

SUBJECT: REPORT ON APPROVAL OF TENDER - MANAGEMENT OF INLAND SWIMMING CENTRES - CONTRACT NO. 2022/137T

REPORT BY: CHIEF EXECUTIVE OFFICER

PURPOSE

At the Ordinary Council Meeting 23 May 2023, Council resolved to delegate to the Chief Executive Officer (CEO) authority to determine the tender for Contract No. 2022/137T for the lease and operation of City of Newcastle's (CN) five owned Swimming Centres. This resolution followed a report to Council by the Acting Executive Director Creative and Community Services recommending CN accept a tender by BlueFit Pty Ltd (BlueFit) for the Lease and Operation of the five centres from 1 July 2023.

The management of Lambton, Mayfield, Wallsend and Stockton has been leased and operated by BlueFit for the past 9 years, with Beresfield operated under a hybrid arrangement with BlueFit operating the kiosk and entry turnstile for the past 6 years.

Following a thorough review and engagement with stakeholders, the CEO has determined to award the tender (Contract No. 2022/137T) to BlueFit for the lease and operation of CN's five Swimming Centres in the annual amount of \$1,411,292 (excluding GST) for a period of seven years with two potential seven year extensions (at the future elected council's discretion), subject to BlueFit delivering capital investment to the pools, and its performance meeting prescribed service level indicators. This decision represents a saving of \$39 million to ratepayers, when compared to an in-house operation.

CN is aware of at least 64 local government owned pools in NSW which are leased and managed by specialist pool operators, including those owned by the neighbouring local councils of Port Stephens, Lake Macquarie (a combination of third party and in-house), Cessnock, Dungog, Upper Hunter and Mid Coast.

The decision to award the tender to BlueFit is substantially based on the evidence outlined in the detailed business case and financial modelling presented in the confidential tender report to Council, as summarised below, as well as further consultation with key stakeholders undertaken by the CEO in the period 24 May to 27 June 2023.

The decision to award the tender does not in itself permit the signing of a contract with BlueFit for the lease and operation of CN's five inland pools. Rather it triggers the inviting of comment from any member of the public regarding the appropriateness of the proposed lease.

As a result of the CEO's decision to award the tender, a public notice will be placed on the CN website, as well as advertised in a widely available newspaper, and made available at each of the five swimming centres. At the conclusion of 28 days public exhibition, the CEO will consider any submissions and then take any required next steps in forming a final decision.

It should be emphasised that the proposed tender does not permit the sale of any of the five swimming centres. Further, Lambton and Mayfield swimming centres are located on crown

land which belong to the NSW Government. The ongoing operation of the five swimming centres and public ownership is secure and noted as such in CN's Inland Pools Strategy 2043.

Due to the circumstances involved in delegating the decision, Council did not provide advice to the CEO in terms of how he should reach a decision to award or otherwise, the tender for Contract no. 2022/137T. In the absence of advice, the CEO considered the requirements set for commercial arrangements in other levels of Government.

A speech by Premier Chris Minns delivered to the NSW Parliament on 10 May 2023 nominated conditions under which commercial arrangements between the NSW Government and third parties. Specifically, the Premier in his speech to the NSW Parliament noted:

- The contract must deliver value for money
- The contract must deliver improved customer service outcomes in order to fulfil the government agency's statutory functions
- The contract must not involve the sale or disposal of its main undertakings.

It is the opinion of the CEO that the recommended tender of BlueFit meets each of the above three criteria, as well as seven additional criteria.

The below outlines the evidence supporting the above statement.

REASONS FOR DETERMINATION

1. BlueFit's tender provides value for money to ratepayers.

CN's preference is to operate services internally wherever possible. This is evidenced by recent decisions to bring outsourced and semi-outsourced services in-house at the Civic Theatre and City Hall. In each case, detailed financial modelling supported the decision to make the change.

Financial modelling has been undertaken to compare the cost of CN operating its five swimming centres with that of the continued operation of the pools on terms proposed by BlueFit in its tender. The modelling used BlueFit's proposed annual contract fee as a benchmark against what would be required by CN to run a service providing day-to-day management of its five inland pools, including salaries and wages, operational costs and set-up and transition costs.

