

 DISTRICT COUNCIL of TUMBY BAY	<b>POLICY# 5.14</b>	<b>Version No:</b>	<b>5</b>
	<b>Contracts, Tenders &amp; Purchasing</b>	<b>Issued:</b>	<b>Mar 2018</b>
	<b>POLICY AREA Finance</b>	<b>Next Review:</b>	<b>After Next Election 2018</b>

## 1. AIMS & OBJECTIVES

Through the promotion of fair and open competition, Council is committed to achieving responsive local government, quality services and best value for money for service users and ratepayers of the District Council of Tumby Bay.

- To implement competitive procurement to help ensure value for money without compromising quality or responsiveness;
- To maintain assets and provide services at the highest standard in the most cost effective manner;
- To monitor and fulfil the needs and expectations of the community in the maintenance of assets and the provision of services, within the limits of the budget provided by Council;
- To provide an explicit customer focus towards service users that improves accountability and responsiveness;
- To provide an environment which gives external and in-house bidders the opportunity to be innovative in service delivery;
- To monitor contracts or in-house agreements to ensure they meet legislative requirements viz National Competition Policies and Trade Practices Act (refer Sections 15, 17) and focus on improving the efficiency and effectiveness of services;
- To ensure the integrity of all procurement processes conducted by Council;
- To provide Council's own workforce with the opportunity for continuous productivity improvement and skill development through relevant training; and
- To ensure the application of competitive principals to Local Government under the Competition Principals Intergovernmental Agreement.

## 2. LEGISLATIVE FRAMEWORK

This Policy is prepared and adopted by the Council in accordance with Section 49 of the *Local Government Act 1999 (the Act)*, which requires the Council to prepare and adopt policies on contracts and tenders, including policies on the following:

- the contracting out of services; and
- competitive tendering and the use of other measures to ensure that services are delivered cost effectively; and
- the use of local goods and services; and
- the sale or disposal of land or other assets.

The policies pursuant to Section 49 of the Act must:

- identify circumstances where the Council will call for tenders for the supply of goods, the provision of services, the carrying out of works or the sale or disposal of land or other assets; and
- provide a fair and transparent process for calling tenders and entering into contracts in those circumstances; and
- provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

### 3. **POLICY STATEMENT**

This Policy has been prepared to encourage 'best practice' in procurement and as far as possible consistency in procurement practices and activities.

### 4. **PROCUREMENT PRINCIPLES**

This Policy is underpinned by the following principles.

#### 4.1 **Open and Effective Competition**

Procurement should as far as is reasonably possible be open and result in effective competition in the provision of goods and services. The Council will give fair and equitable consideration to all prospective suppliers.

#### 4.2 **Value for Money**

The Council will utilise its purchasing power to achieve the best value. The concept of best value is not restricted to price alone. The best value assessment will include a consideration of one or more of the following factors together with other factors relevant to the particular procurement activity:

- contribution to the advancement of the Council's priorities;
- fitness for purpose, quality, services and support;
- whole-of-life costs including costs of acquisition, use, maintenance and disposal;
- internal administration costs;
- technical compliance issues;
- risk exposure;
- the value of any associated environmental benefits.

#### 4.3 **Encouragement of the Development of Competitive Local Business and Industry**

The Council encourages the development of competitive local businesses. Where price, performance, quality, suitability and other evaluation criteria are comparable, the Council may, to the extent permitted by law, give preference to a local supplier having regard to the following:

- creation of local employment opportunities;
- more readily available servicing support;

- more convenient communications for contract management;
- economic growth within the local area;
- benefit to the Council of associated local commercial transaction.

#### 4.4 **Environmental Protection**

The Council promotes the objective of environmental protection through its purchasing activities. In undertaking any purchasing activities the Council will seek to:

- adopt purchasing practices which conserve natural resources;
- align the Council's purchasing of goods and services with principles of ecological sustainability;
- purchase recycled and environmentally preferable products where possible;
- integrate relevant principles of waste minimisation and energy;
- foster the development of products and services which have a low environmental impact; and
- provide leadership to business, industry and the community in promoting the use of environmentally sensitive goods and services.

#### 4.5 **Ethical Behaviour and Fair Dealing**

The Council employees involved in purchasing are to behave with impartiality, fairness, independence, openness, integrity and professionalism in their discussions and negotiations with suppliers and their representatives.

