

## Item 12.

### Exemption from Tender and Contract Variations - Management of Aquatic and Leisure Facilities - Belgravia Leisure

File No: S100640.027

Tender No: T2011/1107 and T2019/3462

#### Summary

This report seeks approval to vary and extend the contracts for the management of the City's aquatic facilities for an additional two years due to extenuating circumstances.

The City operates six world-class aquatic and leisure facilities throughout its Local Government Area (LGA). The sites are managed by Belgravia Leisure Pty Ltd (Belgravia) under two separate contracts.

The contract for the management of Cook and Phillip Park, Ian Thorpe Aquatic Centre, Prince Alfred Park, Victoria Park and Andrew (Boy) Charlton Pools, (referred to as 'the existing five sites contract') commenced on 1 April 2012. The contract was for a term of 10 years (including options), based on a commercial guarantee model.

In October 2019, the City entered into a new contract for the management of Gunyama Park Aquatic and Recreation Centre (GPARC) (referred to as "the GPARC contract"). As a "greenfield" site this contract is a fee for service agreement. This allows the City to establish the performance of the facility before retendering under more commercial terms. The contract was due to commence on 1 December 2019 for a term of 28 months, however, delays in construction delayed the opening of the facility resulting in the term being reduced to 14 months.

Both contracts were aligned to expire on 31 March 2022.

To ensure a consistent and seamless patron experience across all facility touchpoints and to maximise operational efficiencies in the management structure, all six facilities were to be tendered as an integrated group of activity hubs no later than September 2021.

However, with the Covid-19 pandemic still presenting significant uncertainty and risk in the market, the City considers that tendering the service in the current environment will not deliver a satisfactory result for the City. Further, the reduced operational term at Gunyama Park Aquatic and Recreation Centre does not provide an adequate commercial history on which to base the tender of this service.

As such, after careful consideration of the available options, the City is seeking approval to vary and extend both contracts for an additional two years. This will ensure continuity of service through the period of the Covid-19 pandemic without exposing the City to a highly risk averse market.

## 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 to extend the term of existing contracts for the management of the City's aquatic centres under the contract for the management of Cook and Phillip Park, Ian Thorpe Aquatic Centre, Prince Alfred Park, Victoria Park and Andrew (Boy) Charlton Pools; and the contract for Gunyama Park Aquatic and Recreation Centre (GPARC), by reason of extenuating circumstances, noting that a satisfactory result for the City would not be achieved by inviting tenders at this time;
- (B) Council note the reasons that a satisfactory result for the City would not be achieved by inviting tenders are:
  - (i) the high levels of uncertainty and risk in the market as a result of the ongoing Covid-19 pandemic will not result in value for money; and
  - (ii) due to the shorter elapsed time period since the opening of Gunyama Park Aquatic and Recreation Centre, there is insufficient commercial history to allow service providers to provide competitive responses to a tender;
- (C) Council approve the variation of the contract for the management of Cook and Phillip Park, Ian Thorpe Aquatic Centre, Prince Alfred Park, Victoria Park and Andrew (Boy) Charlton Pools; and the contract for Gunyama Park Aquatic and Recreation Centre (GPARC) to extend the terms of both contracts by an additional two years with both contracts to expire on 31 March 2024;
- (D) Council approve a variation to the contract for the management of Cook and Phillip Park, Ian Thorpe Aquatic Centre, Prince Alfred Park, Victoria Park and Andrew (Boy) Charlton Pools to vary the financial arrangements until performance returns to pre-Covid levels;
- (E) Council approve the additional funds in relation to both contracts as outlined in Confidential Attachment A to the subject report; and
- (F) authority be delegated to the Chief Executive Officer to finalise negotiations and enter into any necessary documentation to give effect to the clauses above.

## Attachments

**Attachment A** Financial and Contractual Implications (Confidential)

## Background

1. The City owns and operates six world-class aquatic and leisure facilities across the local government area.
2. Collectively, these facilities represent the largest frontline service offered by Council to the community, with over 300 different programs each week and an average of 1.7 million attendances across the service each year, pre Covid-19.
3. With the opening of Gunyama Park Aquatic Recreation Centre (GPARC), annual attendances are expected to grow to over 2.3 million each year.
4. The sites are managed by Belgravia Leisure Pty Ltd (Belgravia) under two separate contracts as follows:
  - (a) The contract for the management of Cook and Phillip Park, Ian Thorpe Aquatic Centre, Prince Alfred Park Victoria Park and Andrew (Boy) Charlton Pools, (the existing five sites contract) commenced on 1 April 2012.
    - (i) As these were established sites, this agreement offered a financial guaranteed payment to the City over a ten-year term (with options).
    - (ii) However, since the Covid-19 pandemic was declared in March 2020, the agreement has been operating under changed financial arrangements effected through the force majeure clause in the contract with the City underwriting costs.
  - (b) The contract for the management of the recently completed Gunyama Park Aquatic and Recreation Centre was awarded in October 2019.
    - (i) As a "greenfield" site, this agreement is a fee for service model with a six-month pre-opening period and a two-year operating term.
    - (ii) This model allows the City to establish the business before tendering under a more commercial model, however, as a result of delays in construction of the centre, the operating term has been reduced to 14 months.
5. Both contracts expire on 31 March 2022.
6. The Covid-19 pandemic has had a significant impact on the leisure industry and the dynamics of the leisure management market. Impacts include:
  - (a) Many facilities, including the City's sites, were closed for several months at the height of the pandemic.
  - (b) Public Health Orders affected operations with Covid-Safe management plans limiting entry capacity and reducing opening hours.
  - (c) Activity within the CBD has been significantly reduced with working from home and remote study arrangements changing where and how people exercise.
  - (d) The economic effects of Covid-19 have impacted discretionary spending with fitness memberships down across City facilities as households prioritise budgets.