The return to an in-house management model nine years after BlueFit was awarded the contract to operate four of its five pools would require the establishment of a new swim business within CN. The year one net cost (expenses minus income) of an in-house management operation is \$4.034 million. This compares unfavorably against BlueFit's contract fee of \$1.411 million, and represents an additional cost to ratepayers of \$2.623 million in year one.

The net cost of an in-house management model reduces to \$3.250 million in year two (given establishment costs are incurred in year one only). The cost to ratepayers of BlueFit operating CN's five pools increases marginally to \$1.449 million (\$1.411 + 2.75% forecast CPI). Therefore, awarding the tender to BlueFit saves ratepayers a minimum of \$2.623

million in year one of the contract and a further minimum \$1.8 million for every subsequent year of the contract, when compared to an in-house operating model.

The total cost of an in-house management model amounts to more than \$69 million, versus the \$30 million BlueFit would be paid over a maximum term of 21 years. That is, CN ratepayers would pay \$39 million more over the term of the contract if it operated its five pools with an in-house management model. This does not include the capital BlueFit are required to invest into CN pools under any future contract.

Accepting BlueFit's tender prevents an adverse impact on CN's Long Term Financial Plan (LTFP) as it is consistent with forecast expenses related to the operation of the five inland swimming centres over the next ten years. The additional \$1.8 million annual cost under an in-house management model would create a deficit net operating result in year two (2024/25) and potentially year four (2026/27) of the next five annual CN budgets.

Management would need to consider how to offset the \$1.8 million additional expense of in-house operations. Increasing swimming centre entry fees is one option, as has been done at other council-owned pools that operate under an in-house operational model, and which has created a situation where fees are significantly higher than that at CN's five swimming centres.

Swimming Centre	2022/23 general admission fee	2023/24 general admission fee to offset additional cost of an in-house model
Lambton	\$5.80	\$14.90
Mayfield, Stockton and Wallsend	\$5.40	\$13.90
Beresfield	\$3.00	\$7.45

2. Customer service outcomes are enhanced via the construction of a year-round aquatic facility at Lambton Memorial Swimming Centre including pools, a gym and new changerooms, as well as installation of accessible pool facilities at all five sites.

BlueFit will contribute \$5 million towards an overall \$10 million capital works program at Lambton Pool. The \$5 million investment is not conditional on matching funds being secured from CN or the State or Federal Government. Despite significant efforts, CN has been unable to secure funding from other levels of Government to assist in upgrading aging pools.

Proposed upgrades at Lambton Park War Memorial Swimming Centre, as the region's most popular swimming centre, include the following:

- i) Provision of a 25m indoor warm water pool for improved programs and all year-round operations
- ii) Provision of indoor toddlers' pool and changing facilities for year-round operations
- iii) Refurbishment of existing changerooms
- iv) Improved accessible change facilities
- v) Upgrade to facility entrance

- vi) General refurbishment of the amenities block and improvements in accessibility
- vii) Improved administration facilities
- viii) Upgraded kiosk and cafe
- ix) Provision of a multi-purpose room
- x) Provision of a health and fitness amenities.

3. The contract does not involve the sale or disposal of the pools' main undertakings.

The contract ensures the continued operation of the five inland swimming centres. Consistent with CN's Inland Pools Strategy 2043, the contract does not allow for any of the sites to be sold, nor of the pool's main undertakings to be disposed of.

CN has robust and effective governance processes for management of contracts to ensure the provision of quality services for the community.

At a minimum, CN's oversight of its lease for the management of its swimming centres includes:

- i) Setting the broad strategic direction for the five swimming centres through consultation with stakeholders and the operator/lessee;
- ii) Evaluating and monitoring performance of operational and financial aspects against established service level indicators (SLIs);
- iii) Establishing and monitoring risk management frameworks;
- iv) Ensuring compliance with all statutory obligations, including required permits and licences for operation, via annual review;
- v) Legal responsibilities for the ongoing oversight of the five swimming centres; and
- vi) Regular monitoring and reporting against expected industry standards including the establishment of daily, monthly, and annual key performance indicators.