#### 4.6 **Contractors and WHS Management**

The Council has an obligation to ensure that all contractors working for the Council are committed to work, health and safety, as well as being competent in the provision of the contracted goods or services.

The Council is required to select, induct and monitor contractors and maintain WHS records relating to the work undertaken.

#### 4.7 **Insurances and Indemnities**

The Council will ensure that all contractors working for the Council hold all necessary insurances and provide all necessary indemnities to the Council in respect of third party loss, injury or damage.

### 5. **FUNDING ALLOCATION**

Before steps can be taken to purchase goods or services, funds must be available in the approved Council budget. Once Council has adopted the budget, it becomes a legal document, which must be adhered to. In circumstances where funds are not available for the purpose within the appropriate budget line, an alternative source of funds must be approved by Council.

## 6. **AUTHORITY TO COMMIT EXPENDITURE**

After Council has adopted the annual budget, Department Managers will be responsible for expenditure and procurement of goods or services. The Department Manager will ensure that expenditure for their budget lines are relevant and that total annual expenditure does not exceed budget.

## 7. **UNBUDGETED PROCUREMENT AND EXPENDITURE**

### 7.1 **Emergency Expenditure**

Departmental Managers are authorised to procure goods or services, and expend funds that are unbudgeted for if the expenditure relates to the continuation of emergency or essential Council services including but not limited to stormwater, effluent systems, public health, etc. Expenditure of this nature that is unbudgeted for must be reported to Council at the next available meeting of Council for endorsement and reallocation of budget funds.

### 7.2 **Financial or Commercial Suffering**

The procurement of unbudgeted goods or services that would, if not undertaken, cause Council to suffer financially or commercially can be undertaken subject to the following of the process as outlined hereunder prior to committing Council to any future financial liability:

- identification of the required commitment to be communicated to the Chief Executive Officer in the first instance;
- analysis of financial or commercial implications on Council to be detailed by Chief Executive Officer;
- Consideration between the Mayor and Chief Executive Officer to call a Special Meeting of Council to consider the nature of commitment;
- If it is not possible or practical to call a Special Meeting of Council, expenditure can be authorised subject to joint approval from the Mayor, Deputy Mayor, Chief Executive Officer, and one other member of Councils Management Executive Team.
- If possible, any financial commitment of Council must be given “subject to Council approval” (ie land purchase, etc).
- Expenditure of this nature that is unbudgeted for must be reported to Council at the next available meeting of Council for endorsement and reallocation of budget funds.

## 8. **METHOD OF PROCUREMENT OF GOODS & SERVICES**

The Council may utilise one or more of the following procurement methods:

- quotations – verbal and written;
- direct sourcing;
- tenders – select and open;
- panel contracts;
- strategic alliances;
- emergency purchases.

The appropriate method of procurement will be determined by reference to a number of factors as well as the value of the purchase as set out below.

Value of Purchase (\$)	Method of Procurement
Up to and including \$10,000	At least 1 verbal quotation
\$10,001 - \$50,000	At least 3 written quotations
\$50,001 - \$100,000	Select or open tender
\$100,001 or greater	Open tender
Fleet Vehicles including Government Subsidy - Price set by vehicle manufacturer's	Written quotations – local dealerships

For the purpose of this Policy, the value of the purchase will be calculated as follows:

- single one-off purchase – the total amount, or estimated amount, of the purchase (excluding GST);
- multiple purchases – the gross value, or the estimated gross value, of all items to be purchased (excluding GST); or
- ongoing purchases over a period of time – the annual gross value, or the estimated annual gross value, of the purchases (excluding GST).

Other relevant factors in determining the appropriate method of procurement will depend on the particular circumstances of each procurement activity and may include a consideration of the risk profile of the procurement.

The Council may in its absolute discretion determine, having regard to the procurement principles set out in clause 4 of this Policy and any other factors considered relevant by the Council, to utilise a different method of procurement in a particular instance than provided for in the table at clause 8.

The Council will record reasons for utilising a different procurement method in a specific instance and for utilising a procurement method other than tendering.

## 9. COUNCIL ORDER FORMS

All goods or services shall be obtained only by use of a Council Order Form provided that in urgent cases goods or services may be ordered subject to confirmation by an official order.

Order forms shall be numbered consecutively, with a register of all order forms to be maintained under the control of the Chief Executive Officer.

