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## LINDFIELD VILLAGE HUB TENDER UPDATE

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### EXECUTIVE SUMMARY

**PURPOSE OF REPORT:**

This report provides an update on the Lindfield Village Hub tender and seeks Council endorsement on the next steps in the procurement of the project

**BACKGROUND:**

Council resolved to call for Expressions of Interest from the market for the Lindfield Village Hub project at OMC June 2018. An EOI was released in October 2018, and shortlisted tenderers endorsed at OMC February 2019

Council considered a draft Planning Proposal at OMC July 2019 and endorsed submission of the Planning Proposal at OMC August 2019

The Request for Tender (RFT) was endorsed at OMC November 2019 and released to shortlisted tenderers in December 2019. Tenders closed in April 2020. Tender Evaluation was conducted during April / May 2020

**COMMENTS:**

The RFT was the second step of a two stage select tender process to engage a developer for the Lindfield Village Hub Project.

Tender Evaluation Committee has evaluated the submitted tenders and determined that all Tenders received were Non-Conforming Tenders.

**RECOMMENDATION:**

That:

Pursuant to section 178 (1) (b) of the *Local Government (General) Regulation 2005* (NSW), Council decline to accept any tenders received

Delegate authority to the General Manager to enter into negotiations with any possible providers (including Fabcot and Aqualand) over no more than a three month period and report the outcomes of those negotiations to Council by no later than October 2020

## PURPOSE OF REPORT

This report provides an update on the Lindfield Village Hub tender and seeks Council endorsement on the next steps in the procurement of the project

## BACKGROUND

### Tender Evaluation Plan

A Tender Evaluation Plan (TEP) was prepared in accordance with Ku-ring-gai Council's (Council) policies and reviewed by the external Probity Advisor. The TEP was endorsed by the Major Projects Steering Committee (MPSC). The TEP included an Evaluation methodology, criteria and weightings. The evaluation criteria and weightings were made known to the tenderers via the RFT.

### Tender Evaluation Committee

The Tender Evaluation Committee (TEC) was established in accordance with the TEP and comprised five voting members whose knowledge and experience included:

- Project Delivery / Development Management / Project Management
- Building Design and Construction
- Library and Community Services Operations
- Precinct Operations
- Council Finances
- Local Government Procurement

### The Tender Process

Council resolved at 26 June 2018 OMC, to pursue an EOI from the market as the first stage of a two stage selective tender process. The EOI ran from late 2018 and a shortlist of five tenderers was endorsed at OMC 26 February 2019.

The RFT was endorsed by Council for release to shortlisted tenderers at OMC 19 November 2019 following a Tender Readiness assessment undertaken by an independent Project Management advisor.

Prior to the tender commencing all tenderers were asked to reconfirm in writing their bona fide intentions to tender, which they all did. The RFT commenced on 4 December 2019 to the following five shortlisted Tenderers:

- Aqualand Developments Pty Ltd (Aqualand)
- Fabcot Limited (Woolworths Ltd) (Fabcot)
- Frasers Property Australia
- Mirvac Residential (NSW) Developments Pty Ltd
- Planum Billbergia consortium

A non-compulsory briefing session and 3 sets of workshops were offered to the Tenderers during the tender period. These sessions were overseen by the independent Probity Advisor and were offered to the Tenderers as a forum for clarification.

During the tender, Tenderers could ask questions and receive written answers.

#### Tender Submissions Received

The Tender closed on 3 April 2020 (seventeen-week RFT period). Tenders were submitted electronically via Tenderlink.

As at the date and time of the close of Tender, two tenders had been submitted as follows:

- Aqualand Developments Pty Ltd
- Fabcot Limited (Woolworths Ltd)

#### Tender Evaluation

Tender Evaluation was conducted during April and May 2020. The TEC met 5 times.

To assist the TEC with its deliberations consultant reports were prepared covering the following areas of the tender:

- Legal
- Commercial
- Planning
- Architecture
- Library + Community Centre Design
- Landscape Design
- Cost Planning

The TEC produced a Tender Evaluation Report containing its findings (Confidential Attachment A1). This report was presented to and endorsed by the Major Projects Steering Committee on 10 June. Below is a summary of the TEC deliberations of the submitted tenders:

#### Aqualand Tender Submission

- The Aqualand submission was materially incomplete due to the submission not having completely uploaded to Tenderlink by the closing time. Due to the tendering regulations the tender had to be deemed non-conforming, and could not be further considered by the TEC.