The annual review of the operation and management of each swimming centre for the previous 12-month period will include SLIs including:

- i) Operations review i.e. attendance and financial data;
- ii) Range of programs and services offered i.e. core, community, school and specialised;
- iii) Partnerships and sponsorships i.e. new initiatives, traineeships and user groups;
- iv) Investment i.e. capital improvements and site development;
- v) Stakeholder relations, marketing and customer satisfaction survey results (including CN's Inland Pool Community Network);
- vi) Risk management i.e. WHS audits, staff training and compliance, legislative compliance i.e. water quality; and
- vii) Asset management, maintenance and reporting.

Ongoing monitoring throughout the year will be maintained by CN to support the annual review. This will be achieved through monthly meetings to ensure BlueFit's delivery of, and compliance with the SLIs and KPIs.

CN will undertake onsite building and facility inspections throughout the season.

BlueFit will also attend meetings with CN's Inland Pools Community Network to ensure user groups and stakeholders have continued input and communication with the operator and CN regarding feedback and expectations. The Inland Pool Community Network consists of one representative for each of CN's inland pools, a school representative and an accessibility advocate.

BlueFit will develop an annual operational plan for each swimming centre prior to each season commencing for review and approval by CN. These operational plans will include:

- i) Swimming Centre operating budget including attendance;
- ii) Fees and charges;
- iii) Hours of operation and season dates;
- iv) Programs and services;
- v) Specific Swimming Centre marketing campaigns;
- vi) Scheduled WHS audits;
- vii) Capital investment - site development / improvement plan;
- viii) Annual maintenance schedule; and
- ix) User group plans and allocations.

4. BlueFit operated local swimming centres enjoy a high community satisfaction rating.

The day-to-day management of CN's swimming centres with the exception of Beresfield Pool has been managed under contract by BlueFit since 2014. Beresfield has been managed under a hybrid arrangement between CN and BlueFit since 2017.

CN's swimming centres enjoy strong public support and high satisfaction rates as evidenced by various surveys including by Micromex Research Australia, BlueFit customer surveys, and a Net Promoter Score (NPS).

A survey in 2021 of users of the four swimming centres operated by BlueFit within the Newcastle Local Government Area (LGA) found that 84.7% of customers were satisfied or highly satisfied with the operation of Lambton, Wallsend, Mayfield and Stockton swim centres. This is a comparable customer satisfaction result with that of 'blue chip' CN owned sites the Newcastle Art Gallery and Newcastle Museum, which consistently receive very high customer satisfaction results.

BlueFit commenced measuring net promoter scores (NPS) across its managed sites in 2018. NPS is a customer experience metric that gauges customer loyalty, satisfaction and enthusiasm. It is calculated by asking customers one question: 'On a scale from 0 to 10 how likely are you to recommend this product/company to a friend or colleague?'

The results indicate that in 2018 the four swimming centres managed by BlueFit in the Newcastle LGA received a NPS result, which benchmarks as 'good' within the Australian pool industry. From 2019 onwards the four swimming centres have annually received a NPS result that ranks as 'excellent', and places them among BlueFit's most popular pools in Australia.

5. Pool users will financially benefit from BlueFit's decision to freeze or reduce pool entry fees in year one of the contract, as well as preserving Council's 2014 resolution that Beresfield Pool users should benefit from a heavily discounted pool entry fee.

BlueFit has committed to freeze pool entry fees for 2023/24 to help local pool users who are experiencing significant increases in the cost of living (5.6% year to May inflation rate).

Further, BlueFit will reduce several fee categories including the entry fee to Beresfield Swimming Centre and the hourly fee for the water slide at Lambton Swimming Centre.

BlueFit has further committed that it will increase pool entry fees from year two of the contract by no more than CPI, annually. It should however be noted that in the majority of the previous nine years that BlueFit has managed four of CN's inland swimming pools, pool entry fees have either not increased, or increased by an amount less than CPI.

In real terms, entry fees have reduced by at least 12% since BlueFit took over the operation of four of CN's pools in 2014. Entry fees at pools operated locally by BlueFit are 20% and 13% lower than those at pools operated by Lake Macquarie and Maitland Councils.

Lambton Swimming Centre (children under 3 are free)	2014/15	2022/23	2022/23 Adjusted fee if matched to inflation	\$ Variance	% Variance
Single Admission	\$ 5.20	\$ 5.80	\$ 6.53	-\$ 0.73	-13%

Other Pools (not including Beresfield which has a low-cost entry fee of \$3.00) (Children under 3 are free)	2014/15	2022/23	2022/23 Adjusted fee if matched to inflation	\$ Variance	% Variance
Single Admission	\$ 4.80	\$ 5.40	\$ 6.02	-\$ 0.62	-12%

6. The proposed capital investment represents value for money for ratepayers when benchmarked with swimming pools owned by local councils.

