

ITEM 10. EXEMPTION FROM TENDER – MANAGEMENT OF INDOOR AQUATIC LEISURE FACILITIES**FILE NO: S100640.001****SUMMARY**

This report seeks exemption from tender for the management of the Ian Thorpe Aquatic Centre and Cook + Phillip Park Aquatic and Fitness Centre.

The City has five aquatic leisure facilities across the local government area. These facilities are key community assets in Sustainable Sydney 2030, providing a rich layer of accessible social programs and services through activity hubs strategically located across the City. Collectively, the facilities attract over 1.5 million visits annually.

The five facilities are currently managed under separate contracts with YMCA NSW and Belgravia Leisure. The contracts offer the City a financial guarantee over an initial term of four years and two months, with the option of two additional three year terms. The contracts commenced on 1 February 2012, with the first term concluding on 31 March 2016.

Belgravia Leisure, which operates the three outdoor facilities, has advised the City that it will be exercising the option for the first additional term of three years.

On 17 February 2016, YMCA NSW, which operates the two indoor facilities, issued a notice to terminate, effective on 1 April 2016.

The City considered available options and this report requests an exemption from tender and approval to enter into a contract with Contractor A for the management of Ian Thorpe Aquatic Centre and Cook + Phillip Park Aquatic and Fitness Centre under extenuating circumstances for a period of three years.

During the three year period of the contract with Contractor A, the City will complete a comprehensive review of service delivery options to determine the preferred service delivery model for the long term. The review will also include the new Gunyama Park Aquatic and Recreation Centre in Green Square which is anticipated to be ready for operation in 2019.

Contractor A, can transition into the operations with minimal disruption to services. The City will work collaboratively with Contractor A to deliver operational efficiency, improved customer benefits and service outcomes and value for money for the City by leveraging economies of scale across the facilities.

RECOMMENDATION

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993, noting that, because of extenuating circumstances, a satisfactory result would not be achieved by inviting tenders to manage Ian Thorpe Aquatic Centre and Cook + Phillip Park Aquatic and Fitness Centre;

- (B) Council note the reasons why a satisfactory result would not be achieved by inviting tenders are:
- (i) there is insufficient time to undertake a competitive tender before the contract term expires and facilities may need to be closed;
 - (ii) going to tender would not deliver a competitive process because of the limited number of leisure service providers in the market capable of managing facilities of the required size and scope;
 - (iii) the recommended contractor offers demonstrated value for money, as described in confidential Attachment A to the subject report; and
 - (iv) the revised contract structure will allow the City to complete a comprehensive review of service delivery options to determine the preferred service delivery model for the long term, including the new Gunyama Park Aquatic and Recreation Centre;
- (C) Council enter into a contract with Contractor A for the management of Ian Thorpe Aquatic Centre and Cook + Phillip Park Aquatic and Fitness Centre for a three year term for the amount set out in confidential Attachment A to the subject report;
- (D) authority be delegated to the Chief Executive Officer to negotiate and approve the terms of the contract of the management agreement with Contractor A, provided that the contract is consistent with this resolution;
- (E) Council note the financial implications detailed in confidential Attachment A to the subject report; and
- (F) Councillors be advised of the outcome of the contract negotiations through the CEO Update.

ATTACHMENTS

Attachment A: Financial Implications (Confidential)

(As Attachment A is confidential, it will be circulated separately from the business paper and to Councillors and relevant senior staff only.)

BACKGROUND

1. The City's aquatic leisure facilities are managed under contracts as follows:
 - (a) Outdoor facilities by Belgravia Leisure:
 - (i) Andrew (Boy) Charlton Pool;
 - (ii) Prince Alfred Park Pool; and
 - (iii) Victoria Park Pool;
 - (b) Indoor facilities by YMCA NSW:
 - (i) Cook + Phillip Park Aquatic & Fitness Centre; and
 - (ii) Ian Thorpe Aquatic Centre.
2. The facilities operate either all year or on a seasonal basis.
3. The provision of quality community centres and services is a priority social issue identified in Sustainable Sydney 2030. The strategy confirms the City's commitment to the health and well-being of the community through the provision of quality recreation centres and open spaces as places to meet, socialise and to engage in passive and active recreation activities.
4. The contract model with Belgravia Leisure is a financial guarantee with an initial term of four years and two months, with two additional terms of three years, exercisable by Belgravia Leisure, subject to performance.
5. The contract commenced on 1 February 2012, with the initial term due to expire on 31 March 2016.
6. The contract model with YMCA NSW is a financial guarantee with an initial term of four years and two months, with two additional terms of three years, exercisable by the City, subject to performance.
7. The contract commenced on 1 February 2012, with the initial term due to expire on 31 March 2016.
8. While Belgravia Leisure has exercised the option of the first additional term, YMCA NSW has informed the City it is not seeking an additional term and has issued a notice terminating the contract with effect from 1 April 2016.
9. To enable continuation of services to the community, it is proposed to enter into a contract with Contractor A for the management of the two indoor facilities, effective from 1 April 2016.
10. Prior to the end of the proposed contract period, staff will undertake a comprehensive review of service delivery options and recommend a preferred option to Council.

KEY IMPLICATIONS

11. There will be minimal disruption to service delivery, with all current programs and services offered by YMCA NSW unchanged for a minimum period of six months while Contractor A seeks customer feedback on service and program improvements.

FINANCIAL IMPLICATIONS

12. The commercial arrangements are based on Contractor A paying an annual guaranteed financial return to the City. Any surplus achieved over and above the guaranteed financial return in a 12 month period will be shared between both parties based on the surplus share arrangement outlined in confidential Attachment A.
13. The financial implications of the proposed changes are detailed in confidential Attachment A.

RELEVANT LEGISLATION

14. The requirements for tendering under section 55(3) of the Local Government Act 1993 do not apply to a contract where extenuating circumstances are demonstrated, and Council decides by resolution, which states the reasons for the decision, that a satisfactory result would not be achieved by inviting tenders.
15. Attachment A contains confidential information which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
16. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise the City's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

CRITICAL DATES / TIME FRAMES

17. The term of the contract with Contractor A will be 1 April 2016 to 31 March 2019.
18. The deferral of a decision to appoint Contractor A to manage the two indoor facilities or undertaking a tender process, would require the City having to negotiate a month-to-month extension to the existing contract with YMCA NSW on less favourable financial terms.
19. The recommended timing will ensure that the contract for the indoor facilities aligns with the end of the additional term for the outdoor facilities and the transition from construction to operations at the new Gunyama Park Aquatic and Recreation Centre at Green Square.

OPTIONS

20. Options available are:
 - (a) Endorse the appointment of Contractor A to manage the Ian Thorpe Aquatic Centre and Cook + Phillip Park Aquatic and Fitness Centre for a period of three years. This is the preferred option.
 - (b) Vary the existing contract with YMCA NSW on a month-to-month deed of variation on less favourable financial terms as outlined in confidential Attachment A. This is not recommended.

- (c) Insource the operation of the service. This option is not recommended, as the City is not currently structured and resourced to manage this complex frontline service.

GEORGE ANGELIS

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