It shall not be necessary to issue a Council Order Form for:

- fees or payments imposed under any Act;
- insurance and freight charges under \$100;
- payments pursuant to any Award binding upon Council
- payments pursuant to any Court Order binding upon Council
- if the goods or services are below the value of \$100 and the invoice is signed by the employee with the employees name printed;

Order Forms shall have the following details:

- date of order
- suppliers name
- details of goods ordered
- agreed prices where available. If prices are unavailable the order form should note an estimate of the value of the goods or services ordered
- budget allocation account number.

## 10. RECEIPT OF GOODS

Unfilled orders should be regularly followed up to provide completion of procurement process.

All goods and services received should be checked to ensure that:

- quantity of goods conforms with order form;
- goods are in good order and condition;
- price charged is in accordance with the order form, and is fair and reasonable;

All documentation (including cart notes) is to be forwarded to the Finance Officer to allow for processing of invoices and payment to the supplier.

## 11. QUOTATIONS

### 11.1 Informal Quotation Process

Where the gross value of goods or services are required which are estimated to cost \$10,000 or less, a reputable trades person or supplier, who has a history of cost effective work or supply for the Council, may be asked to undertake the work or supply the goods which will include an immediate completion requirement.

*Note: Refer to Clause 10 - Council Order Forms for procurement of goods to the value of \$100.*

### 11.2 Formal Quotation Process

Where the estimated gross value of the goods or services is greater than \$10,000 but less than \$50,000, the method of procurement will be by formal written quotation. A minimum of three quotations must be sought, with these quotations to be submitted in writing.

Provided that a provision exists within the budget, approval to commit expenditure by formal written quotation can be authorised by the department manager concerned.

The quotation period will allow suitable time for the parties concerned to fully study the request for quotation document. Council may for some good cause extend the closing date.

The formal quotation process will not apply if:

- It is impracticable to call for quotations in the circumstances of a particular case (ie single supplier etc), or

- Council resolves for some other good cause that quotations need not be called for in the circumstances of a particular case.

### 11.3 Fleet Vehicle Quotation Process

Where fleet vehicles are purchased the method of procurement will be by formal quotation from local dealerships. Fleet vehicle prices are set by vehicle manufacturer's and include a government subsidy for Council purchases.

Provided that a provision exists within the budget, approval to commit expenditure by formal written quotation can be authorised by the department manager concerned.

The quotation period will allow suitable time for the parties concerned to fully study the request for quotation document. Council may for some good cause extend the closing date.

The number of quotations required will vary from one to three depending on the particular vehicle to be purchased (ie single supplier of particular vehicle).

## 12. TENDER PROCESS

### 12.1 CODE OF ETHICS

All tendering processes conducted by Council will be in adherence with the Interim Australian Standard Code of Tendering (SA4120 (INT) – 1993), which is based on the following principles:

- Tendering at all levels shall be conducted honestly and in a manner that is fair to all parties involved;
- Parties shall comply with all legislative obligations including those required by trade practices and consumer affairs legislation;
- Principals shall have regard to the costs of bidding and the number of tenderers;
- Tenderers shall bid only where they intend to carry out the work if successful;
- Principals shall only call tenders after they have made a firm commitment to proceed with the project;
- The conditions of tendering shall be the same for each tenderer;
- Parties shall not engage in practices such as collusion on tenders, inflation of prices to compensate unsuccessful tenderers, hidden commissions, or any other such secret arrangements;
- Principals, contractors and suppliers shall be prepared to attest to their probity, if necessary, by statutory declaration or other reasonable means;
- Tender documents shall specify the principal's requirements as clearly and precisely as possible and, when documents are altered, sufficient time shall be allowed for all tenderers to review and revise their tenders;
- Any party with a conflict of interest shall declare those interests; and
- Tenderers shall retain the right to intellectual property submitted with tenders, including title thereto.

## 12.2 Monetary Limit

The monetary limit for the provision of goods or services above which tenders must be called is \$50,000 and above.

The monetary limit will not apply if:-

- It is impracticable to call for tenders in the circumstances of a particular case, or
- Council resolves for some other good cause that tenders need not be called for in the circumstances of a particular case, or
- the goods are second hand/used (ie plant & machinery) that would make it impracticable to tender. In this instance a formal quotation process should be undertaken.