A report by Dean Hassall Consulting provides a benchmarking exercise to gain a better understanding of the experience of coastal councils with similar aquatic cultures i.e. combination of beach, ocean baths and inland pools users, which contract the operation of their inland pools to specialist pool operators.

Contractual terms including capital investment are typically protected by commercial in confidence provisions which prevent reliable benchmarking of outsourced pools. Detail was however able to be sourced when a search was extended to include South Eastern Queensland (where a comparable portfolio mix of aquatics facilities (inland pools, beaches, and ocean pools)) exist. The contract terms of the below councils were compared to that proposed by BlueFit:

- i) City of Gold Coast
- ii) City of Logan
- iii) Brisbane City Council
- iv) Sunshine Coast Council.

These four councils own 46 aquatic facilities; 80% of which are managed by commercial operators, with the remaining 20% managed under an in-source management model. Of the facilities that are managed by a third party, an average capital contribution of \$1 million or less over an average lease period of 15 years was secured by the councils. A longer lease term of 21 years was offered for the management of six of the aquatic facilities, which lifted the third-party investment to an average of \$2 million.

Comparison against these councils indicates that BlueFit's proposed capital investment of \$5 million is significantly higher than the benchmarked cohort, where average capital investment from a lessee is less than \$1 million over a shorter lease period, or \$2 million over the same lease period.

7. BlueFit's tender is consistent with the goals of CN's adopted *Inland Pools Strategy 2043*.

CN's Inland Pools Strategy 2043 was unanimously adopted by the Council in May 2023 and provides a recommended investment plan for each of the inland pools to ensure they continue to operate safely over the next 20 years with consideration of facility enhancements to meet the expectations of pool users.

The Strategy outlines that without an aquatic centre at Hunter Park, Lambton Park War Memorial Swimming Centre will continue to operate as the region's premier pool and should benefit from significant upgrading. If the NSW Government funds an aquatic centre at Hunter Park, Lambton will continue to receive upgrades, while ensuring the offering at Lambton is fit for purpose and does not duplicate the offering at Hunter Park.

The Strategy costs seven actions with timeframes of short, short to medium and long term plus. For Lambton, all but the long term plus action (replacement of the 50m pool shell), are proposed by BlueFit to be delivered in partnership with CN within the first seven years of the contract. BlueFit has also proposed improving accessibility at all five pools by installing platforms and hoists, which was identified in the Inland Pools Strategy 2043.

8. Outsourced management of CN owned inland pools reduces risk to ratepayers.

CN commissioned an analysis by Dean Hassall Consulting of in-house versus outsourced management of council owned swimming centres. The report concludes that outsourcing day-to-day management of CN's swimming centres reduces the operational and financial risk to CN, with operational risk being transferred to the operator and financial risk partly transferred through annually agreed budgets and service level indicators.

The table below identifies the key differences between an in-house management model and management by a commercial operator.

In-house management by CN	Management by a commercial operator/lessee
Owned and operated fully by CN	Venue owned by CN but day to day management contracted to a private operator/lessee or management body, for a defined period of time
Full CN management via in-house staff ensuring strategic oversight management, operational and maintenance responsibilities are performed	Contract generally includes financial considerations such as a management fee, lease payment or profit share arrangement and specific expense and maintenance responsibilities

Accountability for venue performance rests solely with CN; generally within responsibility of a senior manager role to govern and oversee performance based on a range of Key Performance Indicators and reporting frameworks	Key Performance Indicators, review clauses and reporting frameworks generally included within contract
CN manages all activation and programming	Operators often contribute to capital investment in the facility if longer term lease periods can be negotiated (eg 10-30 years)
Some services such as lifeguarding, catering, programming, maintenance, cleaning etc may be outsourced by CN	Specific assignment of expense and maintenance responsibilities between CN and operator; CN generally responsible for structural type maintenance
CN responsible for all maintenance and capital	Operator provides all staffing to fulfill day-to-day responsibilities around strategic oversight, management, operations, maintenance, activation and programming
Third parties can invest in facilities via grant funding (eg swim clubs)	Some services such as lifeguarding, catering, programming, maintenance, cleaning etc may be sub-contracted by operator, with CN pre-approval
CN wholly responsible for all risk management and liability from operational delivery; may be exceptions in acts of negligence by venue hirers, users and visitors	Operator accountable for large levels of operating risk in relation to their systems, services and practices; CN as the asset owner must ensure appropriate levels of due diligence over the operator's performance

9. BlueFit is a responsible employer with a remuneration structure that exceeds the relevant award and offers a range of incentives not available under the Local Government Award.