7. While the development of vaccines promises a return to some normality, the delays in the roll-out and threats posed by the emergence of highly transmissible mutated strains means future restrictions and centre (or program) closures remain a serious risk.
8. Given these uncertainties, the City believes retendering the services at this time would not achieve a competitive or satisfactory result that represents value for the City.
9. In relation to the Gunyama Park Aquatic and Recreation Centre, the reduced operating term of just 14 months does not allow the City to adequately establish the performance of the business before going to market.
10. To minimise risk and ensure value, the City is seeking an exemption from tender to:
  - (a) extend both contracts by two years until 31 March 2024;
  - (b) vary the financial terms of the existing five site contract to change the financial arrangement for operation of the facilities until performance returns to pre-Covid levels; and
  - (c) secure additional funding for the Gunyama Park Aquatic and Recreation Centre contract as a result of the contract extensions.

### **Key contract terms**

11. Both the existing five site contract and the Gunyama Park Aquatic and Recreation Centre contract will be extended until 31 March 2024. (Refer to Confidential Attachment A)
12. A change to the financial arrangements of the existing five site contract. (Refer to Confidential Attachment A)
13. No further options to extend the contracts will be offered, with the management service to be retendered in September 2023.
14. All current service levels and operating hours will be retained.

### **Key Patron Benefits**

15. Several business improvements will be delivered during the contract extension. This includes:
  - (a) an upgrade of all cardio and fitness equipment at Cook and Phillip Park, Ian Thorpe Aquatic Centre and Victoria Park Pool;
  - (b) the introduction of e-memberships cards linked to smartphones and watches; and
  - (c) a consolidated website for all leisure services with full e-commerce functionality including the ability to purchase/manage 360 memberships, view group exercise timetables across the service, book classes online and reload multi-visit passes online.

### Performance Measurement

16. Operational and financial performance targets are monitored on a monthly, quarterly and annual basis and through a combination of meetings, audits, inspections and reporting.

### Financial Implications

17. Belgravia have submitted a proposal to continue delivering services during the two-year extension period. Details are outlined in Confidential Attachment A.
18. The Gunyama Park Aquatic and Recreation Centre contract will continue to operate as a fee for service contract.
19. The existing five sites contract will operate under a variation of the payment of the guarantee amount until such time the operations reach break-even, at which point all surplus revenue will be paid to the City. Any surplus beyond the guarantee amount will be treated as profit share in accordance with the terms of the contract.
20. Funding estimates as set out in the Confidential Attachment A have been included in the City's 2021/22 long term financial plan and future forward year estimates, the subject of a separate report in the current reporting cycle.

### Relevant Legislation

21. Local Government Act 1993:
  - (a) Section 55 (3)(i) provides an exemption from tender for a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders by reason of extenuating circumstances.
  - (b) Section 10(A) provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
22. Attachment A contains confidential commercial information of the tenderers and details of Council's tender evaluation and contingencies 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.
23. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest as it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

**Critical Dates / Time Frames**

24. The term of the amended contracts will commence on 1 April 2022 and conclude on 31 March 2024.

**Options**

25. The implications of not approving the variations to the existing five sites contract and the Gunyama Park Aquatic and Recreation Centre contract would require the City to release a tender to the market by September 2021 and make an appointment by December 2021.
26. The City considered several options in this process:
  - (a) Extend both contracts for a further two years with a variation to the existing five sites contract as the preferred option.
  - (b) Tender for the management and operation of the six sites as planned. This option is not recommended given the prevailing risks in the leisure market during the Covid-19 recovery period, the reduced operating period for Gunyama Park Aquatic and Recreation Centre and due to current market conditions which are unlikely to generate a satisfactory return over the medium to long term.
  - (c) Bring the service inhouse. This option is not recommended as the City is not currently structured or resourced to manage this large, complex and high-risk frontline service.

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