## 12.3 Tender Options

The tender process can be initiated by one of the four tender procedures as detailed:

- Open Tenders – All interested parties are invited through open public advertisement to tender on a common basis.
- Selected Tenders – A limited number of organisations are directly invited to tender because of their proven experience or recognised ability to undertake particular work. A minimum of three organisations must be invited to tender.
- Negotiated Tenders – A firm tender is arrived at by negotiation with a single prospective organisation. The negotiations must be carried out in good faith.
- Pre-registered Tenders – Expressions of Interest are invited for a project. Applicants are evaluated with a small number meeting the required criteria then being invited to tender.

## 12.4 Document

All specification writing to be in accordance with the Local Government Works Contract template.

## 12.5 Advertising

Invitations to tender shall be advertised on at least one occasion. The advertisements shall direct tenderers to identify the tender by placing the advertised tender reference on the outside of the sealed envelope or package in which the tender must be enclosed.

All invitations to tender for the provision of goods or services to Council shall specify a closing date, and Council may, at its discretion, extend a closing date.

All advertisements or invitations to tender will indicate “Tenders by facsimile and E-mail **will not** be accepted”.

All advertisements or invitations to tender will indicate “No tender nor the lowest tender necessarily accepted”.

## 12.6 Deposit

Tenders may be received through the mail or may be deposited in the locked container provided for the purpose, and designated as the Tender Box. Tenders received through the mail are to be addressed to

the Chief Executive Officer and marked “TENDER ....” and deposited in the Tender Box as soon as practicable.

#### 12.7 **Accidental Opening**

When an envelope containing a tender is not marked as required, and is opened in the normal process of mail handling, the tender and the envelope are to be sealed into another envelope by the person dealing with the mail, correctly endorsed with the tender number and signed by the Officer, and immediately placed into the Tender Box. The contents of the tender must not be divulged to any other person by the said Officer.

#### 12.8 **Opening**

The Tender Box shall be opened in the presence of at least two members of the management executive team at the time specified in the invitation to tender as the time for the closing of the tender, or at such later times as may be necessary, and the appropriate tenders removed.

Where more than one tender is current at the one time, all tenders in the Tender Box other than the one closing, are to be replaced and locked into the Tender Box immediately the tenders have been sorted and identified.

Immediately, after the tender box is opened, the tenders must be opened and initialled by the two Officers of Council present at the opening of the tender box.

Details of all tenders received shall be entered in the Register of Tenders.

#### 12.9 **Register of Tenders**

The Tender Register shall record the following details:-

- a brief description of the item or service to be tendered
- tender number
- date tender called
- date and time tender closes
- date and time tender opened
- name and address of all tenderers
- gross/trade-in/net values and brief details for each tender
- successful tenderer
- central records management file location

#### 12.10 **Late Tenders**

A tender received after the nominated closing time, that is:-

- received by hand “over the counter”;
- received through the mail,

shall be deemed late and shall be endorsed with the exact time of receipt. A person presenting a tender “over the counter” shall be asked to initial the endorsement.

A late tender is to be opened and scheduled and the schedule endorsed with the time and circumstances of receipt. The envelope enclosing a late tender is to be attached to the tender.

An assessment of late tenders by the Management Executive officers opening the tenders will be made on the following basis that a late tender submitted through the official Australia Post services of pre-paid cost, will not be admitted unless it can be clearly established to the satisfaction of the two Council officers opening the tenders that it was posted before the date and time for the closing of tenders. All late hand delivered tenders will not be accepted as a legitimate tender.

#### **12.11 Qualifications – Formality of Tender**

A tender which does not comply with the tender documents will be rejected. The tenderer will be given reasonable opportunity to comply with the tender documents but only without alterations to the submitted tender price.

Where a tenderer claims an error has been made in calculating the tender or has omitted to include a provisional sum, the tenderer will not be permitted to amend the tender price. In such situations, the tenderer has the options of adhering to or withdrawing the tender price or being passed over.

#### **12.12 Alternative Offers**

Alternative offers will not be considered unless provision is made for such offers within the tender documents. Where an alternative is offered by a tenderer, such alternative is relevant to that tenderer only and cannot be priced by any other tenderer.

#### **12.13 Negotiations**

Any negotiations concerning tendered price will be concluded prior to acceptance with the lowest acceptable tender only, notwithstanding that the estimate or the price received for the amendment when added to the lowest acceptable tender may exceed other tenders. If the value of the amendment in relation to the tender price is significant and a satisfactory price cannot be negotiated with the lowest tenderer, it may be necessary to recall the tenders.

