

11.6 ADELONG COMMUNITY AQUATIC CENTRE MANAGEMENT EXPRESSION OF INTEREST - ATTACHMENTS

Attachment Titles:

1. Adelong Aquatic Centre Management EOI
2. Murrumbidgee Council Contract for Management and Operation of Swimming Pool - Jerilderie 2024-2025

Attachment 1 - Adelong Aquatic Centre Management EOI



PUBLIC EXPRESSION OF INTEREST

Provision of Management Services for Adelong Community Aquatic Centre



EOI number SVC 2024/07

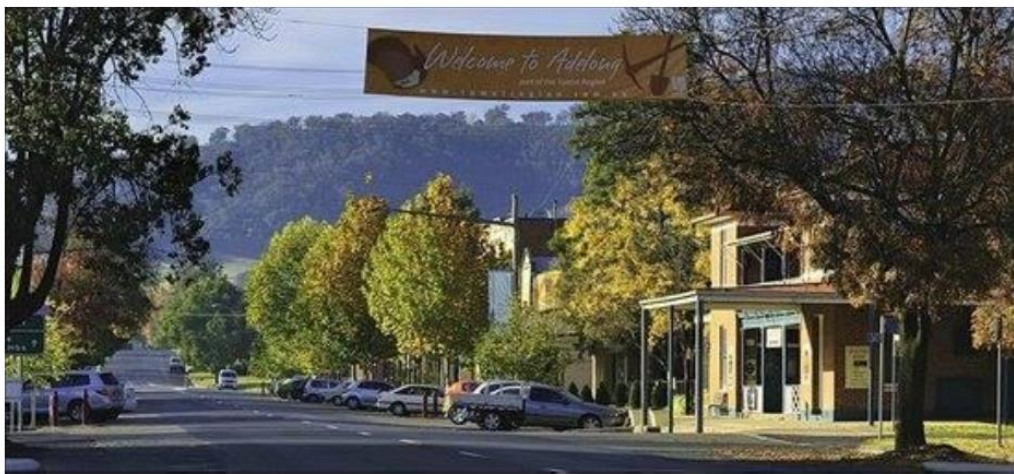
Closing date – COB Monday September 23, 2024



The Opportunity

Snowy Valleys Council is seeking Public Expressions of Interest for the management and operations of the Adelong Community Aquatic Centre.

Council currently manages, maintains and operates five (5) public swimming pools across the Snowy Valleys Local Government Area including the Adelong Community Aquatic Centre. There is now a unique opportunity for a suitably qualified single operator or organisation to take on the management and operations of the Adelong Community Aquatic Centre.



The Adelong Community Aquatic Centre is a modern facility constructed in 2013. The centre is home to a solar heated 6 lane 25 metre, program pool with beach entry and splash pad. The centre also has amenities, change facilities and a kiosk. These facilities provide significant value to the community in terms of recreation, tourism and complimentary social and economic benefits to the Adelong township.

This Expression of Interest is looking for a suitable operator who can make an acceptable offer to Council to manage and operate this facility on Council's behalf for the 2024/2025 and 2025/2026 seasons.



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1. Location

The Snowy Valleys Council area stretches from western slopes of the Snowy Mountains towards the plains of the Riverina in Southwestern NSW. The local Government Area extends from just south of Gundagai in the north, to the Murray River on the Victorian border in the south, and from the ACT border in the East, towards the plains of the Riverina in the West. The Snowy Valleys Council Local Government Area (LGA) covers some 8,958 square kilometres with a population of 14,891 (ABS 2021).

The Council area is close to major centres such as Canberra which is 200 kilometres to the west and Wagga Wagga which is the Riverina's largest City and is just one hours drive west from Tumut or Tumbarumba. Sydney is approximately 400 Kilometres to the North of the Local Government Area and is a four and half hours' drive along the Hume Highway. Tumbarumba is less than five hours drive from Melbourne via the Hume Highway.

Wagga Wagga is home to a domestic airport with regular flights to and from Melbourne and Sydney. Canberra, Australia's capital and the nearest International Airport, is an easy two-hour drive from Tumut.

Tumut is the largest town in the area with smaller townships located at Adelong, Batlow and Tumbarumba that are complemented by smaller villages at Brungle, Jingellic, Khancoban, Rosewood, Talbingo and Tooma.

The Wiradjuri, Ngarigo and Wolgalu (Walgalo) people are the Traditional Custodians of the land on which the Snowy Valleys Council is located.



Figure 1. Location Plan



2. Councils Objectives

The principal objectives of this Expression of Interest (EOI) are as follows:

- To appoint an operator with appropriate experience and resources to manage, promote and operate the site as a high-quality aquatic facility in accordance with industry standards and the criteria set out in this Expression of Interest.
- Operate the aquatic facility to ensure that it brings maximum benefit to Council and the Community in terms of recreation, social wellbeing and meeting the expectations of the Community and Council.
- Ensuring that the facility is maintained to a high standard and meets the expectations of patrons.
- To ensure that the aquatic facility is operated in accordance with sound business management principles (including, as a minimum, principles relating to regulatory & compliance requirements, Work Health and Safety, Environmental requirements) and the financial sustainability objectives of Council.
- A customer oriented operator that will be capable of providing consistently high levels of customer service and perform the functions of management and operation of the aquatic facility to an industry best standard.
- To provide opportunities for quality and diverse aquatic programming and encourage the community's use of the facilities.
- To provide an environment that is safe for participants, spectators and staff of the aquatic facilities.
- To minimise financial and non-financial subsidy from Council.
- To continually explore opportunities for maximising the usage of the aquatic facility through the development of innovative aquatic programs.
- To maintain productive relationships with Council and its staff, regular user groups, corporate and business organisations and the relevant sporting organisations.
- To project a customer focused image of a well-presented and maintained aquatic facility.



3. Background

The Adelong Community Aquatic Centre is a modern facility constructed in 2013. The centre is home to a solar heated 6 lane 25 metre pool, program pool with beach entry and splash pad. The centre also has amenities, change facilities and a kiosk.

All of Council's 5 public swimming pools, including the Adelong Community Aquatic Centre, operate a swipe card system which provides access to the facility for patrons 18 years and older, outside of normal operational hours, within designated times.

Adelong Community Aquatic Centre Statistics

	2021-2022 Season	2022-2023 Season	2023-2024 Season
Patronage Numbers	7,736	6,816	8,560
Total Income	\$24,236	\$22,717	\$43,751
Total Council Expenditure	\$224,027	\$285,485	\$283,684

4. Contract (Operator) Scope

The Contractor (Operator) will be responsible for the complete management and operation of the Adelong Community Aquatic Centre facility, as outlined in this EOI for the 2024/2025 and 2025/2026 season.

5. Contractor Responsibilities

The Contractor will be generally responsible for, but not limited to, the following (in relation to the management and operation of the aquatic facility) to Council's satisfaction:

- (a) management of all swim and recreation programming;
- (b) the development of programming that is responsive to the recreation and leisure needs of the local community;
- (c) continuous liaising with all relevant user groups, schools and associations;
- (d) providing security for the facility;
- (e) maintaining the Aquatic facility in a clean and tidy condition;
- (f) maintaining the Aquatic facility in accordance with NSW Health Guidelines and industry best practice including Practice Note No 15 – Water Safety;
- (g) maintaining all amenities and buildings (non-structural maintenance);
- (h) enforcing appropriate policies and procedures;
- (i) providing expert advice on proposed programming initiatives and aquatic facility developments;
- (j) payment of all relevant costs associated with the operation of the aquatic facility; and
- (k) all associated activities relating to preparation of pools and equipment for pool opening and closing each year.



6. Fees & Charges

The fee structure is set by Council annually as part of Council's Integrated Planning and Reporting process and is available on Council's website – Fees & Charges.

Council reserves the right to approve or vary the aquatic facility fee structure over the term of the Contract. Council will negotiate with the Contractor should it appear that any such variation to entry fees will have an impact on the fixed subsidy to be paid to the Contractor.

The Contractor will retain all monies collected from usage of the aquatic facility.

The Contractor will also retain all income generated from catering (kiosk sales), merchandise sales, management of pool programs, special event activities and sponsorship as outlined in this document.

7. Hours of Operation

Current hours of operations (subject to change) for the Adelong Community Aquatic Centre 2024/2025 season are as follows:

Opening Saturday 26th October 2024, Closing Sunday 23rd March 2025

Monday to Friday: 2.30pm – 6.30pm

Weekends and School holidays: 10am – 6.30pm

Australia Day: 2pm – 6pm

Closed all public holidays

After-Hours Card Access

Available from Saturday 12th October 2024, Closing Sunday 23rd March 2025

Monday to Friday: 6am – 8pm

Weekends: 7am – 8pm

Closed all public holidays

At a minimum the Contractor, should be aware that they must provide supervision for the abovementioned opening hours and as part of the EOI submission must nominate the proposed additional hours of operation it is intended that the aquatic facility will be open to the public. In any event, the aquatic facility MUST open the minimum core hours as outlined.

Council reserves the right to approve or vary the aquatic facilities operational hours over the term of the Contract. Council will negotiate with the Contractor should it appear that any such variation to operational hours will have an impact on the fixed subsidy to be paid to the Contractor.

On days of excessive heat the Contractor may be asked to extend the closing time.

The Contractor may close the aquatic facility immediately in the event of an electrical storm or other emergency weather conditions.

8. Contractors Obligation to Meet Costs

8.1 Costs

The Contractor is responsible for the payment of all Operating Expenses or other costs and expenses related to and incidental to the provision by the Contractor of the Services.



8.2 Materials/Consumables, Fittings and Furniture

The Contractor is to provide at its expense all materials/consumables required for the management and operation of the aquatic facilities. These will include, but are not limited to:

- (a) cleaning supplies and equipment;
- (b) toilet and change room consumables (sanitary paper, hand towels, hand wash soap, etc.);
- (c) stationery supplies;
- (d) telephone, facsimile and internet costs including call costs (except line rental);
- (e) kiosk and other building fittings and fixtures not currently provided by Council;
- (f) all advertising and marketing costs; and
- (g) light globes and sun screen.

8.3 Staff employment and training

The Contractor is responsible for the payment of all costs associated with staff employment including, but not limited to, recruitment, wages, superannuation, training and accreditation.

Training of staff for correct operation of the filtration systems as per their designed use will be the responsibility of the Contractor.

8.4 Insurances

The Contractor is to provide at its expense insurance of kiosk stock and other goods and assets owned by the Contractor which are accommodated within the aquatic facility.

8.5 Supply of Pool Chemicals

Council is to provide, at its expense, all pool chemicals required for the operation of the aquatic facility in accordance with NSW Health requirements and any other relevant legislative requirement or guidelines.

8.6 Electricity/energy/gas /water costs

Council will be responsible for all water, gas, electrical and energy costs associated with the operation and management of the aquatic facility. The Contractor is asked to actively limit the energy usage where possible offering ideas on cost savings.

8.7 Waste

The Contractor will be responsible for removing all waste from the aquatic facility and surrounds.

8.8 Indemnity

The Contractor will indemnify and keep indemnified and hold the Council harmless against all losses, costs, demands, expenses whatsoever arising which the Council may sustain as a result of the failure of the Contractor to pay any costs or charges incurred by the Contractor.

8.9 Pre-Season Plant Start Up Maintenance

The Contractor is responsible for cleaning and start up preparations for the pool season. This includes, but not limited to, cleaning the pool shell, testing pumps, chemical dosing and all activities to get the pools clean and operational to Council's satisfaction.



8.10 Minor Maintenance Costs

The Contractor will be responsible for the payment of all minor maintenance costs so as to ensure that the aquatic facility and all assets within the facility are maintained in accordance with the Contract.

Minor maintenance will be considered for all building and or equipment repairs which have a singular value of \$300.00 (Three Hundred Dollars) or less. These costs will be the responsibility of the Contractor.

The Contractor shall be responsible for all costs associated with grounds maintenance (including supply of all materials and equipment) within the boundary of the aquatic facility where these areas are used to access the facility or reflect on the presentation of the facility. This includes, but is not limited to, maintenance of lawns, gardens and landscaping including mowing, pruning of shrubs and palms.

The Contractor shall be responsible for all costs associated with cleaning of all buildings, pool shells associated structures and equipment (including supply of all materials and equipment) of the aquatic facility.

If there is any equipment breakdown, chemical related issues or any other unforeseen reason that may prevent the pool from opening the contractor and Council will jointly conduct a cause analysis to resolve the issue. This should be the last resort after the contractor has determined the issue is beyond their capability.

The Contractor is to notify Council (Contract Supervisor) immediately in relation to any issues that prevent the pool from opening.

8.11 Property Security

The Contractor is to provide, at its expense, and be responsible for the total security of the aquatic facility, including land, buildings and amenities. This will also include any call-out costs associated with security services for the aquatic facility. Council will provide the locks and keys for each facility.

The Contractor must report any breach of security to the Contract Supervisor immediately.

8.12 Vandalism

The Contractor is responsible for the repair of any vandalism damage to the aquatic facility that occurs during the facilities operating hours and is considered to be minor maintenance.

8.13 Graffiti

The Contractor is, at its own expense, to temporarily obscure graffiti or other unacceptable displays within 24 hours.

This is to be followed, as soon as possible, by its removal and restoration of the surface to its original condition at the Councils expenses. This includes the external façade of the facility.

8.14 Plant and Equipment

The Contractor is responsible for maintaining all mechanical and water treatment plant and equipment in workable, clean and serviceable condition and to the manufacturer's specifications. The maintenance regime involved in all mechanical and water treatment plant and equipment is to be undertaken by suitably qualified and experienced personnel or specialist contractors after consulting with Council. Council will pay for the major maintenance of these items. **Any damage to plant or equipment deemed to be due to mishandling, improper or incorrect use or lack of regular maintenance will be at the cost of the Contractor.**



8.15 Licences, Certificates and Permits

The Contractor will be responsible for all costs associated with obtaining or transferring all licences, certificates and permits.

