3.2 COMPLIANCE WITH NATIONAL COMPETITION POLICY FOR 2009-10
(CORP36:MK:MI)

Responsible Director: Marilyn Kearney

**RECOMMENDATION**

That the National Competition Policy Compliance report for 2009-10 be noted.

**INTRODUCTION**

The purpose of this report is to advise Council that following assessment Monash City Council has complied with National Competition Policy (NCP) requirements for 2009-10.

**BACKGROUND**

The Victorian Government has an ongoing commitment to competition policy and competitive neutrality. Hence, Councils remain obliged to adhere to competitive neutrality principles and the complaints mechanism remains in place under the Competition Principles Agreement reached in 1995 between the Commonwealth and the State and Territory Governments. The State of Victoria agreed in Clause 7 of the Agreement to be responsible for applying the NCP principles to local government in Victoria.

At the February 2006 Council of Australia Government meeting it was agreed that all participants would recommit to the principles contained in the Agreement.

**DISCUSSION**

1.0 NATIONAL COMPETITION POLICY

National Competition Policy requires that Council demonstrate ongoing compliance to the following three policy elements:

- The Trade Practices Act
- Legislation (Local Laws must not be anti-competitive)
- Competitive Neutrality

1.1 Trade Practices Act

As some of Council’s service and business activities fall within the jurisdiction of the Restrictive Trade and Consumer Protection provisions of the Trade Practices Act (TPA), a trade practices compliance program has been established to train staff and raise awareness of prohibited, anti-competitive or unfair conduct.
These compliance strategies, which include formal awareness training and business practice guidelines are overseen by Council’s Compliance Officer and are designed to promote behaviour that complies with the Act. This satisfies Council’s obligations with respect to this matter. For 2009-10 the TPA training was conducted in October 2009 with a total of 36 participants.

1.2 Local Laws
Under National Competition Policy, Council cannot have any local laws, which are anti-competitive or restrict free and open competition unless

- the benefits of the restriction outweigh the costs to the community; and
- the objectives of the local law can only be achieved by restricting competition.

There were no local laws reviewed in the last 12 months.

1.3 Competitive Neutrality Compliance
Under Competitive Neutrality (CN) Policy, Councils are required to apply competitively neutral pricing to significant business activities that compete with other private sector service providers. This means that Council must either set prices to recover actual costs plus other costs that it normally would not seek to recover (e.g. market rental, Council rates, payroll taxes etc) or alternatively, seek community endorsement to retain a subsidy for the significant business activity.

Importantly, CN does not apply to the non-business, regulatory or non-profit activities undertaken by Council which comprises most of the operations conducted by Council. Council has five significant business activities. These are as follows:

1. Brine Street Child Care Centre;
2. Learn to Swim Program at Monash Aquatic & Recreation Centre (MARC);
3. Dry Program (Gymnasium and fitness classes) at MARC;
4. Learn to Swim Program at the Clayton Aquatic & Health Centre;(CAHC); and
5. Dry Programs (Gymnasium and fitness classes) at CAHC.

Council’s Dry Programs conducted at Oakleigh Recreation Centre are monitored and have been assessed for CN. However, due to the size of the activity, based on CN principles it is not considered a significant business activity.

FINANCIAL
The financial position of Council’s business activities is illustrated in the table below.
### Business Activity

<table>
<thead>
<tr>
<th>Business Activity</th>
<th>Council Subsidy % (Financial Position before NCP Costs – Including Overhead Costs)</th>
<th>Council Subsidy % (Financial Position after NCP Costs)</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brine Street Child care Centre</td>
<td>10.54%</td>
<td>-4.73%</td>
<td>Council subsidy is reduced after applying NCP costs due to a negative adjustment to salary and wages. It should be noted that Council pay rates are estimated to be 20% higher than the Children Services (Victoria) Award 2005. Brine St. recovered just under 90% of its expenditure after overheads. This does comply with the 90% operational target set by Council in December 2002. However, the subsidy is slightly (0.54%) over the target of 10%. Due to this minimal variance the cost of conducting a Public Interest would outweigh the cost of a Council subsidy at 0.54%.</td>
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<tr>
<td>MARC – Learn to Swim Program</td>
<td>-13.80%</td>
<td>-9.52%</td>
<td>The MARC Learn to Swim Program generated just under 14% surplus after overheads costs and just under 10% surplus after all NCP costs were applied. There was a 6% increase in the profit margin from the 2008-09 period.</td>
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<tr>
<td>MARC – Dry Programs</td>
<td>-17.63%</td>
<td>-6.13%</td>
<td>The MARC Dry programs generated just under 18% surplus after overhead costs and a 6% surplus after NCP costs were applied. There was a 5% increase in the profit margin from the 2008-09 period.</td>
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<tr>
<td>CAHC – Learn to Swim Program</td>
<td>-10.50%</td>
<td>-0.92%</td>
<td>The CAHC Learn to Swim Program generated over 11% surplus after overheads and just under 1% surplus after NCP cost were applied. There was a significant reduction of 32% in Council subsidy from 2008-09. This business activity has turned over a marginal profit after one year of operation.</td>
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<tr>
<td>CAHC – Dry Programs</td>
<td>-1.92%</td>
<td>10.40%</td>
<td>The CAHC Dry programs generated just under 2% surplus after overhead costs, and just under 11% subsidy after NCP costs were applied. Council subsidy from the previous year was significantly reduced by 11%. Note that the CN Policy states “For the purpose of CN Policy, the key requirement is that Councils should aim to recover the full cost of their whole ‘business activity’ over the medium to long term (three to five years)...” It must also be noted that the CAHC membership fees were set in consideration of the socio economic demographics and range of programs and facilities on offer at the Centre</td>
</tr>
</tbody>
</table>

POLICY IMPLICATIONS


CONCLUSION

Councils remain obliged to adhere to competitive neutrality principles and the complaints mechanism remains in place under the Competition Principles Agreement reached in 1995 between the Commonwealth and the State and Territory Governments. The State of Victoria agreed in Clause 7 of the Agreement to be responsible for applying the NCP principles to local government in Victoria.

Council has implemented strategies and compliance arrangements that satisfy its National Competition Policy requirements. Hence, Council can claim that for the period of 2009-10 is NCP compliant in all three areas i.e.

- The Trade Practices Act
- Legislation (Local Laws must not be anti-competitive)
- Competitive Neutrality

As per the request of the Department of Planning and Community Development the Annual Certification Statement for 2009-10 has been completed and included in the Annual Report certifying compliance for Monash City Council with NCP principles.