

Competitive Neutrality

Council Policy Number	045
Date adopted	17 February 2021
Scheduled for review	February 2025



1. Preamble

The Victorian State Government developed a Competitive Neutrality ('CN') Policy subsequent to agreeing to the Competition Principles Agreement with all other State, Territory and Commonwealth Governments. The aim of the policy is to ensure that when governments undertake significant business activities in markets, they do so on a fair and equitable basis.

To maintain compliance with the Commonwealth and State CN policy, Campaspe Shire Council ('Council') applies competitively neutral pricing principles to significant business activities undertaken by Council.

Council is a government organisation focussed on delivering services to the local communities within its boundaries and in part subsidises the cost of these services through user fees and grants. Council operates on a not for profit basis and any identified significant businesses are secondary in nature to the operation of Council.

2. Purpose

To ensure Council

- meets the requirements of the Victorian Government's Competitive Neutrality Policy;
- meets its Competitive Neutrality ('CN') obligations; and
- identifies any future operations that become subject to competitive neutrality obligations in the future.

3. Definitions

CN	Competitive Neutrality
CNP	Competitive Neutrality Policy
Government Ownership	A term used to describe any stand-alone business owned by Government at Commonwealth, State, Territory or Local level.
Pricing Principles	Pricing principles for local government commercial activities which do not satisfy cost benefit criteria for separate incorporation and the application of full tax equivalents.
Significant Business	An activity that results in the sale of either a good or service and has been assessed as having significance in the relevant market in which it operates.

4. Policy Statement

4.1 Introduction

For those businesses identified as a 'significant business', an assessment of its compliance against CN policy will be conducted annually.

Before Council provides a new activity or changes an activity that has the potential to operate in competition with the private sector, an assessment will be conducted to determine if it is a significant business and needs to adhere to the CN policy and principles. If it is determined that the activity is a significant business, it will be reported to Council.

4.2 Competitive Neutrality Pricing

The following principles will apply to all activities (including private works estimates) that are required to comply with CN Policy:

a. Pricing will be determined using either the fully distributed cost ('FDC') methodology or avoidable cost ('AC') methodology.

Each identified significant business will be assessed to determine which cost methodology will be applied. The determination of this will take into consideration the primary purpose for undertaking the activity compared to the activity identified as a significant business.

When the FDC methodology is applied, all expenses used in the provision of a unit of the goods or service, including cash and non-cash items, will be accounted for. Costs will include direct labour costs, labour on-costs, materials and other operating expenses, accommodation, corporate overheads and depreciation of physical assets.

When the AC methodology is applied only the extra direct and indirect costs that are incurred as a result of undertaking the commercial activity will be accounted for.

b. Pricing should include the net effect of any competitive advantages / disadvantages due solely to Government ownership.

To the base of the costs calculated in point 4.2.a, costs that would be incurred by a private sector provider of similar goods or services but from which government providers are exempt or face lower costs due to government ownership will be added, and the cost of any significant competitive disadvantages resulting from government ownership will be subtracted.

Examples of competitive advantages include land tax, capital financing, rates and charges, payroll tax, bank and audit fees and opportunity cost of capital.

Examples of competitive disadvantages include accountability costs, additional compliance requirements, corporate overheads and employment remuneration.

The opportunity cost of capital will be calculated using a rate of 8% as stated in the Department of Treasury and Finance's Competitive Neutrality Guide to Implementation.

c. The calculation process should be transparent and defensible.

The way in which competitively neutral pricing principles have been applied will be fully documented using the attached CN Financial Analysis Tool, and include reasons given for the inclusion of any relevant cost. When a judgement is made that a particular cost is not relevant, or that a competitive advantage is fully offset by a competitive disadvantage, the reasoning behind such judgement will be documented in the CN Financial Analysis Tool.

d. Pricing of Fees and Charges for commercial activities.

