

Deed of Amendment

The Council of the City of Sydney

and

**Belgravia Health and Leisure Group Pty Ltd atf Belgravia
Leisure Unit Trust**

Sydney2030/Green Global/Connected

The Council of the City of Sydney
Town Hall House
456 Kent Street
SYDNEY NSW 2000

Reference: File Number: S115659

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THIS DEED is made on

2016.

BETWEEN:

- (1) **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Belgravia Health and Leisure Group Pty Ltd atf Belgravia Leisure Unit Trust ABN ABN 18 118 940 063** of 20 Longstaff Road, BAYSWATER VIC 3153 (**Service Provider**)

BACKGROUND

- (A) The City and the Service Provider are parties to the Contract.
- (B) The parties have agreed to amend the Contract on the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires:

Agreement means that part of the Contract defined as the "Agreement".

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Contract means the agreement between the City and the Service Provider entered into on 1 February 2012, and includes all annexures, schedule or other attachments to that document.

Effective Date means the 1 April 2016.

Party means either the City or the Service Provider and Parties means both of them.

Specification means that part of the Contract defined as the "Specification".

1.2 Interpretation

In this deed unless the context indicates a contrary intention,

- (a) a word or expression defined in the Contract has the same meaning when used in this deed; and
- (b) a reference to a clause, schedule, or annexure is a reference to a clause, schedule or annexure of the Contract.

1.3 Severability

Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

1.4 Liability

When two or more persons are named as a party to this deed, any agreement, representation or warranty expressed to be given or made by that party will be a joint and several liability of each named person.



1.5 **Performance Dates**

Any payment, act, matter or thing required to be made or performed by the terms of this deed on or prior to a day which is not a Business Day must be made or performed on or prior to the immediately following Business Day.

2 **AMENDMENT OF CONTRACT**

2.1 **Amendments**

The parties agree that on and from the Effective Date, the Contract is amended by:

- (a) inserting the words marked-up (by underlining and bold) in the copy of the Agreement comprising Annexure A as being insertions; and
- (b) deleting the words marked up (by striking through and bold) in the copy of the Agreement comprising annexure A as being deletions.

2.2 **Confirmation**

The parties ratify and confirm the Contract as varied by this deed.

3 **GST**

- (a) If a party to this deed (**Supplier**) makes a supply under or in connection with this deed and is liable by law to pay GST on that supply, the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- (b) If this deed requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- (c) If a party to this deed has the benefit of an indemnity for a cost, expense, loss or outgoing (**indemnified cost**) under this deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- (d) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this deed.
- (e) Subject to the operation of this clause 3, all amounts stated in this deed are GST exclusive.

4 **GENERAL**

4.1 **Governing law**

- (a) This deed is governed by the law in force in New South Wales, Australia.



- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

4.2 Access to information

In accordance with s121 of the Government Information (Public Access) Act 2009 (NSW), the Service Provider agrees to allow the City immediate access to the following information contained in records held by the Service Provider:

- (a) information that relates directly to the performance of the Services by the Service Provider;
- (b) information collected by the Service Provider from members of the public to whom the Service Provider provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Service Provider from the City to enable the Service Provider to provide services to the public.

4.3 Costs

The Service Provider must reimburse the City for all reasonable legal and administrative costs and expenses incurred in relation to:

- (a) the negotiation, preparation and execution of this deed;
- (b) the giving effect to this deed; and
- (c) any enforcement of the rights under this deed.

4.4 Duty of cooperation

Each party must:

- (a) do all that is needed on its part to enable the other party to perform any obligation under this deed which cannot be performed effectively without the co-operation of both parties; and
- (b) not do anything with the intention of making it impossible to perform its own obligations under this deed, or to make it impossible for the other party to carry out its obligations under this deed.

4.5 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

4.6 Waiver of rights

- (a) A right may only be waived in writing, signed by the party giving the waiver, and:
- (b) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;



- (c) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (d) the exercise of a right does not prevent any further exercise of that right or of any other right.

4.7 Operation of this deed

- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

4.8 Operation of indemnities

- (a) Each indemnity in this deed survives the expiry or termination of this deed.
- (b) A party may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.

4.9 Set off

The City at its discretion may set off or apply any amounts payable by it to the Service Provider under this deed towards satisfaction of any amount payable to the City by the Service Provider under this deed after giving the Service Provider prior written notice of its intention to do this.

4.10 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by law.

4.11 No fetter

Nothing in this deed in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

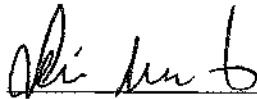
4.12 Counterparts

This deed may be executed in counterparts.



EXECUTED as a deed.

**Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF
SYDNEY** by its duly authorised officer, in
the presence of:



Signature of witness

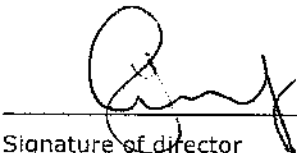
LISA MCCLYMONT

Name

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by **BELGRAVIA HEALTH
AND LEISURE GROUP PTY LTD ATF
BELGRAVIA LEISURE UNIT TRUST
ABN 18 118 940 063** in accordance with
s127(1) of the Corporations Act 2001
(Cth):



Signature of director

GEORGEY FREDERICK LORD

Name



Signature of officer

PATRICK MONICA BARONE

Name of officer

CHIEF EXECUTIVE OFFICER

Position of officer



Signature of director/secretary

RONALD CHARLES PECK

Name



ANNEXURE A MANAGEMENT AGREEMENT

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MANAGEMENT AGREEMENT



The Council of the City of Sydney

and

Belgravia Health and Leisure Group Pty Ltd for Belgravia
Leisure Trust Unit

For management of:

andrew (boy) charlton pool

prince alfred park pool

victoria park pool

cook + phillip park aquatic and fitness centre and
ian thorpe aquatic centre

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Tender number: 1107

The Council of the City of Sydney

Town Hall House

456 Kent Street

SYDNEY NSW 2000

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The Council of the City of Sydney

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transmitted or stored in any form or by any means without prior permission of the Council of the
City of Sydney.



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city of villages

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THIS AGREEMENT is made on the date set out in Item 1 of the Reference Schedule.

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** of Town Hall House, 456 Kent Street, Sydney, New South Wales (the "City"), and
- (2) **THE PARTY** set out in Item 2 of the Reference Schedule (the "Service Provider").

BACKGROUND

- A. The City requires the provision of the Services and the Service Provider has offered to supply the Services to the City.
- B. The City has agreed to appoint the Service Provider to provide the Services on the terms contained in the Contract.

OPERATIVE PART

1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:

Additional Term means the periods set out in Item 4 of the Reference Schedule.


Agreement means this document and any appendices or attachments to this document.

Annual Financial Statement means the statement to be provided by the Service Provider to the City pursuant to Clause 9.

CAN means a corrective action notice, the notice issued by the Contract Manager, or other nominated representative, to rectify a Performance Failure.

Confidential Information means any information, data, practices, techniques trade secrets, commercially sensitive information and confidential information (including without limitation any software or databases) supplied or disclosed by a party (supplier) to another party (recipient) other than information or data:

- (a) in the possession of a recipient prior to the date of its disclosure to a recipient by a supplier;
- (b) in the public domain prior to the date of disclosure to a recipient by a supplier;
- (c) which had entered the public domain, other than as a result of a breach of confidence by the recipient;
- (d) supplied to a recipient without restriction by a third party who is under no obligation to a supplier to maintain that information in confidence; or
- (e) which is required to be disclosed by law.



Containment means taking all necessary actions to:

- (a) make the area safe so no customers or visitors to a Facility are in danger;
- (b) prevent the problem in one area from affecting other areas; and
- (c) prevent unauthorised access to the affected area,

and "Contain" has an equivalent meaning.

Containment Time means the time within which the City requires the Service Provider to ensure Containment of the event or area, as notified by the City to the Service Provider.

Contract Information means all information, materials, statements, papers, and intellectual property in whatever form given to, produced or acquired by the Service Provider for the purposes of carrying out the Services, including without limitation, data and information stored and compiled in any management information systems, member databases, and any other information which the Service Provider may collect and/or use for the purposes of carrying out the Services.

Corrective Action means rectifying a Performance Failure within the Rectification Time so that the performance of the Service Provider complies with:

- (a) the relevant Performance Standard; and
- (b) in the absence of a Performance Standard, all other requirements imposed by the City, acting reasonably.

Default Notice means the notice issued by the Contract Manager when:

- (a) a CAN has not been remedied within the specified Rectification Time or otherwise in accordance with clause 21.2; or
- (b) Two CAN's are issued for the same Performance Failure in any three month period.

Disclosed Data means information and various documents made available by the City to assist tenderers with the preparation of submissions responding to the Request for Tender.

Facility Operating Result means the estimated Income of a Facility less:

- (a) the estimated Operating Expenses of a Facility; and
- (b) Contract Expenses relating to a Facility,

submitted by the Service Provider as part of its Request for Tender submission.

Guarantee means a bank guarantee or performance bond approved by the City that must:

- (a) In the case of a bank guarantee, be issued by a bank licensed to carry on business in Australia;
- (b) In the case of a performance bond, be issued by either Swiss Reinsurance Company Limited or Swiss Re International SE;

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(c) be in favour of the City;

(d) be for the Guarantee Amount;

(e) contain an unconditional undertaking to pay the City on demand; and

(f) not have an expiry date.

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Guarantee Amount means the amount of the Guarantee as set out in Item 7 of the Reference Schedule.

GST means the tax imposed by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the related imposition Acts of the Commonwealth.

Hand Over means the date the City achieves practical completion of the Works referred to in clause 4, and possession of all or part of Prince Alfred Park Pool is returned from the builder to the City.

Income means the total of all sums received by, or payable to, the Service Provider, directly or indirectly in connection with each Facility or the Group.

Indoor Group means each of the following Facilities:

(a) Cook + Phillip Park Aquatic and Fitness Centre; and

(b) Ian Thorpe Aquatic and Fitness Centre.

Intellectual Property means all inventions, patents, patent applications, trade marks, designs, copyright (including copyright in any computer software or hardware or any works associated with such software or hardware) technical know-how and commercially sensitive or valuable information which are created in the course of or arise out of this Agreement.

