



## 1) Introduction

The following information is presented to outline the Town's position from a risk management, contractual and operational perspective. In response to recommendation 2 (a) from the Audit and Finance Committee's meeting 22 April 2015. This being that the YMCA provide:

***'A risk management plan for the expected under performance on the 2014/2015 budget'***.

At the time of adopting the tender for the operation of the Town's three leisure facilities, there was a commitment by both parties to a detailed operational deficit and management fee for each of the four years of the contract. At the Council meeting of March 2012, the following operational deficits were adopted for the Town's three leisure facilities:

Facility	2012/2013	2013/2014	2014/2015	2015/2016
Wanangkura Stadium- Operational Cost	\$747,846	\$583,423	\$537,152	\$562,294
Wanangkura Stadium- Management Fee	\$95,260	\$149,936	\$176,083	\$182,303
<b>Sub Total</b>	<b>\$843,106</b>	<b>\$733,359</b>	<b>\$713,235</b>	<b>\$744,597</b>
Gratwick Aquatic Centre- Operational Cost	\$685,875	\$705,166	\$729,131	\$760,561
Gratwick Aquatic Centre- Management Fee	\$60,612	\$65,048	\$69,875	\$75,712
<b>Sub Total</b>	<b>\$746,487</b>	<b>\$770,214</b>	<b>\$799,006</b>	<b>\$836,273</b>
South Hedland Aquatic Centre- Operational Cost	\$554,121	\$572,659	\$593,875	\$620,207



South Hedland Aquatic Centre- Management Fee	\$60,905	\$65,122	\$68,524	\$72,637
<b>Sub Total</b>	<b>\$615,026</b>	<b>\$637,781</b>	<b>\$662,399</b>	<b>\$692,844</b>
<b>Total</b>	<b>\$2,204,619</b>	<b>\$2,141,354</b>	<b>\$2,174,640</b>	<b>\$2,273,714</b>

At the June 2014, Council meeting, the Council endorsed the 2014/2015 operational budget deficit of \$2,174,640 (inclusive of management fees) for the three leisure facilities.

Within the contract; 'Sections 6 to 9' outline the obligations of the YMCA with regard to the operational budgets for each facility. Note: **attachment 1** provides in full the relevant sections of the contract. It should be noted that the following statements are considered relevant:

- 6.2 Outlines the Town's obligation to make equal monthly payments as per the agreement
- 6.4 Provides a clear position for the sharing of any surplus's in the event of that occurring
- 8.1 Clarifies the need to seek the Town's permission to alter or vary the operating budgets
- 9.2 Outlines the circumstances under which the contractor may be able to vary the budget amounts.

The current position as presented by the YMCA in the March report shows that the operational deficit is \$1,734,836 which is \$308,401 below the forecast. There is an expectation that this figure will become significantly greater by the end of the financial year.

## 2) Contractual Risk Analysis

Based on a detailed understanding of the contract, knowledge about the operation of leisure facilities and from discussions with the YMCA it is anticipated that a proportion of the \$308,401 are the responsibility of the YMCA. It is predicted that there is likely to be an approach from the contractor to significantly reduce their level of responsibility. They are likely to approach the Town with regard to:



- The staffing costs attributed to Gratwick Aquatic Centre for the period July to September (for the operation of the gym July to September during a period of pool closure)
- The revenue shortfall of the Wave Rider at the South Hedland Aquatic Centre.
- The implications of a \$1.00 entry fee to the aquatic centres for children
- The economic down turn in Port Hedland that has seen a drop in membership income.
- Modified hours of operation (South Hedland and Gratwick Aquatic Centre's changing their roles as the seasonal and year round operations)
- Forced precautionary closures of Gratwick and South Hedland Aquatic Centres as prescribed by the Health Department of Western Australia.

### **Staffing of Gratwick Gym**

The matter of the staffing costs at Gratwick Aquatic Centre is expected to be in the vicinity of \$36,000 and could be considered justified. The provision of staff to maintain the operation of the Gratwick Gym was in response to a request made by the Town. In order for the cost to be fully understood the YMCA need to provide detailed documentation outlining in full how this cost has been calculated, including any assumptions made.

### **Revenue shortfall Waverider**

With regard to any loss of income from the Wave Rider it is anticipated that the amount sought will be approximately \$80,000. The YMCA have foreshadowed their belief that the Town should meet in full the shortfall between budgeted and actual income.