BlueFit's lifeguards and employees are engaged under the Fitness Industry Modern Award 2020. Given the seasonal nature of CN's five inland pools, the majority of lifeguards and duty managers are engaged under casual contracts overseen by the Fair Work Commission.

Minimum rates for 2023/24 are:

	Weekday	Saturday	Sunday
Lifeguard	\$ 31.09	\$ 32.34	\$ 32.34
Duty Manager	\$ 37.65	\$ 39.15	\$ 39.15

BlueFit also provides a range of employee benefits and value additions that need to be considered in the context of its remuneration structure. These include but are not limited to benefits such as mandatory employee qualifications (lifeguard, first aid, etc) being paid for by BlueFit, and discounts on lessons and retail.

Some BlueFit staff have the opportunity to earn an additional 5% as a performance-based bonus. They also offer flexible working arrangements for those working at Newcastle's five swimming centres due to their seasonal operation. BlueFit permanent employees may work additional hours during the on season so that they can take off, the off season.

In order to attract and retain quality employees in the marketplace, BlueFit has an established above-award payment structure applicable to department and facility management roles. Above award salaries are market tested on an annual basis and

adjusted in line with CPI movement and the Fair Work Commission annual award review. Roles in 2023/24 are paid up to:

- Facility Manager - \$104,168
- Operations Manager - \$76,678
- Customer Success Manager - \$74,637

Employees are classified based on skills, experience, responsibility, decision making and accountability. With regard to penalty rates, for full-time and part-time employees engaged under the Fitness Industry Award, these employees are entitled to receive the following rates for all ordinary hours worked:

- Saturdays - 125% of the minimum hourly rate
- Sundays - 150% of the minimum hourly rate

It should be noted that staff employed under the Local Government Industry Award who work at a Council owned swimming centre are not entitled to weekend penalty rates when working between the hours of 5am and 11pm.

Some BlueFit staff receive numerous allowances and additional pay conditions. These include but are not limited to

- First Aid Allowance - \$3.02 per day
- Supervisor Allowance - \$26.81 to \$49.15 per week (based on the number of employees)
- Phone Allowance - \$18.50 per fortnight

10. CN has undertaken a robust tender process.

The calling of tenders was in accordance with the requirements of section 55 of the Local Government Act 1993. The tender was advertised between July and September 2022, with three submissions received.

The tenders were assessed against the following criteria:

i)	Tender Price	15%
ii)	Capital Investment	15%
iii)	Business Plan	30%
iv)	Referees and Previous Experience	10%
v)	Transition Plan	10%
vi)	Supplier Diversity	5%
vii)	WHS Management Systems	15%

The tenders were assessed by a Tender Assessment Panel consisting of CN's Acting Executive Manager Community and Recreation, Property Services Manager and the Aquatic Administration and Education Officer. The Panel obtained technical advice internally from subject matter experts in the areas of contracts, finance and human resources.

CN engaged Local Government Procurement to provide probity advice and to oversee the tender assessment process.

CONSULTATION

Following the Council's decision to delegate to the CEO the decision to award the tender or otherwise for the management of CN's five inland pools, a five-week period of consultation with key stakeholders was undertaken. A timeline of this consultation is listed below.

- 23 May 2023: The CEO wrote to the Corruption Prevention Division of the ICAC in advance of the May Ordinary Council Meeting once it became likely that a majority of Councillors could be forced into a position requiring them to declare a significant nonpecuniary conflict of interest regarding contract no 2022/137T. The Corruption Prevention Division provides government agencies with advice on probity and good governance in government decision making.