#### **12.14 Acceptance of Other than the Lowest**

Where it is intended that the lowest tender will not necessarily be accepted then such information should be provided to all prospective tenderers.

The tender most advantageous to the Council will be the one considered for acceptance. Where it is proposed to pass over a formal tender, the tenderer may be informed of the reasons before the preferred tender is accepted.

#### **12.15 Confidentiality**

Adequate safeguards will apply to secure the confidentiality of tenderers. All information provided between the tenderers and the Council will be treated as confidential and both the tenderer and the Council will maintain such information as confidential and commercial-in-confidence.

### **13. EVALUATION OF TENDERS & QUOTATIONS**

#### **13.1 Evaluation of Tenderers**

Evaluation should consider tenderers:-

- technical, management, physical and financial capacity;
- current commitments;
- standing within the industry;
- record of performance;
- ability to perform the works;
- occupational health, safety and welfare systems management.
- tender price
- level and quality of goods or services to be provided

### **14. STRATEGIC ALLIANCES PURCHASING**

The Council may undertake procurement through contract arrangements administered by the following authorities or organisations:

- Strategic Purchasing;
- Local Government Corporate Services;
- State Procurement (NSW and SA); and
- a purchasing group of which the Council is a member.

### **15. EMERGENCY PURCHASES**

Purchases may be made without following this Policy in emergency situations.

For the purpose of this clause emergency situations are restricted to:

- genuine concerns for public safety;
- avoiding major expenses;
- security of the Council's assets; or
- invoking of the Emergency Response Plan.

Where a purchase is made under this clause, the following will apply:

- the expenditure will be limited to that required to alleviate the emergency situation only; and
- this Policy will be followed as soon as the emergency situation is alleviated.

### **16. PANEL CONTRACTS**

The Council may establish panel arrangements with suppliers. If it does so it may undertake procurement through these panel arrangements.

### **17. WORK HEALTH & SAFETY**

The Council will only engage suppliers who are able to maintain a level of work health and safety acceptable to the Council. As a minimum, this will be compliance with the Work Health Safety Act 2012 and all associated regulations. Additional work, health and safety and welfare requirements specific to a particular procurement will be advised in the Conditions of Contract.

**18. SALE OR DISPOSAL OF LAND AND OTHER ASSETS**

Council property that is surplus to requirements must be disposed of by formal tender or auction. The following processes shall apply:-

18.1 For the sale and disposal of land and other assets, the following principles will apply:

- consistency with and relevance to the Council's Strategic Plans;
- transparency and accountability in sale and disposal procedures and practices to ensure that the Council obtains the best price in the circumstances and that all potential purchasers are given equal opportunity to purchase the land or assets;
- opportunities to enhance local economic development and growth;
- compliance with statutory and other obligations;
- commercial confidentiality within legislative constraints; and
- other relevant factors deemed appropriate by the Council.

18.2 When the proposed sale price is contrary to the adopted budget of Council and it is not possible or practical to call a special meeting of Council, the sale can be authorised subject to joint approval from the Mayor, Deputy Mayor, Chief Executive Officer and another Elected Member.”

18.3 The Council will call for tenders for the sale or disposal of land and other assets in the following circumstances:

<b>Value of Asset (\$)</b>	<b>Method of Disposal</b>
Less than \$10,000	By means determined appropriate by the officer responsible
\$10,000 - \$50,000	Public auction or purchase offer invited by at least 2 advertisements in a newspaper circulating throughout State and listing with Land Agent for land.
\$50,000 or greater	Public auction, open tender or listing with land agent (land)

18.4 However the Council may, in its absolute discretion, notwithstanding clause 18 of this Policy and having regard to the principles set out at clause 18 of this Policy, determine not to conduct an auction or call for tenders in respect of a particular sale or disposal.

18.5 Without limiting clause 18.4 of this Policy, the Council recognises the following as being special cases where the above process may not be followed:

- land swaps with other levels of Government – to be negotiated by private sale contract;

- disposal of closed road – to be negotiated in the required 'Agreement for Exchange or Transfer' under the *Roads (Opening and Closing) Act 1991*;
- disposal to Member or employee – to be approved by the Chief Executive Officer;
- disposal to Chief Executive Officer – to be approved by the Council.