9. Council's Obligation to Meet Costs

9.1 Council Rates and Charges

Council shall be responsible for meeting costs associated with Land Rates, Water Charges (Access & Usage), Sewer Charges & Liquid Trade Waste, energy and Insurance Buildings and Property.

9.2 Major Maintenance Costs

Major maintenance will be considered for all building and/or equipment repairs which have a singular value in excess of \$300.00 (Three Hundred Dollars). These costs will be the responsibility of the Council. The Contractor must seek approval from the Contract Supervisor before arranging for major maintenance items to be undertaken.

9.3 Vandalism

Council will be responsible for the repair of any vandalism damage to the aquatic facility that occurs outside of the facilities operating hours or is considered to be major maintenance.

9.4 Plant and Equipment

Should any item of major plant or equipment break down the Contractor is required to contact the Contract Supervisor immediately to initiate repairs.

9.5 Major Refurbishment and Capital Costs

Council is responsible for the payment of all costs and expenses comprising Major Refurbishment Costs and Capital Costs, excluding those activities which would be considered Additional Services as outlined in clause 10.

The Contractor and Council will cooperate with the implementation of any works requiring the incurring of Capital Costs. Such works do not form part of the works required by this Contract. If works are undertaken there may be some disturbance to the operations of the aquatic facility, and some inconvenience may be occasioned to the Contractor. The impact of any major capital works will be negotiated with the Contractor prior to its commencement, with suitable arrangements made to minimise any inconvenience. The Contractor acknowledges it has no claim against Council arising from such works.

9.6 Water quality sampling

Council will be responsible for costs associated with random water quality sampling undertaken by or on behalf of Council.

10. Finance and Payments

10.1 Contractor to Pay Council

In the event that Council provides a service, or purchases goods, required to be provided by the Contractor (as agreed between the parties), the Contractor must reimburse Council for the costs associated.

10.2 Council to Pay Contractor

In accordance with the EOI documents, Council will pay the fixed GST inclusive subsidy amount as outlined in this EOI, or as otherwise agreed.



The Contractor shall be paid an annual rate (being the accepted EOI annual rate), to be paid in equal instalments (as set out in the Contract).

10.3 Additional Services

Funding of any capital expenditure to facilitate the introduction of additional programs or services would be a matter of negotiation between Council and the Contractor and viewed in relation to any proposed income sharing arrangements. There is no onus on Council to financially contribute to any works aimed at the provision of additional programs or services.

11. Facility Usage

The Contractor is expected to maintain good relationships with all bodies, organisations, schools and persons with which or whom dealings must be continued or maintained.

There is an active swimming club operating from the aquatic facility.

The Contractor may allow groups to use the aquatic facility outside normal operating hours at the nominated charge rate in the fees and charges. User groups will not be permitted to supply their own Qualified Lifeguard, in replacement of employees of the Contractor, unless formal permissions have been granted by Council in consultation with the Contractor. The duty of care of supervision of patrons of the aquatic facility will remain with the Contractor.

The Contractor must contact the schools and user groups in the Adelong area to discuss their pool usage requirements before the beginning of each season.

12. Management and Operation

12.1 Licenses, Certificates and Permits

The Contractor is to obtain and keep current all necessary licenses, certificates or permits as required, to ensure compliance with all regulatory authorities whilst performing the Services. The Contractor must display all licences, certificates or permits as required by legislation.

12.2 Sponsorship

The Contractor will advise the Contract Supervisor and seek Council's approval in advance of completion of any negotiations with any potential sponsors. Written approval from the Contract Supervisor is to be sought for any sponsorship, or type of sponsorship.

12.3 Occupancy Levels and Visitation

The Contractor will be responsible for continually monitoring the aquatic facility to avoid occupancy levels that would endanger the public, affect public enjoyment or restrict the ability of staff to control the public and identify safety problems.

The Contractor will record visitation levels daily and provide a written report to Council on a monthly basis and at the conclusion of each swim season.

12.4 Supervision/Qualifications of Staff

The Contractor shall employ all persons required to operate the aquatic facility, including all managerial, supervisory, general and other staff. In this respect the Contractor is to have regard to Practice Note No. 15 (*Water Safety*), issued by the Department of Local Government and must ensure that staffing levels and staff training are in accordance with that publication.

The Pool Manager (appointed by the Contractor) and any staff who may be solely responsible for pool safety at any time during the term of the Contract shall have an approved and current NSW Workplace Senior First Aid Certificate.



The Pool Manager and responsible staff shall be able to demonstrate that they are:

- (a) qualified as a Royal Lifesaving Society Australia New South Wales (RLSSANSW) Pool Lifeguard Licence;
- (b) capable of rescuing a person in difficulty;
- (c) capable and trained in the use of RLSSANSW oxygen resuscitation equipment; and
- (d) hold the appropriate and recognised First Aid Certificate

All certificates required to enable the Pool Manager to undertake the listed duties must remain current at all times.

At the commencement of the Contract, the Pool Manager must carry out a Police Criminal Records Check and Working with Children Check on all employees and notify the Contract Supervisor of the results.

The Contractor shall provide initial theoretical and practical instruction to all employees and responsible persons in the nature of first aid facilities in the work place, the location of first aid kits, the availability of trained first aiders and procedures to be followed when first aid is required when:

- (a) an employee becomes employed;
- (b) there is a change in the nature and type of duties performed; and
- (c) thereafter at regular intervals.

If the Pool Manager is to allow coaching, training or similar, the Pool Manager must ensure that the personnel providing such coaching, training or similar have the required/necessary and approved qualifications.

12.5 Smoking

Smoking is not permitted in the aquatic facility or any Council building. The Contractor will be responsible for ensuring compliance with this requirement.

12.6 Alcohol

The consumption of alcohol will not be permitted within the aquatic facility (whether in the buildings or grounds).

12.7 Incident Reports

The Contractor must notify the Contract Supervisor immediately and follow up with a written report, on any incident at the aquatic facility, involving:

- (a) Work Health & Safety issues;
- (b) property damage or personal injury;
- (c) near misses
- (d) breaches of local laws;
- (e) criminal activity; or
- (f) any other matter that may lead to litigation or otherwise adversely affect the interests of the Council.

12.8 Signage

All internal and external signage maintenance related to the management and operation of the aquatic facility, is the responsibility of the Council. This includes, but is not limited to:

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- (a) all Hazchem signage
- (b) emergency exit signs;
- (c) emergency procedures signage;
- (d) emergency equipment identification signage;
- (e) amenities identification signage;
- (f) all directional signage; and
- (g) all aquatic facility information signage

No signage will be allowed to be affixed or painted on to any glazed or other building surface without the prior approval of the Contract Supervisor.

12.9 Additional Responsibilities

The Contractor must undertake appropriate induction of After-Hours Card patrons prior to issuing and use of the card by the patron.

The Contractor must ensure that staff employed by the Contractor in the aquatic facility are:

- (a) present within aquatic facility at all times it is open to the public;
- (b) sufficient in number to manage the number of occupants of the aquatic facility at any time; and
- (c) appropriately trained with regard to the emergency management plans referred to above.

12.10 Water Quality

The Contractor will be responsible for adhering to all relevant statutory regulations and local laws concerning the quality of all pool water.

All staff involved in the measurement and maintenance of water quality are to be trained to the relevant industry standard as a minimum requirement.

The Contractor will ensure all relevant documentation is kept, demonstrating its compliance with all health regulations concerning the maintenance of water quality.

To ensure that water quality complies with health regulations the Contract Supervisor will carry out random water sampling, with the co-operation of the Contractor.

12.11 Building Maintenance

Council will undertake regular external and internal building maintenance if required as part of this Contract other than those related to the Contractors responsibility.

12.12 General Standards

Best trade practice is to be applied to all works, unless a variation is authorised in writing by the Contract Supervisor. Necessary tools of trade are to be provided by the Contractor. All work shall comply with the most current codes of practice and the latest issues of other guidelines, including:

- (a) Standards Association of Australia;
- (b) National Construction Code of Australia;
- (c) Manufacturers' current specifications and instructions for installation of appliances and fittings;
- (d) Guidelines for Safe Pool Operation (current edition); and
- (e) all Federal, State, Local government and Statutory Authority requirements.



Should the Contractor decide to empty the pool at any time, the water is to be discharged in accordance with guidelines set out by the Environment Protection Authority and any relevant Council requirements to minimise the discharging of pool water into the stormwater system. The Contractor must notify Council, in advance, if a pool is going to be emptied.

12.13 Outdoor Furniture and Amenities

The Contractor is responsible for maintaining all outdoor furniture, fixtures, shade structures and other amenities in a presentable and serviceable condition and to any manufacturer's specifications. Repairs will be carried out by Council over the value of \$300.00.

12.14 Existing Turf Areas

Council will spray grass areas yearly to reduce broadleaf proliferation.

12.15 Irrigation

The Contractor is to ensure the proper and efficient functioning of the irrigation systems servicing all landscaping, ornamental, turf or treed areas of the aquatic facility and surrounds. The provision of replacement parts is the responsibility of Council

12.16 Cleaning

All cleaning will be undertaken by the Contractor or if required by specialist personnel and is to include, but not be limited to:

- all glazed surfaces;
- pool concourses
- all change room facilities and associated amenities;
- entrance, kiosk and public access areas;
- meeting and club rooms;
- all dry area flooring surfaces;
- all ceilings;
- all fixtures and office equipment;
- all loose furniture;
- outdoor furniture;
- external building surfaces;
- soft landscaping areas: and
- Pool shells and associated infrastructure.

The frequency of all cleaning requirements will be determined by the desired level of guest comfort and the ability to present the building in its most favourable condition at all times to Council's satisfaction.

12.17 Catering Services

The Contractor will be responsible for ensuring that catering and food services are available during the opening hours of the aquatic facility and that all hospitality facilities are presented in a clean and attractive state at all times.



The Contractor must, at all times, ensure the food preparation areas are registered, that approved food safety plans are in place and full compliance with all relevant Acts, Regulations and Codes of Practice is maintained.

The Contractor will retain all income generated from catering services at the aquatic facility.

12.18 Merchandising

The Contractor is encouraged to provide a range of products compatible with the aquatic facility services and amenities, including merchandise featuring the aquatic facility brand/logo. All merchandise proposed to be sold must be approved by the Contractor Supervisor prior to sale.

The Contractor will retain all income generated from merchandise sales at the aquatic facility.

12.19 Asset Integrity

An audit of all physical aspects of the aquatic facility will be undertaken at Council's expense with the Contractor present no later than the date of possession of the aquatic facility (initial audit) and again at the end of the swim season and before the final payment (final audit).

The purpose of the audits will be to establish a basis for evaluation of the condition of facilities towards the end of the Term. Any damage of the facilities (fair wear and tear excepted) identified by the audits must be rectified by the Contractor at its sole cost prior to the expiry of the Term.

If the Contractor fails to comply with the final audit, the Contract Supervisor may authorise any necessary remedial works. All costs incurred by Council in the performance of remedial work will be payable by the Contractor and will be recoverable by Council as a debt due by the Contractor to Council.

12.20 Redevelopment

Council reserves the right to advertise and pursue expressions of interest for any potential site redevelopment and aquatic facility enhancement, independently of this Contract.

Council also reserves the right to negotiate with the Contractor to alter any or all of this Contract, to facilitate any favoured redevelopment.

13. Staff and Safety

13.1 Staffing

The Contractor is to provide qualifications of all staff proposed to be involved in the management and operation of the aquatic facility to the Council.

13.2 Insurance, Risk & Emergency Management

The Contractor shall current relevant insurances compliant with Council's "Vault" insurance system requirements including but not limited to Public Liability (\$20M) and Workers Compensation. The Contractor will be required to register with Council's "Vault" prior to commencement of the contract.

The Contractor is to provide details of all staff and patron risk management policies, audits and procedures that it would apply during the operation of the aquatic facility. This includes, but is not limited to, safety map procedures, work method statements, standard operating procedures and emergency management plans in conjunction with Council.



13.3 Work Health & Safety

In managing and operating the aquatic facility the Contractor must at all times comply with the *Work Health & Safety Act 2011* and the *Work Health & Safety Regulation 2017*.

13.4 Records and Reporting Requirements

As a minimum the Contractor must maintain:

- (a) records required by relevant legislation, regulations and NSW Department of Health Guidelines;
- (b) a daily record of pool visitation rates totalled for the season
- (c) a log of all complaints from swimming pool users, and any subsequent action taken in regard to the matter;
- (d) a record of every incident, including near misses and damage to property, and actions taken in regard thereto; and
- (e) log sheets of water testing.

13.5 Customer Service

Any complaints received by Council or the Contract Supervisor may be referred to the Contractor for response within two (2) business days. In this regard, the Contractor will endeavour to comply with any reasonable request from the Contract Supervisor.

13.6 Statutory Requirements

The Contractor is to demonstrate how it will comply with all statutory requirements as they relate to the management and operation of aquatic facility.

13.7 Swimming Pool Programming

The Contractor will retain all income generated from the aquatic facility programs.

13.8 Special Events

The Contractor is to seek approval from the Contract Supervisor regarding proposed special events including the variety, type and frequency of any special events it proposes to stage at the aquatic facility, as well as demonstrating linkages with increased patronage, aquatic facility profile, diversity of non-traditional programming, community access and promotion of the aquatic facility.

The Contractor will retain all income generated from approved special events that occur at the aquatic facility.

14. Fees

Fees are set by Council annually as part of Council's Fees and Charges. Council is interested in strategies that mitigate costs and will look favourably on submissions that include alternative pricing strategies. Please note that Council reserves the right to determine the most appropriate pricing methodology.

15. Performance of Aquatic Service Provider

The successful EOI contractor will be expected to provide the Services and carry out the Services as detailed in this document with reasonable skill and care and in accordance with relevant industry and professional standards.



