

ITEM**POST EXHIBITION REPORT - LICENCE AGREEMENT TO THE HILLS BASKETBALL ASSOCIATION - BERNIE MULLANE**

THEME:	Building a Vibrant Community & Prosperous Economy
OUTCOME:	1 A connected and inclusive community with access to a range of services and facilities that contribute to health and wellbeing.
STRATEGY:	1.3 Facilitate the provision of services across the community.
MEETING DATE:	10 NOVEMBER 2020 COUNCIL MEETING
GROUP:	CUSTOMER, COMMUNITY SERVICES AND TECHNOLOGY
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RESPONSIBLE OFFICER:	GROUP MANAGER – CUSTOMER, COMMUNITY SERVICES AND TECHNOLOGY JOHN DEAN

EXECUTIVE SUMMARY

This report recommends that Council alter its earlier decision to award a multi stage licence for a combined period of 20 years to Hills Basketball Association Inc. (HBA) and instead, consider only awarding a licence for a term up to 5 years.

Council has received submissions by way of objection to the original proposal which would need to be resolved by the Minister for Local Government. The timeframe for this resolution is unknown. To provide certainty and fairness for the current operator and our community, a revised outcome is proposed.

If Council decides to proceed with the revised option for a short license to a maximum of 5 years, that decision would need to be exhibited for further comment with any negative submissions being considered by Council prior to proceeding.

If Council decides not to pursue this revised licence outcome, Council would need to consider entering into an agreement to extend the month to month terms with Belgravia Leisure, consider closing the venue for a period or manage in some way with Council staff.

The Bernie Mullane Sports Complex is a significant community asset that provides a diverse range of sporting and recreational activities for residents to enjoy. The land is classified as community land and is managed through Councils generic plan of management for sportsgrounds and is supported by a recently adopted masterplan. Part of the facility contains an indoor sports centre that Council has traditionally managed by licence. The current licence is with Belgravia Leisure and is on a month to month arrangement until the end of March 2021.

Late last year and prior to the Covid-19 health pandemic, Council conducted an Expression of Interest (EOI) process seeking proposals to operate the venue under license and consider investment in the future enhancements to the facility. At its Ordinary Meeting of the 22

September 2020, Council considered a report in response to submissions received through an Expression of Interest process. Council resolved in part to

“1. In accordance with the Section 47 of the Local Government Act, Council exhibit for 28 days, the intention to accept the Expressions of Interest from Hills Basketball Association Inc. to manage the Bernie Mullane Sporting Complex for up to 5 years for Stage 1 works with an option for a further 15 years for Stage 2 works, to a 20 year maximum, as outlined in the confidential memo to Councillors.”

In response to the exhibition, Council received 25 submissions and emails outlining a range of concerns. Most of these concerns can be addressed as they relate to current users and facilities that are expected to continue under the new licence. Some concerns relate to key staff employed by Belgravia Leisure that have built significant rapport with some user groups. There were also some concerns relating to the uncertainty of the future capital improvements and the length of the term for the licence. Council is required to take these submissions into account before proceeding. Given the licence was for 5 years with the possibility of a further 15 years in recognition of investment into future capital improvements, to proceed with the licence as exhibited would require Ministers consent under section 47(5) of the local Government Act as the submissions are considered to be an objection to the proposal.

Given the preferred licensee identified through the EOI process is a non-profit organisation and there is uncertainty around the stage 2 works, Council has the option of granting a standalone 5 year license to HBA under the provisions of 47A of the Local Government Act. Such a proposal dealt with under s47A would not require Ministerial consent unless the Minister makes a written request for it to be referred. There is no such request and a licence without an option and not exceeding 5 years is satisfactory to HBA.

The purpose of this report is to consider submissions and consider a recommendation for Council to exhibit a proposed licence to HBA limiting to Stage 1 works and a 5 year licence only to operate the Bernie Mullane Sports Centre. If this option were pursued, Council would then undertake a second EOI process before the expiry of the HBA's possible 5 year licence with no obligation to any party.

REPORT

Under s47 of the Local Government Act, a Council can grant a lease or licence relating to community land for more than 5 years by a tender process unless it is granted to a non-profit organisation. The provision of the Act requires any such proposal to be exhibited and Council is to consider submissions received.

Under s47(5) of the Local Government Act, Council must seek the Minister for Local Governments consent to enter into any lease/licence over community land that exceeds 21 years or any lease/licence greater than 5 years (including 5 years plus an option) that has attracted submissions by way of objection to the proposal.

Following an EOI process in late 2019, Council received a number of responses for the operation under license for the Bernie Mullane Sports Centre. The Bernie Mullane Sports Centre is currently operated under licence and the licensee provides a number of activities and sports for the benefit of the wider community to enjoy. The EOI attracted a range of submissions from a range of organisations.

