



# Procurement Review Internal Audit Report

**Macquarie Point Development Corporation**

August 2022

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# Contents

Contents	3
1. Executive summary	4
2. Internal audit findings	6
Appendix 1: Objective, scope and approach	11
Appendix 2: List of contracts comprehensively reviewed	12

# 1. Executive summary

In accordance with the Engagement Letter dated 10 June 2022 for Outsourced Internal Auditing Services, as approved by the Chair of the Board, an independent review of Macquarie Point Development Corporation's (MPDC) Procurement and Contracting Compliance was performed.

## 1.1 Objective and scope

The overall objective of this project was to undertake a compliance internal audit specifically in relation to procurement and contracting activities. The scope of this work included a sample of procurement, contracting and other commercial arrangements (namely leases) entered into by MPDC since 1 July 2017.

The nature and scope of this project specifically excludes any formal investigation services.

## 1.2 Approach

As a statutory authority MPDC is required to comply with the Tasmanian Government's Procurement Treasurer's Instructions (TI's) when undertaking procurement activities. Over and above this requirement, MPDC has additional, internal requirements including delegations of authority from the Board to management.

Internal audit utilised the following approach to select a sample of procurement contracts to consider compliance with the TI's:

**Consultations with MPDC staff** – Internal Audit met with a range of current staff in order to determine any procurement activities that may have attracted criticism in the past. All current staff were briefed on the scope of this independent review and were provided with the opportunity to meet with Internal Audit in a confidential manner. In addition, Internal Audit consulted with several key, senior staff (including those responsible for finance and key projects/procurements).

**Data analytics** – Internal Audit obtained MPDC's complete financial ledgers from 1 January 2017 from both Finance One and MYOB. Data analytics were used to select further samples of purchases or procurements of interest including the following analysis:

- Consideration of the TI's value based market approach requirements for any attempt to deliberately fall under thresholds thereby avoiding additional procurement requirements.
- Ongoing expenditure with contractors to consider contracts which may not have been appropriately varied or extended.
- Multiple transactions with contractors to investigate attempts to invoice split, a process whereby contractors are directly awarded contracts in smaller stages as opposed to having to go through a competitive process for a single larger contract.

**Exit interview transcripts** – Internal Audit requested access to specific exit interview transcripts that included reference to improper procurement activity. These specific procurements were selected for further consideration.

The above activities identified a total of 34 procurements of interest. Internal Audit undertook preliminary enquiries into all 34 and through consideration of documented evidence 24 were deemed

as appropriate. The ten remaining procurement activities warranted detailed consideration and were subject to detailed testing across all procurement and where relevant accounts payable processes.

As outlined above, the scope of this Internal Audit included procurement, contracting and other commercial arrangements (namely leases). The above approach was comprehensive in considering procurements and related contracts.

However, in relation to other contracts or commercial arrangements (leases), Internal Audit were unable to complete the required testing. The reason for this was there are no frameworks/requirements against which to test compliance (TIs aren't applicable and for example there is no MPDC policy or procedure relating to commercial leases).

We would note, that as a result of this review, Management have committed to developing a leasing and licensing policy, for review and approval by the acting CEO. A copy will also be provided to the Board for noting.

## 1.3 Overarching observations

Based on the samples selected, information and evidence provided, Internal Audit saw no evidence of deliberate actions taken to circumvent TIs or other MPDC requirements.

Two findings have been identified, being 'Retention of Key Documentation' (multiple instances indicating a pervasive issue) and 'Non-Compliance with Treasurers' Instruction' (two instances). Both findings are detailed in the following section of this report and point to the need for improved discipline in relation to record keep and governance in respect to procurement activity.

Pertinent to this report and to the findings outlined in Section 2 is the annual Internal Audit project focussed on elements of the TIs. Since 2015, and as required by the TIs, MPDC has commissioned an Internal Audit project to test samples of major works, direct/limited sourcing and contract extensions. For the eight years that this project has been undertaken, there has only been one year (2019) where any findings higher than low were identified (relating to record keeping and also compliance with TIs).

