Confidential Item

CAMPBELLTOWN CITY COUNCIL

Confidential Item

For Council meeting to be held on

Tuesday 20 June 2023 at 7.00 pm

Refer Item 11.8

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Confidential Item

11.8 Lochiel Park Golf at Geoff Heath Par 3 Management & Maintenance Agreement Novation

Manager Recreation & Leisure Services, Andrew Nairn's Report

Purpose of Report

To seek Council endorsement for the novation of the Lochiel Park Golf at Geoff Heath Par 3 Management and Maintenance Agreement from Belair Turf Management following its sale to Belair Turf Pty Ltd.

Strategic Plan Link

Focus Area 1.2.3 Provide services that deliver a wide range of sporting, leisure and recreational opportunities

Focus Area 5.2.1 Strong and respectful relationships with other Councils, Government, businesses and organisations

Previous Council/Committee Resolution

At its meeting on 7 February 2023, Council resolved to:

'1. authorise the Chief Executive Officer to negotiate the renewal of the Management and Maintenance Agreement with Belair Turf Management for a period of three years with a further two year option available, and

2. include a redevelopment clause within the new agreement to allow for any disruption to Belair Turf Management during the term of their agreement.'

At its meeting on 23 January 2018, Council resolved:

'That Council renew the Belair Turf Management agreement in line with the terms of the option in the current agreement for a further five year period as they have satisfactorily met their obligations and have been investing in course improvements.'

Background

In accordance with the above 7 February 2023 resolution the Agreement (Management and Maintenance Agreement) was updated and provided to BTM (Belair Turf Management) for their review, and was executed by Mr Simon Foord the owner of BTM and Council's Chief Executive Officer, on 10 March 2023.

Subsequent to this Council was formally advised on 8 May 2023 by Mr Foord, that BTM had been sold to the Kolsen Group and would become BT P/L (Belair Turf Pty Ltd). It was planned for this sale to proceed in June 2023 and Mr Foord provided a Deed (Deed of Novation) for Council to complete and assign the Agreement over to BT P/L.

Clause 27.4 of the Agreement does not allow for an assignment hence a Council decision is required.

Following receipt of legal advice, the Chief Executive Officer responded to Mr Foord on 16 May 2023 (attached) requesting Kolsen's corporate structure, financial position, contract skills in this area and references pertaining to similar grounds maintenance contracts. These are all consistent to the information requirements in a formal tender process. Costs to Council were requested as were amendments to the Deed to ensure Council's position under the current Agreement were preserved.

Discussion

Corporate Structure

BT P/L will be wholly owned by Kolsen Holdings No 2 P/L. This company holds 100% of three other businesses and has shares in a further two. Kolsen are wholly owned by a trust which have a substantial number of holdings and shares in other complementary businesses.

Financial Position

Finance staff have reviewed the financial information provided including a signed Insolvency Event Declaration and have no adverse matters to report. Evidence of $20m in Public Liability Insurance cover has been provided to Council.

Contract Skills

The Kolsen Group runs businesses in the facility, electrical and industrial sectors within the NT (Northern Territory). Specifically, through its facility company Sterling NT, Kolsen's has been undertaking grounds maintenance services for a number of Government entities, including Darwin City Council, NT Government, CSIRO, Darwin Waterfront and a range of tertiary and commercial clients. Many of these entities have been serviced for more than 10 years. Sport/Council related projects include a $1.4 million dog park in Palmerston, $900,000 Katherine Oval resurfacing and $650,000 pa grounds maintenance/cleaning contract for Marrara Sporting Complex that comprises Larrakia Park, TIO Stadium, Warren Park Fields and Marrara Indoor Stadium.

The newly formed BT P/L is 100% owned by the Kolsen Group. Mr Foord retains a role within the organisation as a Senior Manager, and Mr Mark Halliday retains his role as Manager (although it is noted he is retiring in August 2023). Staff work closely with the Manager, meeting monthly on site and receiving all reports and required documents and communications from this role. Mr Simon Gunn, who also works closely with Staff in his role as Area Manager Golf Courses and Projects, will also retain his role. Critically all Staff at the Lochiel Park Golf at Geoff Heath Par 3 (the Golf Course) are being retained. It is these Staff that are the face of the Golf Course and provide a friendly welcoming experience for golfers and the Community.

The Kolsen Group has significant grounds maintenance contract experience. The newly formed BT P/L has significant grounds contract experience and golf course management experience through managing Council contracts with Campbelltown, Salisbury and Marion Councils.

References

Staff contacted two references as provided, Charles Darwin University and Darwin Waterfront Corporation. Services provided were sports ground maintenance and general landscaping including, lawns, grounds and garden beds. Both references were supportive of the services provided by Sterling NT with recurring themes being stability, reliability and service delivery.

Other

To support the work undertaken to review the Deed of Novation, BTM have agreed to cover Council's costs incurred including the company search and legal advice. The Deed does cover Council's need for suitable indemnity rights and recovery as BTM remains liable for this up to the novation and BT P/L assumes this moving forward.

Social Implications

The key Staff that face the Community are unchanged so this assignment is unlikely to have any adverse impact on the customer service experience.

Environmental / Climate Change Implications

There are no environmental / climate change implications in relation to this report.

Asset Management Implications

The golf course assets remain on Council's Asset Register.

Governance / Risk Management

The governance and risk management implications to Council have been covered in this report. If the assignment goes ahead the Chief Executive Officer will also be asked to endorse a Liquor Licence change to reflect the name change.

When the current agreement ceases or expires, an open tender process will be carried out in order to test and review the market.

Community Engagement

There are no Community engagement implications in relation to this report as the Golf Course site is not Community Land.

Regional Implications

There are no regional implications in relation to this report.

Economic Development Implications

There are no economic development implications in relation to this report.

Financial Implications

There are no financial implications in relation to this report as BT P/L will cover all the costs asoociated with this assignment process.

Recommendation

That Council agree to novate the Lochiel Park Golf at Geoff Heath Par 3 Management and Maintenance Agreement from Belair Turf Management to Belair Turf Pty Ltd for the remainder of the current contract term.

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Enq: Andrew Nairn
Ph: 8366 9359

16 May 2023

Mr Simon Foord
Belair Turf Management Pty Ltd

Via email: Simon@belairturf.com.au

Dear Mr Foord

BTM Deed of Novation

Thank you for your advice that BTM is seeking a deed of novation to the Management Agreement for the Lochiel Park Golf Course at Geoff Heath Par 3. We appreciate your efforts to progress this matter as quickly as possible and accordingly provide the following feedback after reviewing your request.

Please note that the current Management Agreement prohibits assignments or other dealings, which means that any request for novation will need to be presented to the Elected Members for their consideration and approval. As such, we cannot guarantee that the requested 1 June date will be achievable.

Furthermore, the Council will require evidence of Kolsen's corporate structure, financial position, and skills in managing contracts of this nature, as well as references from the principals of existing grounds maintenance contracts. This information will be reviewed as part of the Council's consideration of the request.

We would like to draw your attention to the fact that the Council will require its costs of the novation to be paid by one or more of the other parties involved in the agreement. Additionally, we will require an amendment to the draft deed of novation to ensure that the Council's position under the contract is preserved. This is particularly important in relation to clause 3(b) and 4(a) of the novation, which release the outgoing party from obligations without necessarily giving the Council assurance of having suitable indemnity and rights of recovery from the new party, except from the agreed novation forward.

We hope this information is helpful in assisting you in your request for a deed of novation. Please do not hesitate to contact us if you have any further questions or concerns.

Yours sincerely

Paul Di Iulio
Chief Executive Officer

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