

11.1 Confidential - Noarlunga Leisure Centre - Tender For Management Services

To seek endorsement of the tender process and Council approval to negotiate and finalise a contract for the management of the Noarlunga Leisure Centre.

This is an update on a previously reported project, concept or issue.

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Attachments: 1. Council Tender Evaluation Summary (2 pages)
2. Confirmation from probity advisor (1 page)
3. Contract aims and objectives (3 pages)
4. List of sites managed by Belgravia (8 pages)

1 Executive summary

1.1 Topic

To seek endorsement of the tender process and Council approval to negotiate and finalise a contract for the management and lease of the Noarlunga Leisure Centre.

1.2 Context

Council at its meeting on 20 November 2007 received a confidential report concerning the future management structure of the Noarlunga Leisure Centre. At the meeting it was resolved to establish a direct relationship with the future recreation management service provider for a maximum term of 15 years and conduct an Expression of Interest process under the guidance of a probity auditor.

A nation-wide open tender process was conducted in accordance with Council's resolution.

This report details the tender process, results of the tender evaluation and provides recommendations for endorsement by Council to finalise this matter.

1.3 Suggested outcome

This report recommends the appointment of a contractor to manage the Noarlunga Leisure Centre for a five year term with a further five year right of renewal.

This item is presented as a confidential item because it details commercial tenders for the provision of services. Our procurement policy and process focuses on ensuring that the confidentiality of all information in the course of tendering is preserved.

The possible implications of not considering this item in Confidence is the release of information which may provide industry competitors with information of a sensitive and business nature. This in turn may lead to liabilities being attached to council.

2 Recommendation(s)

1. That

- a. under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. Council is satisfied that it is necessary that the public be excluded to enable Council to consider this report at the meeting on the following grounds:**
 - (i) Section 90(3)(k) tenders for the supply of goods, the provision of services or the carrying out of works.**
 - c. accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**
- 2. That Council accept the tender proposed by Belgravia Leisure Pty Ltd for the management and lease of the Noarlunga Leisure Centre.**
- 3. That the Chief Executive Officer be authorised to negotiate suitable terms and conditions with Belgravia Leisure Pty Ltd for the management and lease of the Noarlunga Leisure Centre for a five year term with a further five year right of renewal.**
- 4. That the Mayor and Chief Executive Officer be authorised to sign and seal any contractual agreements for a term of up to ten years.**
- 5. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(b), 90(3)(d), 90(3)(k) until a recreation management services provider is appointed.**

Key Factors

3 Discussion

3.1 Request for Tender (RFT)

In accordance with our Contracts, Tenders and Purchasing Policy and procedures, an open request for tender (RFT) document was advertised through the SA

Tenders and Contracts website for the management and lease of the Noarlunga Leisure Centre. The RFT was intentionally broad in its content to allow respondents the freedom to submit innovative proposals including capital investment into the centre.

The RFT sought, as a minimum, a cost neutral position for council. This approach requires the service provider to be responsible for any financial risk resulting from the operation of the centre in any one year.

The broad approach of the RFT resulted in the following four national recreation service providers submitting a variety of differing proposals:

- The YMCA of SA
- CASA Leisure
- LeisureCo
- Belgravia Leisure

The evaluation panel comprising of council staff, a recreation services consultant and an external probity advisor analysed and scored each proposal against sound probity principles. This resulted in the short listing of two management firms, namely:

- LeisureCo (existing service provider)
- Belgravia Leisure.

A letter from the external probity advisor, John Dawson, Contracting and Tendering Services Pty Ltd confirms that 'in his opinion the process was fair and proper and conducted within a probity framework' (Attachment 2).

3.2 Select tender process

Council solicitors, Norman Waterhouse in conjunction with the evaluation panel formulated a comprehensive select tender comprising of detailed contract aims and objectives, including key outcomes (Attachment 3) and lease document.