18.6 The Department Manager shall be responsible to ensure the efficient collection or deliver of the property as may be required and to ensure the completion of the transaction, including the viewing of the receipt issued by the Council's Cashier for the purchase of the relevant item of property.

## 19. ENVIRONMENTAL PURCHASING POLICY

There is growing public awareness of the need to protect the environment by discontinuing the manufacture of certain products which are harmful to the environment and by the conservation of scarce resources and by recycling used materials where applicable.

This Council is committed to supporting the market for recycled and environmentally sensitive products by increasing both supply and demand where practical and effective, and by encouraging economic growth and development in recycling and related industries.

The officers who are responsible for the sourcing and procurement of this Council's materials requirements, are encouraged to protect the environment by discontinuing the purchase of products which are harmful to the environment and to promote the preservation of the environment by increasing recycling activity where practicable.

This can be achieved through promotion of the collection of otherwise reusable or recyclable products for recycling and to purchase these products where it is efficient to do so, to increase market viability by increasing demand.

Therefore, preference is to be given to the purchase of products containing 50% or more of recycled material from Australian waste, provided the product is fit for the purpose and is comparable in price to the new or replacement material alternatives.

## 20. BUY LOCAL

Preference for the provision of goods and services will be given to local suppliers only where the price, quality, availability and service provision is comparable to other suppliers or where an economic benefit will accrue to the Council or the community.

This policy should be included in all future tender documents for the provision of Council goods and services which are contracted out.

## 21. WORK HEALTH & SAFETY POLICY

This Council believes that a bi-partisan approach to workplace health and safety is beneficial to all persons at the workplace. Employees and where appropriate their elected Health & Safety Representatives or Committee have

the right both legally and morally to be kept informed of any changes to the workplace which might effect their health or safety.

It is the policy of Council that prior to making a decision to purchase plant, equipment, substances or anything which may effect the health, safety or welfare of employees at the workplace management will consult with duly elected health and safety representatives, health safety committee and affected workers.

This is in accordance with Section 47 of the Work Health Safety Act 2012 – Duty to Consult with Workers.

All plant equipment and substance will be purchased from manufacturers, suppliers or distributors who comply with Section 23 of the Act, Duties of PCBU's etc. ensuring that plant and substances are safe, have been tested or examined, are supplied with relevant documentation where necessary, and comply with prescribed standards and codes, that adequate information is available to ensure safe use, handling, processing storage, transportation or disposal etc.

Preference will be given to manufacturers of equipment from SA and/or Australia.

In accordance with the approved Code of Practice for Manual Handling, purchasing equipment and where possible the general performance characteristics required to reduce the risk to health and safety.

All purchasing contracts will be endorsed with the requirement that all prescribed standards of the Work Health Safety Act are met.

All purchases of plant and hazardous substances will be in accordance with WHS Plant and Hazardous Substances procedures.

## **22. COMPLIANCE WITH ALL AUSTRALIAN STANDARDS**

Council will ensure that the delivery of all goods and materials satisfies all of the requirements of all relevant Australian Standards.

*Note: A catalogue of Australian Standards is available from "Standards Australia".*

## **23. QUALITY ASSURANCE ENDORSED COMPANIES**

Council will ensure that where practical, preference is given to suppliers and manufacturers who are quality endorsed and accredited to the SA 3900/ISO 9000 Quality Standard.

*Note: A catalogue of certified companies is available from Quality Assurance Services, a division of Standards Australia.*

## **24. COMPLIANCE WITH NATIONAL COMPETITION POLICY**

Council will ensure that the application of Competition Principals will apply for in house bids for work as listed in the following points.

#### 24.1 **Significant in terms of a Business Activity relates to**

- Being in a competitive or potentially competitive market
- Not being an activity that is peripheral or marginal to another Council activity
- The commercial objectives of the activity being greater than social economic development
- public safety
- environmental
- or other governance objectives of Council which may also refer to monopolies and isolation issues within the Council area.
- Or any other non-commercial objectives of Council.

#### 24.2 **Pricing Policy**

Where an activity of Council, not being a significant business activity, competes with one or more businesses, then the pricing for the Council service provided shall be determined on a full cost recovery basis or a market price. This would not apply where the commercial objectives of the activity are not greater than:-

- social
- economic development
- public safety
- environmental

or other governance objectives of the Council which may also refer to monopolies and isolation issues within the Council area.