#### Fabcot Tender Submission

- The TEC determined that the Fabcot tender submission appeared to be complete and should be evaluated
- Following an initial review it was resolved by the TEC to identify initial key points of clarification in the Fabcot tender so that it could proceed to further detailed evaluation
- Fabcot's response to the initial clarification request was then considered by the TEC

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- The RFT states that for a tender to be a Complying Tender, it must be on terms which were consistent with the RFT, and could not be conditional
- The TEC determined that the Fabcot tender contained material variations from the RFT, and was conditional, and could therefore only find that the Fabcot tender did not meet the requirements of a Complying Tender
- It was then open to the TEC to consider if the Fabcot tender was an Alternative Proposal, being a proposal that did not represent a substantial departure from (among other things) the legal and commercial structure contemplated by the RFT
- The TEC found that the Fabcot tender did represent a substantial departure from the legal and commercial structure contemplated by the RFT, and could therefore only find that the Fabcot tender did not meet the requirements of an Alternative Proposal
- Because the TEC had determined that the Fabcot tender was to be neither a Conforming Tender nor an Alternative Proposal, it was found to be a Non-Conforming Tender

Shortlisted Tenderers that did not submit:

From the initial five shortlisted tenderers, three did not submit, being Frasers Property Australia, Mirvac and Planum/Billbergia.

TEC Conclusions

The TEC resolved to:

- determine that both Aqualand's tender submission and Fabcot's tender submission are not Alternative Proposals;
- determine (in accordance with section 5(j) of the Tender Evaluation Plan and section 6.2 of the RFT Legal and Commercial Framework) that both Aqualand's tender submission and Fabcot's Tender are Non-Conforming Tenders;
- determine that Aqualand's tender submission and Fabcot's tender submission will be excluded from further evaluation or assessment; and
- prepare a Tender Evaluation Report in accordance with section 5.3 of the TEP, stating that:
  - no Tender received was a Conforming Tender;
  - no Tender received constituted an Alternative Proposal;
  - all Tenders received were Non-Conforming Tenders

**COMMENTS**

Under the Local Government Act, a Council may only seek clarifications or resolve anomalies during a tender period. Negotiation is not permissible during the tender.

The tenders submitted were materially at variance from the RFT. The matters which need to be addressed are potentially resolvable, but cannot be dealt with under the tender rules of the Local Government Act. The Act recognises this through the operation of section 178 (1) (b) of the Local Government (General) Regulation 2005 (NSW), which permits Council's to decline to accept any tenders received in response to a tender, and either invite fresh tenders or resolve to negotiate.

To be permitted to negotiate, pursuant to Local Government (General) Regulation 2005 (NSW), Council must have:

- set out its reasons to decline to invite fresh tenders or applications - section 178 (4) (a)
- set out its reasons for determining to enter into negotiations... - section 178 (4) (b)

The recommendation of this report addresses the specific Local Government (General) Regulation 2005 (NSW) process which must be addressed to move to the next stage of the LVH procurement, which is to finalise the tender through negotiation.

## INTEGRATED PLANNING AND REPORTING

Places, Spaces and Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P4.1: Our centres offer a broad range of shops and services and contain lively urban village spaces and places where people can live, work, shop, meet and spend leisure time.	P4.1.3: Secure a development partner for Lindfield Village Hub.	P4.1.3.1: Progress and award tender for the Lindfield Village Hub.

## GOVERNANCE MATTERS

### Tender Process

The LVH Tender was conducted under the Local Government Act 1993, Local Government (General) Regulation 2005 (Part 7) and the Tendering Guidelines for Local Government

A Tender Evaluation Plan (TEP) was prepared by the Major Projects Unit with input from the probity advisor. Before the tender commenced the TEP was endorsed by:

- The independent probity advisor
- The Tender Evaluation Committee (TEC)
- The Major Projects Steering Committee (MPSC)

### Probity

An appropriately experienced independent probity advisor was engaged to provide advice to Council throughout the procurement process.

The objective of their role was to assist Council to identify, assess and manage probity risks arising during the procurement process such that compliance with the policy and legislative framework applicable to local government procurement is achieved in all material respects. In this capacity the probity adviser impartially also represents the interests of the tenderers in due and proper process during the EOI and selective tender stages of the tender.

The Probity Report is provided at Confidential Attachment A2, where the probity advisor concludes that it:

*“... is not aware of any material probity risks which have not been identified, assessed and appropriate mitigation strategies adopted by Council to ensure ongoing compliance with*

*the policy and legislative framework applicable to local government procurement, being the Tendering Guidelines for Local Government, Section 55 of the Local Government Act 1993 and Part 7 of the Local Government (General) Regulation 2005."*

## **RISK MANAGEMENT**

A risk assessment has been undertaken as part of the due diligence work. Regular updates and reports are provided to the Audit, Risk and Improvement Committee (ARIC).

## **FINANCIAL CONSIDERATIONS**

An analysis on the financial aspects of the Fabcot tender is provided at Confidential Attachment A3.

## **SOCIAL CONSIDERATIONS**

The social and economic considerations arising from this report relate mainly to ensuring that Council is able to realise new and sustainable community services, assets and places through a well-considered asset and service delivery strategy.

## **ENVIRONMENTAL CONSIDERATIONS**

There are no direct environmental considerations arising from this report.

## **COMMUNITY CONSULTATION**

Following the 26 February 2019 Ordinary Meeting of Council the community were informed of the Developers shortlisted for the Tender.