The two tenderers were required to prepare their submission in accordance with the select tender document which contained details of the criteria by which the two submissions would be evaluated. The evaluation criteria consisted of:

- Proposed financial arrangements
- Proposed Annual Business Plan and Budget
- Demonstrated ability and relevant experience
- Management of risk
- Personnel and experience

- Resources (physical and financial)
- Any added value
- Degree of compliance with the contract

3.3 Tender Assessment

The tender evaluation panel assessed each tender on its individual merits in accordance with the evaluation criteria. The appointed Probity Advisor attended the evaluation panel meetings and provided probity advice to panel members.

The financial arrangements of the two tenderers were similar in their structure namely sharing of profits, absorbing a level of financial loss and charging a management fee.

Belgravia Leisure Pty Ltd scored highest and is recommended as the preferred contractor. They provided a very comprehensive and detailed proposal that demonstrated their significant experience and capability to manage facilities of a similar size and nature to the Noarlunga Leisure Centre.

In addition, Belgravia's level of systems, policies and procedures indicate their ability to manage the level of risk associated with the operation of the centre. The range of experienced and qualified personnel within the company, combined with the value adding services that they have offered, demonstrate that Belgravia is the most appropriate tenderer to be awarded the contract.

Further details of the evaluation results are contained in the Tender Evaluation Summary report attached to this report. (Attachment 1)

3.4 Belgravia offer – an overview

Belgravia have agreed to the terms and conditions of the contract (comprising the lease) that forms part of the select tender documentation. The Belgravia offer includes:

- No financial risk to council up to a \$60,000 per annum threshold representing Belgravia's annual management fee. Financial losses beyond \$60,000 may trigger a termination clause.
- Council to receive 25% of all profits generated up to \$100,000. Any profits made beyond \$100,000 will be shared on a 50% basis to both parties (for the portion above \$100,000).
 - E.g. for a profit of \$80,000
 - Council \$20,000 (25% of \$80,000)
 - Belgravia \$60,000 (75% of \$80,000)
 - For a profit of \$120,000
 - Council \$35,000 (25% of \$100,000 + 50% of \$20,000)
 - Belgravia \$85,000 (75% of \$100,000 + 50% of \$20,000)

- Opportunities for capital investment by Belgravia will be subject to a feasibility analysis. Belgravia is committed to capital investment if deemed to be financially viable (this has been demonstrated at other council sites managed by Belgravia)
- Continuation of employment for current staff (further discussed later in this report)

3.5 Belgravia – a company overview

In its submission Belgravia advise that it manages over 50 venues across Australia and employs over 3,000 staff in the leisure industry and almost 10 million visits per annum at its venues.

Many of the sites managed by Belgravia are local government owned. A comprehensive list of centres managed by Belgravia is attached to this report. (Attachment 4)

Belgravia consider the following sites to be similar to Noarlunga Leisure Centre:

- Albany Creek Leisure Centre, Moreton Bay Regional Council, QLD
- Belmont Oasis Leisure Centre, City of Belmont, WA
- Whitlam Leisure Centre, Liverpool City Council, NSW
- Wenden Leisure Centre, Liverpool City Council, NSW
- Cleveland Aquatic Centre, Redlands City Council, QLD
- Bernie Mullane Sports Centre, Baulkham Hills Shire Council, NSW

As part of our due diligence process the referees for the following local government owned sites were contacted:

- Thomastown Recreation and Leisure, Whittlesea Shire Council, VIC
- Whitlam Leisure Centre, Liverpool City Council, NSW
- Swan Hill Leisure Centre, Rural City of Swan Hill, VIC

All referees reported that they were pleased with the overall performance of Belgravia. The referees noted that any issues were dealt with quickly, detailed regular reports (including financial analysis) were provided, ongoing centre cleanliness, maintenance and appearance were of a high standard with a wide range of programs offered and high levels of community acceptance.

3.6 Proposed Contract and Lease Agreement

The select tender documentation was structured to clearly define council's mandatory and desirable social outcomes so as to minimise the scope for

negotiation. Under the terms of the select tender Belgravia has agreed to be bound by the undertakings in their submission and requirements set out in our contract and lease agreement.