From an officers perspective the reduced income is acknowledged in-part, there is however, a belief that there is a level of shared responsibility with regard to the failure of this piece of infrastructure, questions exist with regard to:

- The desire of the YMCA to operate the Wave Rider (non-operation currently reflects a potential cost saving strategy)
- The capacity of the YMCA to provide a suitably skilled workforce to both operate and maintain a major item of infrastructure.

If the Wave Rider were under the control of an operator with greater technical capability, a greater level of desire/motivation and better management processes there would be less downtime. There is also a desperate need to question the scale of the operational failure from a contract management perspective. Swimplex the fabricator of the Waverider has indicated that the attraction has been operational for a large part of the year. They commenced a regular



service regime in July 2014 and believe that the operation has only been interrupted during April and May 2015.

The YMCA have continually resisted communicating with the Town when the Wave Rider was not operational. Good practice from a contractor's perspective would be that any periods of malfunction would be documented and reported to the asset owner. The Town's records will show that (despite numerous requests) that no formal communication as to operational failure of the Waverider. From the Town's perspective it is known that the YMCA have a routine quarterly service agreement in place. To the best of our knowledge the attraction has been operating and has been available for the public to access during the current financial year.

Any request for a budget variation regarding the Wave Rider, will be extremely hard to quantify.

#### **Impact of one dollar child entry fee**

The impact of the Councils decision to set a \$1.00 fee for child entry is significant. This is position that was imposed on the YMCA and is therefore outside of their control. The cost implication to the Town to meet the difference between a \$1.00 entry and a more standard fee is \$92,082 (based on projected attendance figures in the current year and a \$4.00 entry fee as per the Karratha Leisureplex). The YMCA's position on this matter requires consideration. The two key issues that are fundamental to any decision on this matter are:

- The budget for the current financial year was based on the \$1.00 entry fee. The YMCA therefore entered into the current financial year with full knowledge of the operating parameters
- The Councils decision to introduce a \$1.00 pool entry was not part of the tender parameters that the YMCA responded to. There has therefore been a need for them to adapt their business plan accordingly.

The Council would have little room to negotiate with regard to this variation, the justification by the YMCA could be refused outright on the basis that the budget was framed based on the fees and charges being known. Alternatively if the variation were to be supported, the full amount would be the only outcome.

#### **Downturn in economic conditions**

The downturn in the economic conditions could be considered a business or contractual risk. Contractually the Town is obligated to consider economic conditions as a justification for an



operational variation. Point 9.2 (h) in the contract suggests that actions or events which could materially alter the capacity of the contractor to operate within the parameters of the operating budget, may justify a budget variation.

Any variation payment to the YMCA based on changes to the economic environment would need to be based upon some very specific criteria. The size and scale of the impact on the operating budget is something that would require clear determination.

### **Change to operating seasons**

The YMCA are suggesting that the changes of seasonal operations between Gratwick and South Hedland Aquatic Centres have been disadvantageous. The change to our pool facilities to include a significantly upgraded and heated South Hedland Aquatic Centre is considered operationally disadvantageous by the YMCA. The operation of the facilities was well known at the time of framing the current budget.

The position of the YMCA would be that they are required to staff one facility for longer hours all year round. The upgrade to the South Hedland Aquatic Centre facilities was something that all potential contractors were fully cognisant of at the time of the tender being considered, the exact form of the pool heating was not known. In suggesting that the enhancement of the South Hedland Aquatic Centre Pool facilities is a significant disadvantage the YMCA are choosing to overlook the opportunities that exist with operating a facility that is heated all year round.

Any acquiesce to this request would require the YMCA to make a very detailed case outlining the manner in which costs may be estimated and also apportioned. The implications of this request will be hard to appraise.

### **Health Department of Western Australia precautionary closures**

Based on the advice of the Health Department of Western Australia both Gratwick and South Hedland Aquatic Centres were required to close because of the suggestion of Cryptosporidium in water bodies in Port Hedland. Both South Hedland and Gratwick Aquatic Centres were required to close for periods of super chlorination. The closure periods were for up to 48 hours and required 24 hour attention by YMCA staff members

This would appear to be a fairly straight forward matter to assess and could be supported or rejected based on the case provided by the YMCA. No correspondence has been provided by the YMCA regarding this matter.



### Cost Implications

These situations reflect the areas that the YMCA may present as contract variations. It is therefore likely that the Council may need to consider an approach from the YMCA for a sum that is likely to be the full value of the deficit. This figure has been suggested as being in excess of \$300,000.