16. Portable Pool Inflatable

Council will make available to the Contractor an Inflatable Pool Toy for use at the aquatic facility for each swimming season, at no cost to the Contractor.

In order to be equitable, Council will draft a roster for the 5 aquatic facilities on a rotating basis stipulating when the Inflatable Pool Toy will be available for use by each of the aquatic facilities. The Contractor will be responsible for transporting the Inflatable Pool Toy.

17. Expression of Interest (EOI) Evaluation Criteria

As part of this EOI all submissions are required to demonstrate how they address the criteria listed in the EOI. Your response on how your submission meets each of these criteria is to be limited to 200 words or approximately half an A4 page (For each criteria).

It is Councils intention that the proposal that best meets the selection criteria in this Expression of Interest will be recommended to be offered a lease.

Supplementary information supporting the respondent's response to the evaluation criteria may be submitted to Council as part of the EOI submission as an appendix.

The respondents to this Expression of Interest are reminded that any future contract or lease that Council enters into may be subject to the following requirements.

1. Planning approval for any intended improvements or proposed expansion / change of use and/or
2. Development Application for the intended improvements and/or
3. Statutory process associated with the giving of Notice of Councils intention to enter into a lease.

17.1 Evaluation Process

Councils EOI Assessment Panel will evaluate the submissions on the basis of how they address the selection criteria. In doing so Council undertakes to give due consideration to all conforming EOI responses received.

Proposals that don't address the selection criteria and or are not complete will be considered non-conforming.

The financial assessment weightings are:

1. Price - 30%
2. Management - 15%
3. Capability (Staffing levels – Resources) - 15%
4. Experience - 20%
5. Business Plan - 20%
6. Insurances and WHS requirements - Mandatory
7. Conformity with the EOI - Mandatory

The following evaluation methodology will be used to assess each EOI submission.

- EOI responses will be checked for completeness and conformance with the EOI documentation requirements. EOI submissions that do not contain all the information requested. i.e., returnable schedules and requested information in the EOI may be excluded from further consideration.



- EOI responses will be assessed against the selection criteria outlined in this EOI.

The information provided with or pursuant to this EOI represents Council's present intentions. Council can change, without notice and at any time, any or all of the information provided with or pursuant to this EOI. In addition, Council is not under any obligation to proceed with anything described in this EOI, including leasing the identified aquatic facility if it is not satisfied with EOI submissions received.

Nothing in the EOI creates an agreement or contract between the Council and the respondents to the EOI. Council accepts no responsibility for any of its action(s) and/or any action(s) any respondent may take, or any cost(s) any respondent may incur, as a result of any information provided by Council in the context of this EOI. The respondent is assumed to have read and understood all relevant information associated with the EOI and is satisfied that their EOI is complete and correct.



18. Returnable Schedules

18.1 Pricing Schedule

Pricing is requested for the below items inclusive of all costs including consumables, on-costs and any other costs relating to the work described in the EOI.

ITEM	DESCRIPTION	Price (GST EXCLUSIVE)
1	2024/2025 Season	\$
2	2025/2026 Season	\$
	Labour rates	DAY RATE (GST EXCLUSIVE)
3	Pool Manager	\$
4	Lifeguard	\$
5	Junior Lifeguard	\$
6	Swim/Activity Instructor	\$
7	Non Qualified Staff	\$
8	Other -	\$
9	Other -	\$

**18.2 Business Details Schedule****DETAILS**

Company or Trading Name:

ABN:

Registered for GST: Yes V ☐ NoV ☐

Trade or Business Type:

Licence No. (Where Applicable):

Registered Office Address:

Postal Address:

Telephone:

Email:

Contact Name:

DECLARATION:

The applicant named above has fully acquainted itself with the conditions and all related matters pertaining to this EOI and agrees to be bound by the terms and conditions as included in the EOI.

By submitting this EOI the applicant warrants and represents that it has made its own enquiries and investigations and has obtained professional advice and all other relevant information so as to inform itself of all risks and contingencies which may affect its EOI price. The applicant warrants and represents that it has included for all such risks and contingencies in its EOI price

NAME: _____

SIGNATURE: _____

JOB TITLE: _____

DATE: _____



18.3 Insurances Schedule

In reference to the specific types of Insurance policies listed below, please indicate which policies are currently maintained by your organisation.

Public Liability Insurance:

Insurance against the death or injury to any third party or parties or loss of or damage to any property including loss of use of property whether it is damaged or not whatsoever caused during the course of the contract. The policy shall contain a cross liability clause and a "Council's clause" and shall have a limit of indemnity of not less than the amount indicated for any one occurrence, but shall be unlimited in the aggregate.

Insurance Required – A\$20 million

Insurance Company	Policy No.	Value	Expiry Date

Worker Comp Insurance.

Insurance Company	Policy No.	Value	Expiry Date

Other Insurances:

Where the scope of work is such that it requires other appropriate insurances.

**18.4 Management & Staff Resources Schedule**

Please provide a management / organisation chart, plus indicate below the personnel who will have prime responsibility and accountability for the supply of the goods and services that will form part of any future proposed contract. For those personnel

- Note:
1. A brief (CV) for each person nominated shall be attached.
 2. The respondent shall use its best endeavours to ensure that the personnel named in this schedule would be engaged throughout the proposed contract.

NAME 1:**Position:****Reporting to:****Years of relevant
experience:****Line
responsibilities:****NAME 2:****Position:****Reporting to:****Years of relevant
experience:****Line
responsibilities:****NAME 3:****Position:****Reporting to:****Years of relevant
experience:****Line
responsibilities:**



18.5 Previous Experience & Reference Schedule

All interested providers are to describe their experience in contracts of a similar nature.

Contract 1

(Name)

Client: _____

Contact: _____ **Telephone:** _____

Total _____

Contract _____

Value: \$ _____ **Duration:** _____

Description of the
Contract: _____

Contract 2

(Name)

Client: _____

Contact: _____ **Telephone:** _____

Total _____

Contract _____

Value: \$ _____ **Duration:** _____

Description of the
Contract: _____



Previous Experience & Reference Schedule (cont'd)

Please also provide at least two referees who can attest to the respondents’ capabilities in undertaking any proposed future contracts:

Please Note: Council reserves the right to make its own independent enquiries if required.

FIRST REFEREE:

Company name
(if applicable)

Address: _____

Contact Person: _____

Telephone: _____

Email: _____

SECOND REFEREE:

Company name
(if applicable)

Address: _____

Contact Person: _____

Telephone: _____

Email: _____



18.6 Business Plan Schedule

Respondents are required to provide a business plan for the management and operation of the aquatic facility. The business plan should include:

- (a) Staffing structure;
- (b) Staff training programs;
- (c) Risk management procedure;
- (d) Work Health & Safety policy and procedure;
- (e) Reporting plan; and
- (f) Swimming Pool Maintenance and Cleaning Plan.



Additional
Information:



19. Council's Scope of Requirements for Interested Parties

19.1 Councils Rights and Privileges

This is not an invitation to tender.

The Council reserves the right to determine at its absolute discretion which Interested Party or Interested Parties, if any, it will negotiate with.

The Council is not required to give any reason for its actions or decisions to any Interested Party or any other person.

19.2 Access to Documentation

Documents can be downloaded free of charge from **Monday, 12 August 2024** at <https://www.tenderlink.com/svc/>. Alternatively, hard copies of documents can be purchased from Council's Customer Service Counter for \$150.

19.3 Additional Information

Interested parties should include other information if necessary, which demonstrates the Party's expertise in operating the Adelong Community Aquatic Centre. Interested parties may be asked to provide additional information if considered necessary to determine the submitted EOI.

19.4 Enquiries and Clarifications

Respondents may seek clarification of, or make any enquiry concerning the EOI or raise any actual or perceived discrepancy, error or omission in this EOI document in writing to Mr Brad Beed – Manager Utilities, Open Space & Facilities – Contract Supervisor (email bbeed@svc.nsw.gov.au) not less than seven (7) days prior to the deadline for lodgement of proposals.

Enquiries and Council's response will be provided to all prospective respondents, of which Council is aware, except where:

- (a) A respondent nominates in the enquiry that the enquiry relates to proprietary aspects of their proposal; or
- (b) Council is of the opinion that the enquiry and its response are not material to the integrity of the EOI process.

Where the respondent nominates that an enquiry relates to proprietary aspects of its proposal, and if Council is of the opinion that the enquiry is not proprietary in nature, it will advise the respondent, who will be given the option to withdraw the enquiry.

If the respondent, then reaffirms their request for a response to the enquiry then the enquiry and Council's response may be provided to all prospective respondents of whom Council is aware.



19.5 Addenda

Council reserves the right to change any part of this EOI document. All amendments to this EOI will be issued in the form of written addenda before the deadline for lodgement of proposals to all prospective respondents of which Council is aware. Such addenda will then become part of this EOI document.

19.6 Reserved Rights

In addition to any reserved rights set out elsewhere in this EOI document, Council reserves the right, in its absolute discretion and without assigning any reasons and without incurring any liability to a respondent or any consultant of a respondent, or member of a respondent consortia, to and amongst other things:

- (a) Not proceed with the EOI, the evaluation process, for the site;
- (b) Suspend or vary the process, the EOI or any part of it for any duration including indefinitely;
- (c) Change the structure and timing of the EOI;
- (d) Vary or extend any time or date in this EOI for all or any respondent or other persons, at any time and for such period, as Council considers appropriate;
- (e) Terminate further participation in the EOI by any respondent for any reason, regardless of whether the respondent conforms with the requirements of the EOI;
- (f) Terminate any negotiations being conducted at any time with any respondent for any reason;
- (g) Require additional information or clarification from any respondent or anyone else or provide additional information or clarification;
- (h) Negotiate with any one or more respondent and allow any respondent to change its proposal;
 - (i) Call for new proposals;
 - (j) Accept or reject any proposal received after the EOI closing date and time;
 - (k) Consider and accept or reject any proposal that does not comply with this EOI:
- (l) Proceed with the EOI, the evaluation process, or any subsequent processes to the EOI on terms different to those described in this EOI document;
- (m) Modify any aspect of the EOI or any subsequent stage, including, without limitation, the objectives, required format of proposals or subsequent proposals, indicative timetable, or EOI evaluation process;
 - (n) Postpone or delay the evaluation process or any subsequent stages or processes;
- (o) Replace or supersede the EOI process or any of the terms set out in this EOI document at any time, including by way of direct interaction which may lead to negotiations, select expressions of interest, call for detailed proposals or other tender processes;
- (p) Publish the names of some or all respondents and details of proposals;



(q) Clarify or pursue proposals with one or more respondents at any time without prior notice to any other party;

(r) Not consider further any respondent or proposal for the purposes of this EOI or the evaluation process or any subsequent stages or processes.

19.7 Waiver and Liability

By lodging a proposal the respondent will be taken to have acknowledged the following (without limiting the other waivers, disclaimers and qualifications provided elsewhere in this document):

(a) This EOI is not a legal offer or a contract and the process it provides for is not a tender process nor is it, or can it be, a process contract. The EOI is not a process that will necessarily end in the identification of a preferred proposal or respondent. However, participation in subsequent negotiations arising out of this EOI may be restricted to a single respondent or consortium who participated in this EOI. Council is under no obligation, contractual or otherwise, in relation to any respondent, or otherwise legally bound in any way to respondents, or obliged in any way to proceed any further with the EOI or the evaluation process or any subsequent stages or processes.

(b) Respondents acknowledge the qualifications and conditions set out in this document and are to comply with the provisions of this EOI document.

(c) This EOI document and all statements made, and information made available in relation to it and the EOI, reflect Council's current intentions only. The information and intentions set out in this EOI document may change at any time with limited notice. Respondents proceed with the EOI and subsequent proposals at their own risk.

(d) Council has endeavoured to provide accurate information in this EOI document. However, no warranties or representations in that respect are given by Council. Council is not liable for any inaccuracies, omissions or ambiguities in, or implied by, any information in this document or in any other documents and information accompanying or referred to in this EOI document or subsequently made available by Council. Council is not liable in relation to any claim that the respondent or any other person who may be disadvantaged by a lack of information or because any information provided to it was ambiguous or inaccurate or incomplete.

(e) Council is under no obligation to give reasons for any decision made or not made in relation to this EOI, including but not limited to those relating to any of the proposals received and the EOI evaluation process.

(f) There is no legal or other relationship between any respondent and Council enforceable at the suit of the respondent arising from this EOI, this EOI document or any process, including any subsequent stages or processes, or the response to this EOI or to any subsequent stage or process arising out of this EOI or any correspondence exchanged, or negotiations undertaken during this EOI or subsequent related stage or process outlined in it; and

(g) The risk, responsibility and liability connected with reliance by a respondent or any other person on this EOI document, or any written or oral statements made to any respondent or any person in



connection with this EOI is solely that of each respondent. Each respondent must make its own independent evaluation of this EOI document, and other documents or information accompanying or referred to in this document, and the nature and extent of the EOI and all other relevant matters. Each respondent is solely responsible for obtaining its own independent planning, financial, legal, accounting, engineering and other advice with respect to the contents of this EOI document and any other documents and information communicated or made available for inspection by the Council.

Each respondent acts or relies on this information and these documents, and any written or oral statements made concerning the EOI, entirely at its own risk.