Some key features of the contract include:

- Belgravia to be responsible for all operating losses without the obligation for council to subsidise
- preparation and submission of an annual budget and business plan for prior approval by council (including service provision)
- annual maintenance plan for all aspects of the buildings including its associated plant, equipment and cleanliness
- establishment of and reporting against key performance indicators developed in consultation with customer service surveys
- provide high quality programs that cater for the needs of our diverse community
- honour any arrangements with existing regular user groups
- a safeguard that requires prior Council approval for any price increase above the annual Consumer Price Index
- ability for council to undertake independent audits as required to determine compliance with contractual obligations
- provision of risk management, quality management, OHWS compliance, environmental management and financial management policies and procedures
- minimum of \$20 million public liability insurance
- access by council to a \$50,000 bank guarantee to rectify any failure by the successful tenderer to carry out and complete its contractual obligations.
 - E.g. if there were to be a substantial breach and the council was required to return to the market to find a suitable alternative provider, these monies could be accessed to fund such a process.
 - Other such substantial breaches may include:
 - breaches to the *Environment Protection Act 1993* (SA)
 - without reasonable cause to wholly suspend the carrying out of the contractors obligations pursuant to the contract
 - breaches a term of the lease which gives rise to a right of termination by the council
 - breaches the terms of the Services Specification.

The lease agreement is for a ten year maximum comprising an initial five year term with a further right of renewal for five years. A ten year term (in lieu of 15 years as previously resolved) is considered appropriate given the changing market and to allow us to retain some flexibility in relation to the facility and future opportunities. The commencement date for the tender is 1 April 2009 as the existing contract with LeisureCo expires on 30 March 2009.

3.7 Transition management

In its submission (which has been confirmed as part of our own due diligence with other councils) Belgravia have a track record of managing the transition of service providers in a timely and smooth manner. In some cases the timing of a transition has been with only several days notice.

Subject to Council endorsement, Belgravia will be able to implement its proven transition program at the Noarlunga Leisure Centre immediately following the contract finalisation. Part of Belgravia's transition program is to immediately contact each current member and user group to advise of the transition and confirm that any existing arrangement including health club memberships will be honoured.

All current plant and equipment (excluding certain fitness equipment) will be retained for continued use at the centre. Belgravia will introduce new fitness equipment to complement remaining equipment.

Belgravia is confident that the centre will continue to operate in a seamless manner without any loss of services during the transition phase.

Subject to our endorsement, regular update articles leading up to and immediately following the transition to Belgravia will appear in Weekly News. A joint media release will be prepared to inform the community of the change of service providers at Noarlunga Leisure Centre.

3.7.1 Current staff

The centre is currently staffed by approximately 90 casual and four permanent staff members.

Throughout the tender process Belgravia has stated its commitment to retaining current centre staff. In its proposal Belgravia confirm that it 'will seek to employ local candidates wherever possible and current staff will be encouraged to apply for the positions available. We envisage that the majority of existing staff will be retained in their current positions should they wish.'

3.8 Relationship with council

In its submission Belgravia states that 'an integral component to establishing and maintaining a strong and successful relationship with our clients is to adopt an open book management approach along with clear channels of communication and reporting.'

Belgravia will develop an annual business plan for approval by council and will participate in structured monthly meetings. In addition monthly, quarterly and annual reports will be provided to council for review.

Belgravia advise that their typical reports include:

- attendance
- financial reports
- patron feedback and community engagement
- performance analysis (KPI reporting)
- scheduled and reactive maintenance
- marketing conducted
- major events conducted and upcoming
- incident reports
- environmental reports (including utility and water consumption)

Financial performance of the Centre will be reported with detailed analysis and variance explanations.