The full details of the YMCA's approach have not been disclosed, however, it will be essential that in providing the request the onus will be on the contractor to make a definitive case. The following scenarios are anticipated at the current time:

- The staffing costs Gratwick Aquatic Centre \$36,000 approx.
- Revenue shortfall of the Wave Rider TBA – Anticipated the YMCA to determine full extent of income shortfall
- Implications of \$1.00 child entry fee \$92,282
- Economic down turn in Port Hedland TBA
- Modified hours of operation TBA
- Health Department Western Australia closure Gatwick and South Hedland Aquatic Centre's. TBA

### **3) Perceived Social Obligation Risk to be Considered**

From the Town's perspective there are a number of non-financial risks that should be highlighted and considered with respect to the ongoing commitment to the contract with the current contractor.

**Salary Levels**-Current levels of over expenditure at each of the facilities needs to be cognisant of savings in salary and wages costs. Examination of the March profit and loss statements show that the YMCA's current position is enhanced the savings that have been made to labour costs.



A number of these savings are to key positions and therefore any reduced costs are considered unsustainable.

The current budget was approved based on an agreed staffing structure. In the event that the YMCA were to return to the required staffing levels in the near future, the staffing costs will increase and have an adverse effect on the overall financial position.

**Maintenance Costs-** Across all three facilities there is a saving of \$40,429 (February 2014). The budget for maintenance is constructed on a costed maintenance schedule provided by the YMCA as part of their business plan. Savings of this level would suggest that critical preventative repairs to the Town's asset may not being undertaken.

A contract management strategy has been to audit the level of maintenance completed, attachment 2 is an example of correspondence forwarded to the YMCA on 24 February 2014 (attachment 2).

**Key Performance Indicators-**The YMCA are not performing against a number of key performance indicators. The current budget predicaments and reduced numbers in key staffing areas would suggest that any significant change in in this area are unlikely.

The key performance indicators that remain unlikely to be met under the current circumstances include:

**Wanangkura Stadium-**

Junior Sporting Competitions	3 Junior sporting competitions per week.  (8 Teams in each competition and a minimum of one female completion.)
Senior Sporting Competitions	10 Senior sporting competitions per week
Junior (Non sporting programs)	9 Non sporting/lifestyle/personal development programs per annum
School Holiday Programs	School Holiday programs to be conducted in Port Hedland during the 2013 January and April School Holidays.



	(Programs are to cater for 40 participants per week.)
Programs for specific demographic (seniors or people with disabilities) – not including adult lifestyle/personal development programs listed below.	2 programs per annum
Adult Lifestyle/Personal Development Programs	16 per annum

**South Hedland Aquatic Centre-**

Programs and Events	2 events per annum
Casual Aqua-Run	4 hours per week
After School Programs	2 per annum

**Gratwick Aquatic Centre-**

After School Programs	2 per annum
Aquatic Training/Education (Austswim, Bronze Medallion etc)	3 courses per annum
Programs and Events	2 events per annum

**Training Expenses-** The current financial position shows that the YMCA are underspent by \$22,787 on their training expenditure. The approved budget is considered appropriate given that there is a need to continually recruit, train and refresh a large casual workforce. Gym instructors, swimming teachers and sporting coaches are obligated to keep current all accreditations. The casual nature of the workforce means that there is always a need to recruit and train new staff.

The Town’s support for the training budget has been justified on the need to continually provide programs through the capacity to have a succession plan in place for instructors. Savings through underspending in the area of training may have severe ramifications in that there could potentially be a void in the staff available to deliver programs. **Area Manager Role-**



The YMCA have recently made some personnel changes to the role of Area Manager – Port Hedland. The position currently being advertised has a significantly lesser salary package attributed to it. The reduction to the package being offered to this role has the potential to diminish the profile of the position and attract candidates of a lesser calibre to the role.

While it is acknowledged that the restructure of the organisation will provide a General Manager role in the region, there is some concern at the level of overall service by the YMCA. If changes being implemented by the YMCA are a focused effort to reduce the overall salary costs, this will be to the detriment of the overall community.

#### **4) Summary**

The current situation in summary is that the YMCA are tracking poorly as far as financial performance goes. The agreed operating deficit for the facility is \$1,734,836 the current situation suggests that the YMCA are on track for a result that is \$308,401 in excess of this figure. From the Town's perspective there are two levels of risk, these being:

- The potential for the YMCA to claim variations to the current budget based on extraordinary occurrences that have eventuated outside of their control
- A reduced level of service or inferior community outcomes that arise as product of the YMCA's current situation.

