management Act 2000*.
- (2) Subclause (1) does not extend to the requirement, under section 581 of the *Local Government Act 1993*, for councils to be reimbursed for a proportion of amounts written off under that Act."

48. This provision has the effect of applying certain provisions of the *LG Act* to charges which are levied under the *WM Act*. For their part, the provisions of the *LG Act* referred to (Part 8 of Chapter 15) do not contain any express reference to their application under the *LG Act* or any other Act. In that way, it might be said to suggest that those provisions of the *LG Act* would not otherwise apply to charges levied under the *WM Act*, but for the operation of cl. 223 of the *WM Regulation*. However, in my view this provision is neither directly applicable nor persuasive enough indication to read the words of s. 409(3)(a) without their full generality.
49. Finally, I note that I have also considered the effect of s. 409(8), which was introduced in 2003, and provides:
- “(8) Subsections (5)–(7) extend to a council that is a water supply authority within the meaning of the *Water Management Act 2000*.”
50. In my view, subsection (8) proceeds from the position that s. 409(3) applies to money which has been received by a council in its capacity as a water supply authority, that is, received pursuant to provisions of the *WM Act*. Otherwise, in applying the exception in subsections (5)–(7), subsection (8) would have no work to do. Subsection (8) was introduced by the *Local Government Amendment (National Competition Policy Review) Bill 2003*, and in his second reading speech for that Bill Mr Tripodi (Parliamentary Secretary) said² –
- “There are conflicting interpretations of the scope of section 409, and legislative amendment is proposed to clarify the situation... [s. 409(3)(d) to be omitted]. The bill also proposes the insertion of subsections (5) to (7) into section 409 of the Act to define the proper relationship between restricted funds held under section 409 and a council's general funds, including the circumstances in which dividends may be paid by a council business activity.
- Under the amendments contained in the bill, a council may choose to deduct from the money which is restricted in its use for the purpose of water supply or sewerage services, an amount in the nature of a dividend, and to apply that money to any purpose under the Act or any other Act. That is, the dividend payment becomes available for use at council's discretion...
- A further amendment relates to the ability of councils which are water supply authorities under the *Water Management Act 2000* to also pay a dividend. The *Water Management Act* does not specifically constrain councils which are water supply authorities from paying a dividend. Nevertheless this ability needs to be put beyond doubt. The bill will specifically provide that the ability to pay a dividend as per the amendments to section 409(5) and the constraints on such a payment under section 409(6) and (7) also apply to local councils which are water supply authorities under the *Water Management Act*.”
51. The effect of this subsection therefore supports me in a view that s. 409(3) does apply to money received pursuant to the *WM Act*. However, it is not persuasive of whether s. 409(3) paragraphs (a) and (b) both apply. Given that in my view it is clear that (b) applies, I have not found subsection (8) particularly helpful in construing the proper scope of s. 409(3)(a).
52. On balance, I prefer the view that s. 409(3)(a) could apply to money received pursuant to the *WM Act*, as that section should be read in its full generality and with a corresponding scope to s. 409(1). Section 409(3)(b) would also apply if the conditions in that paragraph were satisfied.

² Hansard, Legislative Assembly, 28 May 2003.

2.3 Are there any provisions in the WMA that restrict how the money collected under the WMA can be spent?





53. I have not located any express provisions in the *WM Act* which restrict the way that money collected under the *WM Act* can be spent, in a way which is comparable to the effect of s. 409(3) of the *LG Act*, for example.
54. I would observe, however, that the provisions by which money is collected under the *WM Act* are in themselves restrictive of the way such money can be used. For example, many of the services for which charges can be levied under s. 310(1) of the *WM Act* are services which have been declared to be "government monopoly services" under s. 4 of the *Independent Pricing and Regulatory Tribunal Act 1992* ("the *IPART Act*"): see the *Independent Pricing and Regulatory Tribunal (Water; Sewerage and Drainage Services) Order 1997*. Under s. 11 of the *IPART Act*, IPART has a standing reference to make determinations of the pricing for government monopoly services supplied by government agencies specified in Schedule 1, and Schedule 1 lists "water supply authorities" for that purpose.
55. Therefore, charges which relate to those government monopoly services will be subject to IPART determinations, by which a maximum price or a methodology for fixing the maximum price will be set. I understand these to be based generally on a cost-recovery model. In such a system, it is difficult to envisage that there is very much scope for discretion in the spending of monies collected pursuant to the *WM Act*, as any surplus in one year would presumably be offset against the price determination in the following year. In the absence of a specific question arising for consideration, I will merely observe that in that way, the whole legislative scheme as applying to the Central Coast Council in its capacity as a WSA acts to restrain and control the ways in which it raises money for its operations. I would be happy to provide advice on any further question if you so wish.