#### 24.3 **Cost Reflective Pricing**

The following framework be used as a guide for full absorption (full cost recovery) costing of activities in our organisation, including any Competitive Neutrality Costs which apply to future significant business activities:

- Identify Outputs
- Identify Direct Costs (eg labour, materials, etc)
- Identify Indirect Costs:
  - properly valued assets
  - cost of capital
  - cost of working capital
  - return on investment (capital risk)
  - other indirect (supervision, administration)
- Factor in any competitive advantage (ie government tax relief savings etc)
- Factor in any disadvantages (ie higher levels of superannuation contribution)

OR

Use Market Price.

### 25. **COMPETITION POLICY – COMPLAINTS MECHANISM**

Council will ensure that all complaints in relation to the National Competition Policy are processed in accordance with the Tender Complaints Process.

## 25.1 The Tender Complaints Process

All complaints to be investigated by an internally appointed panel.

Within five working days from receipt of the complaint:-

- record the complaint in the CAR System;
- acknowledge the complaint;
- advise the complainant who will be dealing with the complaint;
- provide the complainant with a copy of the policy;
- provide the complainant with a copy of the complaints process.

Within twenty working days from receipt of the complaint:-

- investigate the complaint;
- advise the complainant of the result of the investigation and any corrective action taken;
- record the outcome in the complaints register.

Council authorises the appointment of an Internal Complaints Panel consisting of three (3) members to investigate any competitive neutrality complaints which arise from Council's Model Complaints Process and that members of the Complaints Panel be as follows:-

- Mayor
- Chief Executive Officer
- An independent person from the local community be appointed by the Mayor or the Chief Executive Officer.

If the complaint is not resolved satisfactorily by the Tender Complaints Process, the matter should be dealt with under Councils Review of Decisions Policy.

## 26. TRADE PRACTICES ACT

### 26.1 Introduction

On 11 April 1995, the Commonwealth and all State and Territories signed an agreement to implement a National Competition Policy, which extends the competition laws contained in Part IV of the Trade Practices Act to all persons within their jurisdiction.

Based on the recommendations of an independent review chaired by Professor Fred Himler, National Competition Policy represents a commitment by all Australian governments to a consistent national approach to fostering greater competition in the Australian economic growth and enhanced community well being.

### 26.2 Conduct Controlled by the Competition Code

A number of respective practices are regarded as being so inherently anti-competitive that they are prohibited absolutely, ie without any assessment of their impact on competition.

Other practices are only prohibited if they have the purpose or have or are likely to have the effect of substantially lessening competition.

## 26.3 **Absolute Prohibitions**

### 26.3.1 **Primary Boycotts**

This refers to situations where two or more competitors collaborate for the purpose of preventing or limiting the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons. Risk areas include trade association meetings and other opportunities for collusion amongst competitors.

### 26.3.2 **Price Fixing between Competitors**

Any arrangement which has the purpose or effect of fixing, controlling or maintaining prices for, or any discount, allowance, rebate or credit in relation to, goods or services to be supplied or acquired by any of the parties to the arrangements is prohibited absolutely. This prohibition is extremely wide and encompasses any restraint upon price flexibility.

### 26.3.3 **Third Line Forcing**

This occurs where a supplier supplies goods or services on condition that the buyer buys goods or services from another person.

### 26.3.4 **Resale Price Maintenance**

Any direct or indirect attempt at enforcing resale price maintenance is prohibited. The practice of recommending prices for goods and services is not prohibited provided that certain conditions are complied with.

## 26.4 **Prohibitions Dependent Upon Anti-Competitive Purpose or Effect**

### 26.4.1 **Anti-Competitive Agreements**

Contracts, arrangements or understandings which have the purpose or are likely to have the effect of substantially lessening competition in a market.

Risk areas include market sharing agreements and agreements which restrict the supply or quality of goods.

### 26.4.2 **Misuse of Market Power**

An entity which has a substantial degree of power in a market is prohibited from using that power for the purpose of:-

- eliminating or substantially damaging a competitor;
- preventing the entry of a person into any market; or
- deterring or preventing a person from engaging in a competitive conduct in any market.

Examples of such conduct could include refusals to deal, termination of existing supply of trading arrangements, predatory pricing and price discrimination.

