

Deed of Variation

The Council of the City of Sydney (ABN 22 636 550 790) and

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

For the Management of:

Andrew (Boy) Charlton Pool

Prince Alfred Park Pool

Victoria Park Pool

Cook and Phillip Park Aquatic and Fitness Centre

Ian Thorpe Aquatic Centre

DEED OF VARIATION

THIS DEED is made on

2025

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**);
- (2) **BELGRAVIA HEALTH AND LEISURE GROUP PTY LTD** ACN 005 087 463 **AS TRUSTEE FOR THE BELGRAVIA UNIT TRUST** 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 Agreement.
- B. By Resolution of Council on 7 April 2025, Council approved the variation of the Agreement to extend the term of the Agreement to expire on 30 June 2026, add transitional provisions to align the Agreement with the Gunyama Park Contract and document the increase in the total contract value for the twelve (12) month extension period (**Third Extension Period**).
- C. The City and the Contractor have agreed to vary the Agreement to reflect the above changes for the Third Extension Period in the manner set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

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

Agreement means the agreement between the City and the Service Provider for the management of Andrew (Boy) Charlton Pool, Prince Alfred Park Pool, Victoria Park Pool, Cook and Phillip Park Aquatic and Fitness Centre, and Ian Thorpe Aquatic Centre entered into on 1 February 2012 as amended by the Deed of Amendment to the Contract entered into on or around 1 April 2016, the Second Deed of Amendment dated 1 March 2022 and Letter of Agreement dated 12 May 2023.

Deed means this deed of variation of the Management Agreement and all annexures, schedules, attachments and exhibits

Gunyama Park Contract means the agreement for the management of Gunyama Park Aquatic and Recreation Centre, between the City and the Contractor, entered into on 22 September 2020, as amended by Deed of Variation dated 1 March 2022, Letter of Agreement dated 12 May 2023, and Deed of Variation dated 4 July 2024.

1.2 Rules for interpreting this Deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or contract, or a provision of a document (including this document) or contract, is to that document, contract or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or contract includes a permitted substitute or a permitted assign of that party;
 - (iv) 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; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
 - (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The words subsidiary, holding company and related body corporate have the same meanings as in the *Corporations Act 2001* (Cth).
 - (g) A reference to dollars or \$ is to an amount in Australian currency.
 - (h) A reference to this document includes the agreement recorded by this document.
 - (i) Words defined in the GST Law have the same meaning in clauses about GST.
 - (j) A reference to a month is to a calendar month.
- 1.3 A reference to a term defined in the Agreement has the same meaning when used in this Deed.
- 1.4 This Deed is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2 VARIATION OF AGREEMENT

The Agreement is amended as follows:

2.1 In Item 3 of the Reference Schedule – Term the wording "Ten years and five months from the Commencing Date" is deleted and replaced with the words "Eleven years and five months from the Commencing Date."

2.2 A new clause 45 is added as follows:

45 Financial Terms of the Agreement for the Third Extension Period

The parties acknowledge and agree that the draft budget (as endorsed by Council) for the twelve (12) month extension period for the Financial Year 2025/2026 (excluding property maintenance, plant and equipment maintenance, utilities and depreciation, is as per the following table:

Operating Budget	Aquatic Budget	Maintenance	Total

2.3 CDR 12: Transition Out Plan -The document entitled CDR 12: Transition Out Plan (included in Appendix 111) is deleted in its entirety and replaced with a new document entitled CDR 12: Transition Out Plan, showing the amendments to the original document in mark up, and attached to this Deed as Attachment A.

3 NO OTHER CHANGE

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed. Nothing in this Deed will be read or construed as implying any form of variation or waiver other than as expressly set out in the Agreement.

4 FURTHER ASSURANCE

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

5 LEGAL COSTS

Each party will bear its own legal costs in relation to the preparation and execution of this Deed.

