

10.8. Tender 22/2023 - Lease of Primrose Park tennis courts

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ENDORSED BY	Gary Parsons, Director Open Space and Infrastructure
ATTACHMENTS	1. CONFIDENTIAL - Tender 22/2023 Lease of Primrose Park Tennis Courts [10.8.1 - 6 pages]
CSP LINK	1. Our Living Environment 1.4 Well utilised open space and recreational facilities 2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

PURPOSE:

The purpose of this report is to advise Council on the outcome of the Tender 22/2023 for the lease of the Primrose Park tennis courts.

EXECUTIVE SUMMARY:

- Tenders were called and received until 3pm 4 April 2024 for the submission of tenders to undertake Tender 22/2023.
- If Council wishes to discuss the report, the meeting should be closed to the public to do so, in accordance with Section 10A(2)(c) Commercial Advantage.
- Should Council wish to discuss this report it is noted that the attached confidential document includes information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. Further, release of the information would on balance be contrary to the public interest as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services. As such should this matter be discussed it should be considered in closed session.

RECOMMENDATION:

1. **THAT** Council accept the tender of the highest ranked tenderer for Tender 22/2023.
 2. **THAT** Council resolve to enter into a five-year lease with a further five-year option.
 3. **THAT** Council notes and implements the recommendations outlined in the confidential attachment, which is to form part of the lease agreement.
 4. **THAT** the Chief Executive Officer be authorised to take any necessary action to implement the decision including entering into associated contracts.
 5. **THAT** Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:
(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
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It is further noted that the release of this information would, on balance, be contrary to the public interest as publication of all tendered documents would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.

Background

Reasons for calling Tender

The Site

Primrose Park tennis courts are located on the northern side of Neutral Bay and Cremorne at historic Primrose Park and lies within folio identifier Lot 100 in Deposited Plan 727041.

The leased area measures 3325m² and the site is zoned RE1 Public Recreation under North Sydney LEP 2013.

The Crown Lands Management Act 2016

Primrose Park is located on Crown Land and is managed by North Sydney Council as its Crown Land Manager, in accordance with the *Crown Land Management Act 2016*.

Part 3, Division 3.4 of the Act provides Council with the authority to manage its dedicated or reserved Crown Land as if it were Community or Operational Land under the *Local Government Act 1993*.

The Local Government Act 1993

The Crown Land Management Act 2016 provides Council with the authority to manage its dedicated or reserved Crown Land in accordance with the provisions for Community Land of the Local Government Act 1993. The Primrose Park Tennis Court lease will be regulated by the terms of Section 46 of this Act.

The Existing Primrose Park Tennis Lease

The existing lease for the Primrose Park Tennis Courts expired on 28 October 2023.

Council is required to call for tenders in accordance with Section 55(3)(e) of the Local Government Act 1993, the details of which are outlined below.

For the purposes of this tender, Sections 55 (Tendering) and 46A (3) of the Local Government Act 1993 are addressed as the proposed lease is for a period that exceeds the requirements of the Act.

Section 55(3)(e) in relation to the requirements of Tendering for Contracts provides:

This section does not apply to the following contracts:

(e) a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A).

Section 46A(3) provides:

(3) A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

Tender 2/2023

Council initially sought tenders for the lease of Primrose Park in June 2023. However, prior to this tender being reported back to Council the following Notice of Motion was raised at the Council meeting on the 28 August 2023.

- 1. THAT Council note that an Open Space and Recreation needs study is currently being undertaken to inform a new Open Space and Recreation Strategy which will set direction in relation to service levels and infrastructure.*
- 2. THAT given the high demand for sporting, recreational and community facilities within the North Sydney Local Government Area, a service level review for all sporting, recreation and community assets be submitted to Council prior to any new leasing or licensing contracts being considered. The service level review should include but not be limited to consideration of the following:*
 - 1. Is the current use of the property/facility the highest and/or best use of the property/facility?*
 - 2. Is the property/facility able to be adapted to accommodate multiple/different sporting, recreational and/or community services?*
 - 3. Is Council in a position to manage the property/facility itself?*
 - 4. Could the property/facility be leased to multiple lessors?*

A Service Review of the Primrose Park Tennis facility was subsequently undertaken in response to the above Notice of Motion.