### 26.4.3 **Exclusive Dealing**

This refers to the interference by a supplier with the freedom of its buyers to buy from other suppliers and with the freedom of its suppliers to supply to other buyers. Risk areas include the following common business practices:

- exclusive distribution – the purchase of goods or services on condition that the supplier will not supply goods or services to another distributor in a territory;
- exclusive purchase – the supply of goods or services on condition that the buyer will not acquire similar goods or services from another supplier; and
- restrictions on the resupply of goods or services to particular persons or in particular areas.

### 26.4.4 **Mergers Resulting in Substantially Lessened Competition**

A merger is prohibited if it would have the effect, or likely to have the effect, of substantially lessening competition.

### 26.4.5 **Other Boycotts**

This refers to the situation where two parties together engage in conduct, which restricts a third party from supplying to, acquiring from, a fourth party.

## 27. **CONDUCT WHICH MAY BE CAUGHT UP UNDER THE COMPETITION POLICY**

Government departments and authorities participate in markets as buyers and sellers of goods or services. In doing so, they may enter into contracts, arrangements or understandings which, for example:

- fix prices;
- have the effect of dividing up the market between competitors;
- impose restrictions on the freedom of parties to buy from or sell to other suppliers;
- provide for the supply of goods and services only on condition that the buyer buys goods or services from another person;
- exclude a certain class of persons from a market; or
- restrict the supply of goods to a market.

For example, where a Government owned entity agrees to enter into a contract with a construction company for the construction of a piece of infrastructure, and agrees in that contract that materials will only be purchased from a specified supplier, this could amount to exclusive dealing.

Similarly, where a Government owned entity or local government hires out some facilities as a function venue, but requires that the lessee also contract for catering services from one particular source, this could amount to third line forcing.

With local government authorities now required to go to open tender to market test the delivery of a significant proportion of their services, and in the context of deregulation of some functions over which local councils previously exercised a statutory monopoly but where they are not in competition with other local authorities and with private sector suppliers, councils may be at risk of engaging in conduct which could breach the Competition Laws. For example,

where neighbouring councils enter an agreement or understanding to divide the market for building permits between them, or not to compete on price, or not to accept tenders from a particular company, these arrangements could be in breach of the Competition Laws.

**28. PROCEDURE**

The Council may adopt procedures in relation to tendering from time to time.

**29. DEPARTURE FROM POLICY**

The Chief Executive Officer of the Council may determine not to follow this Policy in respect of a procurement activity if in the opinion of the Chief Executive Officer the circumstances of the procurement activity warrant a departure from this Policy.

**30. POLICY REVIEW**

This Policy will be reviewed annually. However, any alterations to this Policy are not to be applied to the detriment of procurement processes or arrangements that are already in place.

**Strategic Link:**

**Delegation:**

The following Council officers are authorised to procure goods or services within budget area limitations, and with compliance to all parts of this policy:

Area of Responsibility	Level of Responsibility Per Item
<b>Organisational</b>	
Chief Executive Officer	Unlimited within budget constraints and compliance with Tender & Purchasing Policy
<b>Corporate Services</b>	
Deputy Chief Executive Officer	Unlimited within budget constraints and compliance with Tender & Purchasing Policy
Executive Assistant	Up to \$5,000 purchases for Elected Member, CEO and Senior Staff travel, meeting, conference arrangements and other administrative items.
Finance Officer	Up to \$5,000 purchases for administrative items and training requirements.
Administration Officers	Up to \$500 for Office requirements.

**Operations**

Manager Works	Unlimited within budget constraints and compliance with Tender & Purchasing Policy.
Works Supervisor	Up to \$25,000
General Inspector /Storeman	Up to \$5,000
Park and Gardens Team Leader	Up to \$5,000
Construction Team Leader	Up to \$5,000
Water Services Maintenance Worker	Up to \$5,000

**Building & Development**

Manager Environmental Services	Unlimited within budget constraints and compliance with Tender & Purchasing Policy.
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**Sub-Delegation:**

- Delegation made to a specific position (including Chief Executive Officer) extends to any person appointed to act in the position.
- In the absence of the Chief Executive Officer, delegation extends to the Deputy Chief Executive Officer.

**Documentation:**

<b>Authority:</b>	Adopted by Council:	12/03/2013	{Motion No 12c/32013}
	Reviewed by Council:	10/11/2015	{Motion No 7c/112015}
	Amended by Council:	10/10/2017	{Motion No 6c/102017}
	Amended by Council:	10/04/2018	{Motion No 6c/042018}

SIGNED: .....  
Responsible Officer

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_