6 GENERAL

- a. This Deed contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed are of no effect.
- b. A right may only be waived in writing, signed by the party giving the waiver, and:

1. 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;
 2. a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
 3. the exercise of a right does not prevent any further exercise of that right or of any other right.
- c. 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.
 - d. The invalidity, illegality or unenforceability of any provisions of this Deed will not affect the validity or enforceability of any other provisions.
 - e. This Deed may only be varied in writing by the agreement of the parties.
 - f. This Deed is governed by and construed in accordance with the law of the State of New South Wales.
 - g. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.
 - h. The parties acknowledge and agree that this Deed may be executed electronically, and in counterparts, in accordance with the Electronic Transactions Act 2000 (NSW)

EXECUTION

Executed as a deed on

**Signed for and on behalf of THE
COUNCIL OF THE CITY OF SYDNEY**
by its duly authorised officer in the
presence of:



Witness:

Electronic Signature of:



Name (printed):

Affixed by me on:

1 July 2025

Date signed



Signature:

Electronic Signature of:



Name of Authorised Officer:

Affixed by me on:

1 July 2025

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

**Signed by BELGRAVIA HEALTH AND
LEISURE GROUP PTY LTD AS
TRUSTEE FOR THE BELGRAVIA
LEISURE UNIT TRUST** in accordance
with section 127 of the Corporations
Act:



Signature of Director

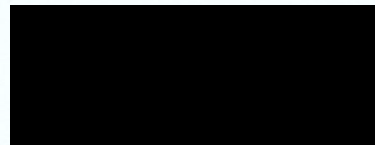
Electronic Signature of:



Full Name (printed):

Affixed by me on:
01.07.2025

Date signed



Signature of Director/Secretary:

Electronic Signature of:



Full Name (printed):

Affixed by me on:
01.07.2025

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

ATTACHMENT A CDR 12: TRANSITION OUT PLAN

CONTRACT DELIVERABLE REQUIREMENT	Management of Aquatic and Leisure Facilities	CDR-12: Transition-out Plan
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Title	Transition-out Plan
Prepared by	Service Provider
Specification Reference	6.3.3
Frequency	Once
Format	Electronic – Office XP compatible (non PDF)
First Submission Due	End of year 1
Subsequent Submission	Reviewed periodically throughout the Term and any AdditionalTerm
Approval	Contract Manager in writing within 28 days
Prepared by	Service Provider
Purpose	To prepare a comprehensive plan including timeframes and resourcing for the Transition-out at the completion of the Contract.

Content	<p>The Transition-out Plan should provide a detailed outline that includes tasks to be undertaken (including sub tasks), staff that will undertake each task and proposed timeframes including how long each task will take. The plan should include but not be limited to the following areas:</p> <p><u>Transfer of Information</u> – return all documents, data (including membership and program enrolment details and databases), financial information, records, source coding for web sites, Intellectual Property and materials developed for each Facility during the Contract, or those requested by the City. Verify data, allow the Contract Manager access to the data as required and ensure that there are no other copies of data after completion of the Contract.</p> <ul style="list-style-type: none"> • <u>Sub-contractors</u> – provide details to the City of all Sub-contractors and advise Sub-contractors of the new arrangement; novate Sub-contractors at the City's request. <u>Make Sub-contractors aware of the transition and cooperate with any novation process requested by the City;</u> • <u>Asset Management</u> – provide copies of maintenance manuals, schedules and other critical data to the City. Undertake Close-out Audit with the City team for any alterations and additions approved by the Contract Manager or installed by the City during the Contract Term. <u>Ensure any relevant assets used in service delivery are properly transferred to the City or its nominees;</u> • <u>Remove any Service Provider Equipment</u> – making good any damage caused by such removal. Any Service Provider Equipment which is not removed at the end of the Term or any Additional Term is deemed to have been abandoned and any expense incurred by the City in removing Service Provider Equipment and making good will be a debt owed to the City by the Service Provider.
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| | <ul style="list-style-type: none"> • <u>Financial Management</u> - reconcile accounts and transactions within 15 Business Days of end of Transition Out Period and provide finalised financial reports within 20 Business Days and finalise all invoices within 30 days. • <u>Human Resources</u> – notify staff, <u>(if appropriate), make staff available to any person taking over provision of the Services in order to allow such persons to make offers of employment or engagement (if they wish)</u>, look at redeployment (if appropriate), and payment of benefits (where appropriate). • <u>Service Continuity</u> – ensure that the level of Services offered across the Group does not diminish during this period. • <u>Transfer of Knowledge</u> – full details of all knowledge and know-how regarding the Services and how any Services which make up the Services fit together, interface, and with any Services provided by persons other than the Service Provider or the Service Provider's Staff; • <u>Data Migration</u> – full details of all data migration activities to be carried out in order to effectively transfer all information relating to the provision of the Services to the City or the City's nominees; • <u>Final Requirements</u> – any other information as required by the City. <p><u>The Service Provider, in consultation with the City Representative will develop a Transition Out Plan in accordance with CDR 13. This plan will be reviewed progressively throughout the Term.</u></p> |
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