

POLICY

Public Reaction – Complaints – Competitive Neutrality

Date adopted by Council	27 June 2022
Minute number	H.06.2.d
Endorsed by	Senior Management Group
CM Ref	CD-19/22
Due for review	June 2026
Related documents	Policy – Customer Service – Complaints Handling
Responsible officer	Director Corporate Services
Department/Section	Corporate Services
Category	Governance
Community Strategic Plan goal	<p>Goal 5 Responsible Governance</p> <p>SO 5.1 Effectively and efficiently manage the business of Council, while encouraging an open and participatory Council with an emphasis on transparency, community engagement, action and response.</p>



Policy Statement

This policy outlines how Council will handle and manage competitive neutrality complaints. By establishing clear guidelines and procedures for the handling and management of these complaints, Council will be in a stronger position to ensure:

- Non-regulatory service functions operate under similar competitive pressures to those experienced by the private sector; and
- Services provided are relevant, cost effective and operationally efficient.

Objective

To ensure complaints relating to competitive neutrality are dealt with appropriately.

Scope

A competitive neutrality complaint **IS**:

- A complaint that Council has not met its requirements under the National Competition Policy Statement of *Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality* and includes concern that the Council has not established an effective Competitive Neutrality Complaints Management System.
- A complaint that Council has not abided by the spirit of competitive neutrality in the conduct of Council business activities.

A competitive neutrality complaint **IS NOT**:

- A complaint regarding the level of service provided by a business activity such as inadequate water quality, a mobile garbage bin not collected or the condition of a road or footpath.
- A complaint regarding the cost of the service, unless it is that Council has not costed the service to take competitive neutrality into account.
- A complaint regarding the trade practices laws and their application to the Council.

Definitions

Competitive Neutrality	Requires that government businesses, whether Commonwealth, State or Local, operate without net competitive advantages over other businesses as a result of 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	Those business units of Council with an annual gross operating income of less than \$2m.



Policy Details

Purpose

This policy has a threefold purpose:

- Firstly, it may be used by members of the public and the owners of businesses competing in the same market as Council to submit complaints to the Council alleging that the Council is operating with net competitive advantages as a result of the Council's ownership of a business activity or service.
- Secondly, it will provide a formal mechanism for the investigation, determination and advice of the outcome of a complaint alleging that non-regulatory service functions discharged or business activities operated by the Council are operating with competitive advantage over other private businesses.
- Thirdly, it will serve to ensure that Council staff continuously monitor non-regulatory services provided by the Council operate under the principles of Competitive Neutrality.

Council Business Activities Subject To Competitive Neutrality

Category 1 Business Activities

Council does not operate any Category 1 Business Activities (i.e. business activities that exceed the \$2M annual sales turnover threshold).

Category 2 Business Activities

The following Council owned and operated activities have been categorised as Category 2 Businesses and are subject to competitive neutrality. Each business activity has an annual gross turnover under \$2M per year.

Recording Complaints

Complaints may be received via telephone, in writing or over the counter.

All complaints will be recorded by the staff member receiving the complaint, and will include the following:

- Date and time
- Staff member's name
- Complainant's name, address and telephone numbers
- Nature and details of the complaint

Processing Complaints

The Public Officer will examine and investigate the complaint. All complaints are to be dealt with within 4 weeks of receipt of the complaint. At all times the complainant is to be kept informed of what action is being taken in regard to their complaint and what follow-up action is being taken.



Remedies

Resolution of a complaint may be:

- To provide more information to the complainant for a more accurate understanding of competition policy;
- To investigate / review Council's business activity if a legitimate complaint is made;
- To change Council's business practice where a complaint is justified.

Confidentiality

All competitive neutrality complaints received will be determined by the Council in the strictest confidence.

Alternative Competitive Neutrality Complaint Handling and Review

Any complainant dissatisfied with Council's determination of a competitive neutrality complaint may refer the complaint to:

- NSW Office of Local Government;
- NSW Ombudsman;
- NSW Independent Commission Against Corruption; or
- The Australian Competition and Consumer Commission.

Alternatively, the competitive neutrality complaint may be referred direct to one of these agencies.

Responsibilities

Councillors (policy template only)

Councillors will adopt a policy concerning how Council will deal with competitive neutrality complaints.

Senior Management Group

The Senior Management Group will develop a policy on how Council will handle and manage competitive neutrality complaints

Director of Corporate Services

The Director of Corporate Services, as the Council's Public Officer, shall have responsibility for dealing with competitive neutrality complaints.

All Managers

All Managers must observe, during service delivery activities that the requirements of this policy are met.



References and Related Legislation

- Local Government Act 1993 (NSW)
- Local Government (General) Regulation 2021 (NSW)
- Independent Commission Against Corruption Act 1988 (NSW)
- Ombudsman Act 1974 (NSW)
- Competition & Consumer Act 2010 (Cwth)
- Pricing and Costing for Council Businesses - A Guide to Competitive Neutrality, NSW Division of Local Government, July 1997.

Version History

Version No.	Date	CM Ref	Reason for Review
1	27/10/2008	INT-22987/08	
2	28/05/2013	INT-4327/13	
3	09/01/2017	CD-37/21	
4	27/06/2022	CD-19/22	