19.8 Intellectual Property Rights

Council is conscious of the need to protect the intellectual property of respondents. Where required, intellectual property protection will be addressed by the use of confidentiality agreements. By lodging a proposal the respondent will be taken to have acknowledged the following:

- (a) This EOI document comprises copyright vested in Council;
- (b) A respondent may copy or otherwise reproduce this EOI document for the purpose of preparing and submitting its proposal but not otherwise;
- (c) A proposal or subsequent proposal becomes the property of Council on submission, and will not be returned to the respondent;
- (d) Any intellectual property rights that are, at the time of lodgement of a proposal, specifically identified, clearly described and claimed as such by a respondent and exist as intellectual property in a proposal will remain the property of the respondent. Any element of a proposal considered by a respondent to carry any intellectual property rights must be clearly and specifically claimed as such by the respondent and the respondent must in each case specify the nature of the claimed intellectual property rights and how it arises. The mere claim of an intellectual property right does not make it so unless it is in fact the property of the respondent and is claimable intellectual property; and
- (e) Council may copy or reproduce, adapt, modify, disclose, use or do anything else necessary to, in Council's absolute discretion, the whole or any part of a proposal or any material (including that material which contains or comprises claimed intellectual property rights of the respondent, or other person) contained in proposals, for the purposes of this EOI or any subsequent stage or process arising out of this EOI, including the EOI evaluation process and any other activity with respect to the sites identified in the EOI document. Should a respondent object to the use of its proposal in this way, the objection should be raised in the respondent's proposal and this will be considered by Council, which reserves the right, in its absolute discretion, to reject or accept any objection or claim of intellectual property. Otherwise, any right to object to such use of the proposal or subsequent proposal (including on the basis of confidentiality, copyright or other intellectual property rights) will be treated as having been waived by lodgement of the proposal.



19.9 Confidentiality and Freedom of Information

Proposals and any other information provided by respondents (Information) are subject to the provisions of the Government Information (Public Access) Act 2009 (the Act). Respondents should note that the Act gives to members of the public rights of access to Council documents. Information may be disclosed to third parties if there is a requirement to do so under the provisions of that Act or where Council or State Government policy or directives require disclosure e.g. any requirement to publish the results of a public procurement process or where information must be supplied to Government Ministers and their staff and to other government entities or to Parliament.

Any information that is commercially sensitive or confidential must be marked "commercial and confidential". This special notation must not be used unless the information is genuinely confidential. Marking Information as "commercial and confidential" will not necessarily prevent disclosure of the information in accordance with the Act or otherwise. Respondents must not advertise, promote or publish the participation, in any form, without the written consent of Council.

19.10 No Collusion

It is a requirement of law that respondents, including all consortium members forming the respondent entity, where applicable, and other persons participating in providing a proposal, must not engage in any improper commercial arrangements, collusive tendering or undertake anti-competitive conduct or any other conduct which denies legitimate business opportunities to any other respondent or any other person involved in providing another proposal in relation to this EOI.

If Council determines that a respondent has, or the respondent is otherwise found to have, engaged in such conduct, the respondent's proposal will be excluded from further consideration in this EOI, the EOI evaluation process, and any subsequent stages or processes at the absolute discretion of Council.

19.11 Material Change in Circumstances

Each respondent is to promptly inform Mr Brad Beed in writing of any material change to their financial capacity, technical capacity or corporate status or to any other information contained in the proposal following lodgement, and of any other material change in circumstances which may affect the truth, completeness, correctness or accuracy of any information provided in or in connection with the proposal. Council may also require respondents to confirm in writing that no such material changes have occurred.

19.12 Changes to Consortium Membership

If a respondent is comprised of more than one person, whether the consortium has been formed specifically for the proposal or not, then respondents will be evaluated on the basis of the consortium structure and membership presented in the respondent's proposal.

If consortium members change, written notification of proposed changes to consortium structure or membership must be provided to Council as soon as possible. If key consortium membership of a respondent changes after lodgement, supporting evidence must be provided to Council to



demonstrate that the capability of the new consortium structure and membership, meets or exceeds the capability of the consortium structure, and membership presented in the respondent's proposal.

Council reserves the right to re-evaluate respondents on the basis of new or diminished consortium membership, and to withdraw a respondent on the basis of new or diminished consortium membership, if they do not demonstrate the capability to meet the evaluation criteria or exceed the capability of the consortium structure and membership presented in the proposal. Further conditions in relation to changes in consortium membership may be imposed by Council at any time at its absolute discretion.

19.13 Disclosure of Contract Information

Under the Local Government Act, Council is required to disclose details of contracts entered into with a value exceeding \$150,000. Generally "commercial in confidence" information is not required to be published. Respondents may mark certain parts of their proposal as "Commercial in Confidence" however this must be minimal and reasons given as to why information should not be disclosed by Council should a lease or contract be entered into as a result of this EOI.

19.14 Reliance on Information

Council will rely on the information included in the responses to the EOI to determine a preferred proponent or proponents. Should the EOI process lead to Council identifying a preferred proponent or proponents, those respondents will be requested to submit, prior to further negotiations:

- A declaration to the effect that no material changes have occurred to the information in the responses; or
- A statement clearly identifying all material changes to the information in the response/s.

When a respondent is comprised of more than one participant and the participants comprising the respondent change (for any reason) after the closing date and if Council (at its sole discretion) determines that these changes are material, it reserves the right to re-evaluate the respondent's responses and/or withdraw respondent's proposal from further consideration.

19.15 Unauthorised Communication

Respondents are required to direct all communications through the contact person(s) named in the EOI documents, unless advised otherwise. Canvassing or any contact of/with Councillors or Council staff in relation to this EOI will automatically disqualify the respondent.

20. Council's Response to EOI Proposals and Timeline

Council's response and program for considering the EOI Proposals is as follows:

- (a) Stage 1: The EOI Proposals will be assessed by Council's EOI Assessment Panel taking into account all of the detail provided therein including how each submission addresses the key objectives and evaluation criteria (Financial and Non-Financial) outlined in this document; The EOI documents and advertising will be available and undertaken through Tenderlink.



- (b) Stage 2: The short listed EOI Applicants will be invited to commence more detailed negotiations with Council.
- (c) Stage 3: The Party or parties whose proposal is accepted by Council will be invited to enter into a Contract.
- (d) Stage 4: The Party whose proposal is accepted will be required to diligently negotiate in good faith, finalise, and execute lease documents within thirty (30) days of the draft lease documents being provided. If the Interested Party does not diligently negotiate in good faith, finalise, execute and or provide the signed lease documents to Council or its lawyers within the required timeframe, then Council reserves its right to end negotiations with the Interested Party and pursue any other Interested Parties.

The Council is not obliged to select the EOI Proposal which contains the lowest price or any particular provision and may choose not to select any EOI Proposal.

20.1 Timeline

The following timeline for this EOI is proposed:

1. EOI's open Monday 12 August 2024
2. EOI's close – Monday 23 September 2024
3. Report to Council Meeting– Thursday 17 October 2024
4. Preferred respondent or respondents notified– Friday 18 October 2024
5. Contract (Lease Agreement documentation) prepared and executed October 2024
6. Access Site 1 November 2024 – onwards

21. Contract documentation

A Pro-forma Draft "Contract" can be provided if requested during the EOI period. Council reserves the right to amend the terms to make it appropriate for the responses received from the EOI process and also in the preparation of a final draft "Contract"

21.1 No Legal Relationship

No legally binding relationship arises between the Council and any Interested Party unless the "Contract" in final form, have been signed by both parties.

To the extent permitted by law, neither the Council nor Agents acting on its behalf owes any duty to any Interested Party.



22. Lodgement of the EOI Proposal

- (a) The lodgement of EOI Proposals will close at 5pm, on Monday, DATE. 23rd of September, 2024
- (b) The following documents must be completed and submitted electronically at tenderlink.com
 - Schedule 1 – Pricing
 - Schedule 2 – Business Details
 - Schedule 3 – Insurances
 - Schedule 4 – Management & Staff Resources
 - Schedule 5 – Previous Experience & References
 - Schedule 6 – Business Plan
 - Schedule 7 – Additional Information
- (c) Alternatively, the complete EOI Proposal together with the necessary attachments may be deposited in the 'Tender Box' located on the Ground Floor of the Council Administration Building, 76 Capper Street, Tumut, NSW 2720 before 5pm, on Monday, 23rd September 2024
- (D) EOI Proposals submitted by facsimile or email will not be considered.
- (e) The opening of the EOI Proposals may be witnessed by the public.
- (f) The EOI Proposal shall remain valid and irrevocable for a period of 90 days after the closing date.
- (g) Council reserves the right to seek clarification on any part of the EOI Proposal submitted after the closing date.
- (h) Information submitted in the EOI Proposal will not be treated as confidential unless specifically requested by the Interested Party.
- (I) Information submitted by an Interested Party will be subject to disclosure to the public under the Government Information (Public Access) Act 2009 (the Act).
- (I) Councils Contact Officer (Contract Supervisor) is Mr Brad Beed – Manager Utilities, Open Space & Facilities. Tel: (02) 6941 2429 – email: bbeed@svc.nsw.gov.au

Attachment 2 - Murrumbidgee Council Contract for Management and Operation of Swimming Pool - Jerilderie 2024-2025



Contract for the Supply of Services

Contract for: Management and Operation of the Jerilderie Swimming Pool Complex

Enquiries on the contents of this document should be directed to:

Sue Mitchell

Manager Corporate & Community Services
Murrumbidgee Council

PO Box 5

DARLINGTON POINT NSW 2706

Phone: 1300 676 243

Email: mail@murrumbidgee.nsw.gov.au

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Dated**Parties**

Council **Murrumbidgee Council** (ABN 53 573 617 925)

21 Carrington Street, Darlington Point, New South Wales 2706

Contractor **James Billing** (ABN 72 460 707 628)

19 Kennedy Street, Jerilderie, New South Wales 2716

Background

- A. In accordance with the *Local Government Act 1993* and Council's procedures, Council has called for the supply of the Services.
- B. The Contractor submitted a proposal to supply the Services that was selected by Council.
- C. Council now seeks to appoint the Contractor as the provider of the Services.
- D. This Contract sets out the terms and conditions of the supply of the Services between the parties.

Agreed Terms**1. DEFINITIONS AND INTERPRETATION****1.1 Definition**

In this Contract:

Aquatic Facility means Council's swimming pool complex known as Jerilderie Swimming Pool located in Jerildeire Street, Jerilderie in New South Wales and includes a 25 metre lap and recreational pool, shaded toddlers' pools, change rooms, canteen, shaded picnic tables and barbecue.

Australian Standards means the product standards relevant to the Services specified by the Standards Australia;

Authorisation includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption;

Authorised Officer means:

- (a) Manager Corporate and Community Services on behalf of Murrumbidgee Council; and
- (b) as it relates to a public authority, any person with the delegated authority to act on behalf of the public authority,
- (c) the term also includes a party's lawyer;

Bank Guarantee means an unconditional bank guarantee issued by a reputable bank or financial institution acceptable to Council (in its absolute discretion) for an amount equivalent to two (2) months Management Fee for the Aquatic Facility.

Bankruptcy Act means *Bankruptcy Act 1966* (Cth);

Business Day means a day that is not a Saturday, a Sunday or a public holiday being a day on which businesses are open for trading;

Claim means any claim, action, proceeding or demand made against the party concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Commencement Date means the date set out in Item 2 of Schedule 1;

Confidential Information means information in relation to Council's operations, strategies, clients, prospective clients and suppliers and includes this document. For the avoidance of doubt information is not confidential if it is in the public domain, unless it came into the public domain by a breach of confidentiality;

Conflict means any existing circumstance which constitutes an actual or potential conflict between the interests of the Contractor and those of Council or the duties of the Contractor to Council and its duties to any other person, in relation to the performance of the Services;

Corporations Act means the *Corporations Act 2001* (Cwth);

Default Event has the meaning set out in clause 12;

Dispute means any dispute, controversy, difference or Claim arising out of or in connection with this document or the subject matter of this document, including any question concerning its formation, validity, interpretation, performance, breach and termination;

Dispute Notice means a written notice issued in accordance with clause 23.13 by a party claiming that a Dispute has arisen and setting out the details of that Dispute;

Electronic Transactions Act means the *Electronic Transactions Act 1999* (Cwth);

Electronic Communication has the meaning given to it in the Electronic Transactions Act;

Expert means a person who has expertise in the resolution of disputes concerning the subject matter of the Dispute and has relevant technical expertise, knowledge and experience concerning the Services. The person must not be a party's employee, agent or Authorised Officer;

Force Majeure Event has the meaning given to it in clause 22.1.

GIPA Act means the *Government Information (Public Access) Act 2009*;

GST has the meaning given to that term in the GST Act;

GST Act means *A New Tax System (Services and Services Tax) Act 1999* (Cwth);

Information System has the meaning given to it in the Electronic Transactions Act;

Initiating Party means a party claiming a Dispute has arisen;

Input Tax Credits means the input tax credits available to a party, determined in accordance with the GST Act;

Insolvency Event means the happening of any one, or more, of the following to a party to this document:

- (a) an order is made for a party to be wound up;
- (b) an order is made appointing a liquidator or provisional liquidator to a party;
- (c) a receiver or receiver and manager of any of the assets or the whole or any part of the undertaking of a party is appointed or a mortgagee takes possession of any of the assets or the whole or any part of the undertaking of a party;
- (d) a resolution is passed to appoint an administrator to a party, pursuant to Division 2 of Part 5.3A of the Corporations Act;
- (e) a party enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving them or any of them, except to reconstruct or amalgamate on terms approved by Council;
- (f) a party resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so, except while solvent and on terms approved by Council, to reconstruct or amalgamate or is otherwise wound up or dissolved;
- (g) a party is or states it is unable to pay its debts when become due;
- (h) a party is, or makes a statement from which it may be reasonably deduced by Council that the party is the subject of an event described in section 459C(2) of the Corporations Act;
- (i) a party takes steps to obtain protection, or is granted protection, from its creditors under any applicable legislation;
- (j) as it relates to an individual:
 - (i) a party is declared bankrupt, or insolvent, or their estate otherwise becomes liable to be dealt with under the laws relating to bankruptcy; or
 - (ii) is declared by a medical practitioner that a party is of unsound mind, or their person, or estate becomes liable to be dealt with under any law relating to mental health; or
- (k) anything analogous or having a substantially similar effect to any of the events specified in this definition occurs;

Insured Amount means the amount specified in Item 4 of Schedule 1;

ISO Standards means the product standards relevant to the Services specified by the International Standards Organisation;

Law means any applicable statute, regulation, by-law, Policy, code, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government authority (including Council), and includes the common law and rules of equity as applicable from time to time;

Local Government Act means the *Local Government Act 1993 No 33* (NSW);

Management Fee means the fees specified in Item 8 of Schedule 1.