Outdoor Group means each of the following Facilities:

(a) Andrew (Boy) Charlton Pool;

(b) Prince Alfred Park Pool; and

(c) Victoria Park Pool.

Performance Failure means a failure by the Service Provider to comply with the terms of the Contract.

Rectification Time means the time within which rectification of a Performance Failure must be completed, as determined by the City in accordance with the below table or otherwise in its discretion.

Classification	Response Time	Service Failure
Priority 1 (P1)	30 minutes from notification	Represent threats to health, safety, or severely affect the normal business operation of the Facility

Priority 2 (P2)	8 hours from notification	Deterioration of the Facility or customer satisfaction or which may put at risk public safety or cause public disquiet for high a high level of complaints
Priority 3 (P3)	48 hours from notification	Unless attended have the potential to develop into issues that will affect the operation of the Facility and the City may expect to receive complaints
Priority 4 (P4)	10 days from notification	Minor equipment or component failure, where the equipment or component does not overly affect normal operation but may lead to reduction in customer satisfaction
Priority 5 (P5)	30 days from notification	Any other works that do not fall into any of the above categories

Service Provider's Intellectual Property means any Intellectual Property owned by or licensed to the Service Provider prior to the date of this Agreement or created or acquired by the Service Provider after the date of this Agreement except intellectual property created or acquired for the sole and specific purpose of the Service Provider performing the Services under this Agreement.

Specification means the specification governing the operation of the Facilities supplied by the City as part of the Request for Tender and any attachments, annexures or schedules to that document.

Sub-contract means any agreement, engagement, contract or other arrangement which passes ordinary responsibility for provision of the Services or management of a Facility from the Service Provider to a Sub-contractor.

- 1.2 Capitalised words that are not defined in this Agreement have the meaning given to the words in the Specification.
- 1.3 Clause headings in this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- 1.4 Words importing a gender include any other gender.
- 1.5 Words in the singular number include the plural and words in the plural number include the singular.
- 1.6 A reference to:
 - (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

- (e) a professional standard is determined by reference to Good Industry Practice in the relevant field or area of expertise; and
- (f) any thing (including a right, obligation or concept) includes each part of it.

2. DOCUMENTS COMPRISING CONTRACT

- 2.1 This Agreement, the Specification, the Request for Tender, the Service Provider's tender submission and any attachments or addenda to those documents constitute the entire agreement between the City and the Service Provider.
- 2.2 In providing the Services the Service Provider must comply with the following documents and in the event of any conflict or inconsistency between them in descending order of priority:
 - (a) the Specification;
 - (b) this Agreement;
 - (c) the Request for Tender; and
 - (d) the Service Provider's tender submission.

3. TERM OF CONTRACT

- 3.1 The Contract will commence on the Commencing Date and will continue for the Term.
- 3.2 The City ~~may, in its absolute discretion,~~ extend the Contract for the Additional Term. This right must be exercised by the City as set out in the remainder of this clause 3.
- 3.3 ~~If the City wishes to exercise its rights under clause 3.2 it will notify the Service Provider of this not more than 12 months and not less than six months before the end of the Term.~~
- 3.4 If a Contract for an Additional Term is to be entered into, that Contract must be signed by both parties before the end of the Term and must be on the same terms as this Contract with amendments only to:
 - (a) update the commercial terms of the Contract as required by the Contract; and
 - (b) reflect the number of Additional Terms of the Contract that remain.
- 3.5 In the absence of a Contract for an Additional Term, the Service Provider will continue to provide the Services on a month-to-month arrangement on the same terms as applied during the Term, terminable by either party on one month's written notice.

4. HAND OVER

- 4.1 The Service Provider acknowledges that:
 - (a) [REDACTED]

Deleted: also has the right to

Deleted: The Service Provider may elect to and the City must enter into a Contract for an Additional Term if, during the Term, the Service Provider:

- achieves an average result over the Term of 85% or higher on the Annual Performance Scorecard in performance of the Monthly Facility Reviews and KPI's; and
- if applicable, pays the Guaranteed Group Fixed Fee in accordance with the Contract.

If the Service Provider does not satisfy all performance requirements under this clause 3.3, then the City may, in its absolute discretion, elect whether or not to enter into a contract with the Service Provider for an Additional Term. The City may, in its absolute discretion, enter into a Contract with the Service Provider for an Additional Term if, during the Term, the Service Provider:

- achieves an average result over the Term of between 70% and 84% on the Annual Performance Scorecard in performance of the Monthly Facility Reviews and KPI's; and

The City will not enter into a Contract for an Additional Term if, during the Term, the Service Provider:

- achieves an average result over the Term of 69% or lower on the Annual Performance Scorecard in performance of the Monthly Facility Reviews and KPI's; or

The City will make its assessment pursuant to clauses 3.3 to 3.5 not more than 12 months and not less than 6 months before the end of the Term. The City

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- (b) it is not anticipated that these Works will be complete until December 2011 at the earliest.

4.2 The City must:

- (a) keep the Service Provider regularly informed of the progress of the Works and of the anticipated dates upon which all or part of Prince Alfred Park Pool will be available for the Service Provider to operate; and
- (b) give the Service Provider not less than 20 Business Days written notice of the date upon which Prince Alfred Park Pool or a part of Prince Alfred Park Pool will be available for the Service Provider to operate.

4.3 The Service Provider:

- (a) will not be required to:

(i) perform the Services; or

(ii) [REDACTED]

until the Agreed Start Date.

- (b) must commence providing the Services as soon as possible following the Agreed Start Date, and

(c) [REDACTED]

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- 4.4 If the Service Provider (acting reasonably) does not believe that the Services can, at the Agreed Start Date, be performed in full, then the Service Provider's Representative must promptly notify the Contract Manager in writing of the omissions and the estimated date at which the Services will commence in full. The City may (but is not obliged to) waive or require performance of any part of the Services referred to in the above notice.

4.5 The City must not allow the Service Provider to access the Facility until after Hand Over to the Service Provider unless:

- (a) the City (acting reasonably) considers that the portion of Prince Alfred Park Pool is ready for the immediate access by the Service Provider;
- (b) to the extent reasonably necessary, any other contractors engaged by the City have been informed; and
- (c) there are no material defects or omissions of which the City is reasonably aware which would materially or significantly impact upon the provision of the Services.

5. **FINANCIAL ARRANGEMENTS AND REVIEW**

5.1

[REDACTED]

5.2

[REDACTED]

5.3 [REDACTED] the Service Provider must, by written notice, certify to the City that it has:

- (a) paid all wages and allowances owing to any of its employees;
- (b) paid all money due to any Sub-contractor of the Service Provider;
- (c) made any payments required to be made in relation to the Service Provider's Equipment; and
- (d) made any other payments that the Service Provider is required to make to meet the requirements of this Contract.

The notice forms part of the Service Provider's monthly reporting requirements and

[REDACTED]

5.4

[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]


5.5 The Service Provider acknowledges that the parties will treat the Contract as applying on an Annual basis for financial purposes, and that the first and last year of the Term may not comprise a full year as a result of this treatment.

5.6

[REDACTED]

5.7

[REDACTED]



(a)

(b)

The parties must enter into any documentation required to give effect to any variation to the Contract, and must comply with that variation.

5.8

This clause does not affect the Service Provider's obligation to otherwise comply with every other provision of this Contract from the Commencing Date.

5.9 Budget Review

(a)

(b)

(c)

(d)

(e)

5.10 Review of Specification

(a) As soon as possible after 1 April 2016 the parties will review the following items within the Specification:

(i) Annual Performance Scorecard as contained in Appendix VI;

(ii) Performance Management Framework as contained in clause 6.4;

(iii) Performance Targets and Standards as contained in clause 6.5;

(iv) Assessment of Service Provider's Performance as contained in clause 6.6;

(v) Corrective Action and Default Provisions as contained in clause 6.7;

(vi) Meeting Requirements as contained in clause 6.9 (type, frequency, focus, and attendance);

(vii) Operating Guidelines as contained in Appendix XIII;

(viii) Payment by Customers as contained in clause 11.2.6, and

(ix) any items other than those specified in (i) to (viii) above that may be nominated by the City, acting reasonably

for the purpose of agreeing any amendments required to these items by 1 September 2016.

(b) The parties will negotiate in good faith to agree on the amendments contemplated by clause 5.10(a).

(c) If the parties cannot reach agreement as required by this clause, then the dispute resolution procedures specified in clause 39 will apply.

(d) The parties must enter into any documentation required to give effect to any required variation to the Contract, and must comply with that variation.

6.

6.1

6.2

(a)

(b)

provided that the scope of the Services is not varied.

6.3

6.4

7. PROVISION OF SERVICES

7.1 The Service Provider must:

- (a) provide the Services and otherwise comply with the requirements of this Contract.
- (b) ensure (at its own cost) that:
 - (x) it has all Approvals to enable the Facilities to operate in accordance with the Contract; and
 - (xi) any such Approvals remain current throughout the Term,and provide copies of such Approvals together with proof of currency at any time required by the City during the Term; and
- (c) comply with:




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- (i) all timeframes set out in the Specification or that the City may otherwise reasonably impose;
- (ii) all applicable Australian standards, including but not limited to those standards, if any, set out in the Specification; and
- (iii) all relevant Laws including occupational health and safety legislation.

7.2 A failure to comply with this clause 7, will result in clauses 20 or 22 applying, as applicable. This clause 7 survives termination of this Agreement.

8. FINANCIAL MATTERS

8.1 The Service Provider must:

- (a) 
- (b) 
- (c) 
- (d) ensure that all monies received are handled in a safe, professional and responsible manner.

8.2 Without limiting any other clause of the Contract, the City may at any time during the Term direct that the Service Provider moderate consumption of any goods or services (including without limitation, energy) in the manner specified by the City (provided always that such direction does not result in a breach of any Law or the Service Provider's ability to provide the Services). The Service Provider must comply with a direction given by the City under this clause 8.2 within the time frame directed by the City. Failure to comply will result in a deemed Performance Failure and the City will have the discretion to apply the provisions of clause 20.

