

CONFIDENTIAL

Note: Confidential Provisions released on 30/06/2020



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| REPORT FOR: | Council | | |
| MEETING DATE: | 18 December 2017 | | |
| REPORT FROM: | Director – Corporate & Community Services | | |
| REPORT TITLE: | Unsolicited Proposal Update – Management and Operation of Council Facility | | |
| FILE NAME: | F17/284 | RECORD NO: | AR17/46162 |

COMMUNITY VISION & STRATEGIC PLAN OUTCOMES

1 We Thrive

- 1.3 Develop partnerships to attract investors in business proposals and new developments that contribute to a diversified and robust economy.
- 1.4 Maintain and develop tourism attractions and visitor services.

2 We Create

- 2.1 Provide facilities and programs that support creativity and excellence in recreation, sport and the arts.

6 We Achieve

- 6.5 We use and manage our financial resources in the best interests of our community, and to ensure financial sustainability and organisational efficiency now and into the future.

PURPOSE

The purpose of this report is to provide an update regarding the unsolicited proposal process applicable to the Ryan Mitchell Swim Centre and its future operation and management.

RECOMMENDATION

Council:

1. Rescinds Council resolution of 28 August 2017 (AR17/33964)

"Endorse 'in principle' the proposal submitted by YMCA South Australia in relation to the management and operation of the Ryan Mitchell Swim Centre; and approves commencing Stage Two of the Unsolicited Proposal process – Policy 2.3.14".
2. Approves seeking Expressions of Interest in line with Council's 'Purchasing Contracts & Tendering' Policy (1.1.09) for the potential operation and management of Ryan Mitchell Swim Centre from the 2018/19 season.

BACKGROUND

On 28 August 2017, Council resolved to approve commencing Stage Two of the Unsolicited Proposal process – Policy 2.3.14 in relation to an unsolicited proposal received from the YMCA in relation to operation and management of the Ryan Mitchell Swim Centre.

DISCUSSION

At a recent training session with Norman Waterhouse regarding “Unsolicited proposals” it became apparent that an important component when assessing whether to continue with a proposal under an exclusive arrangement, is whether the proposal is unique, and no other likely operator exists who would also be interested in offering a proposal to Council. Legal advice identified that ‘uniqueness’ of the proposal should be one of the fundamental issues in determined whether it is more appropriate to accept an unsolicited proposal or to undertake a competitive bidding process.

Although the original approach by YMCA to manage and operate the Ryan Mitchell Swim Centre was determined to have merit, the next stage is for them to submit a detailed proposal, which must be assessed against the provisions of Clause 5.3.1.4 within Policy 2.3.14 – Unsolicited Proposals.

There are other organisations in the market place that may also wish to have the opportunity to put forward an offer to Council in relation to the operation of the Ryan Mitchell Swim Centre, and therefore it is considered appropriate to advise YMCA that due to other competitors in the market, Council will not proceed with Stage 2 of the Unsolicited Proposal Process, but call for Expression of Interest to ‘test the market’ ensuring that their commercial in-confidence information is dealt with under the provisions of Council’s Purchasing, Contracts and Tendering Policy.

The risk with proceeding with Stage 2, with the knowledge that there are other competitors within the market and therefore the uniqueness of this proposal following assessment may not justify an exclusive arrangement, is that YMCA would be providing Council with ‘commercial in-confidence’ information, which could then impact on the integrity of an expression of interest process.

CONFIDENTIALITY PROVISIONS

The Council is satisfied that, pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstance because to information has been provided in good faith and the release of that information, until negotiations have been completed, could result in this proponent and others in the future not willing to negotiation with Council. This could be detrimental to the community as the proponent may not be willing to negotiate terms with Council if this information is made public before negotiations have been completed.

That having considered this agenda item – Unsolicited Proposal – Management and Operation of Council Facility, in confidence under Section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the documents captured within the agenda item be retained in confidence until negotiations have been finalised either through the execution of a Contract or termination of negotiations by Council or the proponent.

RISK MANAGEMENT

1: Financial/Budget

The Ryan Mitchell Swim Centre's audited expenditure for 2016/2017 was \$605,861 with revenue of \$178,568 being achieved. Based on these figures Council deficit funded the facility to the value of \$427,293 (includes depreciation of \$179,916)

The facility attracted 34,961 patrons during the 16/17 season, which based on the above figures equates to a Council subsidy of approximately \$12.22 per person attending the pool during the 2016/2017 season.

2: Legal/Policy

Section 36 of the *Local Government Act 1999* provides that Council has the legal capacity of a natural person and may enter into any kind of contract or arrangement.

Council Purchasing, Contracts & Tendering Policy 1.1.09 outlines the process that Council will follow in relation to calling for Expressions of Interest in operation of Ryan Mitchell Swim Centre.

3: Environment/Planning

Not applicable.

4: Community

4.1 General

A community engagement process will be required in relation to this expression of interest process to ensure that the Community understands the rationale.

4.2 Aboriginal Community Consultation

Not applicable.

Anne O'Reilly
12/12/2017