When setting its fees and charges for commercial activities, Council will set a price to ensure it fully recovers the competitively neutral cost over the medium to long term. Council will also have regard to the level of demand for the goods or service being provided by the commercial activity as well as the level of competition between service providers within the relevant market.

If Council provides multiple commercial outputs, the pricing of individual outputs will have regard to meeting CN principles for the operation as a whole.

4.3 Ensuring CN Compliance

To ensure Council is compliant with CN obligations, the following will be implemented:

a. Competition and Consumer Legislation Training

Council staff will undertake training on competition and consumer legislation including competitive neutrality every two (2) years. Training will be compulsory for staff who:

- i. are a member of the management team; or
- ii. deal with businesses subject to CN principles, procurement or contract management; or

- iii. operate Council's recreation facilities, arts centres, childcare centres or similar Council operations when there may be competing businesses in the private sector.

b. Local Laws compliance

When setting local laws, Council must consider their impact on competition. Restrictions to competition must be removed or justified.

To maintain compliance, when reviewing or establishing local laws prior to 1 July 2021, Council will apply a competition test as per Schedule 8(j) of the *Local Government Act 1989* which states that a local law cannot:

“restrict competition unless it can be demonstrated that-

- i. the benefits of the restriction to the community as a whole outweigh the costs; and*
- ii. the objectives of the local law can only be achieved by restricting competition.”*

From 1 July 2021, Council will meet the obligations defined in section 74 of the *Local Government Act 2020* and any regulations made in relation to the making or amending of local laws.

c. Competitive Neutrality Assessment

Council will assess all businesses it operates to determine whether it is a “significant business” as defined by CN policy.

Council will do this by asking the following questions:

- Is the activity a business rather than a regulatory or governance activity?
- What is the size of the market share for the business?
- What level of influence does the business have on the market?

If a business is determined to be a ‘significant business’ and needs to meet CN guidelines, Council will undertake a financial analysis, using the CN Financial Analysis Tool, to determine if the business is being subsidised. If so, Council will either undertake to bring the business into compliance (i.e. no subsidy is applied) or if it determines that the costs of implementing compliance outweigh the benefits, it will undertake a public interest test and publish to the community the outcomes from such a process.

Council will assess its entire business portfolio at least once every four years to identify and nominate any operations that have since become subject to CN obligations and were not identified at the time of commencing the activity. Once a business is identified as a ‘significant business’, an annual assessment will be undertaken by the Finance Department. Any assessments that are considered at risk of not meeting the requirements of the CN obligations will be reported to Council, by the General Manager Corporate Services, together with the actions being taken to achieve compliance.

All documentation evidencing the assessments, determinations and analyses completed in accordance with this policy will be maintained by Council in accordance with its Record Management Policy.

4.4 Complaints

Complaints about Council's competitive neutrality compliance should be lodged with the relevant State Government department (currently the Office of Better Regulation).

Complaints lodged with the relevant State Government department that result in an investigation by that office will be reported to Council once the result of the investigation is known.

5. Exclusions

Nil

6. Human Rights

This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

7. Related Legislation

- Competition and Consumer Act 2010 (Cwth)
- Local Government Act 1989 (Vic)
- Local Government Act 2020 (Vic)

8. Related Policies, Procedures and Strategies

- National Competition Policy
- Competitive Neutrality Policy Victoria
- Competitive Neutrality Guide to Implementation (Victorian Department of Treasury and Finance, 2000)

9. Attachments

- CN Financial Analysis Tool

10. Review Period

Four years

Responsible officer

General Manager Corporate Services

11. Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter the policy, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

12. Approval History

Revised	21 November 2017	Minute Book Reference No 3382 (item 6.3)
Revised	17 February 2021	Minute Book Reference No 191 (item 9.10)
Revised	19 February 2021	Administrative update to apply consistent references to Campaspe Shire Council ('Council')
Revised	26 March 2021	Administrative update to Approval History Reference No

Chief Executive Officer:

Date: 20/3/2021