8.3 The Service Provider agrees to comply with all provisions of the *Fitness Services (Pre-paid Fees) Act 2000 (NSW)*.

9. REPORTS AND ACCOUNTS

9.1 The Service Provider must provide to the City the Reports required by the Specification at the times stipulated in the Specification.

9.2 The Service Provider must ensure that the Reports are in the format specified in the Specification (or as otherwise agreed between the parties) and contain all information required by the City. Any recommendations in the Reports must be clearly explained and substantiated and the Reports must be accurate and not misleading in any respect. Any error, ambiguity or deficiency which becomes apparent and is referred to the Service Provider for correction or clarification, must be corrected and clarified by the Service Provider to the satisfaction of the City within 5 Business Days of a request by the City.

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- 9.3 The Service Provider must provide to the City by 31 August each year in the Term and within 40 Business Days after the end of the Term a comprehensive Annual Financial Statement for the last financial year, or part of a financial year, which must be prepared in accordance with relevant accounting standards and audited by a registered company auditor who must perform the audit according to generally accepted standards for audits issued by the Australian Auditing Standards Board.

(a)

(b)

(c)

the auditor must support any qualification in the report with recommendation(s) for improvement or Corrective Action to rectify the matter(s) raised in the qualification. The Service Provider must provide evidence to the City of action taken to address the auditor's qualification within three Months of the date of the Annual Financial Statement.

- 9.4 The City and any person authorised by it may at any time review, inspect, copy, audit or investigate any of the Service Provider's financial and other records which relate to the performance of the Services and compliance with the Contract. The Service Provider must within 5 Business Days of a request by the City give access to and provide a copy of all records and accounts, and any other documentation to enable such inspection and audit to occur.
- 9.5 The City may, upon receipt of any Report or plan, require such further information as is considered by the City to be reasonably necessary to enable the consideration and evaluation of that report or plan. The Service Provider must use its best endeavours to promptly comply with that request and in any event supply the further information within 5 Business Days of the request, whether written or verbal.

10. KIOSK

- 10.1 The Service Provider must ensure that the Kiosks at the Facilities are operated in accordance with the Specification.

- 10.2 The Service Provider must ensure the Kiosks are operated in one of the following ways:

(a)

(b)

(c)

10.3



10.4

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

10.5 Without limiting any obligation under clause 9 of this Agreement, the Service Provider must ensure that [REDACTED] are supplied to the City every Quarter as part of the Service Provider's obligation to provide Reports.

10.6 If the Service Provider is required to or elects to fitout the Kiosks with furniture or other items then the Service Provider must first obtain the approval of the City to the proposed fitout.

11. EMPLOYEES

11.1 The Service Provider must comply with its obligations regarding employees and people management set out in the Specification and must comply with any award or Law relevant to its employees.

11.2 The City may, at its discretion, give notice requiring the Service Provider to remove personnel from work involved in providing the Services. The City will act reasonably in giving such a notice and will not give a notice without first discussing with the Service Provider. Upon receipt of such notice, the Service Provider must promptly arrange for the removal of such personnel and replace them with personnel acceptable to the City, acting reasonably. The necessity for the Service Provider to replace personnel will not relieve the Service Provider of any of its obligations under the Contract. Any payment made by the Service Provider to personnel upon removal of personnel that is in addition to those required to be paid by Law must not form part of the Operating Expenses.

11.3 If the Service Provider is unable to provide acceptable replacement personnel, this will be a Performance Failure and clause 20 of this Agreement will apply.

11.4 The Service Provider agrees that in the performance of the Services it will comply with all Law and the requirement of any Authority in relation to its employees including (without limitation) those relating to occupational health and safety, the payment of any relevant tax, workers compensation, income tax deductions, anti-discrimination, equal opportunity and industrial awards.

11.5 The Service Provider agrees that all responsibility for industrial relations with regard to its employees rests with the Service Provider.



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- 11.6 The Service Provider agrees to keep the City fully and promptly informed of any industrial relations problems or issues which affect or are likely to affect the performance of the Services.
- 11.7 The Service Provider must advise the City in writing of the details of any proposed key personnel.
- 11.8 Service Provider must consult with, and obtain, the City's written approval before the removal or the replacement of any key personnel as set out in the Request for Tender or as otherwise approved by the City from time to time.

12. SERVICE PROVIDER IS LIMITED AGENT

- 12.1 Nothing in the Contract constitutes a legal relationship of partnership, joint venture or contract of employment.
- 12.2 The Service Provider undertakes the Services and performs all the obligations and exercises all the rights under the Contract as agent for the City, and, subject to the terms and conditions of the Contract the City retains possession and control of the Facilities.
- 12.3 The Service Provider is the agent of the City in the performance of the Contract but may only act on behalf of the City where expressly authorised to do so:
- (a) under the Contract; or
 - (b) in writing by the Contract Manager.
- 12.4 To the extent that the Service Provider is given possession or control of the Facilities and any of the City's Property it holds and controls these things as agent for the City, and not in its own right.

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13. INSURANCE

- 13.1 The Service Provider must, at its own expense, effect and maintain with an insurance company licensed by APRA to operate as an insurer in Australia or with an investment grade rating from an industry recognised rating agency, from the Commencing Date until a date that is 12 months after the expiration or termination of the Contract, whichever is the later:
- (a) a public liability insurance policy, on an occurrence basis, for an amount not less than the amount set out in Item 9 of the Reference Schedule for each occurrence or any other amount required by the City from time to time;
 - (b) worker's compensation insurance as required by any Law;
 - (c) professional indemnity insurance for an amount not less than the amount set out in Item 10 of the Reference Schedule or any other amount required by the City from time to time provided that such professional indemnity insurance:
 - (i) covers, as a minimum, provision of professional services including but not limited to lifesaving and first aid activities, teaching and coaching activities such as swim instruction, leading and advising activities such as aerobics and gymnasium instruction and fitness assessment, and financial and accountancy services; and



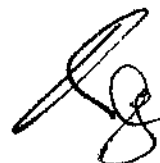
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- (ii) is maintained by the Service Provider until a date which is seven years after the expiration or termination of the Contract, whichever is the later.
 - (d) contents insurance (including machinery breakdown) for loss, destruction or damage to the Service Provider's Equipment;
 - (e) motor vehicle insurance for vehicles in the care and custody of the Service Provider, which may enter the Facilities; and
 - (f) such other insurances as a prudent person would maintain in the circumstances of the Service Provider.
- 13.2 Each insurance policy referred to in clause 13.1(a), (d), (e) and (f) must note the City for its respective rights and interests.
- 13.3 The Service Provider must notify the City at least 40 Business Days before any changes become effective to any policy referred to in clause 13.1.
- 13.4 The Service Provider must not change its insurer without giving the City at least 40 Business Days prior written notice of any proposed change.
- 13.5 The Service Provider must give to the City a certificate of currency for each insurance policy referred to in clause 13.1 on or before the Commencing Date and on or before each anniversary of the Commencing Date during the Term.

14. RELEASE

- 14.1 The Service Provider provides the Services at the Facilities at its own risk.
- 14.2 To the extent permitted by Law, the Service Provider releases the City from any claim, damages, loss, liability, cost or expense which the City incurs or is liable for, in connection with:
- (a) any damage, loss, injury or death;
 - (b) the state of repair or condition of the Facilities or anything in the Facilities; or
 - (c) the provision of Services
- unless and except to the extent that these are caused by negligence of the City.

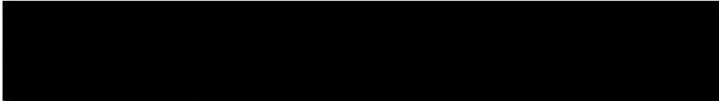


15. INDEMNITY

- 15.1 Subject to clause 15.2 the Service Provider indemnifies the City, its officers, employees and agents against all claims, liabilities, losses, damages and expenses arising directly or indirectly from:
- (a) a breach of the Contract by the Service Provider, its employees, agents or sub-contractors;
 - (b) any act or omission of the Service Provider, its employees, agents or sub-contractors relating to the subject matter of the Contract; or
 - (c) the inaccuracy of any representation or warranty by the Service Provider under the Contract.



-
- 15.2 The Service Provider's liability to indemnify the City, its officers, employees and agents under clause 15.1 will be reduced proportionally to the extent that the City's negligent act or omission (including an act or omission of its officers, employees, contractors or agents acting with the authority of the City) has contributed to the claim, liability, loss, damage, expense or other liability.

16. WARRANTIES BY THE SERVICE PROVIDER

- 16.1 The Service Provider acknowledges that the City has entered into the Contract in reliance on the Service Provider's representations regarding its expertise and experience in managing facilities in the aquatics and leisure industry.
- 16.2 The Service Provider warrants that it has the skills, competence, experience and ability necessary to perform the Services in accordance with the Contract.
- 16.3 The Service Provider warrants that at the date of the Contract and at all times during the Term:
- (a) the signing of the Contract and its performance;
 - (i) complies with all necessary Approvals required by any Authority, Law, governmental policy or administrative requirements or by any agreement, order or arrangement binding upon the Service Provider; and
 - (ii) does not breach any requirement of any Authority, Law, government order or decree or any Approval referred to in sub-paragraph (i) above or any agreement or arrangements binding upon the Service Provider;
 - (b) the Service Provider is able to meet its financial obligations under the Contract;
 - (c) the Service Provider is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under the Contract;
 - (d) all information provided by the Service Provider and set out in its tender submission is complete, true and accurate and not misleading in any respect;
 - (e) the Service Provider will comply with and honour any contracts or agreements that are already in place in relation to each Facility; and
 - (f) 
- 16.4 The Service Provider warrants that prior to entering into the Contract it has:
- (a) 
 - (b) 



- (c) made and relied on its own enquiries and has independently verified any information provided by the City.

16.5 The Service Provider acknowledges that the Disclosed Data has been provided by the Incumbent Service Provider for the Facility. The Service Provider acknowledges and agrees that it has made and relied on its own enquiries before entering into this Agreement, and unconditionally releases the City from any and all liability which may arise as a result of any information provided being incorrect, false or otherwise misleading.

16.6 The Service Provider indemnifies the City against any loss, damage, cost or expense incurred or suffered as a result of any breach of warranty under the Contract.