The contract situation is clear, any expenditure over the operational deficit is the responsibility of the contractor, unless there is prior discussion or there are factors outside of the contractor's control (as specified in 'Section 9' of the contract). There are some points that could be justified as topics to be negotiated between the YMCA and the Town.

It is clear from the financial reports provided up until March 2015, that the YMCA are taking actions to reduce the extent of their financial liability. By making savings in some key areas such as staffing, maintenance and training there is a suggesting that there are efforts being made to reduce the impact of the operational performance. The risks to the Town in this area are two-fold, firstly the community will have a perception that the Town is not meeting their needs and secondly by not investing in the services and facilities now there will be ramifications as all of the facilities get older.

The purpose of this risk review document is to identify these matters so that any possible intervention can occur in the current financial year.



**Attachments**

1. Extract from YMCA contract (see below)
2. Correspondence to YMCA-Audit of maintenance schedule

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## Attachment 1-Contractual Obligations

### 6. CONTRACT PAYMENTS

#### 6.1 Management Fee

If the Contractor complies with its obligations under this Contract and subject to compliance with **clause 6.5**, the Town covenants and agrees to pay to the Contractor the Management Fee in monthly instalments over the Contract Term.

#### 6.2 Payments by the Town for Budgeted Deficits

- (1) The Town must make the payment or payments specified in the approved Operating Budgets as the Budgeted Deficit for a Facility by equal monthly payments, provided that the Town is not required to make any payment to the Contractor in respect of any of the Services which are not performed or are not performed in accordance with this Contract.
- (2) If requested by the Town or its representative, the Contractor must certify in a manner required by the Town or its representative, which may include a statutory declaration that it has:
  - (a) paid all wages and allowances owing to any of its employees;
  - (b) paid all amounts due to any party to which it has sub-contracted any of its rights and obligations under this Contract; and
  - (c) made any payments that it is required to make in respect of the Contractor's Plant.

#### 6.3 Payments by the Contractor to the Town for Budgeted Surpluses

The Contractor must make the payment or payments specified in the approved Operating Budgets as the Budgeted Surplus for a Facility, at the end of financial year.



#### **6.4 Sharing of Operational Surplus**

- (1) If the Contractor, through its management and operation of the Facilities, generates an actual better net profit/loss position for the Town at 30 June during any year of the Contract Term, to the amount forecast in the approved Operating Budgets as the Budget Deficit (or Budget Surplus, if applicable), the Operational Surplus will be split equally between the Town and the Contractor.
- (2) The Contractor must submit a profit/loss statement for each Facility by 31 July each year for examination by the Town or its representative.
- (3) When determining the Operational Surplus, the following costs incurred by the Contractor must not be included in the operational costs for the purpose of this calculation:
  - (a) losses incurred by failing to insure its assets or cash collected at the Facilities;
  - (b) costs to make and remove alterations and additions made at the Facilities without the Town or its representative's prior written approval;
  - (c) costs to rectify services and the damage caused when the relevant service authority approval was not obtained;
  - (d) costs and losses incurred in the misappropriation or theft of the Facilities income;
  - (e) costs of repairing damage caused by non-conformance with manufacturers and suppliers, warranties and direction; and
  - (f) losses incurred due to operational interruption caused as a result of Contractor error or failure to comply with contract requirements including the requirement to service and maintain plant.
- (4) Within 60 days of both parties agreeing on the value of the Operational Surplus payment for each Facility, the Contractor must pay any amount owing to the Town.



## 6.5 Tax Invoices

- (1) Where monthly payments are due to be paid to the Contractor, the Contractor must provide a tax invoice to the Town by the 13th day of the month for Services provided during the previous calendar month.
- (2) The Town agrees to pay any validly provided tax invoice, within 30 days of receipt.

## 6.6 Full Payment for Services

The Contractor acknowledges and agrees that payment of the amounts specified in this clause will constitute full payment for the provision of the Services.

## 7. FEES & OTHER OUTGOINGS

- (1) The Contractor must pay all fees, charges and costs incurred in its performance of the Services and the management and operation of the Facilities, except as expressly stated otherwise in this Contract.
- (2) The obligation in paragraph (1) above, includes but is not limited to:
  - (a) the payment of all ongoing fees and charges for gas, water, electricity, telephone and internet charges, and sewerage for the Facilities from the commencement to the expiry or earlier termination of this Contract;
  - (b) labour, materials, equipment and other such costs required to provide the Services;
  - (c) attendance by the Contractor's Representative 25 management meetings per annum (on phone or electronic medium);
  - (d) fit out of the gym and group fitness rooms of the Facilities;
  - (e) all information technology and point of sale hardware and software;
  - (f) maintenance of staff accreditation; and
  - (g) attendance at Marquee Park in the event of breakdowns, and water testing of Marquee Park in accordance with **clause 40.3**.