Karen Smith
Crown Solicitor



Appendix three – Status of 2019 recommendations

Recommendation	Current status
Information technology	
The Office of Local Government within the Department of Planning, Industry and Environment (OLG) should develop a cybersecurity policy by 30 June 2021 to ensure a consistent response to cybersecurity risks across councils.	OLG are working with Cybersecurity NSW to develop a draft cybersecurity policy to share with councils by 30 June 2021. 
Key	 Fully addressed  Partially addressed  Not addressed

Appendix four – Status of audits

Below is a summary of the status of the 2019–20 financial statement audits, including the type of audit opinion and the date it was issued.

2019–20 audits

Key

Type of audit opinion		Date of audit opinion	
Unmodified opinion	✓	Financial statements were lodged by the statutory deadline of 30 November 2020	✓
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	!	Financial statements were not lodged by the statutory deadline of 30 November 2020. No extension from OLG.	!

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 Council	Unmodified	✓	16 October 2020	✓
Blacktown City Council	Unmodified	✓	30 October 2020	✓
Blue Mountains City Council	Unmodified	✓	28 October 2020	✓
Burwood Council	Unmodified	✓	29 October 2020	✓
Camden Council	Unmodified	✓	27 November 2020	✓
Campbelltown City Council	Unmodified	✓	28 September 2020	✓
City of Canada Bay Council	Unmodified	✓	20 November 2020	✓
Canterbury-Bankstown Council	Unmodified	✓	27 November 2020	✓
Central Coast Council	Modified	!	10 May 2021	✓

Council	Type of opinion		Date of audit opinion	
Cumberland Council	Unmodified	✓	30 October 2020	✓
Fairfield City Council	Unmodified	✓	28 October 2020	✓
Georges River Council	Unmodified	✓	6 November 2020	✓
Hawkesbury City Council	Unmodified	✓	11 November 2020	✓
Hornsby, The Council of the Shire of	Unmodified	✓	10 November 2020	✓
Hunters Hill, The Council of the Municipality of	Unmodified	✓	19 November 2020	✓
Inner West Council	Unmodified	✓	30 October 2020	✓
Ku-ring-gai Council	Unmodified	✓	23 September 2020	✓
Lane Cove Municipal Council	Unmodified	✓	23 October 2020	✓
Liverpool City Council	Unmodified	✓	25 November 2020	✓
Mosman Municipal Council	Unmodified	✓	13 November 2020	✓
North Sydney Council	Unmodified	✓	27 October 2020	✓
Northern Beaches Council	Unmodified	✓	30 September 2020	✓
Parramatta Council, City of	Unmodified	✓	5 November 2020	✓
Penrith City Council	Unmodified	✓	30 September 2020	✓
Randwick City Council	Unmodified	✓	14 September 2020	✓
Ryde Council, City of	Unmodified	✓	29 October 2020	✓
Strathfield Municipal Council	Unmodified	✓	19 November 2020	✓
Sutherland Shire Council	Unmodified	✓	21 October 2020	✓
Sydney, Council of the City of	Unmodified	✓	29 October 2020	✓
The Hills Shire Council	Unmodified	✓	7 September 2020	✓
Waverley Council	Unmodified	✓	21 October 2020	✓
Willoughby City Council	Unmodified	✓	11 November 2020	✓
Wollondilly Shire Council	Unmodified	✓	17 March 2021	✓
Woollahra Municipal Council	Unmodified	✓	14 October 2020	✓