16.7 The Service Provider warrants that no later than 1 September 2016:

(a) in relation to each Facility within the Indoor Group, all Programs and Services will be available to the community including where required alternates to Programs which operated prior to 1 April 2016; and

(b) a stand-alone service specific website.

17. MAINTENANCE AND OWNERSHIP OF PROPERTY

17.1 The Service Provider accepts the Facility and the City's Property on an "as is" basis.

17.2 Subject to clauses 17.3 and 17.4, in complying with its maintenance obligations in the Specification the Service Provider must:

- (c) keep and maintain all Service Provider's Equipment and the City's Property within or used in relation to the Facilities clean, in a safe condition and in good repair, working order and condition (fair wear and tear excepted); and
- (d) use due care when undertaking maintenance of the Service Provider's Equipment and City's Property.

If the Service Provider does not comply with its maintenance obligations or fails to comply with a request by the City to repair or maintain an item, the City may arrange such works or repairs as may be required and

17.3 The Service Provider

17.4

(a) the Service Provider has complied with the Maintenance Plan; and

(b) the Service Provider has [REDACTED]

17.5 The Service Provider must not, without having obtained the prior approval of the Contract Manager, alter or interfere with, remove from the Facility or dispose of any part of the City's Property or do or permit or cause to be done any other matter or thing whereby the rights of the City in the City's Property are prejudicially affected.

17.6 [REDACTED]

18. ASSIGNMENT, MORTGAGE AND SUBCONTRACTORS

18.1 The Contract creates personal rights between the City and the Service Provider only and does not create any interest in the Facilities.

18.2 The Service Provider must not assign or purport to assign or transfer any of its rights and obligations under the Contract without the City's prior written approval. The City may in its discretion withhold approval under this clause. If the Service Provider is a corporation, any change in the beneficial ownership of or the management of the Service Provider, such that control (as defined in the Corporations Act 2001) of the Service Provider passes to persons other than those persons who control the Service Provider at the date of this Agreement, will be deemed to be an assignment for the purposes of this clause 17.

18.3 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

18.4 The City may, at its discretion, give notice requiring the Service Provider to remove a Sub-contractor from work involved in providing the Services. Upon receipt of such notice, the Service Provider must promptly arrange for the removal of such Sub-contractor and replace them with a Sub-contractor acceptable to the City. The necessity for the Service Provider to replace a Sub-contractor will not relieve the Service Provider of any of its obligations under the Contract.



18.5 The Service Provider acknowledges that any claims of Sub-contractors will be the responsibility and liability of the Service Provider. No Sub-contractor will have any rights under the Contract against the City or be entitled to receive any payments under the Contract from the City.

18.6

18.7 The Service Provider must:

- (a) inform the City promptly if the Service Provider identifies that a new Sub-contract is required or that there will be a change to a current Sub-contract; and
- (b) ensure that, in respect of a Sub-contract the Service Provider:
 - (ii) obtains not less than three quotes for the relevant work;
 - (iii) is able to provide documentation supporting that the proposed third party is reasonably capable of fulfilling the Sub-contract and represents value for money; and
 - (ii) provides the quotes and supporting documentation to the City for approval, such consent not to be unreasonably withheld.

19. STEP-IN

19.1 If the City reasonably believes that it needs to take action in connection with any part of the Services:

- (a) because of serious risk to the health or safety of persons or property or to the environment; and/or
- (b) to discharge a statutory duty,

then the City is entitled to take action in accordance with this clause 19.

19.2 If the City wishes to take action pursuant to this clause 19, the City shall notify the Service Provider in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the period which it believes will be necessary for such action; and
- (e) to the extent practicable, the expected effect on the Service Provider and its obligation to provide the Services during the period such action is being taken.

19.3 Following service of such notice, the City shall take such action as notified under clause 19.2 and any consequential additional action as it reasonably believes is necessary to support the required action. The Service Provider shall give all reasonable assistance to the City while it is taking such required action.



19.4 If the Service Provider is not in breach of its obligations under the Contract, then for so long as and to the extent that the required action is taken which prevents the Service Provider from providing any part of the Services:

- (a) the Service Provider shall be relieved from its obligations to provide such part of the Services; and
- (b) in respect of the period in which the City is taking the required action and provided that the Service Provider gives the City all reasonable assistance

(i)

(ii)

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19.5 If the required action is taken as a result of a breach of the obligations of the Service Provider under this Agreement, then the City may take such further action as it is entitled to under this Agreement including terminating the Contract for default.

19.6 Nothing in this clause will be construed as amounting to a waiver by the City of any breach.

20. CONTAINMENT

20.1 If the City becomes aware of event or matter at a Facility that requires Containment then the City may issue a notice requiring the Service Provider to ensure Containment within the Containment Time stated in the notice.

20.2 The Service Provider must comply with any notice issued by the City in accordance with clause 20.1. If the Service Provider fails to comply with a notice then the City may apply the provisions of clause 21 of this Agreement.

21. PERFORMANCE FAILURE AND CORRECTIVE ACTION

21.1 If the City becomes aware of a Performance Failure by the Service Provider, the City may issue a CAN. The Service Provider must then take the required Corrective Action.

21.2 The Service Provider must use all reasonable endeavours to remedy a Performance Failure within the Rectification Time. If the Service Provider cannot remedy the Performance Failure in the Rectification Time, before the expiry of the Rectification Time the Service Provider may apply in writing to the City for a rescheduled Rectification Time. The Service Provider must provide details of the alternative date and time by which the Performance Failure is proposed to be rectified and must provide one of the following reasons for requesting the proposed new Rectification Time:

- (a) the activity required to rectify the Performance Failure is better carried out at a later time;

-
- (b) in the case of Fitness Equipment, the Service Provider does not have in stock or is unable to replace a part which is necessary to rectify a Performance Failure, provided the Service Provider can demonstrate that its practice for maintaining stock is in line with Good Industry Practice;
- (c) In the case of Fitness Equipment, the Service Provider does not have in stock or is unable to replace a part which is necessary to rectify a Performance Failure due to the obsolescence of that part; or
- (d) the circumstances of the Performance Failure are such that it cannot reasonably be rectified within the scheduled Rectification Time when the Service Provider is acting in accordance with Good Industry Practice.
- 21.3 The City (acting reasonably) may, but is not obliged to, grant the Service Provider a rescheduled Rectification Time to undertake the required Corrective Action notified under clause 21.2. Approval of any rescheduled Rectification Time must be communicated by the City to the Service Provider in writing and must be signed by the Contract Manager or such other officer as is duly authorised by the City from time to time.
- 21.4 If the Service Provider does not remedy a Performance Failure in accordance with a CAN issued by the City, then the City may remedy such a Performance Failure.
[REDACTED] Nothing in this clause will be construed as amounting to a waiver by the City of that Performance Failure.

22. DEFAULT NOTICE

- 22.1 If:
- (a) the Service Provider does not take the Corrective Action within the Rectification Time or rescheduled Rectification Time; or
- (b) the City has issued to the Service Provider two CAN's for the same Performance Failure in any three month period
- the City may issue a Default Notice and the Service Provider must rectify the default specified in the Default Notice within 48 hours of receipt of the Default Notice.
- 22.2 If:
- (a) the Service Provider does not comply with the Default Notice to the reasonable satisfaction of the City; or
- (b) the City has issued two Default Notices in any six month period,
- the City may proceed to terminate the Contract in accordance with clause 9 of this Agreement.
- 22.3 Without the limitation to any other right under this Agreement, if the Service Provider fails to provide or perform the Services or any part of them in accordance with the Contract, the City may engage another party to carry out the Services and may deduct the amount payable for those services from the Guarantee.

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23. TERMINATION FOR DEFAULT

23.1 The City may immediately terminate the Contract by written notice to the Service Provider if the Service Provider:

- (a) fails to comply with clause 5 of this Agreement;
- (b) assigns its rights otherwise than in accordance with the Contract;
- (c) fails to comply with any Law applicable to performance of the Service, including occupational health and safety legislation;
- (d) or any employee, agent or Sub-contractor of the Service Provider engages in activity that is fraudulent;
- (e) fails to effect and maintain insurance in accordance with clause 13;
- (f) fails to give evidence of the terms and currency of any Approvals, registration, accreditation or licence required to be maintained under this Agreement;
- (g) fails to remedy any default in performance of its obligations under the Contract in accordance with clauses 21 or 22; or
- (h) or any employee, agent or Sub-contractor of the Service Provider acts in a way that in the City's opinion may cause harm or bring into disrepute or otherwise adversely affects the reputation or image of the City or the Facilities.

24. TERMINATION FOR INSOLVENCY

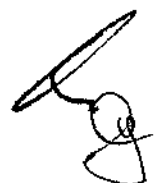
24.1 If the Service Provider:

- (a) becomes insolvent, makes an assignment of its estate for the benefit of creditors, goes into liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed, becomes subject to any petition or proceedings in a court for its compulsory winding-up, becomes subject to supervision of a court either voluntarily or otherwise, or in the case of an individual, becomes bankrupt or enters into a scheme of arrangement with creditors; or
- (b) suffers any execution against its assets having an adverse effect on its ability to perform the Contract;

then, without prejudice to its rights at common law, the City may, by written notice, terminate the Contract effective immediately and recover from the Service Provider any loss or damage suffered by the City, including any amounts paid to the Service Provider.

25. CONSEQUENCES OF TERMINATION OR EXPIRATION

25.1 Upon the earlier of termination of the Contract and the expiration of the Term, the City may itself or by engaging or employing any other person (including retaining any agents engaged by the Service Provider to perform the Services) complete the performance of the Services or such part of the performance of the Services as the City considers it desirable to complete.



