

14.3 Noarlunga Leisure Centre contractual matter

Report contact

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Approving officer

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Meeting

Council

Date

8 December 2020

1. Purpose

The purpose of this report is to provide an update on the transition of the Noarlunga Leisure Centre to council's in-house management and to flag a significant financial claim raised by Belgravia Health and Leisure Group Pty Ltd (who currently manage the centre) for cleaning costs incurred over the duration of the contract.

Given this report considers a commercial arrangement with an existing provider, and a matter that is potentially the subject of legal action, the report is recommended to be considered in confidence.

2. Recommendations

1. Exclusion of the public

That:

a. under the provisions of Section 90(2) of the *Local Government Act 1999* an order be made that the public, with the exception of staff on duty, be excluded from attendance at the meeting in order to consider this item in confidence.

b. the Council is satisfied that it is necessary that the public, with the exception of staff on duty, be excluded to enable the Council to consider the report at the meeting on the following grounds:

Section 90(3)(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.

This report considers a commercial arrangement with an existing provider.

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. Confidential recommendations

That Council:

- 1. Notes the claim for cleaning expenses raised by Belgravia Health and Leisure Group Pty Ltd for \$398,656 (excluding GST) in relation to the management services contract for the Noarlunga Leisure Centre.**
- 2. Notes that staff will continue detailed financial analysis, seek ongoing legal advice, and undertake negotiations with Belgravia in an effort to resolve this matter as soon as possible.**
- 3. Authorises for the Chief Executive Officer to negotiate a settlement figure of no more than \$100,000, noting that the objective is to achieve a nil sum.**
- 4. Notes that, dependent of the final agreed figure, funds may need to be secured through the December Budget Review (BR1) to settle this matter.**

3. Period of confidentiality and delegations

- a. That the matter of Noarlunga Leisure Centre contractual matter having been considered by the Council in confidence under sections 90(2) and 90(3)(i) of the *Local Government Act 1999* that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the agenda report, related attachments, discussion and minutes of the Council relating to the subject matter be kept confidential until the matter is formally finalised and accepted in writing by both parties.**
- b. That, pursuant to section 91(9)(a) of the *Local Government Act 1999*, Council delegates the duty to conduct an annual review of the confidentiality order to the Chief Executive Officer, or their sub-delegate.**
- c. That, pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke the confidentiality order to the Chief Executive Officer, or their sub-delegate.**

3. Background and Discussion

Background

The Noarlunga Leisure Centre (Noarlunga Aquatic Centre and St Vincent Recreation Centre) is currently managed by a large Australian owned, Victorian based company, Belgravia Health and Leisure Group Pty Ltd (Belgravia). The contract with Belgravia has been operational for the full term of 10 years.

On 20 October 2020 Council authorised (in confidence) the termination of the current contract with Belgravia for management of the Noarlunga Leisure Centre, noting that the management will be brought in-house. The decision of Council is as follows:

- 1. Authorises for the Chief Executive Officer to serve a three-month notice period to Belgravia Leisure of council's intentions to terminate the holding over arrangement that has been in place since the expiry of the Lease on 31 March 2019.*

- 2. Notes that at the end of the notice period, council will begin to manage the Noarlunga Leisure Centre in house, to bring it in line with other recreation centres currently owned and managed by council.*

Status of Transition

Belgravia were formally notified on this decision on 3 November 2020 and, in line with their holding over contract, requested a one-month handover period. The targeted handover date is Monday 21 December 2020, well ahead of the three-month handover period approved by Council.

Good progress has been made toward achievement of this handover date, noting that closure in the week prior to Christmas may be required to enable the moving of equipment and the undertaking of minor maintenance works whilst managing worker and public risk.

Communications with the centre users and the general public will be maintained to ensure that they are notified on any disruptions or closures ahead of time.

Claim for cleaning costs

As part of the handover discussions, Belgravia have raised an historical claim for cleaning costs. Provisions related to cleaning costs and associated reimbursements are detailed in the management services contract. This has been a protracted matter first raised in 2014.

In 2016, Belgravia claimed approximately \$183,000, which is the amount of money spent on cleaning contracts from 2012 to 2014, over and above the annual cleaning costs cap (\$30,000) as detailed in the management services contract.

Acting on instructions from council, Norman Waterhouse Lawyers issued a letter to Belgravia at the time refuting the claim that Belgravia was entitled to the adjustment. Belgravia did not pursue this matter any further.

In 2018 Belgravia made another claim seeking payment of a substantial sum for cleaning, in the order of \$367,000.

Norman Waterhouse Lawyers assessed the claim against the contract conditions, and in the context of the financial reporting provided by Belgravia and concluded that the claim was not warranted. Advice to this effect was provided in a letter to Belgravia on 17 August 2018.

Whilst neither the 2016 and 2018 claims were pursued by Belgravia, no further action was taken to finalise the matter.

Now in the finalisation of the Belgravia/Council formal relationship, the matter was again raised in a recent transition meeting with Belgravia and on 25 November 2020, Belgravia wrote to council claiming \$398,656 in outstanding cleaning costs relating to the full term of the contract. Unfortunately, the contract is, in places, less than clear and open to considerable interpretation, hence a negotiated settlement will be required.

Whilst Belgravia's contractual claim for \$398,656 is significant, previous and recent financial analysis and legal advice initiated by council staff suggests that council may have genuine financial claims of its own against Belgravia related to the contract provisions – specifically to the payment/level of management fees and the level of investment in maintenance. Both these matters are guided by the contract.

Whilst it is yet to be confirmed, the value of council's claims may be in the vicinity of those raised by Belgravia.

Council will continue to undertake negotiations with Belgravia in relation to cleaning costs, management fees and maintenance (historical and current) costs in an effort to arrive at a mutually acceptable outcome. Further, our objective is to resolve this matter through negotiation to avoid costly formal legal action.

In order to provide parameters for these negotiations, authorisation is sought for the Chief Executive Officer to negotiate a settlement figure of no more than \$100,000, noting that the objective is to achieve a nil sum.

Further updates on the outcome of these negotiations will be reported to Council when suitable.

4. Financial implications

The financial implications associated with this report will not be known until a settlement figure has been agreed on.

Dependent of the final agreed figure, funds may need to be secured through the December Budget Review (BR1) to settle this matter and to cover associated legal fees.

5. Risk and opportunity management

Risk	
Financial/business sustainability	The substantial claim for cleaning costs poses a significant risk/impost to council's financial position. The impact will be mitigated through undertaking detailed financial analysis, seeking ongoing legal advice, and undertaking negotiations with Belgravia in an effort to resolve this matter as soon as possible with minimal (or no) additional cost to council.

Opportunity	
Identify	Maximising the opportunity
Resolve an outstanding matter	Council will continue to undertake negotiations with Belgravia in an effort to arrive at a mutually acceptable outcome for both parties in an effort to avoid formal legal action.

6. Timelines and deadlines

Whilst it is our objective to resolve this matter as soon as possible, there is no obligation upon council to conclude the matter by the 21 December 2020 when the facility is handed back to council.

A thorough and considered process will ensure that the ultimate outcome is as favourable as possible for council and its ratepayers.

If an agreement cannot be reached via negotiation, a formal legal process may be considered. This would involve forensic accounting being undertaken by a third party and

an associated litigation process. This would be lengthy and very costly and therefore is not preferable.

7. Next steps

Continue detailed financial analysis, seek ongoing legal advice, and undertake negotiations with Belgravia in an effort to resolve this matter as soon as possible at minimal (or nil) cost to council.

8. Attachments

Nil.

- END OF REPORT -

RELEASED 1/9/21