Regional councils

Council	Type of opinion		Date of audit opinion	
Albury City Council	Unmodified	✓	23 November 2020	✓
Armidale Regional Council	Unmodified	✓	23 December 2020	✓
Ballina Shire Council	Unmodified	✓	22 October 2020	✓
Bathurst Regional Council	Unmodified	✓	6 November 2020	✓
Bega Valley Shire Council	Unmodified	✓	30 November 2020	✓
Broken Hill City Council	Unmodified	✓	16 November 2020	✓
Byron Shire Council	Unmodified	✓	30 November 2020	✓
Cessnock City Council	Unmodified	✓	6 November 2020	✓
Clarence Valley Council	Unmodified	✓	26 November 2020	✓
Coffs Harbour City Council	Unmodified	✓	27 October 2020	✓
Dubbo Regional Council	Unmodified	✓	26 November 2020	✓
Eurobodalla Shire Council	Unmodified	✓	30 November 2020	✓
Goulburn Mulwaree Council	Unmodified	✓	26 October 2020	✓
Griffith City Council	Unmodified	✓	26 November 2020	✓
Kempsey Shire Council	Unmodified	✓	24 November 2020	✓
Kiama, The Council of the Municipality of	Unmodified	✓	5 February 2021	✓
Lake Macquarie City Council	Unmodified	✓	28 October 2020	✓
Lismore City Council	Unmodified	✓	27 November 2020	✓
Lithgow City Council	Unmodified	✓	18 December 2020	✓
Maitland City Council	Unmodified	✓	11 November 2020	✓
Mid-Coast Council	Unmodified	✓	26 November 2020	✓
Mid-Western Regional Council	Unmodified	✓	6 November 2020	✓
Newcastle City Council	Unmodified	✓	20 October 2020	✓
Orange City Council	Unmodified	✓	30 November 2020	✓
Port Macquarie-Hastings Council	Unmodified	✓	29 October 2020	✓
Port Stephens Council	Unmodified	✓	22 October 2020	✓
Queanbeyan-Palerang Regional Council	Unmodified	✓	29 October 2020	✓
Richmond Valley Council	Unmodified	✓	23 October 2020	✓
Shellharbour City Council	Unmodified	✓	9 November 2020	✓
Shoalhaven City Council	Unmodified	✓	27 November 2020	✓
Singleton Council	Unmodified	✓	30 October 2020	✓
Snowy Monaro Regional Council	Unmodified	✓	23 November 2020	✓

Council	Type of opinion		Date of audit opinion	
Tamworth Regional Council	Unmodified	✓	6 November 2020	✓
Tweed Shire Council	Unmodified	✓	27 November 2020	✓
Wagga Wagga City Council	Unmodified	✓	26 October 2020	✓
Wingecarribee Shire Council	Unmodified	✓	29 October 2020	✓
Wollongong City Council	Unmodified	✓	5 November 2020	✓

Rural councils

Council	Type of opinion		Date of audit opinion	
Balranald Shire Council	Unmodified	✓	11 February 2021	✓
Bellingen Shire Council	Unmodified	✓	27 November 2020	✓
Berrigan Shire Council	Unmodified	✓	17 December 2020	✓
Bland Shire Council	Unmodified	✓	17 November 2020	✓
Blayney Shire Council	Unmodified	✓	17 November 2020	✓
Bogan Shire Council	Unmodified	✓	8 October 2020	✓
Bourke Shire Council	Unmodified	✓	30 September 2020	✓
Brewarrina Shire Council	Unmodified	✓	21 September 2020	✓
Cabonne Council	Unmodified	✓	11 November 2020	✓
Carrathool Shire Council	Unmodified	✓	29 October 2020	✓
Central Darling Shire Council	Unmodified	✓	17 February 2021	✓
Cobar Shire Council	Unmodified	✓	21 October 2020	✓
Coolamon Shire Council	Unmodified	✓	10 October 2020	✓
Coonamble Shire Council	Unmodified	✓	23 November 2020	✓
Cootamundra-Gundagai Regional Council	Unmodified	✓	18 December 2020	✓
Cowra Shire Council	Unmodified	✓	3 November 2020	✓
Dungog Shire Council	Unmodified	✓	29 January 2021	✓
Edward River Council	Unmodified	✓	19 November 2020	✓
Federation Council	Unmodified	✓	16 November 2020	✓
Forbes Shire Council	Unmodified	✓	30 November 2020	✓
Gilgandra Shire Council	Unmodified	✓	24 November 2020	✓
Glen Innes Severn Council	Unmodified	✓	30 November 2020	✓
Greater Hume Shire Council	Unmodified	✓	7 October 2020	✓
Gunnedah Shire Council	Unmodified	✓	28 November 2020	✓
Gwydir Shire Council	Unmodified	✓	2 November 2020	✓
Hay Shire Council	Unmodified	✓	9 October 2020	✓

