

4.6. CODE OF COMPETITIVE CONDUCT STATEMENT

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Purpose

This report seeks to identify Council's business activities where Council has resolved to apply the Code of Competitive Conduct (the Code) and commercialisation requirements and confirm their treatment under the National Competition Policy guidelines.

Related Parties

Nil.

Corporate Plan Linkage

Priority: Financial Strength:

Strategy: Affordable Living - Our rates and charges are understood and provide value for residents and are sufficient to provide for required infrastructure, facilities and services.

Strategy: Ethical Decision-Making and Good Governance – We are committed to keeping our community informed about our activities and performance and employing robust governance policies and procedures to ensure legislative compliance and organisational integrity.

Background/Discussion

In accordance with the *Local Government Act 2009* (the Act) and the *Local Government Regulation 2012* (the Regulation), Council is required to make certain assessments and disclosures in relation to business activities:

Significant Business Activities

Section 19 of the Regulation prescribes the threshold that a business activity must meet to be a significant business activity for a financial year:

- If the business activity is the provision of combined water and sewerage services, the threshold is 10,000 or more premises being connected to a water service as at 30 June of the financial year ending immediately before the current financial year.
- For any other business activity, the threshold is expenditure of at least \$9.7m for the financial year ending immediately before the current financial year.

Section 20 of the Regulation requires Council to use this information to present significant business activities in either the performance report or at the budget meeting for the financial year ending immediately before the current financial year.

The following are significant business activities of Mackay Regional Council (MRC):

- Mackay Water Services, which manages water and sewerage activities; and
- Mackay Waste Services, which manages solid waste activities.

Code of Competitive Conduct

The Act requires Council to decide each financial year (by resolution) whether to apply the code of competitive conduct to a business activity prescribed under a regulation.

The Regulation (section 39) states that a business activity is prescribed if the amount of current expenditure for a financial year is \$340,000 or more. If Council decides not to apply the Code, then the reasons for not doing so must be stated per the Act (section 47(8)). The following activities are primarily involved in trading goods and services, and have been considered:

Building Certification

The Regulation (section 38) prescribes that any building certification activity of MRC is a prescribed business activity. As Council does not presently conduct a building certification activity, the requirements of this section do not apply.

Roads Activities

The Act (section 47(3)) states that the local government must apply the code of competitive conduct to a roads activity. A roads activity is defined to only include business activities which the State or local government has put out to tender. Council does not presently perform any such road activities and therefore the requirements of this section do not apply.

Mackay Entertainment & Convention Centre (MECC)

Whilst the activity receives a large component of its funding by trading in goods and services, the overall objective of the Mackay Entertainment and Convention Centre is to promote economic development in the region and to encourage artistic and cultural development within the community. It is anticipated that applying the code of competitive conduct to the business activity will add an administrative expense without necessarily improving decision-making or the financial results of the activity. Therefore, it is proposed that the code of competitive conduct should not be applied to this activity.

Sarina Sugar Shed

The primary activity of the Sarina Sugar Shed is to promote economic development within the region through tourism. A portion of its funding is generated by trading in goods and services. It is anticipated that an increase in administrative expense would occur from the application of the code of competitive conduct, with no measurable improvement in decision-making or the activity's financial result. Therefore, it is proposed that the code of competitive conduct should not be applied to this activity.

Off-street Parking

MRC operates off-street parking facilities within the city centre for the community's use. These facilities offer an alternative to on-street parking and have been provided to facilitate the demand for parking within the defined area. Application of the code of competitive conduct to the business activity is anticipated to add an administrative expense without necessarily improving decision-making or the financial results of the activity. Therefore, it is proposed that the code of competitive conduct should not be applied to this activity.

Sporting Facilities

Mackay Stadium and Mackay Aquatic and Recreation Complex are significant sporting facilities owned by MRC. These facilities are provided to support economic development in the region, through the provision of sporting games and other attractions including artist performances.

These businesses, along with the various aquatic facilities across the region, do not have the necessary commercial or profit-making focus, and application of the code of competitive conduct is anticipated to add an administrative expense without necessarily improving decision-making or financial results of the activity. Therefore, it is proposed that the code of competitive conduct should not be applied to this activity.