3.9 Belgravia – risk assessment

An analysis of potential risks associated with the recommended engagement of Belgravia is detailed below:

Potential Risk	Likelihood	Risk Management Approach
Financial return – Belgravia fail to return a break even or better financial position in any one year	Possible (due to current market)	Contract obligates Belgravia to be solely responsible for any financial loss in any one year
Non performance by Belgravia	Unlikely (based on due diligence undertaken)	Contract sets out Belgravia's requirements and the need for an annual business plan to be agreed upon including performance measures. Non performance may constitute a breach of contract. Depending on the seriousness of the breach council may draw upon the bank guarantee or terminate the contract.
Management of risk (inc. OHS&W, public health, environmental & quality management)	Unlikely	Belgravia currently has policies and procedures in place demonstrating its commitment to managing risk. Belgravia has a \$20 million Public Liability

Potential Risk	Likelihood	Risk Management Approach
systems)		Insurance policy
Registrations / Licences	Unlikely	Belgravia is registered for WorkCover and has appropriate licences in place.
Governance	Rare	The company's structure as proposed has national backing and is resourced with its own tested systems for implementation at NLC. The level of transparency to Council demonstrated by the provider in relation of the centres operation was well regarded by the assessment panel. The contract makes provision for monthly, quarterly and annual reporting milestones and measurements upon the KPI's to assist council to audit the operation of the centre against the contract aims and objectives.
Management	Rare	The company has provided information to assist us to conclude that it has adequate management resources that could be applied to the management of NLC from the commencement of operations and at any intervening event during the contract period.
Financial performance of company	Unlikely	We have undertaken an inspection of the company's financial accounts, statement of position and audited financial statements and equity position. These inspections have satisfied us that the company is financially stable and able to withstand minor fluctuations in the financial market.

3.10 Future competition

During the tender process Belgravia disclosed that a sister company of the Belgravia Group 'Genesis Fitness' is the preferred service provider of an approved health and fitness centre to be established in close proximity to the Noarlunga Leisure Centre. It is reputed that the new health and fitness centre will commence operations in 2010.

Belgravia states that their investigations have shown that the new health and fitness centre will have an impact on the operations (both services and financial) of the Noarlunga Leisure Centre. It is anticipated that the new provider will seek to service the high-end commercial market for gym and fitness classes.

Belgravia considers that its relationship with Genesis Fitness (should it be the successful provider of the new facility) will provide it with the best opportunity to mitigate some of this impact. Belgravia would have access to the marketing campaigns of Genesis Fitness prior to their release, which would allow Belgravia to respond appropriately to maintain their share of the market. The clients of the

facilities will ultimately determine their patronage based on the price structures offered.

If endorsed, Belgravia intends to focus on community fitness services and the complementary broad range of activities available at the Centre.

3.11 LeisureCo – overview of current contract and tender offer

LeisureCo has been the current operator of the Noarlunga Leisure Centre since 1998 under the provision of an agreement from NCCRA.

LeisureCo participated in both the open and select tender processes for the continued management of the centre beyond April 2009.

The relationship between the Council and LeisureCo has been made difficult over the past several years with the presence of NCCRA operating between both parties. This has been addressed in the new direct management model proposed under the recent Expression of Interest process and resultant contract.

Throughout the existing contract period we have experienced numerous difficulties in receiving information from LeisureCo as required by the contract terms. In particular, the provision of financial information from LeisureCo on the performance of the centre has not been forwarded to us on time. This trend has continued throughout the holding over period of the current contract.

LeisureCo participated throughout the tender process with the most recent select tender being lodged through its new Chief Executive Officer, Mr Ian Buckley.

LeisureCo's select tender offer was in keeping with the offer of Belgravia in the areas of proposed financial arrangements, proposed annual business plan & budget, personnel & expertise and they did not foreshadow any significant changes to the contract as proposed. The areas in which LeisureCo did not score as well were for demonstrated ability, management of risk, resources (physical and financial) and any value added proposals.

LeisureCo does not hold another comparable facility to our centre in Australia (other than of their most recent acquisition in New Zealand). LeisureCo's appreciation of the opportunities and constraints of operating a community leisure facility were not fully reasoned in their tender proposal. Further, LeisureCo provided minimal details (through their submission) of the financial and physical resources that they would bring to facilitate the contract throughout the proposed term.

3.12 Council endorsement

Council's endorsement of Belgravia being the preferred tenderer is now sought to enable staff to finalise contract negotiations (including the inclusion of risk controls identified) to the effect that Belgravia are the Noarlunga Leisure Centre service provider for a maximum term of ten years effective from 1 April 2009.

