

SPECIAL BUDGET MEETING 22 JUNE 2022	1
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NATIONAL COMPETITION POLICY IMPLEMENTATION FOR THE 2022/23 FINANCIAL YEAR

K Robertson | 63/8/32-01 | #6961993

RECOMMENDATION:

That Council:

1. Note that the following are all business activities that are to be conducted by Council during the 2022/23 financial year:
 - a. Cairns Water
 - b. Cairns Resource Recovery
 - c. TicketLiNK
 - d. Car Parking
 - e. Cemeteries
 - f. Botanical Gardens Visitor Centre
 - g. Munro Martin Parklands
 - h. Tanks Arts Centre
 - i. Cairns Performing Arts Centre (CPAC)
 - j. Barlow Park
 - k. Swimming Pools
 - l. Sugarworld Water Park
 - m. Libraries
 - n. The Court House
 - o. Caravan Parks
2. Note that for the 2022/23 financial year, the identified significant business activities of Council which are subject to the National Competition Policy (NCP) under Section 43 of the *Local Government Act 2009* are:
 - a. Cairns Water
 - b. Cairns Resource Recovery
3. Note that the competitive neutrality principle will be applied to all of the identified significant business activities for the 2022/23 financial year. The level of reform applied to the significant business activities is:
 - a. Cairns Water – commercialisation
 - b. Cairns Resource Recovery – commercialisation
4. Note that it will not conduct any significant business activities that were not conducted in the preceding financial year, that is, there are no new significant business activities to be conducted in the 2022/23 financial year.
5. Note that for that 2022/23 financial year, the following are prescribed business activities under Section 39 of the *Local Government Regulation 2012*:
 - a. Cairns Water
 - b. Cairns Resource Recovery
 - c. TicketLiNK
 - d. Car Parking
 - e. Cemeteries

- f. Botanical Gardens Visitor Centre
 - g. Munro Martin Parklands
 - h. Tanks Arts Centre
 - i. Cairns Performing Arts Centre (CPAC)
 - j. Barlow Park
 - k. Swimming Pools
 - l. Sugarworld Water Park
 - m. Libraries
 - n. The Court House
6. Note that the code of competitive conduct will mandatorily apply to a ‘building certifying activity’ within the meaning of Section 47(4) of the *Local Government Act 2009*. Council note that it will not conduct a business activity within the meaning of a ‘building certifying activity’ in the 2022/23 financial year.
7. Note that the code of competitive conduct will mandatorily apply to a ‘roads activity’ within the meaning of Section 47(5) of the *Local Government Act 2009*. Council note that it will not conduct a business activity within the meaning of a ‘roads activity’ in the 2022/23 financial year.
8. Decide by resolution, for the 2022/23 financial year, that the following prescribed business activities apply the code of competitive conduct under Section 47(7) of the *Local Government Act 2009*:
- a. Cairns Water
 - b. Cairns Resource Recovery
9. Decide by resolution, for the 2022/23 financial year, that the following prescribed business activities do not apply the code of competitive conduct under Section 47(7) of the *Local Government Act 2009*, for the reasons provided:

Business Activity	Reason
TicketLiNK	Principle purpose to ticket Council events and shows
Car Parking	Principle purpose to increase availability of parking in the Cairns CBD
Cemeteries	Primarily undertaken as a community service, with little or no competition
Botanical Gardens Visitor Centre	Primarily undertaken as a community facility, with little or no competition
Munro Martin Parklands	Primarily undertaken as a community facility, with little or no competition
Tanks Art Centre	Primarily undertaken as a community facility, with little or no competition
Cairns Performing Arts Centre	Primarily undertaken as a community facility, with little or no competition
Barlow Park	Primarily undertaken as a community facility, with little or no competition
Swimming Pools	Primarily undertaken as a community facility, with little or no competition
Sugarworld Water Park	Primarily undertaken as a community facility, with little or no competition
Libraries	Primarily undertaken as a community service, with little or no competition
The Court House	Primarily undertaken as a community facility, with little or no competition

EXECUTIVE SUMMARY:

This report provides an analysis of the application of the National Competition Policy to the business activities of Council. The National Competition Policy, implemented through provisions of the *Local Government Act 2009* (LGA), requires Council to make certain disclosures and decisions regarding its business activities.

Each financial year, Council is required to decide, by resolution, whether the code of competitive conduct is to be applied to certain business activities, known as prescribed business activities. Where it is decided that the code of competitive conduct will not be applied to a prescribed business activity, the reasons for this decision must be included in the resolution. Council may also voluntarily elect to apply the code of competitive conduct to any other business activity that is not a prescribed business activity.

Council is required by the LGA to apply the code of competitive conduct to Cairns Water and Cairns Resource Recovery as they are above the significant business activity expenditure threshold.

It is recommended that Council does not apply the code of competitive conduct to its remaining business activities, as predominantly they exist principally to provide community services which may not otherwise be provided and have little or no competition.