Report to Council dated 11 December 2023 – Outcome of Service Review of Primrose Park Tennis Courts

The outcome of the Service Review was reported to Council on 11 December 2023, where the following was resolved:

- 1. THAT Council notes the contents of the Service Review for Primrose Park Tennis Courts and the recommendations made therein;*
 - 2. THAT Council notes that a lease arrangement is recognised as the most effective and efficient mechanism for managing the Primrose Park Tennis Courts;*
 - 3. THAT Council continues to manage Primrose Park Tennis Courts through a lease to a private operator for the next five years;*
 - 4. THAT Council close the current tender process (Tender 2/2023) and invite fresh tenders on a selective basis from the proponents that already submitted applications for Tender 2/2023 in accordance with Clause 178(3) of the NSW Local Government (General) Regulation;*
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5. THAT Council notes that the tender for the lease of Primrose Park Tennis Courts will include criteria for proponents to increase utilisation of the facility by other sports that have a known shortfall across the Local Government Area; and

6. THAT the proposed lease term be coordinated to coincide with the renewal of the synthetic surface of the courts at Primrose Park.

7. THAT Council notes that a further report will be brought back to Council in relation to the outcome of the tender for the lease of Primrose Park Tennis Courts.

Close of Tender 2/2023 and Opening of Tender 22/2023

To enable the Resolution of Council dated 11 December 2023 (outlined above) to be satisfied, Council closed Tender 2/2023 and invited fresh tenders on a selective basis from the proponents who had already submitted applications for Tender 2/2023.

The findings of the service review were incorporated into the documentation for the retendering of the lease. The tender criteria were also adjusted to specifically address the Notice of Motion.

Report

The methodology adopted to undertake the tender evaluation of Tender 22/2023 was based on selection criteria outlined in the tender documents and in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005.

Selective tenders were called and were received until 3pm, 4 April 2024 via Tenderlink.

At close of tenders, two out of the three selective tenderers lodged submissions. Listed in strict alphabetical order, the tenderers were:

Tenderer
Dalbech Pty Ltd
Sydney Sports Management Group Voyager Operations (SSMG) Pty Ltd

Information provided by tenderers which is commercial-in-confidence has been protected and will not be disclosed in accordance with section 10A(2)(d) of the *Local Government Act 1993*.

A consistent standard for all tenderers has been used in assessing any request for confidentiality by a tenderer.

The following information is treated as confidential in the confidential attachment:

1. Tender evaluation including selection criteria

The tender process has been reviewed and endorsed by Council's Procurement Panel for adherence to the *Procurement Policy*.

2. Tender evaluation panel results

The final ranking and point scores (out of a total 100) of the tenders are identified in the table in the confidential attachment. The assessment was based on Council's standard

tender evaluation methodology, as outlined in the selection criteria.

3. Funding and costing details

Application for access to documentation should be through lodgement of a GIPA Public Information application form and payment of prescribed fees.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications

This component is discussed in the Confidential attachment.

Legislation

Council acceptance of tenders must be undertaken in accordance with clause 178 of the *Regulation*. For transparency, minutes record the names of the councillors who supported the decision and any councillors who opposed the decision. Clause 178(3) of the *Regulation* gives council six options where it either accepts none of the submitted tenders or receives no tenders. The options are:

- postpone or cancel the proposal for the contract.
- invite fresh tenders, either open or selective, based on the same or different details.
- invite fresh applications by public advertisement (clause 168) from persons interested in tendering for the proposed contract.
- invite fresh applications from recognised contractors listed by council (clause 169) interested in tendering for contracts of the same kind as the proposed contract.
- enter into direct negotiations with any person with a view to entering into a contract in relation to the subject matter of the tender.
- carry out the requirements of the proposed contract itself.

Project Program

Anticipated Lease Start Date:	1 September 2024
Anticipated Termination Date:	31 August 2029
Responsible Officer:	Risha Joseph, Senior Property Officer