Council at its meeting of 22 September 2020, considered a report detailing the response to the EOI. It determined that the most favourable to Council was the proposal received from the Hills Basketball Association which is a local non –profit organisation operating in The Hills Shire. Council resolved to exhibit a proposal to accept the proposal from the Hills Basketball Association Inc. (HBA) to operate the facility under a licence. The proposed term of offer accepted by Council was for a 5 year licence for stage 1 works with a further option for 15

years subject to approval/construction of Stage 2 expansion works. The total maximum term available to HBA in this proposal is 20 years providing within the first 5 years, all necessary approvals were in place for the funding, delivery and management of the stage 2 works.

It is recognised that the proposed stage 2 works were not certain nor imminent and under the proposal both the HBA and the Council, would need to be in agreement to the stage 2 works to exercise the option beyond 5 years under the proposed licence.

The exhibition process resulted in submissions being received primarily raising concerns around the range of recreational activities being maintained/ lost and other management issues. Council needs to consider any submission made before making a decision. As the exhibited proposal contemplates both an initial 5 year term and the possibility of a further 15 years, Council cannot enter that licence without firstly obtaining consent of the Minister for Local Government as many of the submission can be considered an objection to the "proposal". The process of achieving Ministerial consent is outlined in the Act however the timeframe is uncertain.

Under section 47A of the Local Government Act, Council can exhibit and enter into a lease or licence not exceeding 5 years. Under these provisions, Council is able to deal with submissions and there is no Ministerial consent required unless Council has received a written request from the Minister to do so. There is no such written request and given that this facility has been traditionally operated under a licence arrangement, it is unlikely that the Minister would do so. Any licence or lease under this provision in the Act is limited to a maximum of 5 years without any reference to an option beyond the initial 5 years.

This report considers the submissions submitted. After considering the submissions and to move forward with a licence to HBA, it has 2 options:

1. It can proceed to make application seeking Ministers consent for the proposed licence as exhibited.
2. Council can determine to offer the HBA being a non for profit organisation, a licence for 5 years maximum with no option included.

Based on the acceptance of HBA to the 5 year term and that the offer from HBA is not adjusted, it would seem appropriate to proceed to Option 2. This option would enable the HBA to take over from the current licensee as the arrangement with Belgravia Leisure expires at the end of March 2021. It would enable HBA to establish the programs, staffing and operations for the communities' benefit. It would enable Council to undertake the study, consultation and processes around expansion of the facility and once done, a further competitive process will be undertaken to determine a new licence beyond the 5 year licence offered.

PUBLIC SUBMISSIONS

Council received 25 formal public submissions and emails covering similar issues in response to the exhibition of the proposed licence agreement. The submissions relate to concerns regarding the loss of existing sports and/or user groups being replaced by basketball. In summary, there were also concerns about:

- the loss of the existing gym, fitness classes, loss of existing staff and badminton,
- location of the proposed pool, and
- hire arrangements for existing hirer Soccerjoey's or other basketball users who hire courts.

There has been no submission requesting Council not proceed with a licence agreement for a venue operator, however some have expressed concerns with the term beyond 5 years when the works are not certain. Bernie Mullane Sports Centre has operated under a licence agreement for many years.

Comments have been provided about these concerns below.

a) Concern about the loss of current services, gym programs such as the senior gym classes, scheduling for existing users such as gymnasium, badminton or Soccerjoey's. There is also concern that the venue will be only used for basketball and will only benefit basketball.

Comment:

The aims and objectives that formed part of the expression of interest documentation address these concerns as all operators were required to ensure that the range of programs and activities conducted at the premises, maintains as a minimum, the existing levels of usage and activities and ensures full access by the community for a range of sporting activities across various sports.

These include, but are not limited to, gymnasium, fitness programs, basketball, soccer, futsal, badminton etc. that currently occur in the venue. The gymnasium equipment is owned by Council and will remain at the venue.

HBA has confirmed all existing sports and activities will meet the requirements of the EOI specifications. They will consult with existing users during the transition period as soon as the EOI process is finalised and there is clarification around the current operating procedures, timetables and scheduling, payment arrangements and details of existing user groups etc. The courts will also be available for hire on an hourly basis for casual users. HBA is cognisant of the existing users and the business opportunity they provide.

It is acknowledged that managing the facility by licence has inherent risks especially when the licensee changes as is the case during the license period with different staff and economic conditions arise. Over the many years of operation of this venue, there have been changes to the services and facilities within license periods to respond to changing business conditions. It is difficult for Council to control operations under licence other than through licence conditions and a competitive process of establishing a licensee.