Operating Expenses means all costs and expenses consumed or used at the Aquatic Facility by the Contractor in performing its obligations under this Contract.

Operating Hours means the hours of operation of the Aquatic Facility as specified in Item 7 of Schedule 1;

Permitted Use means the provision of the Services as described in the Specification of Services;

Policy means all relevant Council policies and codes.

PIIP Act means the *Privacy and Personal Information Protection Act 1998* (NSW);

Privacy Act means the *Privacy Act 1988* (Cwth);

Recipient has the meaning given to that term in the GST Act;

Renewal Term means the additional period of time set out in Item 6 of Schedule 1 that may be offered to the Contractor by Council, in its absolute discretion, and in accordance with clause 7.

RLSSA means the Royal Life Saving Society Australia.

Summer/Peak Season means: (open) between 1 November to 21 April each year.

Winter/Off Peak Season means: (closed) between 22 April and 31 October each year.

Services means the services (or any part of them) described in Item 1 of Schedule 1;

Specifications means the specifications of the Services as described in Schedule 2;

Standards means the ISO Standards, the Australian Standards and other industry standards and generally accepted product standards;

Supply has the meaning given to that term in the GST Act;

Swimming Pools means the swimming pools at the Aquatic Facility;

Tax includes any tax, levy, duty, charge, impost, fee, deduction and withholding however it is described, that is assessed, levied, collected or imposed by law or

Government Agency, (including any related interest, penalty, fine or charge imposed with respect to the above);

Tax Act means *Income Tax Assessment Act (1936)* (Cwth);

Tax Invoice has the meaning given to that term in the GST Act;

Taxable Supply has the meaning given to that term in the GST Act; and

Term means the time period specified in Item 5 of Schedule 1, or as varied by exercise of the Renewal Term identified in Item 6 of Schedule 1;

Termination Date means the date specified in Item 3 of Schedule 1 or as varied in accordance with the terms of this Contract; and

Trust means the trust (if any) by which a party enters into this Contract, irrespective of that trust being set out expressly in this Contract.

1.2 Interpretation

In this Contract, unless a contrary intention appears:

- (a) the headings are used for guidance only and do not affect the content of any of the clauses;
- (b) a reference to a 'month', means a calendar month;
- (c) a reference to a 'year', means a period of twelve (12) months commencing 1 January;
- (d) a reference to '\$' or 'dollar' is to Australian currency;
- (e) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (f) a reference to a party to this document (or any other document or agreement) includes their permitted agents, permitted assigns and substitutes;
- (g) a reference to a clause, schedule, annexure or party is a reference to a clause, schedule, annexure or party to this document;
- (h) a reference to this document includes any schedules or annexures to this document and an Order;
- (i) a reference to a right includes a benefit, remedy, authority, discretion or power;
- (j) a reference to a person, corporation, partnership, trust, unincorporated association, government, local authority or other entity irrespective of it comprising a separate legal entity includes any other of them;
- (k) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;

- (l) a reference to legislation or to a provision of legislation (including subordinate legislation and statutory regulations) is to that legislation as amended, replaced, supplemented or varied;
- (m) the meaning of any general language is not limited by any accompanying example, and the words 'includes', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (n) amounts which are calculated by reference to revenue or profits are calculated on the GST-exclusive component of that revenue or those profits unless expressly provided to the contrary;
- (o) a singular word includes the plural and vice versa;
- (p) a word which suggests one gender includes the other;
- (q) if a word or a phrase is defined, its other grammatical forms have a corresponding meaning;
- (r) if a party to this document (or a party referred to in this document) consists of more than one person, or a term is used in this document to refer to more than one party;
- (s) an obligation of those persons is joint and several; and
- (t) a right of those persons is held by them severally;
- (u) if an act is required to be done on a particular day and that act is done after 5pm on that day, it will be deemed to have been done on the following day; and
- (v) a reference to time is to NSW time, unless otherwise agreed in writing.

2. SUPPLY OF SERVICES

2.1 Term

The Term commences from the Commencement Date and, unless terminated, continues until the Termination Date.

2.2 Supply

- (a) The Contractor must provide and supply the Services:
 - (i) in accordance with the Specifications as described in Schedule 2;
 - (ii) diligently, to a standard of skill and care expected of a person or firm who regularly acts in the capacity in which the Contractor is so engaged;
 - (iii) in accordance with all applicable Laws;
 - (iv) so as to comply with Operating Hours and other specified timeframes for the performance of the Services (or any part of

them); and

- (v) otherwise in accordance with the terms and conditions of this Contract.
 - (b) The Contractor must:
 - (i) if requested by the Authorised Officer of Council meet with Council from time to time so as to evaluate and monitor the performance of the Contractor;
 - (ii) liaise and comply with the directions of the Authorised Officer of Council, as reasonably requested from time to time;
 - (iii) provide written monthly reports (as specified in section 13.4 of the Specifications) to accompany each monthly invoice to Council in relation to the provision of the Services;
 - (iv) comply with the provisions of the Privacy Act and the PPIP Act (and, in particular, the "Information Privacy Principles");
 - (v) report, in writing to Council, all incidents, near misses and Work Health and Safety matters, property damage, personal injury, criminal activity, or any other matter that may lead to litigation or otherwise adversely affect the interests of the Council within 24 hours of each occurrence;
 - (vi) furnish Council with their qualifications before entering into the contract and of all other personnel engaged in the supply of the Services prior to commencement of their duties or change in duties
- All personnel must hold a:
- a) Current First Aid Certificate;
 - b) Current Working With Children Check;
 - c) Lifeguard Certificate from Royal Lifesaving Society of Australia, or equivalent.
- All personnel must be a minimum of sixteen (16) years of age.
- (vii) develop and maintain a website and Facebook page for the Aquatic Facility to assist with communication to the public during the Term.
 - (c) The Contractor is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract.
 - (d) Council may in its absolute discretion, in writing, require the Contractor to remove any personnel from work in respect of this Contract, or from undertaking the Services or any part of the Services. The Contractor must comply with such direction within the time specified by Council.

3. FEES

3.1 Management Fee

In consideration for the provision and supply of the Services:

- (a) Council will pay the Management Fee to the Contractor by way of monthly instalments as set out in Item 8 of Schedule 1; and
- (b) Council will grant to the Contractor a right to occupy the Aquatic Facility for the Permitted Use during the Term.

3.2 Payment of Invoices

- (a) Subject to clause 3.3, the Contractor will issue Tax Invoices to Council for the pro rata portion of the Management Fee in arrears each month.
- (b) The Contractor must furnish Council with the written monthly report in accordance with section 13.4 of the Specifications at the same time as the issuance of the Tax Invoice to Council. Council reserves the right to withhold payment of the monthly invoice if the written monthly report is not received or is incomplete.
- (c) Council will attend to the payment of the Contractor's Tax Invoices within fourteen (14) days of receipt, subject to any Dispute that has not been resolved between the parties.

3.3 Failure to Open Adjustment

If there is any closure of the Aquatic Facility during the Operating Hours by the Contractor, or caused directly or indirectly by the Contractor, the Contractor must apply an adjustment to the next monthly Tax Invoice reducing the Management Fee on the Tax Invoice by \$430.00 (including GST, if any) for each day (or \$200 for part of a day) that the Aquatic Facility is so closed.

3.4 Other Revenue

The Contractor will be entitled to retain all revenue derived by the Contractor from the canteen in the Aquatic Facility during the Term. The Contractor must not charge any entry fees to the Aquatic Facility.

4. EXPENSES

4.1 Contractor's Expenses

Subject to clause 4.2, the Contractor is liable for the Operating Expenses.

4.2 Council's Expenses

The Council is liable for:

- (a) Major refurbishment and capital improvements as agreed;
- (b) All electricity costs;
- (c) Plant replacement and repair subject to fair wear and tear;
- (d) All gas costs;
- (e) All operating equipment and appliances;

- (f) Garbage bins and bags and garbage removal;
- (g) Periodic maintenance of plant and equipment from an accredited service provider (semi annual and annual servicing of chlorinator, filters, pumps);
- (h) Structural and major maintenance;
- (i) First aid provisions;
- (j) Provision and servicing of fire extinguishers to facility;
- (k) Telephone supply carrier costs;
- (l) Security costs (monitoring);
- (m) Water charges;
- (n) Installation and replacement of pool signage;
- (o) All cleaning requirements;
- (p) All pool chemicals;
- (q) All water testing equipment and provisions;
- (r) Staff induction training and accreditation;
- (s) Toiletries and cleaning aids and supplies;
- (t) Sunscreen
- (u) Mowing and gardening;
- (v) Repair of vandalism.

5. PERMITTED USE

5.1 Grant of Licence

- (a) Council grants to the Contractor a non-exclusive licence to occupy the Aquatics Facility during the Term for the Permitted Use.
- (b) The Contractor acknowledges that this right to occupy does not confer exclusive possession of the Aquatic Facility upon the Contractor.
- (c) The Contractor shall not use the Aquatic Facility or allow it to be used for any purpose other than the Permitted Use.
- (d) The licence will end on the Termination Date at which time the Contractor will vacate the Aquatic Facility at the Contractor's expense.

5.2 Access by Council

The Contractor acknowledges that Council will be entitled to access the Aquatic Facility at any time in order to undertake an inspection of the Services, Swimming Pools and facilities.

5.3 Relationship of parties

Nothing contained or implied in this Contract shall be deemed or construed to create the relationship of lessor or lessee, partnership or of principal and agent or of joint venture between Council and the Contractor.

6. QUALITY CONTROL

6.1 Selection Criteria

From time to time Council may require the Contractor to meet with its Authorised Officers for the purpose of evaluating the performance of the Contractor's obligations under this Contract.

6.2 Quality of the Services

The Contractor will supply the Services of a quality that complies with the current Standards for the Services or services of a similar nature. If there are no Standards, then the quality suitable for the proper management and provision of the Services will be determined by Council at its absolute discretion.

6.3 Defective Services

- (a) If Council notifies the Contractor of any deficiencies in the Services (including the Services not meeting the Specifications or not being fit for the purpose for which they were supplied), the Contractor must take all necessary steps to remedy those deficiencies and where necessary resupply the Services.
- (b) If those deficiencies are not remedied, or the Services are not resupplied within five (5) Business Days, Council may at any time cancel all future orders, terminate this Contract and seek the supply of the Services from another party.
- (c) All costs incurred by Council in connection with exercising its rights under this clause are payable by the Contractor.

7. RENEWAL TERM

7.1 Council's Discretion

Council may offer, in its absolute discretion, to extend the Term of this Contract to the Contractor for the period identified in Item 6 of Schedule 1.

7.2 Conditional Offer

The offer to extend is conditional upon:

- (a) there being no subsisting breach of any covenant in this Contract by the Contractor at the date of Council offering to extend the Contract and also at the date of expiry of the Term; and
- (b) the Contractor accepting the offer, in writing, at least ninety (90) days before the Termination Date, or such later date agreed between the parties.

7.3 Renewal Contract

If Council offers to extend the Term in accordance with this clause and the Contractor accepts the offer, the parties agree to be bound by this Contract for the Renewal Term, subject to necessary variation to dates.

8. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to Council that:

- (a) the Contractor has and will continue to adhere to and comply with all relevant laws, regulations, guidelines and codes of practice relevant to the operation of the Contractor's business and the supply of the Services, including, but not limited to compliance with Work Health and Safety legislation;
- (b) the Contractor has the necessary skills, expertise, equipment and personnel for the proper supply and performance of the Services;
- (c) any materials developed in the course of supplying or performing the Services in accordance with the terms of this Contract will be delivered up to Council and remain the property of Council. The Contractor must not disclose those materials to a third party or use them other than in accordance with the terms of this Contract and in the course of supplying the Services to Council;
- (d) the Contractor will only engage and retain personnel who are able to competently provide the Services;
- (e) for the duration of the Term the Contractor will ensure that all personnel engaged in the supply of the Services have the requisite skills and qualifications necessary to supply the Services. The Contractor must furnish Council with the qualifications of all personnel engaged in the supply of the Services prior to commencement of their duties or change in duties;
- (f) for the duration of the Term the Contractor will document the date and time of the supply of the Services and its compliance with its obligations under this Contract and must provide Council with a copy of those records if requested;
- (g) the Contractor has and will continue to maintain all licences, approvals and necessary consents that a prudent person supplying the Services and operating the business of the Contractor would maintain;
- (h) as the Contractor (including its Authorised Officers, employees and agents) is required to enter onto Council premises to supply the Services the Contractor will comply with all reasonable directions and procedures instructed by Council, including those concerning security;
- (i) all information provided to Council is true and accurate and not misleading (including by omission);
- (j) the Services supplied are free from any Claim or third-party interest (including any intellectual property rights of a third party);
- (k) where the Contractor is a company, the Contractor will maintain its corporate existence and obtain and renew all relevant Authorisations required for it to enter into this document and perform its obligations under this Contract;
- (l) the Contractor will notify Council as soon as it becomes aware of any conflict of interest between the parties in connection with this Contract and the supply of the Services;
- (m) it will not involve Council in any industrial dispute between the Contractor and any of its employees;

- (n) the Services are of merchantable quality, meet the Standards and are fit for the purposes for which they are supplied;
- (o) to the extent permitted at law, assign to Council the benefits of any warranties given by a third party in connection with the Services; and
- (p) the Contractor has disclosed to Council any information relevant to past history of the supply of similar services by the Contractor or by a related entity (including any director of a corporate entity) in relation to breaches of law, investigations or disciplinary action that has resulted in the loss or early termination of a contract or the imposition of any reprimand or penalty (financial or otherwise).

