

Statutory Policy

Burke Shire Council

Business Activities Policy



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Version History

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1. Purpose

The purpose of this Policy is to outline the legislative requirements and establish the broad principles within which Council will operate its business activities in order to comply with the National Competition Policy (NCP).

2. Scope

This policy is applicable to all business activities of Council that are required by the Local Government Act and/or Local Government Regulation to have NCP principles applied to them, and to any business activities that Council chooses to apply the NCP to, despite having no obligation under the Act and/or Regulation to do so.

3. Date of Policy

This Policy applies from the date adopted by Council.

4. Definitions

Affected Person	means: (a) person who – i. competes with the Council in relation to the Business Activity; and ii. claims to be adversely affected by a Competitive Advantage that the person alleges is enjoyed by Council; or (b) a person who – i. wants to compete with Council 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 Council.
Building Certifying Activity	means a Business Activity that involves performing building certifying functions within the meaning of section 10 of the Building Act 1975.
Business Activity	means trading in goods and services by Council. See also: - Prescribed Business Activity (>\$340,000 p.a.) - Significant Business Activity (>\$9,700,000 p.a.)
CEO	means Council's chief executive officer
Competitive Advantage	means an advantage that Council has over a private sector business providing the same goods or services because Council enjoys financial, procedural or regulatory advantages inherent to its status as a local government authority.

Competitive Neutrality Complaint	means a complaint that: (a) relates to the failure of Council to conduct a Business Activity in accordance with the Competitive Neutrality Principle; and (b) is made by an Affected Person.
Competitive Neutrality Principle	Or (CNP) means the principle that an entity conducting a Business Activity in competition with the private sector should not enjoy a net advantage over competitors solely because the entity is in the public sector.
Preliminary Reviewing Officer	means Council's CEO or any person acting in that position.
Preliminary Review Process	means Council's process for attempting to resolve Competitive Neutrality Complaints prior to that complaint being referred to the Queensland Productivity Commission.
Prescribed Business Activity	means a Business Activity where the current expenditure for the previous financial year is over \$340,000. Current expenditure is the total of the following amounts: (a) operational costs; (b) administrative and overhead costs; (c) cost of resources; and (d) depreciation
Roads Activity	means a Business Activity that involves: (a) constructing or maintaining a State-controlled Road that the State put out to competitive tender; or (b) submitting a competitive tender in relation to constructing or maintaining a road: i. in the local government area, that Council had put out to competitive tender; and ii. in another local government area, that the other local government put out to competitive tender.
Significant Business Activity	means a Business Activity of a local government that is conducted in competition, or potential competition, with the private sector and exceeds the relevant threshold for that particular activity as prescribed in the Local Government Regulation 2012. However, the term does not include a Building Certifying Activity, a Roads Activity or any Business Activity related to the provision of library services. N.B. Burke Shire Council does not conduct any Significant Business Activities.

5. Policy Statement

5.1 Activities of Council will be identified as business activities if:

- 5.1.1.** Chapter 3, Part 2, Division 2 of the Act specifies Council's obligation to identify and undertake certain actions with regard to its business activities to ensure Council complies with the NCP.
- 5.1.2.** The requirements for the application of the NCP, either by way of the competitive neutrality principle (CNP) or the code of competitive conduct (CCC), are dependent on the classification of the business activity under the Act and Regulation.
- 5.1.3.** The Regulation sets the thresholds that a business activity must meet to be considered a "significant business activity" (SBA) or a "prescribed business activity" (PBA).
- 5.1.4.** The business activities of Council (and their classification) are outlined within Annexure 1 subject to any of the listed business activities being added or removed from this list as part of the annual budget process.

Each year Council is required to identify those activities that are business activities and determine whether competition reform needs to be applied to assist in removing anti-competitive conduct, encourage greater transparency in the operation of such activities and improve the allocation of Council's limited resources.

No business activities have been identified for 2023-2024 for the Burke Shire Council with no business activities anticipated for 2024-2025.

5.2 Classification and Requirements of Business Activities

- 5.2.1** Council must identify any new SBA within its Annual Report for each financial year.
- 5.2.2** In the event a new SBA is identified within the Annual Report, Council must conduct a public benefit assessment of the new SBA in accordance with section 46 of the Act.
- 5.2.3** Council must prepare a report on the public benefit assessment that contains its recommendations about the application of the CNP in relation to the SBA.
- 5.2.4** At a meeting of Council, Council must consider the public benefit assessment report and decide, by resolution, whether or not to apply the CNP in relation to the SBA. If Council decides not to apply the CNP, the resolution must state the reasons for doing so.
- 5.2.5** Council must give the Minister a copy of the public benefit assessment report and all resolutions made in relation to that report.
- 5.2.6** If Council decides not to apply the CNP in relation to a SBA, Council must, within 3 years after making the decision, repeat the process within section 46 of the Act for that SBA.