Whilst this report identifies historic issues with record keeping, the annual TI compliance Internal Audit \* has not (aside from in 2019) identified any issues with provision of documentation. Since 1 July 2017, there has been significant turnover of staff, a change in office location and also a change in information technology systems. With this backdrop, it wouldn't be unexpected for there to be some challenges regarding complete and accurate record keeping.

In addition, whilst outside of the scope of this project, we observed that MPDC would benefit from enhancing internal policy and procedure relating to procurement, contracting and other commercial arrangements (including leasing).

*\*Note, the annual TI compliance Internal Audit is limited to sample testing of major works, contract extensions and direct/limited submission, appointments.*

## 2. Internal audit findings

### 1 Retention of Key Documentation

#### Finding

The TI's state at Procurement Principle 1.3 that "*accurate records must be kept throughout a procurement to justify the process and decisions made*". Prior versions of the Treasurer's Instructions dating back to 2017 also specify this requirement. Further, Procurement Principle 1.4 states "*decisions must be able to withstand public scrutiny*".

During our review over the ten procurement contracts and associated activity, Internal Audit noted that several key documents were unable to be provided and there was a notable absence of stored documentation to support evidence of decision making. Specifically:

- We were unable to obtain signed contracts for three procurements:
  - Geo-Environmental Solutions AA4 Escarpment 2019
  - Renewable Intelligence Consultancy Services District Energy Scheme 2020
  - Evolve Tourism 2022
- Three contracts had variations with limited or no documentation retained (such as a signed deed of variation) nor was there a documented rationale for why it was agreed to treat these as a contract variation as opposed to a new procurement:
  - Geo-Environmental Solutions AA4 Escarpment 2019 Contract
  - Geo-Environmental Solutions Road/Vehicular Access/Stairlink 2019 Contract
  - Pitt and Sherry Design of Northern Vehicular Access 2018 Contract
- Two contracts had variances between the initial proposal amount and the eventual signed procurement contract amount:
  - Knight Frank AA4 Escarpment 2019 Contract had a variance between the proposal for \$105,000 and contract signed for \$75,000.
  - Evolve Tourism 2022 Contract had a variance between the initial proposal of \$223,900 and secondary proposal/contract for \$38,200.

Noting that in both the above instances the final contracted amount has decreased from the initial proposal we would note that this could have altered the required market approach under TI's. Internal Audit were only able to obtain anecdotal or informal documented rationale as to why the significant variations occurred.

- One contract had unsigned, informal/insufficient documented rationale for the Pre-Procurement Local Impact Assessment and approval of exemption to disaggregate (a key pillar of the buy local policy, the aim of which is to give local proponents more opportunity to participate in tender opportunities). This was:
  - AECOM Australia Formal Deed of Variation 2017 Contract

## Impact

Procurement Principle 1.3 states “*accurate records must be kept throughout a procurement to justify the process and decisions made*” and Procurement Principle 1.4 states “*decisions must be able to withstand public scrutiny*”. A lack of retention of key documentation that documents decision making means MPDC is not compliant under these TI’s. Further, without signed contracts on hand there is also an increased risk of MPDC not being able to enforce contracts should a dispute arise.

Per Procurement Principle 1 (Valuation) MPDC is required to estimate the total maximum value of a procurement, including any options to extend. The estimated value cannot be divided up or estimated for the purpose of avoiding the application of applicable procurement thresholds. Procurements with large variances, and insufficient documentation surrounding the need to vary, may call into question whether the procurement was appropriately valued in the initial stages.