Other Business Activities

Council does not conduct any other activities which are primarily involved in trading goods and services.

Principles of Community Service Obligations

Community service obligations (CSO) arise when the Council specifically requires a commercialised business unit to carry out operations that are not in the commercial interests of the business activity, or alternatively would only deliver at higher prices or through some other form of compensation.

The process for establishing new CSO’s by Council business activities is:

- determine the specific policy objective of Council to which the CSO is linked;
- propose the CSO after undertaking research into its validity and delivery;
- cost the CSO according to an acceptable method;
- develop performance measures for the CSO to measure its effectiveness in achieving policy objectives, efficiency of delivery and other impacts;
- present the CSO to Council for review prior to its incorporation in the budget; to ensure that an appropriate decision is made on its size and importance;
- incorporate the CSO into pricing budgets as a revenue item; and
- ongoing negotiation and review of performance and size of CSO.

Types of Community Service Obligations

This policy recognises five basic types of Community Service Obligations:

Type CSO	Description
Uniform	Where Council considers it desirable that certain goods and services be supplied to all users at a uniform or affordable price regardless of the cost of the provision.
Concession	Where Council has social welfare objectives to provide concessions to consumers who are considered disadvantaged eg: pensioner concessions, sporting bodies, charitable organisations etc.
Industry	Where Council may wish to provide incentives to industry, eg: rate rebates.
Purchasing	Where Council may require business activities to purchase specific goods and services as inputs. This may apply for a number of reasons, including economies of scale, maintaining a certain quality or stimulating the local economy.
Other	Where Council may require business activities to abide by environmental, consumer, cultural heritage or some similar policy, which may not usually apply.

Implications of CSO’s for Full Cost Pricing (FCP)

The net cost of providing the CSO or additional CSO’s are required to be identified as part of the budget process.

As part of this process, the performance of the CSO in achieving policy objectives needs to be reported to Council and the size of the CSO reviewed where appropriate.

The method for reporting on the CSO’s is to be through the reporting to Council on achievement of the Annual Performance Plan of the commercialised business unit.

CONSULTATION AND COMMUNICATION

Consultation has been undertaken with the appropriate business areas.

RESOURCE IMPLICATIONS

There are internal administrative costs associated with applying the code of competitive conduct, and consultancy fees associated with reviewing NCP processes. The proposed resolution will minimise these costs by focusing the application of National Competition Policy principles to where there is a clear public benefit.

RISK MANAGEMENT IMPLICATIONS

Nil.

CONCLUSION

This report concludes that the following National Competition Policy reforms should apply for the financial year 2023/24:

Business Activity	Level of NCP Reform
Water and Sewerage	Commercialisation
Waste Services	Commercialisation
MECC	No application of the code of competitive conduct or full cost pricing
Sarina Sugar Shed	No application of the code of competitive conduct or full cost pricing
Off street Parking	No application of the code of competitive conduct or full cost pricing
Sporting Facilities	No application of the code of competitive conduct or full cost pricing

Officer's Recommendation

THAT Council:

1. Determine that water and sewerage and waste business activities will continue as significant business activities; and
2. Determines that the code of competitive conduct should not apply to the Mackay Entertainment & Convention Centre, Sarina Sugar Shed, Off-street Parking and Sporting Facilities as prescribed business activities for the 2023/24 financial year, as the cost of applying the code will outweigh the benefits, and the activities have significant non-commercial objectives; and
3. Determines that it does not conduct any other business activities or prescribed business activities.

**MACKAY REGIONAL COUNCIL
ACTIVITY STATEMENT
SIGNIFICANT BUSINESS ACTIVITIES
For the year ended 30 June 2024**

	Mackay Water Services 2023/24 \$000	Mackay Waste Services 2023/24 \$000
Revenue for services provided to MRC	4,429	776
Revenue for services provided to external clients	105,431	34,325
Community service obligations (community or sporting rebates)	221	39
	110,081	35,140
Less: expenditure	77,146	26,211
Operating result before tax and dividend	32,935	8,929
Tax	10,654	2,542
Dividend	18,917	651
Operating result after tax and dividend	3,364	5,736