No changes have been made during the 2022/23 review, with the exception of the consideration of The Court House within the National Competition Policy.

BACKGROUND:

The obligations imposed under the National Competition Policy require Council to make certain disclosures and decisions regarding its business activities each financial year.

Each financial year, Council is required to decide by resolution whether the code of competitive conduct is to apply to each of its business activities which is prescribed under a regulation (a prescribed business activity). Council may also voluntarily elect to apply the code of competitive conduct to business activities that are not prescribed business activities. The recommendation outlines the business activities to which the code of competitive conduct is considered suitable.

Applying the code of competitive conduct involves:

1. Applying the competitive neutrality principle
2. Applying the pricing provisions
3. Financial reporting obligations
4. Recognising the cost of performing community service obligations

The application of the competitive neutrality principle involves:

- a. removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
- b. promoting efficiency of the use of resources, to ensure markets are not unnecessarily distorted.

The application of the pricing provisions involves using the full cost pricing method. The full cost pricing method is a central provision of the National Competition Policy which applies to both significant and prescribed business activities. The intention of these provisions is to ensure that local government business activities are charging commercially competitive prices for their goods and services. This is achieved by:

1. Applying the competitive neutrality principle to remove any competitive advantages or disadvantages the local government business activity has due to public ownership, so as to place it on a 'level playing field' with its private sector competitors, and
2. Ensuring the revenue for providing the goods and services exceeds the adjusted costs (including a capital profit) of providing the goods and services.

COMMENT:

Council has reviewed its operations and listed all of the business activities that it conducts. Council has listed its current significant business activities. Council reviews all business activities to identify any new significant business activities and to ensure any previously identified significant business activities continue to meet the regulated threshold.

The recommendations contained in this report are based on:

1. The suitability of applying the code of competitive conduct, with regard to Council's primary purpose for conducting the business activity, for example:
 - a. A commercial purpose - to generate general revenue for Council, or
 - b. A community service or facility - to ensure that certain goods, services and facilities are available to the public
2. The amount of actual or potential competition that exists
3. The effect the Council business activity will have on the actual or potential competition
4. The cost to Council of applying the code of competitive conduct

Council is required by the LGA to apply the code of competitive conduct to Cairns Water and Cairns Resource Recovery as they are above the significant business activity expenditure threshold.

It is recommended that Council decide to not apply the code of competitive conduct to the following business activities for the reasons outlined below.

Summary of Business Activities

Status <i>Do not apply the Code of Competitive Conduct - by resolution</i>		
Business Activity	Description	Comment
TicketLiNK	Provides ticketing services for local events.	Principle purpose to ticket Council events and shows
Car Parking	Operates various off street car parks, include the parking station on Lake Street.	Principle purpose to increase availability of parking in the Cairns CBD
Cemeteries	Operates various cemeteries in the Cairns region.	Primarily undertaken as a community service, with little or no competition
Botanical Gardens Visitor Centre	Retail store stocking locally made artwork and merchandise.	Primarily undertaken as a community facility, with little or no competition

Status <i>Do not apply the Code of Competitive Conduct - by resolution</i>		
Business Activity	Description	Comment
Munro Martin Parklands	Public space and facility available for hire.	Primarily undertaken as a community facility, with little or no competition
Tanks Art Centre	Centre for artistic performances and venue hire.	Primarily undertaken as a community facility, with little or no competition
Cairns Performing Arts Centre	Special purpose theatre for artistic performances.	Primarily undertaken as a community facility, with little or no competition
Barlow Park	Special purpose performance stadium for sporting or other events.	Primarily undertaken as a community facility, with little or no competition
Swimming Pools	Operates swimming pools in various locations in the Cairns region.	Primarily undertaken as a community facility, with little or no competition
Sugarworld Water Park	Operates a waterpark in Edmonton.	Primarily undertaken as a community facility, with little or no competition
Libraries	Operates libraries in various locations in the Cairns region.	Primarily undertaken as a community service, with little or no competition
The Court House	Art Gallery and performance venue	Primarily undertaken as a community facility, with little or no competition
Caravan Parks	Operates a caravan park at Bramston beach.	Below threshold of a prescribed business activity

There is also moderate administrative and resource effort required to apply the code of competitive conduct which it is not considered an appropriate use of ratepayer funds.

OPTIONS:

The options available to Council are:

1. Accept the recommendations as provided. Decide to apply the code of competitive conduct to the business activities listed in recommendation 8. Decide to not apply the code of competitive conducted, for the reasons provided, to the business activities listed in recommendation 9.
2. Do not accept the recommendations as provided. Decide to apply the code of competitive conduct to any of the business activities in recommendation 9.

CONSIDERATIONS:

Risk Management:

There are regulatory risks involved with implementing the National Competition Policy. Council is legally required to make certain disclosures and resolutions regarding its business activities. These obligations have been reviewed to ensure Council has discharged all of its legal requirements.

Statutory:

- Part 2 of the Local Government Act 2009
- Part 2 of the *Local Government Regulation 2012*



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