9. ACKNOWLEDGEMENTS

The Contractor acknowledges that:

- (a) Council has incurred obligations under this document in reliance on the representations and warranties given by the Contractor;
- (b) Council, at any time during the Term, may request information about the conduct and operation of the Contractor's business;
- (c) in entering into this Contract, the Contractor has not relied on any representations and warranties made by Council or its Authorised Officers;
- (d) Council is not responsible for the safety or the security of the Contractor in the provision of the Services;
- (e) all operational manuals, instructions and documentary materials developed by the Contractor, or provided to the Contractor by third parties, during the Term (inclusive of all of the intellectual property in those materials), is the property of Council.
- (f) the Contractor is liable for all costs in relation to obtaining and maintaining all relevant licences and Standards concerning the Services and the Contractor's business that may be required by Council from time to time;
- (g) Council is not responsible, and the Contractor will hold Council harmless, for the safety of or any damage to person or property suffered in the course of the Contractor supplying the Services to Council; and
- (h) Council's liability and obligations are limited to that which is expressly set out in this Contract.

10. INSURANCE

- 10.1** For the Term, the Council must at all times maintain at its own cost public liability insurance for the Aquatic Facility for the Insured Amount. Council will also pay for public liability insurance on behalf of the contractor.
- 10.2** For the Term the Contractor must at all times maintain at its own cost:

- (a) workers compensation insurance; and
- (b) any other policy relevant to the Contractor's business and the supply of the Services,

noting where appropriate Council's interest and with an insurer approved by Council. A copy of the certificate of currency of insurance, issued by the insurer must be provided to Council on request.

11. INDEMNITY

The Contractor indemnifies Council (and shall keep Council indemnified) from any loss, damage or Claim suffered by Council (including its Authorised Officers) as a consequence or in relation to this Contract and:

- (a) any deficiencies in the Services;
- (b) any delay in the supply of the Services;
- (c) any act or omission of the Contractor (including its employees, agents and sub-contractors);
- (d) any breach of the Contractor's obligations (including a breach by its employees and Authorised Officers) under this Contract; and
- (e) any unlawful, negligent, reckless or deliberately wrongful act or omission by the Contractor (including its employees and Authorised Officers) in the performance of the Contractor's obligations under this Contract.

12. DEFAULT EVENT

Any one or more of the following events is a Default Event:

- (a) if the Contractor is in breach of its obligations under this Contract and receives written notice from Council (served in accordance with clause 23.13) specifying:
 - (i) that it is in breach of its obligations under this Contract;
 - (ii) the nature of the breach; and
 - (iii) how the breach is to be remedied,and fails to remedy the breach within ten (10) Business Days after receiving that notice;
- (b) if the Services are not supplied in accordance with this Contract;
- (c) if the Contractor fails to supply the Services free of deficiencies and those deficiencies are not remedied or the Services are not replaced within the time frame specified by Council;
- (d) Council determines there is a conflict of interest that may prevent the proper performance of either party's obligations under this Contract;
- (e) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body in

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relation to this Contract or the Contractor;

- (f) where the Contractor (or a person on behalf of the Contractor) makes a statement, representation or warranty, in a certificate, report or opinion:
 - (i) that induced Council to enter into this Contract; and
 - (ii) that statement, representation or warranty proves to be incorrect or misleading in any respect;
- (g) where the Contractor is a corporation and any one or more of the following events occurs without first obtaining Council's consent:
 - (i) the registration of the transfer of any share or stock;
 - (ii) a dealing with the beneficial interest in any share or stock;
 - (iii) the issue or allotment of any new share or stock; or
 - (iv) any other action,and as a result the persons who at the date of this Contract (together beneficially), hold or control of more than 50% of the voting, income and capital participation rights in the Contractor, hold less than that percentage of the voting, income and capital participation rights in the Contractor;
- (h) where the Contractor is the trustee of a Trust at the date of this Contract, ceases to be the trustee of that Trust;
- (i) the Contractor suffers an Insolvency Event;
- (j) except to the extent that clause 22.4 applies, any event or occurrence leading to the closure of the Swimming Pool during the Summer/Peak Season for a period of in excess of one (1) month, or such period as otherwise agreed between the parties; or
- (k) except to the extent that clause 22.4 applies, any other event occurs or any circumstances arise which in Council's opinion, prejudices the Contractor's ability to meet any one or more of its obligations under this Contract.

13. SWIMMING POOL CLOSURE

13.1 Emergency Maintenance

The Contractor acknowledges that it is an essential term of this Contract that the Swimming Pools may require emergency maintenance or renewal during the Term. Council will use its best endeavours to minimise any disruption to the Contractor, and where possible, carry out any works during the Season Winter/Off Peak periods.

13.2 Pool Closure

The Contractor agrees that Council may close (or limit access to parts of) the Aquatic Facility or Swimming Pools if the Council deems, in its absolute discretion, that works are required that are of an urgent nature. In these circumstances, the Contractor is not entitled to any compensation or penalty.

14. TERMINATION

- (a) Without prejudice to any of Council's rights or the continuing obligations of the Contractor, Council may terminate this Contract on the happening of a Default Event, by notifying the Contractor in accordance with clause 23.13 and recover from the Contractor any costs, damages or loss suffered by it as consequence of the Default Event.
- (b) Council will only be liable to the Contractor for payments of Services accepted before the Termination Date.
- (c) The Contractor will not be entitled to any loss of profits as a consequence of the termination of this Contract.

15. CONTINUING OBLIGATIONS

In addition to those obligations expressly stated in this Contract as continuing obligations, the following clauses will not merge on the Termination Date:

- (a) clause 8, representations and warranties;
- (b) clause 9, acknowledgements;
- (c) clause 16, resolution of disputes;
- (d) clause 11, indemnity;
- (e) clause 17, confidentiality; and
- (f) clause 18, capacity as a public authority.

16. RESOLUTION OF DISPUTES**16.1 Injunctive or Interim Relief**

Nothing in this clause prevents a party seeking urgent injunctive relief or similar interim relief from a court.

16.2 Negotiation

An Initiating Party claiming a Dispute has arisen, under or in relation, to this Contract must give a Dispute Notice to the other party specifying the nature of the Dispute. On receipt of a Dispute Notice the other party must, within five (5) Business Days, organise a date and time for the Initiating Party to meeting with its Authorised Officers for the purpose of attempting to resolve the Dispute. If the Dispute is unable to be resolved within ten (10) Business Days of the parties meeting, the Initiating Party will be entitled to refer the Dispute to an Expert.

16.3 Mediation

If the Dispute remains unresolved (after the parties has met in accordance with clause 16.2), the parties must attempt to mediate the dispute in accordance with the mediation rules of the New South Wales Law Society. The President of the New South Wales Law Society (or the President's nominee) will select the mediator and

determine the mediator's remuneration. If the parties are still unable to resolve the Dispute, either party is entitled to proceed immediately with resolving the Dispute in accordance with any rights or remedies available to them under this document and at law.

17. CONFIDENTIALITY

The Contractor must not disclose any Confidential Information to any person without first obtaining Council's written consent, unless otherwise required by law. Despite anything to the contrary (expressed or implied) in this Contract, Council is not:

- (a) bound to disclose to any other person any Confidential Information relating to the subject matter of this Contract;
- (b) under any obligation other than those set out in this Contract;
- (c) liable to any person in respect of any exercise of discretion or the making of an opinion in connection with the subject matter of this Contract, other than by reason of its own gross negligence or wilful misconduct;
- (d) under any duty whether initially or on a continuing basis to provide any person with any credit or other information concerning the financial accommodation or affairs of Council whether coming into Council's possession before, on or after the date of this Contract; or
- (e) required to do anything which would or might in the reasonable opinion of Council be contrary to the law of any relevant jurisdiction.

18. CAPACITY AS A PUBLIC AUTHORITY

18.1 Council's Discretion

Nothing in this Contract operates to restrict or otherwise affect the unfettered discretion of Council in exercising its powers as a public authority under any relevant law, in relation to the subject matter of this Contract or otherwise.

18.2 No Claim

If there is any conflict between the discretion of Council in the exercise of its powers as a public authority and the satisfaction of the performance of its obligations under this Contract, the former will prevail. Anything that Council does, fails to do, or purports to do in its discretion to exercise its powers as a public authority:

- (a) will be deemed not to be an act or omission by Council under this document; and
- (b) will not entitle the other parties to make any Claim against Council under this document for any costs, losses, expenses or damages.

18.3 GIPA Act – Access to Information

- (a) The Contractor must, within seven (7) days of receiving a written request from Council, provide Council with immediate access to the following information contained in records held by the Contractor:

- (i) information that relates directly to the performance of the Services provided to Council by the Contractor pursuant to this Contract (including information that discloses the Contractor's financing arrangements, financial modelling, cost structure or profit margin);
 - (ii) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Services pursuant to this Contract; and
 - (iii) information received by the Contractor from Council to enable it to provide the Services pursuant to this Contract.
- (b) For the purposes of sub-clause (a), information does not include information that the Contractor is prohibited from disclosing to Council by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth.
- (c) The Contractor will provide copies of any of the information in sub-clause (a), as requested by Council, at the Contractor's own expense.
- (d) Any failure by the Contractor to comply with any request pursuant to sub-clause (a) or (c) will be considered a breach of an essential term and will allow Council to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of Council, then the termination will take effect seven (7) days after receipt of the notice.

18.4 GIPA Act – Consultation

- (a) Council will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
- (i) the information:
 - A. includes personal information about the Contractor or its employees;
 - B. concerns the Contractor's business, commercial, professional or financial interests; or
 - C. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - D. concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);
 - (ii) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
 - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against

disclosure of the information.

- (b) If, following consultation between Council and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within five (5) days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of government information, Council will take into account any objection received by the Contractor.
- (d) If the Contractor objects to the disclosure of some or all of the information but Council nonetheless decides to release the information, Council must not provide access until it has given the Contractor notice of Council's decision and notice of the Contractor's right to have that decision reviewed.
- (e) Where Council has given notice to the Contractor in accordance with sub-clause (d), Council must not provide access to the information:
 - (i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (ii) where any review of the decision duly applied for is pending.
- (f) The reference in sub-clause (e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

19. GST

19.1 GST Inclusive

The consideration for a Supply made under or in connection with this Contract includes GST.

19.2 Taxable Supply

If a Supply is made under or in connection with this Contract as a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Contract for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

20. TRUST PROVISIONS

If the Contractor has entered into this Contract as trustee of a Trust, the Contractor (including its successors) is liable under this Contract as trustee so that the Trust's assets at any time are available to satisfy the Contractor's liabilities under this Contract.

21. COSTS

Each party will pay their own professional fees and costs in relation to the preparation and negotiation of this Contract. Any stamp duty or other government charges (including any fines or interest for late payment) payable in respect of this Contract, or any other document prepared pursuant to this Contract, will be payable by the Contractor.

22. FORCE MAJEURE**22.1 Definition**

For the purposes of this clause, **Force Majeure Event** means any of the following:

- (a) earthquakes, fires or other physical natural disaster;
- (b) acts of war, acts of terrorism, riots, civil or military disturbances, national or state-wide industrial disputes (excluding actions by, between or originated among employees of a party);
- (c) acts of any government or competent authority (including the cancellation or revocation of any approval, authority or permit);
- (d) the declaration of a state of emergency or the invocation of martial law having an effect on commerce generally; or
- (e) epidemics or pandemics (including COVID-19);

which:

- (f) is beyond the control of and has occurred without the fault or negligence of the party affected;
- (g) the affected party is unable to prevent or overcome by the exercise of reasonable diligence; and
- (h) makes performance of its obligations under this Contract (whether in whole or part) impossible, not merely more onerous or uneconomic.

22.2 Notice

If a party is affected by a Force Majeure Event:

- (a) that party must immediately give the other party prompt notice (served in accordance with clause 23.13) of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration; and
 - (iii) the obligations affected by it.

22.3 Action to be taken

The party affected by a Force Majeure Event must:

- (b) promptly after the occurrence of the Force Majeure Event, use and continue to use all reasonable endeavours to cure, avoid or minimise the consequences of the Force Majeure Event; and
- (c) after giving the notice referred to in clause 22.2, continue to provide the other party with all relevant information relating to the Force Majeure Event, including the cessation of the Force Majeure Event or its consequences.

22.4 Suspension of obligations

A party's obligations affected by a Force Majeure Event will be suspended to the extent that the Force Majeure Event prevents the party from meeting its obligations under this Contract.

22.5 Reduction of Management Fee

During any period in which the Contractor is not supplying the Services (whether in whole or part) because of a Force Majeure Event, the Management Fee payable by Council will be reduced to an amount which, in Council's absolute discretion, represents reasonable compensation for the Services which the Contractor continues to supply during the Force Majeure Event.

22.6 Alternative supply

During any period in which the Contractor is not supplying the Services (whether in whole or part) because of a claimed Force Majeure Event, Council may (but need not) make alternative arrangements for the supply, whether by another person or otherwise, of the Services which the Contractor is not supplying, without incurring any liability to the Contractor.

22.7 Termination

If a Force Majeure Event continues for more than 40 Business Days, either party may terminate this Contract by giving at least 14 Business Days' written notice to the other party. In the event of termination under this clause 22.7:

- (a) Council must pay the Contractor for the Services work executed prior to the date of termination (subject to clause 22.5, as applicable);
- (b) the Contractor must refund moneys previously paid by Council pursuant to this Contract for Services not provided by the Contractor to Council;
- (c) the Contractor will have no Claim against the Council for any overhead, loss of profit, cost, expense, damage, loss, or other liability arising out of or in connection with the termination; and
- (d) neither party is otherwise liable to the other except to the extent of rights or obligations which accrued before the termination.

23. GENERAL PROVISIONS**23.1 Amendments**

This Contract may only be amended by written agreement executed by the parties.