HBA are very experienced in managing multi-purpose facilities and have demonstrated a strong track record in operating under licence both Dural Recreation Centre, including the gymnasium, and the Hills Basketball Stadium at Fred Caterson Reserve. HBA currently cater for the following sports as well as basketball at their Castle Hill and Dural venues and this strategy would continue at Bernie Mullane.

- Cross fit gym
- Floorball
- Futsal
- Jiu-Jitsu
- Mixed Martial Arts
- Netball
- Walking Basketball
- Wheelchair Basketball
- Wheelchair Multi Sports
- Wheelchair Rugby

b) Concern about the loss of the existing staff and trainers and questions about them be employed by the new operator – as well as who would run the fitness classes.

Comment:

The centre is managed outside of Council through a competitive process and to a specification. Belgravia Leisure employs the current trainers and staff and they operate in a competitive market for venue management. They were given the same opportunity to place an EOI and they did so. The response by HBA is superior to that of all other responses including Belgravia Leisure and full details have been provided to Councillors under separate confidential cover. In summary the offer by HBA is more favourable to Council in terms of financial result, capital improvement, services provided and demonstrated capability.

Council has no role in the day-to-day operations of the venue including staffing arrangements and the employment of existing staff will be a matter for the venue operators. Since the venue opened it has always been operated by venue managers including The YMCA and Belgravia Leisure and the changeover process can be concerning for staff and customers of the venue.

Once the next steps are decided on by Council, a transition phase will need to be developed and any staff matters can be considered by the operator at that time. It is not considered a role for Council to deal in staffing matters.

c) Concerns about the café design impacting gym users, location of proposed learn to swim pool, provision of a quiet indoor area away from the gym for yoga and Pilates.

Comment:

Stage 1 capital works involve minor painting, equipment and security cameras, upgrades to backboard glass and new timber floorboards on courts, netball courts refurbishment and lighting and café fit-out and equipment, with connection to the outdoor area. Opportunities to explore alterations to the cafe area and provision of quiet areas can be considered at that time.

The proposed stage 2 capital works are at concept stage and include a major upgrade of the café kitchen to industrial/commercial standard, increasing the facility from two courts to four and construction of a learn-to-swim pool. Approvals for Stage 2 will require detailed design, development application and consultation, review of the Plan of Management/Master Plan for Bernie Mullane Reserve to include a pool and parking requirements before it can proceed.

As indicated in the resolution adopted by Council, Stage 2 works are subject to development and construction approvals being finalised over the next five-year period, and will require a further report to Council, exhibition and depending upon the term, may need approval from the Minister for Local Government. For this reason and to address these concerns it is recommended that Council and HBA enter into a 5 year licence in this instance. Proceeding to stage 2 was not certain nor imminent and would require consent of both parties.

d) Claims the report did not provide detailed information on all submissions.

Comment:

Individual submissions from organisations and companies are considered commercial in confidence as they contain information, that might if disclosed, confer a commercial advantage for a person with whom Council is conducting (or proposed to conduct) business. The detailed information was provided on a confidential basis to Councillors prior to the decision-making meeting.

- e) No prior consultation was held with the seniors' fitness classes and the decision should be re-visited.**

Comment:

The statutory 28-day consultation period commenced on 24 September 2020 and concluded 23 October 2020 as proposed in the Council resolution on 22 September 2020. Public notice was included on Council's website, community engagement e-newsletter and the Hills to Hawkesbury local community magazine. There was no requirement in the EOI process for any respondent to upgrade the gymnasium and the existing classes will be accommodated.

It is very difficult for Council to consult directly with user groups who are essentially customers of the existing operator. The existing operator also submitted a response to the EOI. To the extent possible, most of the concerns however are addressed in the EOI specification and the response by HBA.

- f) No stadium heating or cooling is provided in the upgrade.**

Comment:

The provision of heating or cooling for the venue was not a requirement of the specifications as part of the EOI process. The provision in future of air conditioning would be a matter for Council as the asset owner and or the operator - and subject to future decisions on the asset.

- g) The 20 year proposed term is too long and should only be 5+5 years.**

Comment:

The Local Government Act permits for a licence agreement, up to 21 years. Terms beyond 21 years require Ministerial consent. The response from the preferred tenderer provides for considerable capital expenditure and their submission was based on a 20-year agreement to provide for their return on investment. Having regard to the number of submissions and the time uncertainty with the Ministerial approval process, it is now recommended the licence period will be for five years maximum. Any new licence beyond 5 years will be subject to a fresh EOI and associated further Council reports and process as required by the Local Government Act.

