

Bungarribee Park Sydney Zoo Agreement for Lease

Contract Information

This document sets out the information required to be disclosed under Part 3 Division 5 of the Government Information (Public Access) Act 2009 (GIPA Act).

1. **Defined terms used in this document**

The following meanings are used in this document:

Agreement for Lease means the Agreement for Lease dated 5 December 2014 between the Authority and the Developer. (Annexure A)

Authority means the Western Sydney Parklands Trust.

Developer means Sydney Zoo Pty Limited.

Site means the site of the zoo at the Western Sydney Parklands, being Part Lot 101 in Deposited Plan 1195067.

Variation means the variation to the Agreement for Lease dated 24 February 2015 between the Authority and the Developer. (Annexure B)

2. **Effective date and class of contract**

2.1 The Agreement for Lease became effective on 1 July 2015.

2.2 The Agreement for Lease is classified as a class 3 contract under the GIPA Act. This also means that it has met the relevant thresholds to be classified as a class 1 contract (because it has a value of \$150,000 or more) and class 2 contract (because the proposed contract (whether or not made publicly available) has been the subject of a tendering process and the terms and conditions of the contract have been substantially negotiated with the successful tenderer).

2.3 Section 27 of the GIPA Act requires that information about a class 1 contract be published within 45 working days after the contract becomes effective. Due to a requirement to maintain confidentiality prior to a joint public project launch on 7 September 2015, the timing of publishing was deferred.

3. **Class 1 contract information**

(a) *The name and business address of the contractor*

Sydney Zoo Pty Limited ACN 168 970 090 of C/- Sturt Capital, Level 5, 1 Alfred Street, Sydney NSW 2000.

(b) *Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract*

Not applicable.

- (c) *The date on which the contract became effective and the duration of the contract*

The Agreement for Lease became effective on 1 July 2015. The Agreement for Lease term will continue until the development is completed or the Agreement for Lease is terminated.

- (d) *Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract*

The Agreement for Lease grants the Developer rights (and obligations) to undertake the design, funding, construction, management, maintenance and marketing of land, buildings (including theme park rides) and infrastructure at the Site.

A lease of the Site will be granted to the Developer following practical completion of the development for a term of 40 years, plus a further term of 10 years subject to the Developer expending, prior to the 35th year, a capital expenditure of not less than \$20m on new exhibits and facilities and other works prescribed in the Lease.

- (e) *The estimated amount payable to the contractor under the contract*

Amounts are generally not payable to the Developer under the Agreement for Lease; however the Authority has obligations to pay for the cost of providing road access and services to the Site boundary. The Authority is to reimburse the Developer, for the cost of the final road surface.

Under the Lease, the Developer is to pay an Annual Rent to the Authority for the term of the Lease.

- (f) *A description of any provisions under which the amount payable to the contractor may be varied*

As described in paragraph (e) above, amounts are generally not payable to the Developer. The cost of the final road surface may vary.

- (g) *A description of any provisions with respect to the renegotiation of the contract*

On 24 February 2015 the Agreement for Lease was varied as follows:

- An extension was granted to the deadline for obtaining funding commitment.
- An increase in the initial Rent.
- An extension to the Works Program Dates.

In accordance with Section 33(2) of the GIPA Act a copy of the variation to the Agreement to Lease is included as Annexure B.

- (h) *In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed*

The Authority undertook a public tender process by issuing an Expression of Interest followed by a Request for Proposals.

The Developer was short-listed as a result of that process and subsequently became the Successful Proponent upon entering into the Agreement for Lease.

The assessment criteria were proposed facility, initial concept plans, experience, financial capacity and financial offer, with equal weighting given to each criteria.

- (i) *A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services*

Not applicable.

4. **Class 2 contract information**

- (a) *Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer*

Economic ownership of the Lessee's fixtures and fittings at the Site could transfer to the Authority following either the earlier of termination or expiry of the lease granted to the Developer, if the Authority does not require the Lessee to remove the Lessee's fixtures and fittings.

- (b) *Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer*

As described above, following the completion of the development at the Site, a lease will be granted by the Authority to the Developer. The date for the grant of the lease is dependent on achievement of practical completion of the development.

- (c) *The results of any cost-benefit analysis of the contract conducted by the agency*

A detailed evaluation of the commercial aspects of the financial offer was undertaken during the tender processes described in paragraph 3(h) above.

- (d) *The components and quantum of the public sector comparator if used*

The Authority compared the rental offer for the Site to the commercial market rents received by the Authority on other comparable projects and sites as part of the tender assessment process referred to in paragraph 3(h) above.

The Authority determined that a tender by way of Expression of Interest and Request for Proposals will deliver superior value for money over other delivery models.

- (e) *Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges)*

Commercial-in confidence information which is not required to be included in accordance with Section 32 of the GIPA Act.

- (f) *Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved*

The Agreement for Lease allocates substantial risk during the construction and operational phases of the project to the Developer. The Developer has obligations to procure approvals, and then proceed with the construction, and once the project is complete, accept the allocation to it of a range of operational risks.

- (g) *Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into*

The Developer is required to provide an upfront development payment and funding commitments and construction bank guarantee by way of security for its compliance with its obligations under the Agreement for Lease. The construction bank guarantee is to be provided before commencing works.

The Developer is required to provide a bank guarantee to secure its compliance with its obligations under the Lease. The bank guarantee is to be provided on practical completion of the works.

- (h) *Particulars of any other key elements of the contract*

Refer to the published copy of the Agreement for Lease and Variation.

5. **Class 3 contract information**

5.1 The Authority has published a copy of the Agreement for Lease and Variation in its government contracts register, but has redacted the parts of the Agreement for Lease and Variation which are not required to be included in the copy under section 32.

5.2 Section 32 does not require the inclusion of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) details of any unsuccessful tender;
- (c) any matter that could reasonably be expected to affect public safety or security; or
- (d) a copy of a contract, a provision of a contract or any other information in relation to a contract that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record.

5.3 The commercial-in-confidence provisions of a contract are:

- (a) the contractor's financing arrangements;
- (b) the contractor's cost structure or profit margins;
- (c) the contractor's full base case financial model;
- (d) any intellectual property in which the contractor has an interest; or
- (e) any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future (see clause 1, Schedule 4).

5.4 The table attached as Annexure C references those provisions of the Agreement for Lease and the Variation which have not been included in the Authority's government contracts register, as section 32 applies to them. The provisions of the Agreement for Lease within Schedule 9 which have not been disclosed will be included in the Authority's government contracts register, on lodgement of the Lease for registration.