## **8. OPERATING BUDGETS**

### **8.1 Obligation to comply with approved Operating Budgets**

- (1) The Contractor must implement and comply with the approved Operating Budgets for the Facilities.
- (2) The Contractor must not vary or alter expenditure in the Operating Budgets, unless otherwise approved by the Town in writing.
- (3) The Contractor must communicate with the Town in writing in respect of any major budget variations.
- (4) The parties acknowledge that it is anticipated that any variance between the Operating Budgets and the actual results will be minimal. A variance analysis is required to be provided in respect of any variations within a timely manner.

### **8.2 Review of Operating Budgets**

- (1) The approved Operating Budgets for the first year of the Contract Term will be the Operating Budgets provided by the Contractor as part of the Tender, with any changes to such Operating Budgets agreed by the Town and the Contractor in writing.
- (2) The Operating Budgets will be reviewed annually in March in each year of the Contract Term.
- (3) By 28 February in each year of the Contract Term except for the last year, the Contractor must submit to the Town the proposed Operating Budget for the next financial year for each Facility for the Town's approval. The proposed Operating Budgets must be fully itemised and be in a form generally acceptable to the Town.
- (4) The Town (and where applicable its Council) will review the proposed operating budgets, and advise the Contractor in writing if the proposed Operating Budgets are approved.
- (5) The Town covenants and agrees to act reasonably, and not to unreasonably fail to approve or withhold approval to the proposed Operating Budgets.



- (6) If the Town does not approve the proposed operating budgets it will, within 14 days of advising the Contractor of its decision not to approve the proposed operating budgets (or part thereof), provide to the Contractor written reasons for the decision not to approve the proposed operating budgets, and will provide the Contractor with a reasonable opportunity to submit a further proposed operating budget.

## **9. VARIATIONS TO SERVICES & OPERATING BUDGETS**

### **9.1 Variation to Services**

- (1) During the Contract Term, the Town or its representative may by written notice to the Contractor direct the Contractor to:
  - (a) alter the extent of the Services;
  - (b) alter the character, quality or mode of performance of the Services; or
  - (c) carry out any work of a character similar to the Services.
- (2) The direction of a variation by the Town or its representative under paragraph (1) above will not in any way vitiate or invalidate the Contract.
- (3) The value, if any, of any variation must be added to or subtracted from any payment to the Contractor under **clause 6**. The value of each variation must be determined by the Town or its representative by applying:
  - (a) any relevant rates or prices contained in this Contract or the Tender Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause;
  - (b) reasonable rates or prices, if there are no rates or prices contained in this Contract or the Tender Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause; or
  - (c) if the variation involves a decrease in the Services or the omission of part of the Services, the Town or its representative must make a reasonable allowance for the Contractor's profit and overheads in the Operating Budgets.



## 9.2 Variation for reasons beyond the Contractor's reasonable contract

- (1) Subject to paragraph (2) below, the Town and the Contractor agree that the approved Operating Budgets may be varied by the Town in an amount or amounts determined by the Town, acting reasonably and in consultation with the Contractor, for a reason or reasons beyond the reasonable control of the Contractor, including but not limited to:
  - (a) acts of God, including fire, bushfire, lightning, storm, tidal wave, cyclone, hurricane, earthquake, landslide, mudslide, washouts and flood;
  - (b) epidemics, public health scares or outbreaks of disease;
  - (c) war, revolution or other state of armed hostility of a like nature;
  - (d) insurrection, civil disturbances or riot (except where arising within the custodial areas);
  - (e) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash or nuclear contamination;
  - (f) unavailability or lack of reasonable availability in the State of labour;
  - (g) a strike, lockout, or other industrial disturbance or restraint of labour which also involved employees; and
  - (h) an action or event which occurs which could not at the time of preparing the Operating Budgets for the year, could not have been reasonably been expected to occur and which has or could materially alter the capacity of the Contractor to operate within the parameters of the approved Operating Budgets.
- (2) Prior to varying the approved Operating Budgets in accordance with paragraph (1), the Contractor must provide to the Town reasonable evidence within a reasonable period of time, as to the need for the amendment to the approved Operating Budgets and the steps taken by the Contractor to minimise the impact upon the approved Operating Budgets.



Version	Author	Date
2	Graeme Hall	3 May 2015

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