## Recommendation

We recommend management

- 1 Investigate and remediate the above instances of missing signed contracts.
- 2 Investigate system solutions to aid effective record keeping and document retention to ensure that clear decision making is captured, and that appropriate and auditable documentation is available to support MPDC decisions and contractual arrangements. This could include considering further integration or leverage of systems and processes used by the Department of State Growth.
- 3 Develop and communicate formal guidance on what records must be retained to support procurement decisions and the form in which it should be maintained (such as signed contractual arrangements).
- 4 Consider how management and the Board can satisfy themselves of compliance with record keeping requirements going forward. This could include use of Internal Audit to provide regular, independent feedback.

## Management Comments

Management accept the above finding and recommendations and outline below our actions:

In response to recommendation 1:

- A copy of the contract and/or record of agreed arrangements to be located or a copy sought from the recipient and saved in Content Manager as the Corporation’s auditable Electronic Data Management System.
- Referenced in Finding 2, a copy of the contract and/or record of agreed arrangements to be located and saved in Content Manager as per above.

In response to recommendations 2 and 3:

- Develop a procurement policy that provides a framework with clear stages and checklists to support Corporation Staff to consistently undertake procurement activity. The Policy will be developed with links to the guiding tools and information provided at [purchasing.tas.gov.au](http://purchasing.tas.gov.au), through TIs, and informed by State Growth templates and guiding information.
- Establish a role to coordinate and monitor all procurement activity, oversee regular reporting, and support liaison with State Growth, Treasury and referrals to Crown Law for advice.
- Undertake training as a team to support the use of Content Manager and establish business practices to capture all procurement business records in a consolidated procurement classification or file.

- Share the Procurement Review report with the team and discuss immediate changes/clarifications in business practices.
- Highlight in the procurement policy and framework, and in discussions with the team, the importance of observing the Buy Local requirements and to consider total quantum (such as allow for some contingency and full proposed contracted term) when estimating the total value of contracts, to help select the appropriate procurement mechanism.

In response to recommendation 4:

- Provide updates to the Board on the implementation of the actions listed in this Minute, as part of the standing CEO report at Board meetings.
- Seek advice from the Internal Auditor on the internal procurement policy before finalising.
- Establish a role to coordinate and monitor all procurement activity, as noted in response to items recommendations 2 and 3 above.



## 2 Non-Compliance with Procurement Treasurer's Instructions

### Finding

Through consideration of the ten procurement contracts selected for detailed testing, Internal Audit identified the following instances of non-compliance with the TIs as detailed below:

Procurement Contract	Non-Compliance Description	Relevant Treasurer's Instruction
Renewable Intelligence (2020) Consultancy for District Scheme Architecture	An initial arrangement was entered into for a period of two months for an upper contract limit of \$40,000. Data analytics identified that additional works were undertaken by Renewable Intelligence, with work performed totalling \$459,720 without any consideration given to any extension or variation of the contract. From discussions with the Chair of the Board we anecdotally understand that the proposal to continue to engage RI was considered by to the Board. However, the appropriate procurement processes do not appear to have been implemented by Management following that discussion.	Treasurer's Instruction No TI-1115 (archived) which details requirements in relation to contract extensions for goods and services.
AECOM Australia (2017) Deed of Variation Remediation Services Contract	Documentation provided indicated that the Exemption to Disaggregate was conducted after the contract was awarded and signed.	Treasurer's Instruction No TI-1119 (5) (archived) which details the requirement to seek and approve exemption to disaggregate prior to the commencement of the Procurement Process.

### Impact

The TIs are provided to government departments, statutory authorities, GBEs and state-owned enterprises to ensure that mandatory purchasing requirements and government policies and procedures for procurement and contracting are adhered to as per the *Financial Management Act 2016*. Failure to comply with the TIs could lead to the improper management of the public finances of Tasmania, in a manner that is inefficient, ineffective and inconsistent with accounting standards and financial practices.

### Recommendation

We recommend management consider the non-compliances identified above and undertake remediation action where deemed appropriate. With Renewable Intelligence continuing to provide services, management should consider actions to mitigate the risks going forward including termination/suspension of contract and new procurement activity in line with TI requirements.

## Management Comments

Management accept the above finding and recommendations.

