

Competitive Neutrality Complaint Management Policy

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Responsible Officer	Manager Development and Governance	Date Approved:	17/11/2021
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1. PURPOSE

To provide a framework for investigation and resolve of competitive neutrality complaints received by Council in accordance with requirements under the *Local Government Act 2009* (Qld) (LGA) and *Local Government Regulation 2012* (Qld) (LGR).¹ This policy should be read in conjunction with Council's *Competitive Neutrality Complaint Management Process*.

2. SCOPE

This policy applies to competitive neutrality complaints regarding business activities undertaken by Council that are in direct competition or have the potential to be in competition, with the private sector.

The below complaint types will be managed separately from this policy:

- Corruption complaints that are required to be dealt with under the *Crime and Corruption Act 2001* (Qld)
- Administrative Action Complaints
- Public Interest Disclosures (PIDS) made under the *Public Interest Disclosure Act 2010* (Qld)
- Internal complaints relating to staff conduct (i.e. Code of Conduct matters) will be referred to the relevant policies
- Social media comments
- Customer Requests

3. POLICY STATEMENT

3.1 PRINCIPLES

Council recognises that effective complaints management is integral to good customer service and therefore values all complaints. While Council encourages a proactive approach to complaints management, the competitive neutrality complaints process exists to ensure that Council is adhering to the competitive neutrality principles. Council is committed to a complaints management framework that ensures the transparent, effective and timely resolution of complaints, and that contributes to continuous improvement of Council's services.

The complaints management framework governed by this policy aims to:

- Be fair and objective. All complaints are considered on their merits and the principles of natural justice are observed

¹ See *Local Government Act 2009* (Qld) s 48. See also *Local Government Regulation* (Qld) ss 43-55A.

- Support continuous improvement. Where applicable, the outcomes from a complaints management process are applied to improve business operations, policies and procedures.
- Be open and accountable. The decisions and outcomes regarding a complaint are made available to the affected person, subject to statutory provisions.
- Be accessible and simple to understand. The process facilitates feedback from the community in a form that encourages participation.

3.2 MAKING A COMPLAINT

A competitive neutrality complaint must be made in writing to Council or to the competition authority and must contain certain information to be valid.²

A complaint may be made to Council:

- In writing by letter to:
Chief Executive Officer
Mareeba Shire Council
PO Box 154
MAREEBA QLD 4880
- By email to: info@msc.qld.gov.au

A complaint may also be made to:

- Queensland Competition Authority
PO Box 2257
BRISBANE QLD 4001

Council may provide assistance to persons seeking to make a competitive neutrality complaint and will handle receipt of all competitive neutrality complaints in accordance with the process set out in Council's *Competitive Neutrality Complaint Management Process*.

4. REPORTING

The Council will maintain a register of business activities to which the competitive neutrality principle applies that states:

- the business activities to which the Council has applied the competitive neutrality principle, and the date from which the competitive neutrality principle applied to each business activity;
- the business activities to which the code of competitive conduct applies, and the date from which the code applied to each business activity; and
- a list of—
 - i. current investigation notices for competitive neutrality complaints; and
 - ii. the business activities to which the complaints relate; and

² See *Local Government Regulation 2012* (Qld) s 45.

- iii. the Council's responses to the QPC's recommendations on the complaints.³

5. DEFINITIONS

The **code of competitive conduct** is the code declared in the *Local Government Act 2009* (Qld) and described in detail within the *Local Government Regulation 2012* (Qld).⁴

Competition Authority means the Queensland Competition Authority established under section 7 of the *Queensland Competition Authority Act 1997* (Qld).

A **competitive neutrality complaint** is a complaint that:

- relates to the failure of Council to conduct a business activity in accordance with the competitive neutrality principle; and
- is made by an affected person.⁵

An **affected person** is:-

- (a) a person who
 - i. competes with the local government in relation to the business activity; and
 - ii. claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or
- (b) a person who
 - i. wants to compete with the local government in relation to the business activity; and
 - ii. claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the local government.⁶

The **competitive neutrality principle** is used when Council applies the code of competitive conduct to its business activities. Council must apply the competitive neutrality principle to the business activity including by:

- removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
- promoting efficient use of resources to ensure markets are not unnecessarily distorted.⁷

Significant business activity is a business activity of Council that—

- (a) is conducted in competition, or potential competition, with the private sector; and
- (b) meets the threshold prescribed under a regulation.

However, a significant business activity does not include a business activity that is—

- (a) a building certifying activity; or
- (b) a roads activity; or
- (c) related to the provision of library services.⁸

³ See *Local Government Regulation 2102* (Qld) s 56.

⁴ See *Local Government Act 2009* (Qld) s 47. See also *Local Government Regulation 2012* (Qld) ss 31-39.

⁵ See *Local Government Act 2009* (Qld) s 48(2).

⁶ See *Local Government Act 2009* (Qld) s 48(3).

⁷ See *Local Government Regulation 2012* (Qld) s 33(1).

⁸ See *Local Government Act 2009* (Qld) ss 43(4)-(5).

5.1 RELATED DOCUMENTS AND REFERENCES

- *Competitive Neutrality Complaint Management Process* (MSC)
- *Local Government Act 2009* (Qld)
- *Local Government Regulations 2012* (Qld)

6. REVIEW

It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and recommend appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.