25.2 Upon the earlier of termination of the Contract and the expiration of the Term, the Service Provider must:

- (a) immediately cease providing the Services;
- (b) ensure the Transition-Out Plan is implemented;
- (c) leave all of the City's Property at the Facilities in the condition required by the City following the Close-out Audit, subject to fair wear and tear;
- (d) [REDACTED] together with all ownership documentation of the equipment or items showing the owner as the City;
- (e) subject to clause 26, upon receipt of written notice from the City either:
 - (i) allow the City to remove the Service Provider's Equipment and pay to the City the cost of such removal; or
 - (ii) remove the Service Provider's Equipment and make good any damage caused by such removal in a manner approved by the City.
- (f) ensure that all financial records, booking records, staff manuals, and other information reasonably necessary for the efficient performance of the Services is complete and up to date and deliver them to the City within the time required by the City;
- (g) notify the Contract Manager in writing of any delivery routines, collection routines, or other similar information reasonably necessary for the daily operation of the Facilities;
- (h) take any other reasonable available steps to minimise the disruption and loss arising from termination;
- (i) if requested by the City terminate any contract or assign/novate the benefit of any contract entered into by the Service Provider in relation to the Facilities to the City or a new service provider; and
- (j) comply with clause 9.3.

25.3 If the Contract is terminated under clauses 9 or 24:

Deleted: 23

- (a) subject to the Contract, the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; and
- (b) the City's rights to recover damages are not affected.

25.4 This clause 25 survives termination or expiry of the Contract.

26. PURCHASE OF SERVICE PROVIDER'S EQUIPMENT

26.1 At least 60 Business Days before the expiry of the Term, or as soon as possible if the Contract is terminated, the Service Provider must provide the City with a comprehensive list of the Service Provider's Equipment that includes the following information:

-
- (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]
 - (e) [REDACTED]
 - (f) [REDACTED]
 - (g) [REDACTED]

26.2 Upon receipt of the required information, the City will appoint an independent and duly qualified valuer or quantity surveyor having not less than five years experience in the valuation of items of the same or similar nature to those comprising the Service Provider's Equipment to value the Service Provider's Equipment. The valuer will take into account the information provided by the Service Provider, and will provide a report to the City.

26.3 Following receipt of the report from the valuer/quantity surveyor (a copy of which will be made available to the Service Provider), the City may, by notice in writing to

26.4 The Service Provider must assign to the Council the benefit of any guarantees or warranties relating to the Service Provider's Equipment if the Service Provider's Equipment is transferred to the City in accordance with this clause 26.

26.5 For the avoidance of doubt, this clause 26 does not apply to:

- (a) [REDACTED]
- (b) [REDACTED]

Clauses 17.8(d) and 25.2 of this Agreement apply to all such equipment or items.

27. EQUIPMENT LEASES AND SERVICE AGREEMENTS

27.1 Prior to the termination of this Agreement or the expiration of the Term, the City may by notice require the Service Provider to novate to the City or a party nominated by the City any leases of equipment at a Facility or service agreements relating to a Facility that the Service Provider is a party to.

27.2 The Service Provider must act promptly and comply with any notice issued by the City in accordance with this clause.



28. GST

28.1 The Service Provider must be a GST registered entity. If the City requests written evidence of the Service Provider's GST registration, the Service Provider must promptly produce such evidence.

28.2

28.3

28.4

28.5

29. TRANSITION ASSISTANCE AT END OF TERM

29.1 The Service Provider must give to the City and its agents, contractors and consultants, as necessary, every reasonable assistance (including assistance required to novate ongoing maintenance and service agreements to the new service provider) to enable the seamless handover of the performance of the Services to another service provider or the City in accordance with the Transition-out Plan, so that there is minimum interruption to the ongoing performance of the Services. Provided that the transition assistance is provided to the satisfaction of the City,

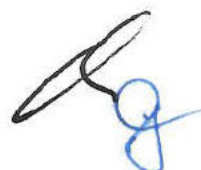
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30. VARIATIONS

30.1 At any time during the Term, the City may by notice in writing to the Service Provider ("Variation Notice") change the requirements for the provision of the Services including:

- (a) varying the nature of Services already performed by the Service Provider;
- (b) directing additional services be performed by the Service Provider; or
- (c) directing that a particular part of the Services is no longer required to be performed by the Service Provider.

30.2 If the Service Provider considers that a Variation Notice will:



- (a) impact the Operating Expenses of the Service Provider; or
- (b) cause a change to the provision of Services that is outside the general scope of this Contract.

the Service Provider must give the Contract Manager written notice identifying the anticipated impact of the variation with sufficient information to demonstrate the particulars of the impact.

30.3 Following a submission by the Service Provider pursuant to clause 30.2, the parties must act reasonably in assessing whether:

- (a) [REDACTED]
- (b) the change in Services is to be implemented.

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30.4 For the avoidance of doubt:

- (a) the direction of a variation by the City will not in any way vitiate or invalidate this Contract; and
- (b) a reference to Services in the Contract will be a reference to the Services as varied from time to time in accordance with this clause 29.

30.5 If no date is specified in the Variation Notice, the change to the Services will take effect when the Variation Notice is issued by the City.

30.6 The City may require the performance of additional services on an urgent basis and may issue an oral direction for urgent additional services. The Service Provider must use its best endeavours to comply with each request for additional services and confirm the details of each request and the extent of compliance, to the City within five Business Days.

30.7 The City may acquire additional facilities during the Term and may wish to vary the Contract to include the new facilities. In the event that a new facility is acquired, the parties will act promptly and reasonably to make any amendments required to this Agreement in order to accommodate the provision of the Services to the new facility.

31. REDEVELOPMENT AND WORKS

31.1 The City may at any time during the Term enter a Facility cause a part or all of a Facility or Facilities to be closed for:

- (a) annual planned maintenance;
- (b) major programmed or reactive maintenance work;
- (c) minor remedial work;
- (d) major remedial work;
- (e) a review of the structural integrity of the Facility or Facilities; or
- (f) any purpose incidental to the purposes listed above.

31.2 If a Facility is partly or wholly closed for a purpose listed in clause 31.1 the City will give the Service Provider not less than 20 Business Days' notice of the closure, other than in the case of an emergency, where the City must give the Service Provider the maximum period of notice that is reasonably practicable in the circumstances.

31.3 The City may at any time during the Term cause a part or all of a Facility or Facilities to be closed for:

- (a) the construction of alterations, additions or improvements to the Facility or Facilities;
- (b) the purpose of developing or redeveloping the Facility by constructing, improving, extending, varying, amending, refurbishing, renovating or reducing the Facility or Facilities; or
- (c) any purpose incidental to the purposes listed above.

31.4 If a Facility is partly or wholly closed for a purpose listed in clause 31.3, the City will:

- (a) use reasonable endeavours not to interrupt or interfere with the delivery of the Services by the Service Provider;
- (b) give the Service Provider not less than three Months' notice of the proposed works other than in the case of an emergency, where the City must give the Service Provider the maximum period of notice that is reasonably practicable in the circumstances, and for these purposes the City may:
 - (i) interrupt the water, gas, electrical and other utilities to the Facility but in such a manner as to minimise so far as is practicable any inconvenience to or interruption to the Facility; and
 - (ii) alter, inhibit and obstruct to a substantial extent the access or the flow of customers to the Facility; and

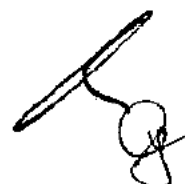
(c)

31.5 If:

- (a) the City carries out any works contemplated by this clause 31.4; or
- (b) any utilities are interrupted; or
- (c) access or the flow of customers to the Facility is altered, inhibited or obstructed,

then the Service Provider will not be entitled to terminate the Contract or take any action, or claim compensation or damages by reason of the same provided however that if the works materially change the manner in which the Services can be provided by the Service Provider after completion of the works, the Contract will be varied and the provisions of clause 29 will apply.

31.6 For the avoidance of doubt, this clause 31 does not apply to any maintenance referred to in clause 9.2.10 of the Specification.



32. DAMAGE TO FACILITY

32.1 Repair of damage

- (a) Subject to clause 32.2, if a Facility is damaged or destroyed and the City gives the Service Provider notice that the City considers, in its discretion, that it is impracticable or undesirable to repair the damage within three months from the date of the damage, then either the City or the Service Provider may terminate the Contract by giving at least five Business Days written notice to the other and no compensation is payable in respect of that termination.
- (b) Any termination of the Contract pursuant to clause 32.1(a) is without prejudice to the rights and obligations of the parties in relation to any breach or failure to comply with the Contract occurring before the date on which the Contract is terminated.
- (c) The Service Provider must, [REDACTED] and must continue providing the Services in the Facility so far as it may be reasonably practicable for the Service Provider to do so, having regard to the nature of the Services and the nature and extent of the damage sustained.

32.2 Damage caused by Service Provider

If the damage or destruction referred to in clause 32.1 is caused by the Service Provider, or any employee, agent or Sub-contractor of the Service Provider the Service Provider cannot terminate the Contract under clause 32.1(a).

32.3 City's rights not affected

- (a) Nothing in this clause 32 affects any rights the City may have if:
 - (i) any damage or destruction is caused or contributed to by; or
 - (ii) any right under an insurance policy in connection with the Facility is prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,

the act, negligence or default of the Service Provider, or any employee, agent or Sub-contractor of the Service Provider.
- (b) Nothing in this clause 32 obliges the City to restore or reinstate the Facility.

32.4 Dispute

If any dispute arises under clause 32, the City or the Service Provider (or both) may invoke the provisions of clause 39 of this Agreement.

33. FORCE MAJEURE

- 33.1 If any strike, act of God, act of terrorism, or any other event beyond the reasonable control of the City or the Service Provider occurs (which is not as a result of a breach of this Agreement by the Service Provider) preventing the Facility (or any part of it) from being available to customers or the Service Provider from providing the Services then the City:



- (a) will not apply the Performance Standards; and
- (b) if applicable, will not require the Service Provider to pay the Guaranteed Group Fixed Fee,

for the period of the force majeure event.

34. COMMUNITY USE

34.1 The Service Provider may allow, on behalf of the City, use of parts of the Facilities for community and corporate activities in accordance with the Specification provided that the use:

- (a) is not contrary to any Law;
- (b) will not impair the provision of the Services;
- (c) is compatible with and ancillary to the use of the Facilities as a community aquatic and leisure centre and a public asset;
- (d) is one which could not be expected to involve undue violence (acknowledging that organised sport is not usually considered to involve undue violence); and
- (e) is otherwise compatible with the City's community focus.