Management note the following with regard to Renewable Intelligence Consultancy for District Infrastructure Scheme:

The following options have been considered to remediate:

- A retrospective direct appointment
- Cease all activity with the consultant
- Implement a new direct appointment arrangement.

Discussions with staff involved in the project indicated that work is currently at a key point in establishing Term Sheets between the DIS proposed service provider and the Corporation, with Renewable Intelligence providing specialist technical advice to assist with this.

### Action:

Given the status of the Term Sheet negotiations, the proposed action is as follows:

- COO to seek a quote from Renewable Intelligence for their services to finalise the Term Sheets.
- The proposal will then be reviewed and considered by the acting CEO to determine if a direct appointment is appropriate for the finalisation of the draft Term Sheets only.
- An overview of the District Infrastructure Scheme project, including work undertaken and costs incurred to date will be prepared, along with the expected future costs, works required and risks and benefits of the scheme, and presented to the Board for consideration and to agree on the next steps for the project.
- If the project will proceed, a RFQ/RFT process will be undertaken to procure any further specialist advice that may be required.

Management note the following with regard to AECOM Australia (2017) Deed of Variation Remediation Services Contract:

A review of the report indicates that this arrangement is historic and is not a current contract. Appendix 2 indicates that the Procurement Review also considered the more recent engagement of AECOM including the 2019 and 2021 contracts. There are no apparent concerns with the more recent contracts.

### Action:

- Highlight the importance of complying with the Buy Local policy as part of the actions taken to improve processes in response to Finding 1.
- If further remediation advice is required outside the term of the current contract being negotiated, an open process will be undertaken to test the market and procure a suitable specialist consultant.

# Appendix 1: Objective, scope and approach

A summary of the objective, scope and approach is outlined below:

## Objective and Scope

The overall objective of this Internal Audit was to undertake a compliance internal audit specifically in relation to Procurement and Contracting activities. The scope of this work included a sample of procurement, contracting and other commercial arrangements (namely leases) entered into by MPDC since 1 July 2017. The scope of this work covered the period commencing 1<sup>st</sup> July 2017 until the production of this report.

## Approach

This engagement followed the below approach:

### Phase 1: Planning Consultations

- Attended a whole of Corporation staff briefing that invited input from any staff member on the scope of sample of activities that should be considered for review as part of the engagement.
- Met with Senior Corporation employees plus other staff that wished to participate to understand any specific focus areas for the fieldwork phase.

### Phase 2: Fieldwork

- Selected an initial sample of procurements, contracts and other transactions.
- Provided the Corporation with a document request list.
- Undertook detailed testing with reference to the Treasurers' Instructions, Corporation Policy and Procedures and other relevant guidance.

During this phase we met with the Chair of the Board regularly to discuss our findings.

### Phase 3: Finalisation

- Attended a Close out meeting to verbally discuss findings with the Chair of the Board
- Prepared a draft report
- Met with the Chair of the Board to discuss any feedback on the report
- Finalised the report.

Please note that the Scope specifically excluded any formal investigation services.

# Appendix 2: List of contracts comprehensively reviewed

Supplier	Procurement Description	Date
AECOM Australia Pty Ltd	Remediation consultation services.	2017
Pitt & Sherry Operations Pty Ltd	Design of northern vehicular access.	2018
AECOM Australia Pty Ltd	Remediation services AA6	2019
Geo-Environmental Solutions Pty Ltd	AA4/escarpment.	2019
Geo-Environmental Solutions Pty Ltd	Road/vehicular access/stairlink.	2019
Knight Frank	Escarpment sale.	2019
Renewable Intelligence	Consultant services - district energy scheme EOI process, operational structure and district scheme architecture.	2020
Johnstone, McGee & Gandy Pty Ltd	Supply of consultant services – Hobart main sewer diversion.	2021
AECOM Australia Pty Ltd	Principle remediation consultant.	2021
Evolve Tourism		2022

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