

# Policy

## Competitive Neutrality

Responsible Manager (Title)	Manager Finance & Supply		
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Document(s) this policy Supersedes	Competitive Neutrality Policy V3.0 (adopted 19 May 2015)		
Community Plan Linkage	5 Leadership		
	5.2 We will have an effective and efficient organisation		
	5.2.1 Operates in a financially responsible and sustainable manner		

### 1. Purpose

The Competitive Neutrality Policy will ensure the principle of competitive neutrality is adhered to in the business activities of Clarence Valley Council. The principle underlies the National Competition Policy, which is applied to government businesses at all levels throughout Australia, and included in the *NSW Government Policy Statement on the Application of National Competition Policy to Local Government (June 1996)*.

### 2. Definitions

**Competitive Neutrality** – requires that government businesses, whether Commonwealth, State or Local, operate without net competitive advantages over other businesses as a result of their public ownership.

**Corporatisation** – Council’s business activities must be capable of being separately identified within the operations of Council, and have their accounting and other operations structured in such a way as to provide a distinct reporting framework on their operations to Council.

**Category 1 business** – those business units of Council with annual gross operating income of more than \$2m.

**Category 2 business** – Council has no category 2 businesses.

### **3. Background/legislative requirements**

The principle of competitive neutrality centres on the concept that government businesses should operate without competitive advantage over private businesses as a result of their public ownership, and that any competition should be on a 'level playing field'. As a result of the increased competition, greater efficiencies and lower costs should be generated, ensuring a public benefit.

It is recognised that social implications as a result of the application of this principle need also to be taken into account, and exemptions on this basis can be considered. In some instances, the application of the principle of competitive neutrality and the resultant cost to the community may outweigh any benefits identified in its application.

The principle of competitive neutrality applies only to the business activities of Council, and not the non-business, non-profit activities. There are 2 categories of business activity. Category 1 businesses are those business units of Council that have an annual gross operating income in excess of \$2m. The competitive neutrality principle may also be applied to those businesses that have an annual gross operating income less than \$2m, but to a reduced extent, and at Council's discretion.

The Competitive Neutrality Guidelines prepared by the Office of Local Government suggests that the following activities may be regarded as businesses:

- a) water supply;
- b) sewerage services;
- c) abattoirs;
- d) gas production and reticulation

Other areas may include Tourism and Information Centres, or Caravan Park management.

Category 1 business units of Council must adhere to the following minimum standards:

- a) adopt a corporatisation model;
- b) apply full cost attribution, including tax equivalent regime payments, debt guarantee fees (where the business benefits from Council's borrowing position by comparison with commercial rates);
- c) make explicit any subsidies paid to the business;
- d) operate within the same regulatory framework as private businesses.

Category 2 business units must:

- a) make any subsidy to the business explicit as part of the calculation of costs;
- b) apply full cost attribution where practicable;
- c) be free to determine the extent to which the business will be separated from other associated mainstream activities;
- d) operate within the same regulatory framework as private businesses.

Essential to the principle of competitive neutrality is the opportunity for competing organisations or contractors to access a formal complaints process in situations where they feel the principle is being breached.

### **3.1 Undertaking benefit/cost analyses**

Council must consider the benefits and costs of applying the competitive neutrality principle to a business activity. In order to do this, the following must be considered:

- a) Government legislation and policies relating to ecologically sustainable development;
- b) social welfare and equity considerations, including community service obligations;
- c) Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- d) economic growth and regional development, including employment and investment growth;
- e) the interests of consumers generally or of a class of consumer;
- f) the competitiveness of Australian businesses, and
- g) the efficient allocation of resources.

### **3.2 Benefits of Competitive Neutrality**

The benefits of competitive neutrality for Council and the community include:

- a) pricing policies which are fairer and more cost reflective
- b) a better allocation of resources
- c) decisions being made with a clearer knowledge of true costs and potential revenues

It is assumed that a more detailed and accurate costing process will ensure Council is aware of the full costs and revenues of a business activity, required for realistic strategic planning, budgeting and performance measurement. Benefits may also be realised in determining best practice or assessing new services.

Specifically, the requirements for Council in the Category 1 activity are as follows:

- a) Establish a complaints handling system for competitive neutrality issues.
- b) Separate internal reporting for business activity.
- c) Apply full cost attribution, including:
  - 1) tax equivalent payments;
  - 2) debt guarantee fees;
  - 3) return on capital.
- d) Make subsidies to business activities an explicit transaction.
- e) Comply with the same regulation as the private sector.

### 3.3 External reporting

**Management Plan** – must include a statement of the objectives and performance targets, means of achieving those targets and the manner of assessing those targets for each of Council's principal activities. Category 1 businesses should be viewed as principal activities.

**Annual reports** – must include a statement of expenses incurred, revenue raised, assets acquired and assets held for each of Council's principal activities (Category 1 businesses). Council is also required to provide a summary of its progress in implementing the competitive neutrality principle, including complaints received and the outcomes of any investigations.

**Financial Reporting** – Council is required to implement separate accounting for individual business activities, consistent with Australian equivalents to International Financial Reporting Standards (AIFRSs), other authoritative pronouncements of the Australian Accounting Standards Board, Urgent Issues Group Interpretations, the Local Government Act (1993) and Regulations and the Financial Reporting Guidelines for NSW Councils. This applies to Category 1 and 2 business activities.

## 4. Appeal/objections process

Council must have in place a complaints mechanism for any actual or potential competitor of Council who may feel they are being adversely affected by Council failing to adopt the competitive neutrality principle or apply this policy.

### 4.1 Lodging a Competitive Neutrality Complaint with Council

Written complaints should be sent to Council by normal mail (Locked Bag 23, Grafton 2460), by fax (6642 7647), by email ([council@clarence.nsw.gov.au](mailto:council@clarence.nsw.gov.au)) or delivered over the counter during normal work hours.

Initial enquiries are to be directed to the Public Officer, who will provide advice and assistance with the preparation and submission of any complaints.

Competitive neutrality complaints must be made within 3 months of the event, and investigations will be undertaken generally within 30 days of date of receipt. Complaints should be addressed to the General Manager who may delegate the investigation to the Public Officer.

Competitive neutrality complaints which establish that Clarence Valley Council:

- a) has not met its requirements under the National Competition Policy Statement or Pricing and Costing for Council Businesses – a Guide to Competitive Neutrality; or
- b) has not abided by the spirit of competitive neutrality in the conduct of Council business activities

will result in changes to Council's business practice to ensure future and continued compliance with the principle of competitive neutrality. Where a complaint is found to be substantiated, a report will be prepared with recommendations for changes to the practices of that business activity.

All complaints received will be handled with strict confidentiality and in accordance with Council's Privacy Management Plan.

## **4.2 Lodging a Competitive Neutrality Complaint with an External Agency**

Competitive neutrality complaints may also be referred to the following external agencies for investigation:

- a) NSW Office of Local Government
- b) NSW Ombudsman
- c) NSW Independent Commission Against Corruption
- d) Australian Competition and Consumer Commission

## **5. Related Documents**

*Pricing & costing for Council Businesses: A guide to Competitive Neutrality (July 1997)*, issued by the Office of Local Government

*Policy Statement on the Application of Competitive Neutrality (TPP 02-1 January 2002)*, at <https://www.treasury.nsw.gov.au/nsw-economy/competition-policy>

*Competition Principles Agreement – 11 April 1995 (As amended to 13 April 2007)*, at <https://www.coag.gov.au/about-coag/agreements/competition-principles-agreement>