35. SPONSORSHIP, MARKETING AND ADVERTISING

- 35.1 The City retains all naming, branding, and endorsement rights for the whole of each Facility.
- 35.2 The City may, but is not obliged to, promote a Facility in any events, sponsorships, promotions or endorsements involving the City.
- 35.3 The City:
 - (a) may at any time erect or install on the Facility signs, notices or advertisements;
 - (b) may at any time substitute, replace or relocate any of the notices, signs or advertisements erected on the Facility pursuant to paragraph (a); and
 - (c) may consult with the Service Provider in connection with the installation, relocation, substitution or removal of any notice, signage or advertisement referred to in paragraphs (a) and (b) provided however that the City retains ultimate control over the placement of advertising signs and notices.
- 35.4 The Service Provider may seek and enter into endorsements, sponsorships or supply arrangements in relation to the Facility or any of the Services but only with the prior written consent of the City.
- 35.5 The City will not unreasonably withhold its consent if any endorsements, sponsorships or supply arrangements:
 - (a) do not interfere with the City's rights under this clause 35;
 - (b) do not involve the promotion or consumption of tobacco or alcohol;

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- (c) do not involve any promotion or advertisement that the City (acting reasonably) considers offensive or indiscreet having regard to the status of the Facility as a public asset;
 - (d) are sympathetic to and consistent with the status of a Facility as a public asset; and
 - (e) encourage the use of each Facility as a public asset.

35.6

36. INTELLECTUAL PROPERTY

36.1 The Service Provider acknowledges that:

- (a) the City is the proprietor of all Contract Information provided to the Service Provider by or on behalf of the City prior to or during the course of the Contract;
- (b) the Contract Information is supplied to the Service Provider for the purposes of providing the Services under the Contract and may only be used for that purpose;
- (c) the City is the proprietor of all Contract Information collected by the Service Provider during the Term; and
- (d) the Intellectual Property arising under the Contract is the property of the City and waives any right title or interest it may have in the Intellectual Property.

36.2 The Service Provider must do all things necessary and required by the City for the proper application or protection of the Intellectual Property and Contract Information.

36.3 Except as otherwise provided in the Contract, nothing contained in the Contract will be deemed to grant to the Service Provider any right or licence in respect of the Intellectual Property at any time.

36.4 The Service Provider will not use the Intellectual Property for any purpose other than as contemplated in the Contract and in connection with the performance of the Services and other obligations under the Contract.

36.5 The City acknowledges that the Service Provider's Intellectual Property remains the property of the Service Provider. For clarity, the Intellectual Property of the Service Provider must be documented as part of the Transition-in Plan

36.6 The Service Provider grants to the City an irrevocable, royalty-free licence during the Term to use the Service Provider's Intellectual Property.

36.7 Where the Service Provider's Intellectual Property is subject to a third party licence, the Service Provider warrants that it has the right to use that intellectual property for the purposes of the Contract and will bear the costs associated with the licence.



36.8 The Service Provider indemnifies and agrees to keep indemnified the City against any action, claim, suit or demand, whether direct or indirect, arising from or in connection with the Service Provider's Intellectual Property infringing or allegedly infringing the rights of a third person. The Service Provider must notify the City as soon as it becomes aware of any infringement or suspected infringement of the Intellectual Property by a third party.

36.9 The Service Provider must return all Contract Information to the City within 10 Business Days of the expiry or earlier termination of the Term.

37. ADMINISTRATION OF THE CONTRACT

37.1 The Contract Manager will:

- (a) review, monitor and report to the City on the performance of the Service Provider under the Contract;
- (b) consider and give effect to improvements in efficiency, quality, productivity and safety in relation to the Services; and
- (c) carry out such other functions specified in the Contract or required to give effect to the Contract.

37.2 Service Provider's Representative

- (a) The Service Provider agrees that the Service Provider's Representative has authority to receive and sign notices and written communications for the Service Provider under this Agreement and to accept any request or direction in relation to the Services.
- (b) The Service Provider may replace its Service Provider's Representative from time to time by nominating a senior officer to take the place of the Service Provider's Representative in writing to the City. The City may reject such person as it sees fit.
- (c) The City may, at its discretion, give notice to the Service Provider requiring it to replace the Service Provider's Representative. The Service Provider must promptly nominate a senior officer acceptable to the City to take the place of the Service Provider's Representative.
- (d) The Service Provider's Representative and any nominated replacement must be suitably qualified and informed in relation to the matters referred in clause 37.2(a).
- (e) The Service Provider's Representative must, from time to time, give sufficient information to the Contract Manager to enable the Contract Manager and the City to properly assess the performance of the Service Provider under the Contract.

37.3 The Contract Manager and the Service Provider's Representative must meet at the times set out in the Contract, or at such other times as reasonably required by the Contract Manager at the City's office (or at any other place agreed by the parties) at a time agreed between the parties.

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38. GUARANTEE

- 38.1 The Service Provider must, on the date of its execution of this Agreement, give to the City a Guarantee for the Guarantee Amount as security for performance of the Service Provider's obligations under the Contract.
- 38.2 If the Service Provider is in default of any of its obligations under the Contract, the City may without notice to the Service Provider have recourse to a claim under the Guarantee.
- 38.3 If the City makes an appropriation from the Guarantee, the Service Provider must immediately provide a new Guarantee to the City so that there is maintained during the Term a Guarantee for the Guarantee Amount.
- 38.4 The rights of the City under this clause ~~Q~~ will not derogate from any of the rights and remedies available to the City under the Contract or at law or in equity in relation to any default of the Service Provider.

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39. DISPUTE RESOLUTION

- 39.1 If a dispute between the Service Provider and the City arises out of or in connection with the Contract, then either party may within five Business Days of that dispute arising, give written notice to the other party of the dispute. The notice must adequately identify and give details of the dispute.
- 39.2 Within 10 Business Days of a party issuing a notice of dispute under clause 39.1 or such further period as the parties agree, the parties must ensure that senior management of each party meet in an attempt to resolve the dispute. The parties senior management may, within such period:
- (a) meet more than once to resolve the dispute; or
 - (b) use any dispute resolution techniques and procedures as the parties may agree.
- 39.3 If the dispute is not resolved within 20 Business Days of the dispute being referred to senior management of the parties, the parties may commence arbitration, mediation, expert determination or legal proceedings against the other as it sees fit.
- 39.4 Nothing in this clause 39 prevents a party from seeking urgent injunctive relief.

40. CONFIDENTIALITY

- 40.1 The Service Provider acknowledges that in the course of the Contract or as a result of the performance of the Services it may receive or be shown Confidential Information of the City.
- 40.2 The Service Provider must not disclose the City's Confidential Information directly or indirectly to any other party and must take all reasonable steps to protect the Confidential Information and must not use the City's Confidential Information other than for the purposes of providing the Services under the Contract.
- 40.3 The Service Provider must not destroy any physical or written records containing or relating to or concerning the City's Confidential Information whether during or after the Term without the prior written consent of the City. The Service Provider



must return all Confidential Information to the City at the expiry or earlier termination of the Term.

- 40.4 The Service Provider expressly acknowledges that any information collected by the Service Provider in operating the Facilities is not confidential to the Service Provider and must be provided to the City as part of the Service Provider's reporting obligations, and must otherwise be provided to the City upon request and at the end of the Term.

41. GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 AND REGULATIONS

- 41.1 The Service Provider acknowledges that in the course of the Contract or as a result of the performance of the Services it may receive or be shown Confidential Information of the City.
- 41.2 Each party acknowledges that this Contract is subject to the Government Information (Public Access) Act 2009 and the respective regulations.
- 41.3 Subject to exemptions under the Government Information (Public Access) Act 2009 and the respective regulations, the parties acknowledge that this Contract may be disclosed on the City's website for public access.
- 41.4 The Service Provider must, within seven days of receiving a written request by the City, provide the City with immediate access to the following information contained in records held by the Service Provider:
- (a) information that relates directly to the performance of the Services provided to the City by the Service Provider pursuant to this Contract;
 - (b) information collected by the Service Provider from members of the public to whom the Service Provider provides, or offers to provide, the Services pursuant to this Contract; and
 - (c) information received by the Service Provider from the City to enable the Service Provider to provide the Services pursuant to this Contract.
- 41.5 For the purposes of clause 41.4, information does not include:
- (a) information that discloses or would tend to disclose the Service Provider's financing arrangements, financial modelling, cost structure or profit margin;
 - (b) information that the Service Provider is prohibited from disclosing to the City by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (c) information that, if disclosed to the City, could reasonably be expected to place the Service Provider at a substantial commercial disadvantage in relation to the City, whether at present or in the future.
- 41.6 The Service Provider will provide copies of any of the information requested by the City in accordance with this clause 41 at the Service Provider's own expense.



-
- 41.7 Any failure by the Service Provider to comply with a request from the City for access to information pursuant to this clause 41 will be considered a breach of an essential term of this Contract and will allow the City to terminate this Contract by providing notice in writing to the Service Provider of the City's intention to do so, with the termination to take effect seven days after receipt of the notice. Once the Service Provider receives the notice, if the Service Provider fails to provide the information to the City's satisfaction within the seven day period, then the termination of this Contract will take effect seven days after receipt by the Service Provider of the notice of termination.
- 41.8 The City will take reasonably practicable steps to consult with the Service Provider before providing any person with access to information relating to this Contract, in response to an access application under the Government Information (Public Access) Act 2009, if it appears that:
- (a) the information:
 - (i) includes personal information about the Service Provider or the Service Provider's employees;
 - (ii) concerns the Service Provider's business, commercial, professional or financial interests;
 - (iii) concerns research that has been, is being, or is intended to be, carried out by or on the Service Provider's behalf; or
 - (iv) concerns the affairs of a government of the Commonwealth or another State (and the Service Provider is that government); and
 - (b) the Service Provider may reasonably be expected to have concerns about the disclosure of the information; and
 - (c) 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.
- 41.9 If, following consultation between the City and the Service Provider, the Service Provider objects to disclosure of some or all of the information, the Service Provider must provide details of any such objection (including the information objected to and the reasons for any such objection) within five days of the conclusion of the consultation process.
- 41.10 In determining whether there is an overriding public interest against disclosure of government information, the City will take into account any objection received from the Service Provider.
- 41.11 If the Service Provider objects to the disclosure of some or all of the information but the City nonetheless decides to release the information, the City must not provide access until the City has given the Service Provider notice of the City's decision and notice of the Service Provider's right to have that decision reviewed.
- 41.12 Where the City has given notice to the Service Provider in accordance with clause 41.11, the City must not provide access to the information;
- (a) before the period for applying for review of the decision under Part 5 of the Government Information (Public Access) Act 2009 has expired; or



(b) where any review of the decision duly applied for is pending.