From August 2018 to May 2019 Council involved the community in a broad discussion to extend understanding about the Lindfield Village Hub mixed use development, as a Council-led development providing new community facilities and enhanced social outcomes for the Kuring-gai and Lindfield communities and the key findings and outcomes were presented to Council at a briefing on 21 May 2019.

Since then, the Community are being kept updated on the project's progress through Council e-news, and project website updates.

Given that tenders have been invited by select process, the tender documentation comprises commercial information of a confidential nature which could not appropriately be the subject of community consultation on legal, commercial and probity grounds. Likewise, the tender submissions that have been received are commercial in confidence.

## **INTERNAL CONSULTATION**

The Major Projects Steering Committee (MPSC) has been the key internal governance body for project. The Major Projects Unit (MPU) has provided regular reports to the MPSC which has considered and resolved upon various matters pertaining to the management of the LVH project.

Regular liaison has occurred between the MPU and Council's communications team. The input and advice of the Director Community Services was sought in regard to the Community Assets. The Corporate services team has been consulted in relation to project budgeting through the annual Project Bids and quarterly QBR process, and in regard to the feasibility modelling of the project.



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Council's internal Corporate Lawyer has been consulted and provided advice as required. MPU have worked with the corporate planning team to feed in to the IP&R updates.

Updates have been provided to Councillors via the annual February Councillor Workshop, at Major Projects Councillor Consultation Forums, Councillor Briefings and through responses to Councillors queries.

Given that tenders have been invited by select process, the tender documentation comprises commercial information of a confidential nature which could not appropriately be the subject of community consultation on legal, commercial and probity grounds. Likewise, the tender submissions that have been received are commercial in confidence.

### SUMMARY

A two stage selective tender was conducted. The evaluation of the second stage of the tender was undertaken by the Tender Evaluation Committee with input from Council's internal teams and external advisors in accordance with the requirements of:

- Tendering Guidelines for Local Government, Section 55 of the Local Government Act 1993
- Part 7 of the Local Government (General) Regulation 2005.
- RFT documents
- Tender Evaluation Plan

The TEC evaluated the submitted tenders and determined that all tenders received were Non-Conforming Tenders.

This report recommends that Council decline to accept any tenders received in response to tender RFT5-2019, and authorise the General Manager to enter into negotiations with a view to entering into a contract in relation to the subject matter of tender.

In the first instance Council will seek to enter into negotiations with Aqualand and Fabcot who submitted tenders. This report recommends that the General Manager report back to Council with the outcomes of those negotiations within a defined timeframe.

### RECOMMENDATION:

That:

- A. Pursuant to section 178 (1) (b) of the *Local Government (General) Regulation 2005* (NSW), to decline to accept any tenders received in response to tender RFT5-2019 advertised on 4 December 2019;
- B. Pursuant to section 178(3)(e) of the *Local Government (General) Regulation 2005* (NSW), enter into negotiations with any possible providers with a view to entering into a contract in relation to the subject matter of tender RFT5-2019 issued to selected tenderers on 4 December 2019;
- C. Pursuant to section 178 (4) (a) of the *Local Government (General) Regulation 2005* (NSW), to decline to invite fresh tenders or applications as referred to in sections 178(3)(b) to (d) inclusive for the following reasons:

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- (a) The tenders received in relation to the Lindfield Village Hub Project demonstrated that, due to the significant complexity of the Project and prevailing social and economic conditions, it is unlikely a further tender or application process conducted under the *Local Government Act 1993*(NSW) will result in conforming tenders capable of acceptance (including from the tenderers who responded to the original request for tender).
  - (b) The range and variation of the non-conformances in the tenders received demonstrated that it would not be reasonably possible to reformulate a tender or application process on terms satisfactory to Council which would be likely to result in conforming tenders capable of acceptance (including from the tenderers who responded to the original request for tender).
- D. Pursuant to section 178(4)(b) of the Local Government (General) Regulation 2005 (NSW), the Council's reasons for determining to enter into negotiations with the persons referred to in (B) above are as follows:
- (a) The selective tendering method conducted by Council has confirmed that there are two or more high quality and motivated parties interested in entering into a contract with Council in relation to the subject matter of the tender.
  - (b) A competitive negotiation process between with one or more high quality and motivated parties is likely to promote a value for money outcome.
  - (c) A negotiation process will provide Council with an appropriately flexible basis for engaging with the market to identify and address matters raised by the market within a framework which is acceptable to Council, and thereby deliver the most advantageous outcome for the Lindfield Village Hub Project and the Community.
- E. The General Manager be delegated authority to conduct the negotiations referred to in (D) above which must be conducted over a period of no more than 3 months, and report the outcomes of those negotiations to Council by no later than October 2020.

Geoff Douglas  
Group Lead - Major Projects

<b>Attachments:</b>	A1 Confidential Attachment A1 - Tender Evaluation Report	<i>Confidential</i>
	A2 Confidential Attachment A2 - Probity Report	<i>Confidential</i>
	A3 Confidential Attachment A3 - Finance Evaluation of Submitted Tenders	<i>Confidential</i>