

Purpose	The purpose of this policy is to outline a framework for Council to consider undertaking private works for individuals or organisations.
Department	Works and Services
File No.	WOR/1350 and PLT/0500
Council Meeting Date	22 May 2024
Minute Number	104.05.2024
Next Review Date	Four (4) years from Council Resolution Date
Review History	New

1. Definitions

<u>Business Activity</u>	¹ An activity ‘that involves the production of goods and/or services in a market that is, or has the potential to be, competitive’.
<u>Competitive Neutrality</u>	The principle that government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership and should compete on fair and equal terms with businesses in the private and community sector.
<u>Council</u>	Flinders Council
<u>Major Private Works</u>	Means any private works valued above \$20,000 (excluding GST.)
<u>Minor Private Works</u>	Means any private works valued at or below \$20,000 (excluding GST).
<u>Private Works</u>	The supply of Council’s labour, materials, plant, services and any other resources where the provision of those services is beyond the role and responsibility of Council. For the purposes of clarity, this does not include the hire of plant without a council operator.
Significant Business Activity (SBA)	A business activity may be deemed ‘significant’ ² based on the following considerations: <ul style="list-style-type: none"> • What is the relevant market? (i.e. what is the product space and geographic area in which competition does, or could, exist)

¹ Treasury, <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

² Treasury, [Identification and management of significant business activities by local government in Tasmania](#)

	<ul style="list-style-type: none"> • What is the size of the relevant business activity in relation to the size of the relevant market? • What is the competitive impact (including the potential competitive impact) of the business activity in the relevant market? • Is the business a major player in the overall market? <p>If the business activity is the only local or regional provider of the service to the community, would competitors emerge if that business operated differently?</p>
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2. Objective

The purpose of this policy is to:

- 2.1. Provide transparent, objective and consistent guidelines for any circumstance where Council considers undertaking private works.
- 2.2. Provide a framework for Council to undertake private works at a cost recovery price, including an acceptable profit margin, that is consistent with the anti-competitive requirements of the *Trade Practices Act 1974*, *Local Government Act 1993* and the National Competition Policy.

3. Scope

This policy applies to all private works undertaken by Council on behalf of any applicant including:

- 3.1. Private works undertaken on behalf of individuals, private organisations and businesses. Works may include the supply of labour, materials, plant, services, and other resources.
- 3.2. Works undertaken for state government departments and local service authorities, excluding contracted work for the State Government and TasWater.

4. Policy

It is the policy of Council that:

- 4.1. No private works be undertaken unless there is no other entity available to undertake the work or unless other extenuating circumstances apply.
- 4.2. Private works requests will only be considered if made in writing to the General Manager.
- 4.3. Priority for use of Council's plant, equipment, labour and other resources is to be given to Council's own works program at all times, before entering into any private works arrangement.

5. Guidelines

5.1. Competitive Neutrality³

If a private works arrangement is under consideration, Council must determine if competitive neutrality principles should apply to the activity, as per the National Competition Policy (NCP).

The objective of competitive neutrality is to eliminate resource allocation distortions arising out of the public ownership of entities engaged in significant business activities.

The principal objective of the NCP is to promote competition within the economy where it is considered to be in the public benefit. The underlying premise is that increased competition in a market leads to greater efficiency and productivity throughout the economy. Under the NCP, the application of competitive neutrality principles applies only to significant business activities. If the business activity is deemed significant, Council must consider if the application of competitive neutrality principles would be in the public interest.

5.2. Consideration of Private Works Request

5.2.1 Private works will only be considered in the following circumstances:

- There is no private contractor available to undertake the work;
- The project would be of strategic, economic, social or environmental benefit to the community;
- The Council has the capacity to engage in the project; and/or
- It may provide a valuable training opportunity for Council Staff.

5.2.2 Major private works (valued over and above \$20,000 (excluding GST)) will require the consent of Council by resolution.

5.2.3 Minor Private Works (valued at or below \$20,000 (excluding GST)) will require the written consent of the General Manager.

5.3. Costings

5.3.1 Costings for all private works will include on-costs, freight, penalty rates where applicable and profit margin.

5.3.2 Costings will require a quotation to be prepared and accepted prior to commencement of works. Quotations for private works will be based on Council's costs plus:

- 8% Direct Overheads (apportionment of Depot Labour, Materials and Building Costs);
- Plus 12% Indirect Overheads (apportionment of Corporate Costs to support the activity); and
- Plus 20% Margin to cover variances in pricings, time, plus contribution to profit.
- All estimates and quotes provided are GST-inclusive.

³ Treasury, <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/competitive-neutrality-policy>

- 5.3.3 Minimum charges, mobilisation and demobilisation costs will be included in all quotes for private works. A minimum charge rate of two (2) hour plant hire for each machine engaged will apply to private works.
- 5.3.4 Quotes may include a contingency sum.
- 5.3.5 Variations to scope may incur additional charges to the original quote and must be agreed in writing by both parties before works commence.
- 5.3.6 Any disputes arising as a result of private works will be managed through Council's Customer Service Charter dispute process.

5.4. Works Agreement

- 5.4.1 Council will only undertake private works following the execution of a works agreement for either a fixed price or a schedule of rates, with detailed scope of works and terms of trade included.
- 5.4.2 The scope of works for Minor Private Works must be clearly outlined, including the works to be undertaken, permits required, estimated quantities of materials to be used and a timeframe in which the work is to be carried out.
- 5.4.3 The scope of works for Major Private Works must include design drawings, specifications where appropriate and all permits required to be provided to Council prior to commencement of works.
- 5.4.4 Where Council agrees to undertake Private Works on private property not owned by the hirer, the hirer shall have adequate public liability insurance to cover the activities of the services provided. Evidence of that insurance and permission of the landowner must be provided to Council prior to commencement of the works.
- 5.4.5 All private works are to be undertaken in accordance with Council's standard operating procedures and employee agreements and in compliance with Council's risk management and workplace health and safety procedures.

5.5. Payment

- 5.5.1 Upon completion of the activity, the relevant Council Coordinator will arrange for the private works to be invoiced.
- 5.5.2 Payment terms are 30 days.
- 5.5.3 The applicant is responsible for paying the invoiced amount in full by the due date.
- 5.5.4 A deposit or milestone payment may be required for Major Private Works.
- 5.5.5 As Council is responsible for the payment of Council operators engaged on private works, no other payment arrangements are permissible.

5.6. Conflict of Interest

- 5.6.1 Council employees, volunteers, consultants and contractors, are bound by the conflict of interest requirements detailed in the Council's Employee Code of Conduct Policy, and as such:
- must not gain any advantage when private works are undertaken by Council;

- must not gain an advantage over the general public; for example, they cannot get an advantage in relation to GST, or purchase items on Council's accounts to gain a corporate discount; and
- must pay the same rates and charges for private works that would apply to anyone else.

5.6.2 Elected members are also bound by the conflict of interest requirements detailed above.

5.6.3 Applications for private works from the General Manager require the approval of Council.

6. Legislation and Related Policies

Competition and Consumer Act 2010

Local Government Act 1993

Trade Practices Act 1974

Workplace Health and Safety Act 2012

Flinders Council Employee Code of Conduct Policy

Flinders Council Risk Management Framework

National Competition Policy

7. Responsibility

The General Manager has delegated power under this policy to implement decisions of Council relating to private works in accordance with section 22(1) of the *Local Government Act*.

The General Manager may sub-delegate such powers and functions in accordance with section 64(b) of the *Local Government Act*. This means that the General Manager or sub-delegate has the authority to make any decisions relating to private works.