41.13 The reference in clause 41.12 to the period for applying for review of the decision under Part 5 of the Government Information (Public Access) Act 2009 does not include the period that may be available by way of extension of time to apply for review.

41.14 This clause 41 is included in this Contract to facilitate the City's obligations under sections 54 and 121 of the Government Information (Public Access) Act 2009.

42. NOTICES

42.1 A notice or communication under the Contract must be in writing and faxed, posted or delivered to the address of the recipient shown in Item 2 and 11 of the Reference Schedule (as the case may be).

42.2 A notice or communication is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, three Business Days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile generates a message confirming successful transmission of the total number of pages of the notice.

43. GENERAL

43.1 The Contract will be governed by and construed in accordance with the law for the time being in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

43.2 A waiver by either party of a particular breach is not a waiver of any other breach.

43.3 The Contract may only be amended or supplemented in writing, signed by the parties.

43.4 The invalidity, illegality or unenforceability of any provision of the Contract will not affect the validity or enforceability of any other provisions.

43.5 The indemnities in the Contract are continuing obligations and remain in full force and effect following the expiration or termination of the Contract.

43.6 The Service Provider must not, without the prior written consent of the City, advertise or publish in any manner the fact that the Service Provider has contracted with the City for the performance of the Services.

43.7 The Service Provider must not take or permit to be taken any photograph, drawing or sketch of the Services being performed in the Facilities except for the purpose of performing the Contract and with the prior written consent of the City.

43.8 The Service Provider must not, in any advertising or promotional material, use or permit to be used the City's name except with the prior written consent of the City.

43.9



43.10 Each party must pay their own legal costs and expenses in relation to the preparation, negotiation, signature and completion of the Contract.

43.11



43.12 Nothing in the Contract in any way restricts or otherwise affects the unfettered discretion of the City as to the exercise of its statutory powers as a public authority. In the event of any conflict between the unfettered discretion of the City in the exercise of such powers and the performance of obligations under the Contract, the former prevails.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a cursive 'g'.

REFERENCE SCHEDULE

ITEM	NAME	DESCRIPTION
1	Date of Agreement	
2	Service Provider's Name Service Provider's ABN Service Provider's Address Service Provider's Contact Person	Belgravia Health and Leisure Group Pty Ltd for Belgravia Leisure Unit Trust 18 118 940 063 20 Longstaff Road, Bayswater VIC 3153 <u>Nick Cox</u> , Chief Executive Officer
3	Term	<u>Seven</u> years and two months from the Commencing Date.
4	Additional Term	<u>Three</u> years
5	Commencing Date	1 February 2012
6	(a) Contract Manager (b) Service Provider's Representative	Collette Holland, Aquatic and Leisure Services Manager <u>James Ellender</u> , <u>NSW State Manager</u>
7	Guarantee Amount	<u>Outdoor Group:</u> [REDACTED] [REDACTED] <u>Indoor Group:</u> [REDACTED]
8	Guaranteed Group Fixed Fee, exclusive of GST (monthly)	<u>Outdoor Group:</u> [REDACTED] <u>Indoor Group:</u> [REDACTED]

Deleted: Adrian Johnston

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Deleted: 2nd additional term: Three years

Deleted: Paul Curtis

Deleted: Regional Operations Manager

Deleted: Bond

Deleted: exclusive of GST

Deleted: per Facility

9	Public Liability Insurance	\$20 million
10	Professional Indemnity Insurance	\$5 million
11	City's Address	Council of the City of Sydney Town Hall House 456 Kent Street Sydney NSW 2000 Facsimile: 9265 9111 Telephone: 9265 9333 Att: Aquatic and Leisure Services Manager
12	Surplus Share	

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SCHEDULE 1 - GUARANTEED GROUP FIXED FEE AND SURPLUS SHARE

On a Facility basis:

[REDACTED]

If:

- [REDACTED]
- [REDACTED]

The Annual Financial Statement will confirm actual **Group Operating Result (GOR)**.

[REDACTED]

Surplus and Loss Sharing Restrictions

When determining the [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]



EXECUTED as a Deed

**EXECUTED BY THE COUNCIL OF THE
CITY OF SYDNEY COUNCIL** by its duly
appointed attorney **Marcia Claire Doheny**
pursuant to Power of Attorney registered
book **4572** number **994** in the presence of:

Witness:

Name (printed):

Name (printed):

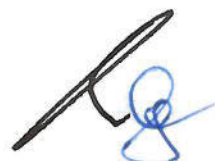
**SIGNED BY BELGRAVIA HEALTH AND
LEISURE GROUP PTY LTD FOR
BELGRAVIA LEISURE TRUST UNIT,
ABN 18 118 940 063**, in accordance with
section 127 of the Corporations Act 2001:

Director:

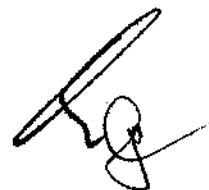
Director/Secretary:

Name (printed):

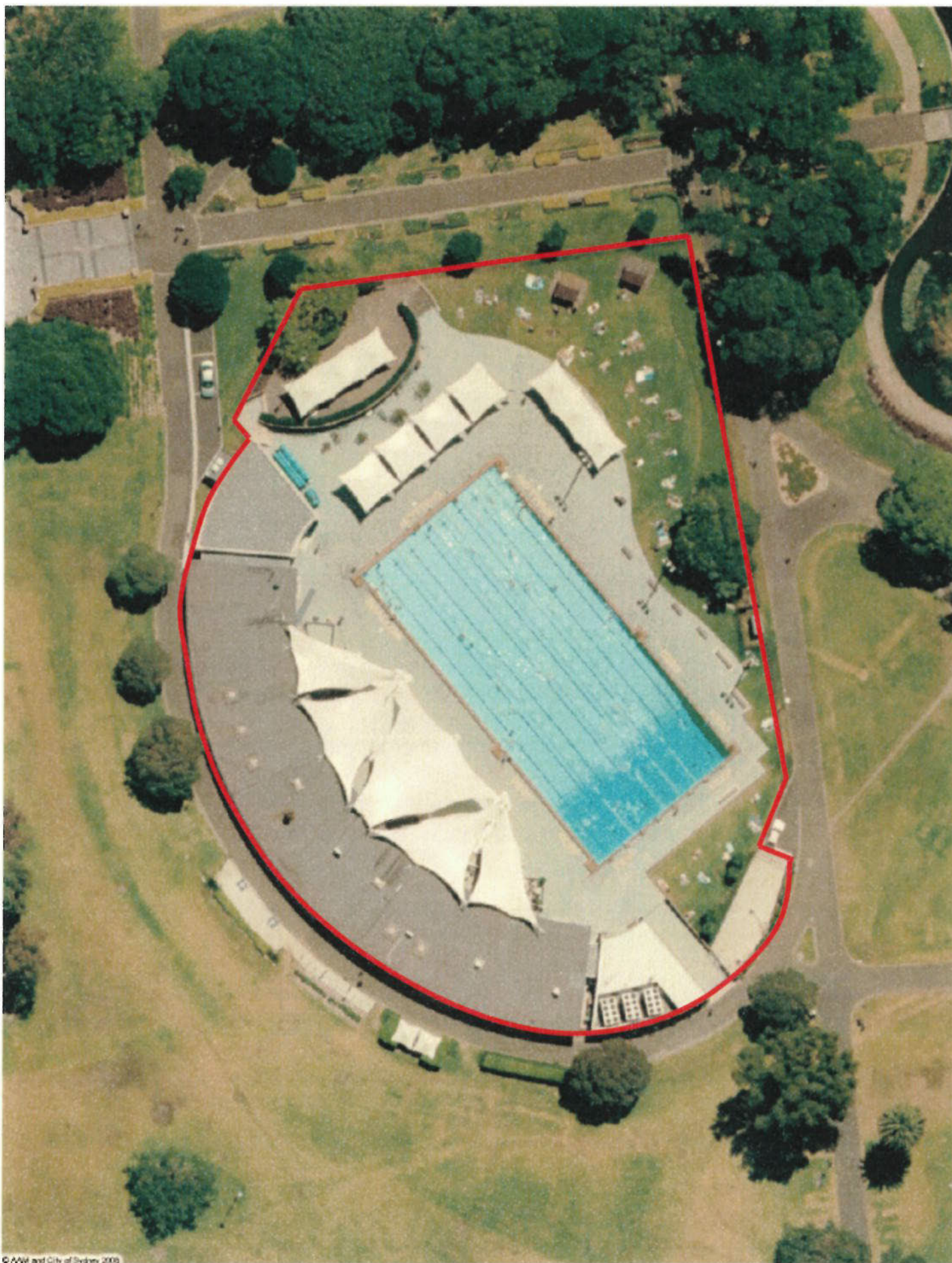
Name (printed):



ANNEXURE A – FACILITY PLANS

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Victoria Park Pool



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Scale is 1:458 at A3

Document Produced: 18/04/2011
User: wntell



[Handwritten signature]

Ian Thorpe Aquatic Centre



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Document Produced: 18/04/2011
User: wtmell