23.2 Assignment

The Contractor must not, without the consent of the other party, assign, sub- contract, dispose or otherwise deal with its rights under this Contract.

23.3 Counterparts

This Contract may be executed in any number of counterparts, each of which will be an original but together will constitute the one instrument. If this Contract is signed in counterpart, the date of the Contract will be the date it is executed by the last party.

23.4 Electronic Communication

A notice, other than:

- (a) a Dispute Notice;
- (b) a notice exercising an option to renew the Term;
- (c) notice stating a Default Event has arisen within the meaning of clause 12; and
- (d) a notice terminating this Contract,

may be given by one party to another by Electronic Communication directed to the recipients email address, as advised by the recipient from time to time. An Electronic Communication is received at the time it enters the recipients Information System or other such time as described under the Electronic Transactions Act.

23.5 Entire agreement

The parties acknowledge that:

- (a) this Contract constitutes the entire agreement and understanding by the parties; and
- (b) all prior arrangements, representations, warranties and discussions between the parties do not form part of the terms of their agreement.

23.6 Further assurances

The parties agree and acknowledge that they will do all things, to give effect to the intent and spirit of this Contract.

23.7 Governing law and jurisdiction

The law of New South Wales governs this Contract. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

23.8 Rights cumulative

To the extent permissible, no law will apply to this Contract so as to extinguish, fetter, delay or otherwise prejudice any of the rights, powers and remedies of the parties under this Contract or otherwise available to them.

23.9 No merger

Nothing in this Contract merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

23.10 No partnership

The parties acknowledge they have no fiduciary duty to each other, are not in a fiduciary relationship to each other, have not formed a partnership, trust relationship or joint venture with each other and have no obligations to each other than provided for under this Contract.

23.11 No wavier

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

The exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

The variation or waiver of a provision of this Contract or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

23.12 Not an employee or agent

The parties acknowledge there is no relationship of employee, employer or agent and principal established between them by virtue of this Contract or the supply of the Services.

23.13 Notices

A notice or other communication required or permitted to be given by one party to another, must be:

- (a) in writing;
- (b) signed by or on behalf of the party giving it (a notice may be signed by a party's Authorised Officer, or by that party's lawyer);
- (c) addressed to the party to whom it is being given; and
- (d) given by one of the following methods:
 - (i) delivered by hand to that party's address;
 - (ii) sent by Electronic Communication to that party's nominated email address;
 - (iii) sent by prepaid mail (and by prepaid airmail, if their address is overseas) to that party's address; or
 - (iv) sent by facsimile transmission to the party's facsimile number, where the party sending the notice receives a transmission

confirmation report from the dispatching facsimile machine indicating that the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

Other than an Electronic Communication, a notice, consent or other communication delivered under this clause 23.13 is given and received:

- (a) if it is hand delivered or sent by facsimile:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and
- (b) if it is sent by post:
 - (i) within Australia, three (3) Business Days after posting; or
 - (ii) to or from a place outside of Australia, seven (7) Business Days after posting.

A party's address is as set out in Item 9 of Schedule 1 of this Contract, or as that party notifies the others, in writing, from time to time.

23.14 Set off

If the Contractor owes any debt to Council, Council may deduct the amount from the payment of a Tax Invoice submitted by the Contractor.

23.15 Severability

If a clause or part of a clause of this Contract is illegal or unenforceable, then it may be severed from this Contract and the remaining clauses or part of the clause of this Contract will continue in full force and effect.

If any part of this Contract is illegal or unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Contract in the relevant jurisdiction, the rest of this Contract will not be affected.

Schedule 1**Particulars****Item 1**

Description of Services	Management and Operation of the Aquatic Facility
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Item 2

Commencement date	1 November 2024
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Item 3

Termination Date	31 March 2025
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Item 4

Insured Amount	\$20,000,000 Public Liability
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Item 5

Term	Commencement Date: 1 November 2024 Termination Date: 31 March 2025
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Item 6

Renewal Term	Commencement Date: 1 November 2025 Termination Date: 31 March 2026
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Item 7

Operating Hours	As required to complete the Services as per the minimum operating hours contained in the Specifications in Schedule 2.
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Item 8

Management Fee	\$52,500.00 per season (including GST, if any) payable by Council by way of monthly instalments of \$10,500.00 (including GST, if any)
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POOL CONTRACTOR PAYMENT**SCHEDULE 2024/25****Period****Amount**

1 - 30 November 2024	\$10,500
1 - 31 December 2024	\$10,500
1 - 31 January 2025	\$10,500
1 - 28 February 2025	\$10,500
1 - 31 March 2025	\$10,500

2024/25 Season Total**\$52,500**

Contact Details

Council

Contact Person: Sue Mitchell
Manager Corporate and Community
Services
Phone: 0407 786 226
Email: suem@murrumbidgee.nsw.gov.au
Postal address: PO Box 5
DARLINGTON POINT NSW 2706

Contractor

Contact Person: James Billing
Phone: 0405 403 762
Email: jamesbillingphotography@gmail.com
Postal address: 19 Kennedy Street
JERILDERIE NSW 2716

Schedule 2**Specification of Services**

1. Service Aim

It is Council's aim that the Aquatic Facility will be safely managed and operated to meet the expectations of all users. The principal role of the lessee is to supervise patrons using the pool. Any other activity (such as the sale of food, providing swimming lessons, cleaning etc) must not impede or prevent the supervisory role of the Lessee.

2. Service Objectives

- 2.1 To appoint a customer-oriented Contractor that will be capable of providing consistently high levels of customer service and perform the functions of management and operation of Aquatic Facility to an industry best standard.
- 2.2 To provide opportunities for quality and diverse aquatic programming and encourage the community's use of the facilities.
- 2.3 To provide an environment that is safe for participants, spectators and staff of the Aquatic Facility.
- 2.4 To continually explore opportunities for maximising the usage of the Aquatic Facility through the development of innovative programs.
- 2.5 To maintain productive relationships with Council and its staff, regular user groups, corporate and business organisations and the relevant sporting organisations.
- 2.6 To project a customer focused image of well-presented and maintained Aquatic Facility.

3. Contract Scope

- 3.1 The Contractor will be responsible for the complete management and operation of the Aquatic Facility.

4. Contractor's Responsibilities

- 4.1 The Contractor will also be generally responsible for, but not limited to, the following (in relation to the management and operation of the Aquatic Facility):
 - (a) management of all swim programming;
 - (b) the development of programming that is responsive to the recreation and leisure needs of the local community;
 - (c) liaising with all relevant user groups, schools and associations;
 - (d) maintaining the Aquatic Facility in a clean and tidy condition;
 - (e) maintaining the Aquatic Facility in accordance with NSW Health Guidelines and industry best practice;

- (f) maintaining all amenities and buildings (non-structural maintenance);
- (g) maintaining and replacement of canteen facilities including electrical equipment;
- (h) enforcing appropriate policies and procedures;
- (i) providing expert advice on proposed programming initiatives and Aquatic Facility developments; and
- (j) ensuring agreed and adequate access to local swimming clubs, Royal Life Saving Society SwimVAC Program and/or not for profit community groups and should this agreement not be reached the Authorised Person is to adjudicate an outcome which will be final.

5. Pool Facilities

- 5.1 The Aquatic Facility is located at Jerilderie Street, Jerilderie in New South Wales.
- 5.2 Facilities include a 25-metre outdoor lap and recreation pool, shaded toddlers' pools, canteen, change rooms, shaded picnic tables and barbeque.

6. Fees & Charges

- 6.1 No entry fees to the Aquatic Facility are charged.
- 6.2 The Contractor will retain all income generated from the canteen.

7. Minimum Core Operating Hours

- 7.1 The minimum core operating hours for the Aquatic Facility during the Summer/Peak Season is as follows:

- (a) Monday: Closed
- (b) Tuesday: 6:00am to 10:00am and 1:00pm to 7:00pm
- (c) Wednesday: 6:00am to 10:00am and 1:00pm to 7:00pm
- (d) Thursday: 6:00am to 10:00am and 1:00pm to 7:00pm
- (e) Friday: 6:00am to 10:00am and 1:00pm to 7:00pm
- (f) Saturday: 9:00am to 7:00pm
- (g) Sunday: 9:00am to 7:00pm

Closed Christmas Day, New Year's Day and Good Friday.

These hours may be changed in accordance with customer requirements or preferences but MUST be opened 10 hours per day. The Contractor must allow adequate public notification and notification to Council's Authorised Officer in advance of the change.

- 7.2 The Aquatic Facility must be open for the minimum core operating hours set by Council.
- 7.3 The Aquatic Facility is closed during the Winter/Off Peak Season.
- 7.4 During the Term, the Contractor may provide for additional pool opening times outside of the minimum core operating hours at its discretion. If the published additional hours outside the minimum core operating hours are subject to change the Contractor must allow adequate public notification in advance of the change.
- 7.5 The Aquatic Facility may be closed by Council without notice due to storms and severe weather conditions. The Aquatic Facility may be closed to the general public from time to time due to a school carnival, swimming club event or private event. The Aquatic facility may be closed by Council without notice due to unforeseen breakdowns, maintenance or a public health related matter.
- 7.6 On days of excessive heat, the Contractor may be required by Council to extend the closing time.
- 8. Management Fee**
- 8.1 The Contractor shall be paid a management fee as set out in the Contract.
- 9. Facility Usage**
- 9.1 The Contractor is expected to maintain good relationships with all bodies, organisations, schools and persons with which or whom dealings must be continued or maintained.
- 9.2 The duty of care of supervision of patrons of the Aquatic Facility is with the Contractor.
- 10. Contractor's Expenses**
- 10.1 The Contractor is responsible for the payment of all Operating Expenses or other costs and expenses related to and incidental to the provision by the Contractor of the Services.
- 10.2 The Contractor is responsible for the payment of all costs associated with staff employment including, but not limited to, recruitment, wages, superannuation, training and accreditation. Training of staff for correct operation of the water reticulation and treatment systems as per their designed use will be the responsibility of the Contractor.
- 10.3 The Contractor is to provide at its expense insurance of canteen stock and other goods and chattels owned by the Contractor which are accommodated within the Aquatic Facility.
- 10.4 The Contractor will indemnify and keep indemnified and hold the Council harmless against all losses, costs, demands, expenses whatsoever arising which the Council may sustain as a result of the failure of the Contractor to pay any costs or charges incurred by the Contractor.
- 10.5 The Contractor must report any breach of security to the Council within twenty-four (24) hours of discovering the breach. The Contractor will be responsible for fees associated with security company call-out costs not associated with a genuine breach of security.
- 10.6 The Contractor is, to temporarily obscure graffiti or other unacceptable displays within twenty-four (24) hours. This is to be followed, as soon as possible, by its removal and restoration of the surface to its original condition at the Council's expense. This includes the external façade of the Aquatic Facility.

11. Council's Expenses

- 11.1 Council shall be responsible for meeting costs associated with Land Rates, Water Charges (Access & Usage), Sewer Charges & Liquid Trade Waste and Insurance of the buildings and property.
- 11.2 Council will be responsible for all electrical and energy costs associated with the operation and management of the Aquatic Facility. The Contractor must actively limit the energy usage at all sites and where possible offer ideas on cost savings.
- 11.3 Council will be responsible for the security of the Aquatic Facility, including land, buildings and amenities. This will also include any call-out costs associated with security services for the Aquatic Facility. Council will provide the locks and keys for each facility. The Contractor shall ensure that all buildings and gates are securely locked, prior to leaving the premises each day.
- 11.4 Major Repairs are all building and/or equipment repairs which have a single value in excess of \$200.00. These costs will be the responsibility of the Council. The Contractor must seek prior approval from Council before arranging for any major maintenance items to be undertaken.
- 11.5 Council is to provide, at its expense, all pool chemicals and testing equipment required for the operation of the Aquatic Facility in accordance with NSW Health requirements and any other relevant legislative requirement or guidelines.
- 11.6 Council will be responsible for the repair of any vandalism damage to the Aquatic Facility that occurs outside of the Aquatic Facility operating hours or is considered to be major maintenance.
- 11.7 Should any item of major plant or equipment break down Council will be responsible for the costs. The Contractor is required to contact Council as soon as possible to initiate repairs.
- 11.8 Council will be responsible for costs associated with random water quality sampling undertaken by Council.

12. Management and Operation

- 12.1 Water Quality
 - (a) The Contractor will be responsible for adhering to all relevant statutory regulations and laws concerning the quality of all pool water. All staff involved in the measurement and maintenance of water quality must be trained to the relevant industry standard as a minimum requirement.
 - (b) The Contractor will ensure all relevant documentation is kept, demonstrating its compliance with all health regulations concerning the maintenance of water quality.
 - (c) To ensure that water quality complies with health regulations Council may carry out random water sampling, with the co-operation of the Contractor.
- 12.2 Opening Hours
 - (a) During the Term, the Contractor will be given flexibility to extend opening times beyond the minimum core opening hours.

- (b) The Contractor is to ensure that the Pools are open during the minimum core opening hours. The pool opening hours must be adequately advertised and displayed at the pools and on the Contractors Web-site and/or Facebook Page.
- (c) The Contractor may close the Aquatic Facility immediately in the event of an electrical storm, other emergency weather conditions or where there is a public health risk.

12.3 Entry Fees

- (a) The Contractor is not entitled to charge any entry fees to the Aquatic Facility.

12.4 Maintenance Responsibility

- (a) The Council's and Contractors Maintenance Responsibilities are outlined in Appendix 1 – Maintenance Responsibilities.
- (b) Appendix 2 includes the Schedule of Equipment provided by Council at the Aquatic Facility. The Contractor will have access to the equipment to provide and supply the services in accordance with this Specification of Services. The Contractor will be responsible for the supply of any other equipment required.