5.3 Prescribed Business Activities

- 5.3.1** For any PBA, Council must decide each financial year, by resolution under section 47(7) of the Act, whether or not to apply the CCC to such activity. If it decides not to apply the CCC, the resolution must state its reasons for doing so.

5.4 Roads Activities

- 5.4.1** In accordance with section 47(3)(b) of the Act, Council must apply the CCC to a Road Activity (RA) other than a roads activity for which business is conducted only through a sole supplier arrangement.
- 5.4.2** Council must start to apply the CCC from when the RA is first conducted.

5.5 Broad Principles for the Operation of All Business Activities

- 5.5.1** Subject to other requirements and considerations, Council will, at all times, endeavour to operate its business activities in a manner that will provide a normal after-tax commercial return on the investments made into the business activity.
- 5.5.2** In order to generate the required returns, Council will endeavour to:
 - 5.5.2.1** manage operations as efficiently as possible in keeping with market and industry norms;
 - 5.5.2.2** establish a pricing regime that will cover efficient full operating costs (including non-cash items such as depreciation) and make a normal return on investment, taking into consideration the open market and competitor pricing (where applicable);
 - 5.5.2.3** credit the business activity with the cost of carrying out any Community Service Obligations (where applicable);
 - 5.5.2.4** adopt a methodology to calculate and allocate an overhead charge for any common Council services that the business activity may use;
 - 5.5.2.5** calculate a notional interest charge for any advances made to the business activity from Council; and
 - 5.5.2.6** calculate a notional tax on the profits made by the business activity.
- 5.5.3** The following will be applied in the calculation of the required normal return:
 - 5.5.3.1** the Regulated Asset Base of the business activity will be deemed to be the investments made in the business activity; and
 - 5.5.3.2** the required normal return will be calculated using the CAPM with the beta adjusted for the specific industry (or closest equivalent) of the business activity.
- 5.5.4** Each business activity will provide a return to Council by payment of a sum to Council's general fund. The exact amount to be paid will be determined taking into consideration:
 - 5.5.4.1** the operating surplus;
 - 5.5.4.2** cash balances; and
 - 5.5.4.3** re-investment requirements and borrowing capacity based on medium term projections.
- 5.5.5** Each business activity will prepare an asset management plan, which will be revised annually as required.
- 5.5.6** Each business activity will prepare at least a three-year business plan, which will be revised annually. The business plan will in the minimum identify:
 - 5.5.6.1** overall market assessment for the business activity's goods and services;
 - 5.5.6.2** where relevant, a marketing plan to achieve identified targeted sales volumes;

5.5.6.3 targeted volumes for the relevant period(s);

5.5.6.4 projected annual income and cash flow statements for each financial year;

5.5.6.5 projected balance sheet as at the end of each financial year; and

5.5.6.6 projected returns to investors.

5.5.7 The business plans, incorporating the projected returns, will be presented to Council annually as part of the overall budget adoption process.

5.6 Competitive Neutrality Complaints Process

Where business activities have been identified in accordance with Section 1, the Code of Competitive Conduct (the Code) is applied to those activities. Where the Code is applied to a business activity, the Local Government Act 2009 requires Council to establish a complaints mechanism to deal with any complaints about whether the activity is being run in accordance with the requirements of the Code. The complaints mechanism is intended to provide both Council and complainants with some degree of certainty about the status and treatment of complaints over competitive neutrality.

No business activities were identified by Council during the 2023-2024 financial year and no related complaints were received.

6. Key Responsibilities

Position	Responsibility
Mayor	To lead councillors in their understanding of, and compliance with, this policy.
Councillors	To understand and comply, where relevant, with this policy.
CEO	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy. To function as the Preliminary Reviewing Officer
Directors	To communicate, implement and comply with this policy.
Managers and Supervisors	To implement this policy and related procedures.
All Council staff	To comply with this policy and consider its implications for related projects and programs.

7. Related Documents

Legislation/Regulations	BSC Policies	Procedures
Local Government Act 2009 Local Government Regulation 2012		