Council	Type of opinion		Date of audit opinion	
Hilltops Council	Unmodified	✓	31 March 2021	✓
Inverell Shire Council	Unmodified	✓	26 November 2020	✓
Junee Shire Council	Unmodified	✓	9 November 2020	✓
Kyogle Council	Unmodified	✓	25 November 2020	✓
Lachlan Shire Council	Unmodified	✓	9 November 2020	✓
Leeton Shire Council	Unmodified	✓	29 October 2020	✓
Liverpool Plains Shire Council	Unmodified	✓	30 November 2020	✓
Lockhart Shire Council	Unmodified	✓	6 November 2020	✓
Moree Plains Shire Council	Unmodified	✓	26 November 2020	✓
Murray River Council	Unmodified	✓	27 November 2020	✓
Murrumbidgee Council	Unmodified	✓	26 November 2020	✓
Muswellbrook Shire Council	Unmodified	✓	27 November 2020	✓
Nambucca Shire Council	Unmodified	✓	26 November 2020	✓
Narrabri Shire Council	Unmodified	✓	30 November 2020	✓
Narrandera Shire Council	Unmodified	✓	4 September 2020	✓
Narromine Shire Council	Unmodified	✓	29 October 2020	✓
Oberon Council	Unmodified	✓	24 November 2020	✓
Parkes Shire Council	Unmodified	✓	3 December 2020	✓
Snowy Valleys Council	Unmodified	✓	19 November 2020	✓
Temora Shire Council	Unmodified	✓	10 November 2020	✓
Tenterfield Shire Council	Unmodified	✓	30 October 2020	✓
Upper Hunter Shire Council	Unmodified	✓	30 November 2020	✓
Upper Lachlan Shire Council	Unmodified	✓	17 November 2020	✓
Uralla Shire Council	Unmodified	✓	12 November 2020	✓
Walcha Council	Unmodified	✓	21 December 2020	✓
Walgett Shire Council	Unmodified	✓	27 November 2020	✓
Warren Shire Council	Unmodified	✓	4 November 2020	✓
Warrumbungle Shire Council	Unmodified	✓	23 November 2020	✓
Weddin Shire Council	Unmodified	✓	4 November 2020	✓
Wentworth Shire Council	Unmodified	✓	20 November 2020	✓
Yass Valley Council	Unmodified	✓	29 January 2021	✓

County councils

County council	Type of opinion		Date of audit opinion	
Castlereagh Macquarie County Council	Unmodified	✓	27 November 2020	✓
Central Tablelands County Council	Unmodified	✓	24 November 2020	✓
Goldenfields Water County Council	Unmodified	✓	1 October 2020	✓
Hawkesbury River County Council	Unmodified	✓	10 November 2020	✓
New England Weeds Authority	Unmodified	✓	27 August 2020	✓
Riverina Water County Council	Unmodified	✓	30 September 2020	✓
Rous County Council	Unmodified	✓	22 October 2020	✓
Upper Hunter County Council	Unmodified	✓	27 November 2020	✓
Upper Macquarie County Council	Unmodified	✓	11 August 2020	✓

Joint organisations

Joint organisation	Type of opinion		Date of audit opinion	
Canberra Region Joint Organisation	Unmodified	✓	12 January 2021	!
Central NSW Joint Organisation	Unmodified	✓	29 November 2020	✓
Far North West Joint Organisation	Unmodified	✓	30 October 2020	✓
Far South West Joint Organisation	Unmodified	✓	30 November 2020	✓
Hunter Joint Organisation	Unmodified	✓	30 November 2020	✓
Illawarra Shoalhaven Joint Organisation	Unmodified	✓	1 February 2021	✓
Mid North Coast Joint Organisation	Unmodified	✓	14 October 2020	✓
Namoi Joint Organisation	Unmodified	✓	23 October 2020	✓
New England Joint Organisation	Unmodified	✓	10 November 2020	✓
Northern Rivers Joint Organisation	Unmodified	✓	26 November 2020	✓
Orana Joint Organisation	Unmodified	✓	3 December 2020	✓
Riverina and Murray Joint Organisation	Unmodified	✓	30 November 2020	✓
Riverina Joint Organisation	Unmodified	✓	27 October 2020	✓

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)

Level 19, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000 Australia

PHONE +61 2 9275 7100

EMAIL mail@audit.nsw.gov.au

Office hours: 8.30am-5.00pm
Monday to Friday.