The Director of the Corruption Prevention Division of the ICAC replied to the CEO on 28 May 2023 stating:

"I understand the affected councillors declared a conflict of interest and decided not to vote on the matter. While this outcome might not be to everyone's satisfaction, it appears to be a pragmatic way to manage the allegations of undue influence."

- 24 May 2023: The CEO spoke with the one CN employee directly affected by the lease for operation of CN's Swimming Centres. The employee was updated on the decision of the Council from the previous evening and the process of engagement the CEO would now undertake.
- 24 May 2023: The CEO emailed Councillors who had not declared a conflict of interest for contract no 2022/137T, offering the opportunity to meet and provide information that may assist in his decision making. Councillors contacted were:
 1. Councillor Jenny Barrie
 2. Councillor John Church (*no reply received*)
 3. Councillor Dr John Mackenzie
 4. Councillor Charlotte McCabe
 5. Councillor Callum Pull (*indicated he was comfortable with information presented to Council*)
 6. Councillor Katrina Wark
- 24 May 2023: Councillor Wark requested to meet with the CEO. Unfortunately, she was then unavailable on the day of the scheduled meeting and subsequent attempts to contact her to reschedule were unsuccessful.
- 24 May 2023: The CEO wrote to the United Services Union (USU) offering a meeting to discuss the proposed contract, including CN's financial modelling comparing in-sourced versus outsourced management of the day-to-day operation of swimming centres. The USU met with CN on 20 June, with CN represented by the CEO, the Executive Manager People and Culture, the Acting Executive Director Creative and Community Services, and the Acting Executive Manager Community and Recreation.
- 25 May 2023: Councillor McCabe wrote to the CEO giving notice that she would be lodging a rescission motion regarding the Council resolution to delegate the award or otherwise of the tender for Contract No. 2022/137T for the lease and operation of five CN owned Swimming Centres to the CEO. The rescission motion was subsequently emailed to the CEO on 26 May 2023. The CEO received support for the motion via email from three councillors as is required under the Code of Meeting

Practice. Support was received from Councillor Barrie and Councillor Dr Mackenzie (on 1 June 2023) and from Councillor Wark (on 6 June 2023).

- 30 May 2023: Councillor Dr Mackenzie spoke by phone with the CEO and then again briefly in person on 20 June.
- 2 June 2023: Councillor Barrie met with the CEO and the Acting Executive Manager Community and Recreation.
- 5 June 2023: The CEO wrote to the State Member for Wallsend (Sonia Horner) offering to meet to discuss the operation of CN's pools. No acknowledgement of the invitation has been received.
- 6 June 2023: The President of the NSW ALP Beresfield Tarro Branch and NSW Secretary of the Australian Workers Union (AWU), Tony Callinan, wrote to the CEO requesting a meeting to discuss the tender. The CEO met with Mr Callinan and another branch member on 9 June at the Council Administration Centre (CAC) at 12 Stewart Avenue.
- 7 June 2023: Councillor McCabe emailed the CEO advising that she was going to be travelling for several weeks and would not be able to meet in person and that she is an apology for the Ordinary Council Meeting 27 June 2023 when the recission motion is listed. Her email provided a detailed list of reasons for her opposition to the Officer's recommendation.
- 20 June 2023: A response to a Private Members Statement made by the State Member for Wallsend on 31 May 2023 regarding CN's five inland pools was submitted to the Speaker, consistent with the Standing Orders. The response was to correct errors of fact in the statement by the State Member for Wallsend (Sonia Horner), including inaccurate claims relating to serious matters of public health (such as claims of Giardia being detected in CN swimming pools).

SUMMARY DETERMINATION

Consistent with the additional temporary delegation of the elected council, and having considered the totality of options, the CEO has determined to award the tender (Contract No. 2022/137T) to BlueFit for the lease and operation of CN's five Swimming Centres in the annual amount of \$1,411,292 (excluding GST) for a period of seven years with up to two potential seven year extensions (to be considered and awarded at the future elected council's discretion), subject to BlueFit delivering capital investment to the pools, and its performance meeting prescribed service level indicators.

The decision to award the tender does not in itself permit the signing of a contract with BlueFit for the lease and operation of CN's five inland pools. Rather it triggers the inviting of comment from any member of the public regarding the appropriateness of the proposed lease. At the conclusion of 28 days public exhibition, the CEO will consider any submissions and then take any required next steps in forming a final decision.