



Policy Name	NATIONAL COMPETITION POLICY
Policy No	7.63.7
Reviewed By	Lynne Jolley Manager Corporate Governance
CEO Authorisation	Rob Donaldson CEO
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1. GENERAL

The Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement (September 2002) and the Government Business Enterprises (Competition) Act 1996 provide the framework for implementing National Competition Policy by local government entities in South Australia.

Council is supportive of the objectives of the National Competition Policy, which aims to:

- Develop an open and integrated Australian market for goods and services,
- Ensure no buyer or seller is able to engage in anti-competitive conduct against the public interest,
- As far as possible, apply the same rules of market conduct to all participants, regardless of the form of business ownership, and
- Ensure that the regulation of business activities which restrict competition is subject to an assessment of likely costs and benefits.

Note: The National Competition Policy does not require local governments to divest themselves of business activities, to contract out services, or to engage in competitive tendering for the purchase of goods and services.

2. BY-LAWS RESTRICTING COMPETITION

When considering any by-law or policy restricting competition by placing barriers on market entry or conduct or discriminating against competitors, Council must be able to demonstrate that the benefits of the restriction to the community as a whole outweigh the costs.

3. COMPETITIVE NEUTRALITY

Where Council provides goods or services in a competitive market, these business activities shall not have an unfair advantage over private sector businesses by virtue of local government ownership. The three options available to Council to implement competitive neutrality are:

3.1. *Corporatisation*

Involves creation of separate legal entity, characterised by clear and non-conflicting objectives; separate managerial responsibility, authority and autonomy; effective performance monitoring; and effective rewards and sanctions related to performance.

3.2. Commercialisation

Requires application of commercial practices to business elements of Council without establishing a separate legal entity. Attributes of commercialisation would typically include some or all of:

- a separate business plan
- the determination of an appropriate return on investment
- clear commercial performance targets
- separate financial recording and reporting
- separation of regulatory functions from any commercial activity
- application of tax equivalent regime
- application of debt guarantee fees
- arrangements for allocation of “profits” from the business activity.

3.3. Cost Reflective Pricing

Cost reflective pricing is a mechanism used to arrive at a price which is competitively neutral. Appropriate for smaller business activities, cost reflective pricing is a calculation of the costs of providing the service, taking into account:

- Actual costs of providing the goods and/or services on a full-cost basis
- Cost advantages of local government, (eg. lower cost of finance, less taxes)
- Cost disadvantages of local government, (eg. increased accountability and administration)
- Return on investment and dividend payment to Council.

This can be achieved by ring-fencing the business activity from other Council activities.

4. IMPLEMENTATION OF COMPETITIVE NEUTRALITY

Council shall apply competitive neutrality principles, where appropriate to any significant business activity carried out by Council, unless the costs of implementing the principles are greater than the benefits to be realised.

A significant business activity includes any activity undertaken where:

- The activity is primarily involved in producing goods and services for sale in the market, and
- The activity has a commercial or profit making focus, and
- There are user charges for goods and/or services, and
- The activity is not primarily funded from rate or grant funding, or
- Council submits a tender as part of a tending process in competition with the private sector.

However a significant business activity does not include any activity where there is no competition with local suppliers or where the achievement of community benefits is the main priority of the activity.

5. **COMPLAINTS PROCESS**

Complaints against Council alleging an infringement of the principles of competitive neutrality should be made through the Department of Premier and Cabinet (DPC) and:

- (a) must be in writing; and
- (b) must contain full details of the alleged infringement; and
- (c) must contain any further information required under the regulations

6. **REPORTING**

Council will include in its Annual Report, where relevant, information in relation to:

- The commencement or cessation of significant business activities controlled by Council;
- Competitive neutrality measures applied to each significant business activity; and
- Review of any by-laws which restrict competition, including proposals for new by-laws.
- Complaints received alleging breach of competitive neutrality principles

This information may be presented in summary form.

7. **RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy, will be enacted upon as per Council's current Delegations Register.

8. **REVIEW**

This policy shall be reviewed by the City of Port Lincoln within twelve months after the conclusion of each periodic election or on significant change to legislation or aspects included within this policy.

9. **REFERENCES**

- [Government Business Enterprises \(Competition\) Act 1996](#)
- [LGA Guide to National Competition Policy and Competitive Neutrality](#)
- [Revised Clause 7 Statement on the application of Competition Principles to Local Government under the Competition Principles Agreement](#)