Andrew (Boy) Charlton Pool



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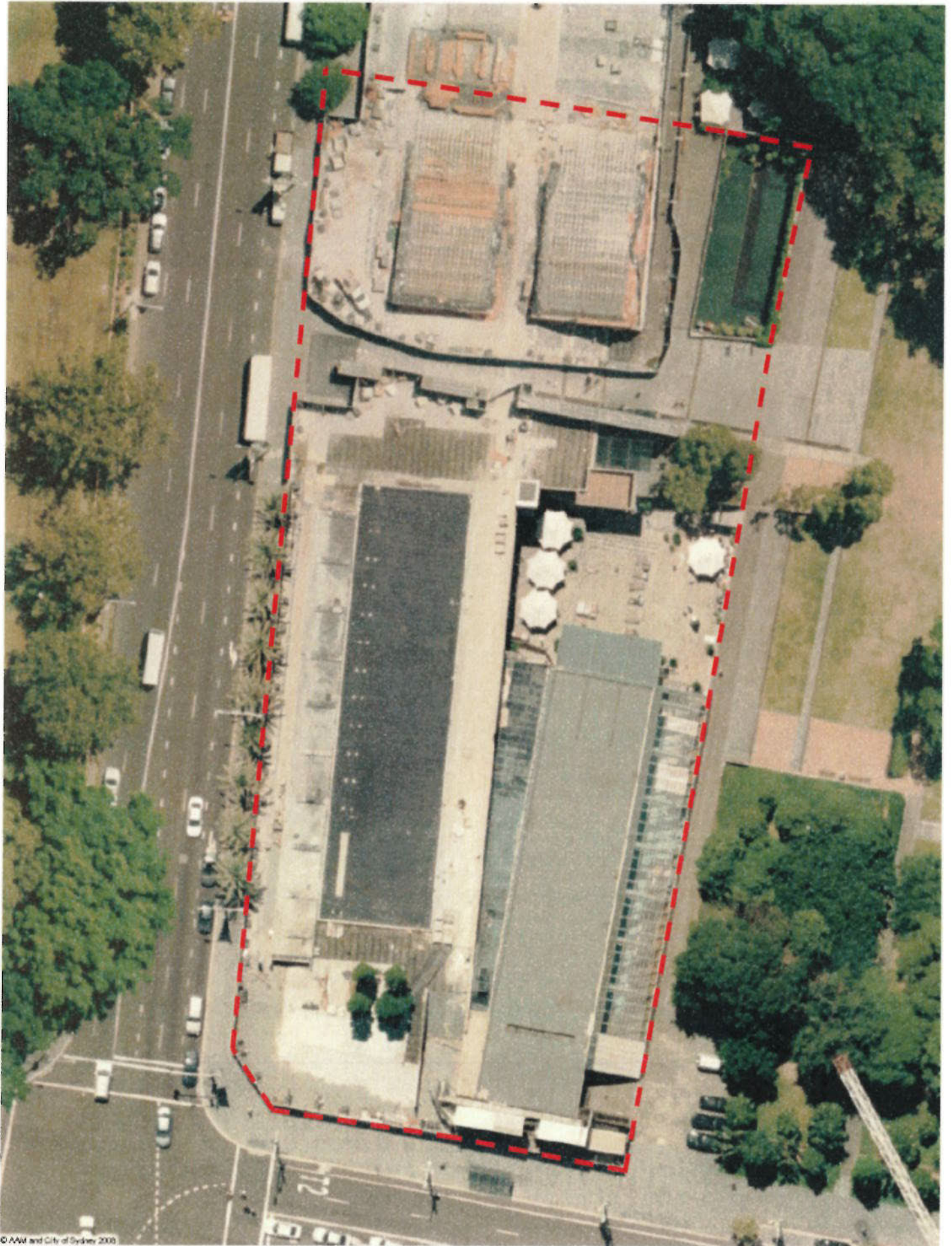
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Document Produced 18/04/2011
User: wharrell



Cook + Phillip Park Aquatic & Fitness Centre



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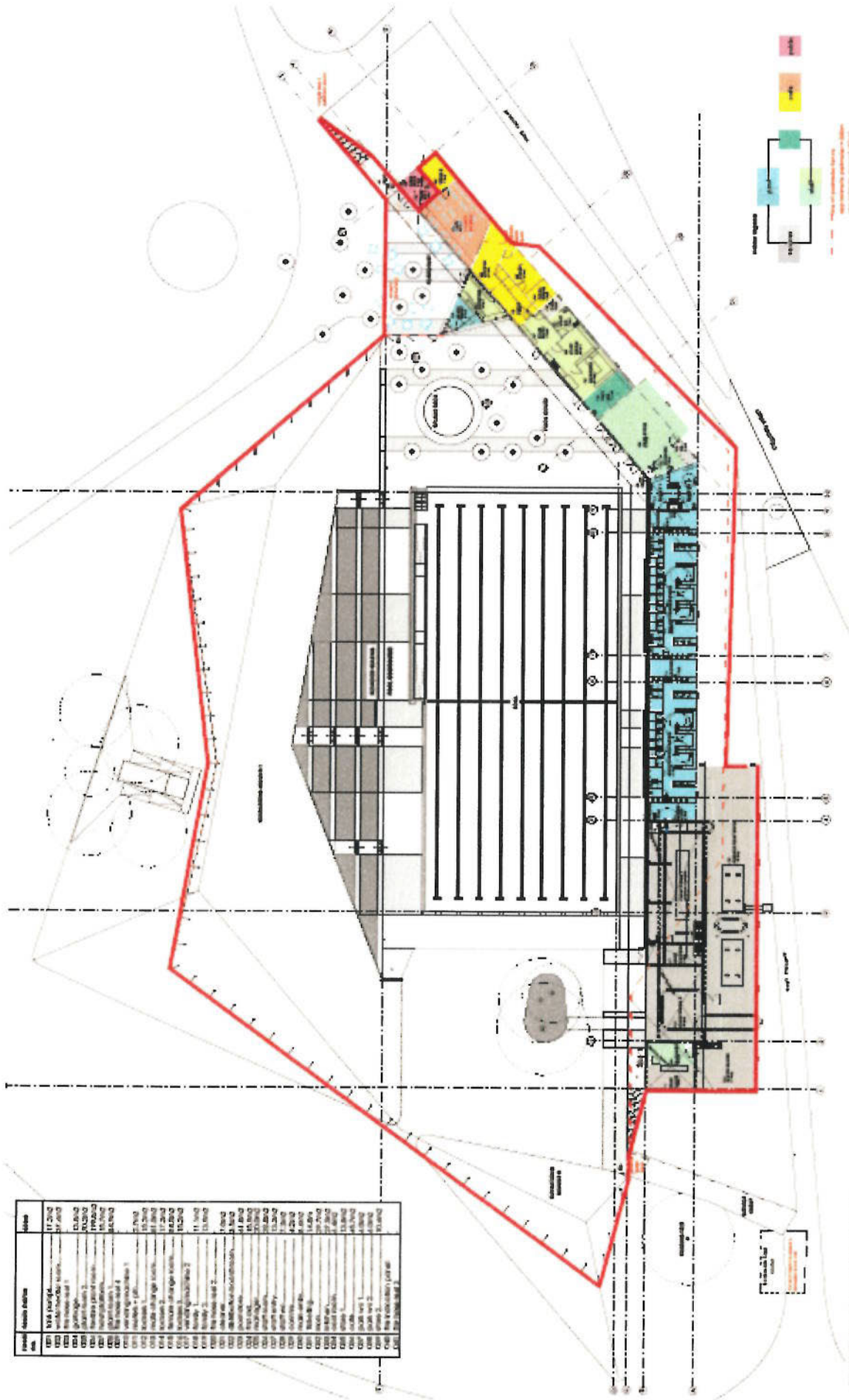
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User: watrell

N

Prince Alfred Park Pool



GROUND FLOOR LAYOUT PLAN 1:200

SYDNEY

PROJECT NAME: PRINCE ALFRED PARK POOL
PROJECT NO: 10000000000000000000
DATE: 10/10/2023
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

LEGEND

- Pool
- Cafe
- Changing Room
- Outdoor Seating
- Indoor Seating

NOTES

1. All dimensions are in millimeters unless otherwise stated.

2. All areas are in square meters unless otherwise stated.

3. All materials are to be of a standard quality.

4. All work is to be completed in accordance with the relevant standards.

Michael Herchenbach

From: Collette Holland <CHOLLAND@cityofsydney.nsw.gov.au>
Sent: Thursday, 31 March 2016 4:05 PM
To: Michael Herchenbach
Subject: RE: Belgravia Leisure - Deed of Amendment

Thanks Michael, appreciate the confirmation.

Kind regards

Collette Holland
Aquatic & Leisure Services Manager
City Greening & Leisure



Telephone: +61 2 9265 9278
cityofsydney.nsw.gov.au

From: Michael Herchenbach [<mailto:mherchenbach@belgravialeisure.com.au>]
Sent: Thursday, 31 March 2016 3:53 PM
To: Collette Holland <CHOLLAND@cityofsydney.nsw.gov.au>
Subject: RE: Belgravia Leisure - Deed of Amendment
Importance: High

Hello Collette

We are pleased that the remaining outstanding issue was resolved this afternoon and consistent with that now please find attached the revised letter from Nick Cox responding to your email and letter yesterday.

We confirm that this amendment applies regardless of the entire agreement clauses contained within the Deed of Amendment [cl. 4.7(a)] and the Management Agreement [cl. 2.1] attached to it.

Kind regards,

Michael

MICHAEL HERCHENBACH
GENERAL MANAGER COMMERCIAL & LEGAL

P 115 BELGRAVIA ROAD, A 20 LONGSTAFF ROAD, BAYWATER, 2155

E mherchenbach@belgravialeisure.com.au



A handwritten signature in blue ink, appearing to be 'RQ'.



BY EMAIL: CHOLLAND@cityofsydney.nsw.gov.au

Ms Collette Holland
Aquatic & Leisure Services Manager
City Greening & Leisure
City of Sydney
Town Hall House
456 Kent Street
Sydney NSW 2001

Dear Collette,

Re: acceptance of offer for the management of Cook + Phillip Park Aquatic and Fitness Centre and
Ian Thorpe Aquatic Centre

I refer to your email and letter to me yesterday regarding the above and now confirm our Company's acceptance of the contents of the letter with one alteration which has been agreed this afternoon by us. [REDACTED]

On this basis I will arrange for the necessary documentation to be delivered to you as soon as possible.

Thank you for this opportunity to assist Council in providing these services to the people of Sydney. We look forward to working with you.

Kind regards

Nick Cox
Chief Executive Officer
Belgravia Leisure