- h) Meeting with representatives of the senior's fitness class.**

The Mayor, General Manager and Group Manager Customer, Community Services and Technology met with representatives of the senior fitness class to listen to their concerns and where possible, provided feedback to help address those concerns. It is very clear that the rapport established between the exiting staff and the fitness group is strong and meaningful. While impossible for Council to give guarantees, the concerns raised are well understood by Council and HBA. All parties will act in good faith to manage the transition.

LEASING OR LICENCING OF COMMUNITY LAND

A lease or licence for a term in excess of five years (including any option contained in the lease or licence) must be dealt with in accordance with s.47 of the Local Government Act 1993 (Act).

This means that if Council is offering a 5 year licence with a 15 year option and receives a submission in the form of an objection, during the required public notice period, it cannot enter into the arrangement, without receiving the Minister for Local Government's consent to do so.

Council can also, in accordance with section 46A of the Act, only grant a lease or licence by way of tender for a term in excess of 5 years, unless it is being granted to a non-profit organisation with the required public notice period.

Council exhibited the original resolution for 28 days, with the intention to accept the Expression of Interest from Hills Basketball Association Inc. to manage the Bernie Mullane Sporting Complex for up to 5 years for Stage 1 works with an option for a further 15 years for Stage 2 works, to a 20 year maximum, as outlined in the confidential memo to Councillors.

Council can however grant a five year standalone licence, which would not of itself require the calling of expressions of interest by way of tender as HBA is a not-for-profit organisation. Nor would it require ministerial approval. If Council were to resolve to grant a 5 year licence only, it is considered appropriate to re notify and exhibit as it varies from Council's previous decision. There can be no reference to a further 15 year licence in the licence documentation relating to the five year licence. Any 15 year licence granted after the five years has expired, would need a further report to Council and dealt with in accordance with the Act.

The General Manager has consulted with the Office of Local Government in relation to the Ministerial approval process. Unfortunately, no clear advice as to the process approval time frame has been given, even though the submissions are not opposing the management by an operator through lease/licence, but rather concerns about levels of service which to the extent possible, are addressed.

The offer provided by HBA in response to the EOI process is the most favourable to Council and favourable to the wider community. There is a need to deal with the licence before the end of March 2021 when current arrangements expire.

As a result of the exhibition process and the lack of certainty about Ministerial consent timeframe, it is recommended Council proceed with Option 2 as outlined in this report. This will allow the transition to the new operator and the development of expansion options through an update to the Plan of Management with community consultation. At the end of that process, it is possible to take the time needed for Ministerial approval. Proceeding with option 1 will not allow the time for transition to the new operator and is not recommended.

IMPACTS

Financial

The previous rental subsidy from Council was approximately \$60,000 per annum. Effective 1 April 2020, Council is paying a subsidy of \$9,850 per month to Belgravia Leisure (annualised \$118,000). In addition to the subsidy Council has been incurring on average a further \$65,000 on repairs and maintenance and \$351,000 in the past two years on capital expenditure.

The submission by Hills Basketball Association is considered to be the best offer as it is proposing a considerable upgrade to the venue at no cost to Council and does not require an ongoing subsidy over the five year term.

Strategic Plan - Hills Future

Ensure a connected and inclusive community with access to a range of services and facilities that contribute to health and wellbeing.

RECOMMENDATION

1. In accordance with Section 47A of the Local Government Act 1993, Council notify and exhibit for 28 days a proposal to grant a licence to the Hills Basketball Association Inc. to operate the Bernie Mullane Sporting Complex for up to 5 years including stage 1 works.
2. If no negative submissions are received, the General Manager be authorised to enter into a licence agreement with Hills Basketball Association Inc. for a maximum term of 5 years as detailed in this report.
3. When the detailed designs and approvals for Stage 2 works are finalised and the Masterplan/Plan of Management is updated, a further report will be brought to Council to consider and exhibit the Stage 2 licence for the longer term up to a maximum of 20 years in total.
4. If Stage 2 does not proceed, a report will be brought to Council to consider ongoing management options as outlined in the report of 22 September 2020 (Attachment 1 ECM Document No. 19188031).

ATTACHMENTS

1. Council Report 22 September 2020 – Bernie Mullane Sports Complex – Management Expression of Interest (6 pages)
2. Adopted Bernie Mullane Sports Complex Masterplan (1 page)
3. Specifications Bernie Mullane Leisure Tender EOI 20-02 (6 pages)
4. Confidential Memo EIO 20-20 submissions and comments Bernie Mullane (***distributed under separate cover***)

[Attachment 1 - Council Report 22 September 2020 – Bernie Mullane Spor...](#)

[Attachment 2 - Adopted Bernie Mullane Sports Complex Masterplan.pdf](#)

[Attachment 3 - Specifications Bernie Mullane Leisure Tender EOI 20-02....](#)