

Councillor Davis - QoN - Council Engagement in Commercial Markets: Risk, Oversight, and Impact on Private Enterprise

Tuesday, 22 April 2025
Council

Council Member
Councillor Henry Davis

Public

Contact Officer:
Anthony Spartalis, Chief Operating Officer

QUESTION ON NOTICE

Councillor Henry Davis will ask the following Question on Notice:

- ‘1. What is the Council’s policy regarding competition with private sector providers in the delivery of services, including through subsidiaries or associated entities?
 2. If no formal policy exists, what is the administration’s (including the Council, subsidiaries or associated entities) methodology or guiding principles when engaging in activities that may compete with private market operators?
 3. Does the Council, or any of its subsidiaries or associates, engage in pricing strategies that may be considered predatory, with the intent or effect of undercutting private competitors?
 4. Under what circumstances can the Chief Executive Officer or administration waive or reduce council rates, and does this require a formal resolution of Council?
 5. Have any rate concessions, fee waivers, or financial incentives been provided to secure commercial contracts that would otherwise be fulfilled by private market participants? If so, were these decisions approved by Council resolution, and were any impact assessments on market competition undertaken?
 6. What authorisations (e.g., Council resolutions, delegated authorities) exist that permit the administration, or its subsidiaries/associates, to engage in commercial activity in direct competition with private businesses?
 7. What is the Council’s policy on price gouging or unfair pricing practices, and does this apply to its subsidiaries and associates?
 8. Has the Council undertaken any analysis or received legal advice regarding the potential for its subsidiaries or associates to breach competition law through their pricing or contracting practices?
 9. What processes are in place to ensure transparency when Council, subsidiaries or its associates enter into commercial arrangements with private parties?
 10. How does the Council assess the public benefit versus private market impact when engaging in commercial ventures either in its own right or through its subsidiaries and associates?
 11. Are commercial decisions by Council-associated entities subject to public reporting or audit by an external body?’
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REPLY

1. Council is bound by the principles of competitive neutrality through the *Local Government Act 1999* (SA) Schedule 2, Part 1, clause 15. In addition to the principles of competitive neutrality and National Competition Policy, Council has additional policies and controls in place including prudential reviews and reports, and the Land Acquisition and Disposal Policy, with strategic direction informed by the Property Strategy.
2. Competitive neutrality principles are defined in *Government Business Enterprises (Competition) Act 1996*, Part 4, section 16 - *"If a subsidiary is declared by its charter to be involved in a significant business activity, the charter must also specify the extent to which the principles of competitive neutrality are to be applied to the activities of the subsidiary and, to the extent that may be relevant, the reasons for any non-application of these principles."*
3. This is summarised and noted on page 23 of the City of Adelaide Annual Report 2023/24 - *"Principles of competitive neutrality are designed to neutralise any net competitive advantage that a government or local government agency engaged in significant business activities would otherwise have, by virtue of its control by the government or local government, over private business operating in the same market. The City of Adelaide has a complaints mechanism in place should parties or individuals wish to complain. In 2023–2024, no complaints were received with regard to competitive neutrality."*
4. Land acquisitions are an express decision of Council.
5. What is the Council's policy regarding competition with private sector providers in the delivery of services, including through subsidiaries or associated entities?
 - 5.1. See comment above.
6. If no formal policy exists, what is the administration's (including the Council, subsidiaries or associated entities) methodology or guiding principles when engaging in activities that may compete with private market operators?
 - 6.1. See comment above.
7. Does the Council, or any of its subsidiaries or associates, engage in pricing strategies that may be considered predatory, with the intent or effect of undercutting private competitors?
 - 7.1. No
8. Under what circumstances can the Chief Executive Officer or administration waive or reduce council rates, and does this require a formal resolution of Council?
 - 8.1. Rates cannot be waived by an Officer. This requires formal resolution of Council.
 - 8.2. Criteria for reduction in rates via Mandatory and Discretionary Rebates is defined by Sections 159-166 of the *Local Government Act 1999* (SA). The Chief Executive Officer can apply these rebates under delegation.
 - 8.3. The Chief Executive under delegation can remit rates in the case of hardship (Section 182(4) *Local Government Act 1999* (SA)).
9. Have any rate concessions, fee waivers, or financial incentives been provided to secure commercial contracts that would otherwise be fulfilled by private market participants? If so, were these decisions approved by Council resolution, and were any impact assessments on market competition undertaken?
 - 9.1. No.
 - 9.2. All land disposal and acquisitions follow the Land Acquisition and Disposal Policy, with strategic direction informed by the Property Strategy. These items are presented to Council for consideration and approval and are an express decision of Council.
 - 9.3. Lease Management, pricing is informed by leasing agent appraisal and executed under delegation, in accordance with delegations' policy, new leases that require the Common Seal are presented to Council for consideration and approval.
 - 9.4. Parking Fees - Off-Street, pricing is informed via market research and formally adopted by Council as part of its fees and charges.
10. What authorisations (e.g. Council resolutions, delegated authorities) exist that permit the administration, or its subsidiaries/associates, to engage in commercial activity in direct competition with private businesses?
 - 10.1. Commercial Activity undertaken by Council is subject to Council approval. Flinders Street is a recent example.

11. What is the Council's policy on price gouging or unfair pricing practices, and does this apply to its subsidiaries and associates?
 - 11.1. As outlined above, policies and principles of competitive neutrality (as defined in legislation) guide Council and subsidiary commercial activity, including pricing practices.
 - 11.2. Council does not engage in price gouging or unfair pricing practices. Pricing is developed with reference to the relevant market and all fees and charges are approved by Council annually.
12. Has the Council undertaken any analysis or received legal advice regarding the potential for its subsidiaries or associates to breach competition law through their pricing or contracting practices?
 - 12.1. No analysis has been undertaken recently nor legal advice sought specific to breach of competition law. Neither has there been any trigger to do so (eg complaint from a business or individual).
13. What processes are in place to ensure transparency when Council, subsidiaries or its associates enter into commercial arrangements with private parties?
 - 13.1. From a property perspective, administration follows the Land Acquisition and Disposal Policy, with strategic direction informed by the Property Strategy. Both documents are approved by Council. Land transactions are an express decision of Council.
14. How does the Council assess the public benefit versus private market impact when engaging in commercial ventures either in its own right or through its subsidiaries and associates?
 - 14.1. Transactions are governed by Policies and Guidelines in place and undertaken in accordance Council reports and resolutions. In relation to Capital acquisitions or disposal or a business that require significant capital funding a Prudential Issues Report is prepared which considers benefits, risk, and governance.
15. Are commercial decisions by Council-associated entities subject to public reporting or audit by an external body?
 - 15.1. Yes. All Council finances including those of its subsidiaries are audited annually

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 5.5 hours.
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