12.5 Plant and Equipment

- (a) The Contractor will be required to share the responsibility for the maintenance of all mechanical and water treatment plant and equipment to warrant that it is in a workable, clean and serviceable condition to the manufacturer's specifications at all times. The maintenance regime involved in all mechanical and water treatment plant and equipment is to be undertaken by suitably qualified and experienced personnel or specialist contractors after consulting with Council. The Contractor shall monitor all plant and equipment to ensure maintenance intervals are observed and that plant and equipment are in good working order.
- (b) Council will pay for the major maintenance of all mechanical and water treatment plant and equipment.
- (c) Appendix 2 includes a Schedule of Equipment provided by Council at the Aquatic Facility.

12.6 Marketing and Communication

- (a) The Contractor must provide and maintain an "up-to-date" Web-site and Facebook Page for the pool facilities to convey necessary, timely and accurate information to the community. At minimum the following information is to be included:
 - (i) Photographs and information about the Aquatic Facility;
 - (ii) Opening times;
 - (iii) Contractor's contact details; and
 - (iv) Information on up-coming closures/ events.

12.7 Operation of Canteen Facilities

- (a) It is the Contractor's responsibility to stock and fit out (if required) the canteen at its own expense. This may include showcases, banes, wall fixtures, refrigeration, furniture and stock.
- (b) The Contractor will be responsible for ensuring that catering and food services are available during the opening hours of the Aquatic Facility and that all hospitality facilities are presented in a clean and attractive manner at all times.
- (c) The Contractor must, at all times, ensure the food preparation areas are registered, that approved food safety plans are in place and full compliance with all relevant Acts, Regulations and Codes of Practice is maintained.
- (d) The Contractor will retain all income generated from catering services at the Aquatic Facility.
- (e) The Contractor will ensure that only Pre Packaged Food for Sale is available during the opening hours of the Aquatic Facility. If the Contractor wishes to provide other foods not pre packaged, the Contractor may seek an application for consent from the Council's Environmental Health Officer. No foods that produce oily waste are to be cooked at the Aquatic Centre unless the facility has a Council approved Grease Trap Installed.
- (f) The Contractor must provide evidence that canteen staff have the skills and knowledge to safely handle, prepare and sell food for sale in accordance with meeting obligations under the Food Standards Code, NSW Food Act and Food Regulation. Staff are encouraged to undertake the Basic Food Handler Training available on the NSW Food Authority Website [Food Handler Basics training | NSW Food Authority](#).
- (g) The Contractor is to provide to the Council's Environmental Health Officer a copy of the menu/items to be sold in the Aquatic Centre Canteen.
- (h) The Contractor must, at all times, ensure the canteen area is presented in a clean and tidy manner and is aware an inspection by the Council's Environmental Health Officer may be undertaken at any time.

12.8 Storage of Equipment

- (a) The Contractor must not store personal or other business materials, items or goods within the Swimming Pool grounds. The storage of items, including the location and quantities, associated with community sporting bodies or user groups must be approved in writing by Council.

12.9 Swimming Pool Grounds

- (a) The concourse areas are to be swept and washed with water regularly to remove debris that could be potentially dangerous.
- (b) Lawns, grass, trees, shrubs and gardens should be watered at least once weekly during the swimming season and more often when required.
- (c) The Contractor must empty and clean all garbage bins daily.

- (d) The Contractor must keep clean all the furniture at the facilities including bubblers, seats, tables, umbrellas and signs.
- (e) The Contractor must keep all the grounds and surrounds free of all rubbish and neat and tidy.
- (f) The Contractor must regularly check all gates and fences. Gates and locks must be regularly lubricated. Any damage to fences etc. is to be reported to Council.

12.10 Cleaning

- (a) All cleaning will be undertaken by the Contractor or if required by specialist personnel and is to include, but not be limited to:
 - (i) all glazed surfaces;
 - (ii) pool concourses;
 - (iii) all change room facilities and associated amenities;
 - (iv) entrance, kiosk and public access areas;
 - (v) all dry area flooring surfaces;
 - (vi) all ceilings;
 - (vii) all fixtures and office equipment;
 - (viii) all loose furniture;
 - (ix) outdoor furniture;
 - (x) external building surfaces; and
 - (xi) soft landscaping areas.
- (b) The frequency of all cleaning requirements will be determined by the desired level of guest comfort and the ability to present the building in its most favourable condition at all times. The Contractor may be directed by Council to undertake cleaning at any time if deemed necessary by Council.

12.11 Outdoor Furniture and Amenities

The Contractor is responsible for maintaining all outdoor furniture, fixtures, shade structures and other amenities in a presentable and serviceable condition and to any manufacturer's specifications. Repairs and replacement will be carried out by Council.

12.12 Landscaped Areas

- (a) The Contractor is responsible for all cleaning and maintenance of indoor and outdoor landscaping areas associated with the Aquatic Facility.
- (b) The Contractor is to ensure that all landscaping, ornamental, potted plants, turf or treed areas of the Aquatic Facility are adequately watered at all times. Council will spray grass areas yearly to reduce broadleaf proliferation. Council will

provide fertilizer upon request.

12.13 First Aid and Rescue Equipment

- (a) The Contractor is responsible to advise Council in regard to the required first aid supplies, materials and oxygen equipment and also ensuring that there are adequate supplies at all times.
- (b) The Contractor is responsible for advising Council on what Rescue equipment is required at the Aquatic Facilities to meet the RLSSA Guidelines for Safe Pool Operation. The Rescue equipment is to be located on the concourse and should be in accordance with RLSSA Guidelines for Safe Pool Operation.
- (c) Council will be responsible for the purchase of all appropriate First Aid and Rescue equipment.

12.14 NSW Child Protection Legislation

The Contractor must demonstrate that they have taken appropriate action in regards to the Child Protection Legislation. It should be noted that for the purposes of the legislation, employees include your regular paid staff, casuals, volunteers, sub- contractors, trainees and work experience students. A Working With Children Check is a requirement for anyone who works or volunteers in child-related work in NSW.

12.15 Licenses, Certificates and Permits

The Contractor is to obtain and keep current all necessary licenses, certificates or permits as required, to ensure compliance with all regulatory authorities whilst performing the Services. The Contractor must display all licences, certificates or permits as required by legislation.

12.16 Occupancy Levels and Visitation

- (a) The Contractor will be responsible for continually monitoring the Aquatic Facilities to avoid occupancy levels that would endanger the public, affect public enjoyment or restrict the ability of staff to control the public and identify safety problems.
- (b) The Contractor will record visitation levels daily and provide a written report to Council on a frequent basis. Unless specified otherwise, this report must be provided to Council at least at the conclusion of each financial year / swim season.

12.17 Supervision/Qualifications of Staff

- (a) The Contractor shall employ all persons required to operate the Aquatic Facility, including all managerial, supervisory, general and other staff.
- (b) The Contractor must comply with Practice Note No. 15 (*Water Safety*), issued by the Department of Local Government (or any amendments or updates to this Practice Note) and must ensure that staffing levels and staff training accord with that publication.
- (c) Staff must wear clearly identifiable uniforms designed in accordance with RLSSA Guidelines for Safe Pool Operations.
- (d) The Contractor and any staff who may be solely responsible for pool safety at

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any time during the term of the Contract shall have an approved and current NSW Workplace Senior First Aid Certificate.

- (e) The Contractor and responsible staff must be able to demonstrate that they are:
 - (i) qualified as a RLSSA New South Wales (RLSSANSW) Pool Lifeguard Licence;
 - (ii) capable of rescuing a person in difficulty;
 - (iii) capable and trained in the use of RLSSA NSW oxygen resuscitation equipment; and
 - (iv) hold the appropriate and recognised First Aid Certificate.
- (f) All certificates required to enable the Contractor to undertake the listed duties must remain current at all times. The Contractor must furnish Council with the qualifications of all personnel engaged in the supply of the Services prior to commencement of their duties or change in duties;
- (g) The Contractor must provide initial theoretical and practical instruction to all employees and responsible persons in the nature of first aid facilities in the work place, the location of first aid kits, the availability of trained first aiders and procedures to be followed when first aid is required when:
 - (i) an employee becomes employed;
 - (ii) there is a change in the nature and type of duties performed; and
 - (iii) thereafter at regular intervals.
- (h) If the Contractor is to allow coaching, training or similar, the Contractor must ensure that the personnel providing such coaching, training or similar have the required/necessary and approved qualifications. The Contractor must furnish Council with the qualifications of all personnel providing such coaching, training or similar prior to commencement of their duties or change in duties.

12.18 Emptying Pools

Should the Contractor need to empty (or part thereof) the pools at any time, the water is to be discharged in accordance with guidelines set out by the Environment Protection Authority and any relevant Council requirements to minimise the discharging of pool water into the stormwater system. The Contractor must notify Council, in advance, if a pool is going to be emptied.

12.19 Smoking and Alcohol

- (a) Smoking or vaping is not permitted in the Aquatic Facility. The Contractor will be responsible for ensuring compliance with this requirement.
- (b) The consumption of alcohol will not be permitted within the Aquatic Facility (whether in the buildings or within the grounds).

12.20 Incident Reports

- (a) The Contractor must notify Council immediately and follow up with a written report (within twenty-four (24) hours), on any incident at the Aquatic Facility,

involving:

- (i) Work Health & Safety issues;
- (ii) property damage or personal injury;
- (iii) criminal activity; or
- (iv) any other matter that may lead to litigation or otherwise adversely affect the interests of the Council.

12.21 Insurance and WHS Requirements

- (a) The Council will insure the Aquatic Facility against liabilities for damage or loss by fire, flood, storm or tempest to their full insurable value. The Contractor must not do or permit anything which might vitiate or interfere with any policy of insurance in respect of the Aquatic Facility, or which might prejudice any claim under such policy or render the Council liable for any increased premium on any policy of insurance in respect of the Aquatic Facility, fittings, fixtures, furniture or equipment supplied by Council.
- (b) The Council will hold a public liability insurance policy with a minimum of \$20,000,000.00 cover. Council will also pay for public liability insurance on behalf of the contractor.
- (c) Work, Health and Safety and Work Cover measures are to be applied by the Contractor as per the RLSSA Guidelines for Safe Pool Operation and the *NSW Occupational Health and Safety Act 2011*. The Contractor is responsible for the insuring of any contents not owned by Council.

12.22 Signage

- (a) All internal and external signage maintenance related to the management and operation of the Aquatic Facility, is the responsibility of the Council. This includes, but is not limited to:
 - (i) all Hazchem signage
 - (ii) emergency exit signs;
 - (iii) emergency procedures signage;
 - (iv) emergency equipment identification signage;
 - (v) amenities identification signage;
 - (vi) all directional signage; and
 - (vii) all Aquatic Facility information signage.
- (b) No other signage will be allowed to be affixed or painted on to any glazed or other building surface without the prior approval of the Council. The Contractor is responsible for notifying Council if any signage requires upgrading or replacement.

12.23 Additional Responsibilities

- (a) The Contractor must ensure that staff employed by the Contractor in the Aquatic Facilities are:
 - (i) present within the Aquatic Facilities at all times it is open to the public;
 - (ii) sufficient in number to manage the number of occupants of the Aquatic Facilities at any time and in accordance with the RLSSA guidelines for Safe Pool Operation; and
 - (iii) appropriately trained with regard to the emergency management plans referred to in these specifications.

12.24 Public Statements and the Media

The Contractor shall not comment to the Media on behalf of Council nor make any statements to any persons on matters relating to Council or its operations. The Contractor must provide Council with copies of media releases or public notices for prior approval. The Contractor must advise Council immediately of any issues which may result in the closure of a swimming pool or a major disruption of its services.

12.25 Animals

The Contractor shall not permit any animals on or within the swimming pool grounds unless they are Assistance Animals. Assistance Animals are animals that have been trained to perform tasks that assist people with disabilities. Assistance animals may also be referred to as service animals, assist animals, support animals, or helper animals.

13. Staff and Safety

13.1 Staffing

The Contractor is to provide qualifications of all staff proposed to be involved in the management and operation of the Aquatic Facility to the Council.

13.2 Risk & Emergency Management

The Contractor is to provide details of all staff and patron risk management policies, audits and procedures that it would apply during the operation of the Aquatic Facility. This includes, but is not limited to, safety map procedures, work method statements, standard operating procedures and emergency management plans in conjunction with Council.

13.3 Work Health & Safety

In managing and operating the Aquatic Facilities the Contractor must at all times comply with the *Work Health & Safety Act 2011* and the *Work Health & Safety Regulation 2017*.

13.4 Records & Reporting Requirements

- (a) As a minimum the Contractor must maintain:
 - (i) records required by relevant legislation, regulations and NSW Department of Health Guidelines;
 - (ii) a daily record of pool visitation rates;
 - (iii) a daily record of temperatures (minimum am & pm);

- (iv) a log of all complaints from swimming pool users, and any subsequent action taken in regard to the matter;
 - (v) a record of every incident, including near misses and damage to property, and actions taken in regard thereto; and
 - (vi) log sheets of water testing.
- (b) Copies of the above records for the Aquatic Facility are to be provided to Council for its records with each monthly invoice. Council reserves the right to withhold payment of the monthly invoice if the written monthly report is either not received or incomplete.

13.5 Customer Service

Any complaints received by Council may be referred to the Contractor for response within two (2) business days. In this regard, the Contractor will endeavour to comply with any reasonable request from Council.

13.6 Statutory Requirements

The Contractor is to demonstrate how it will comply with all statutory requirements as they relate to the management and operation of Aquatic Facility.

13.7 Council Assets

Council owns all assets at the Aquatic Facility unless provided by the Contractor as part of the Contract.

13.8 Performance of Aquatics Services Provider

The Contractor is expected to provide the Services and carry out the Services as detailed in this document with reasonable skill and care and in accordance with relevant industry and professional standards.

Execution

Executed as an agreement _____
Date

Signature of General Manager Signature of witness

Full name of the General Manager Full name of witness

SIGNED by:

Signature of the Contractor Signature of witness

Full name of the Contractor Full name of witness