

**1 Union Road Request For Proposal (RFP)**

**Compiled by:** Kate Speare, Economic Initiatives Manager

**Authorised by:** Kylie Powell, Executive Manager - City Economy & Planning

<b>Outcome</b>	<i>We can work close to home</i>
<b>Strategy</b>	<i>Diversify the region's economy and attract investment, particularly targeting new and emerging employment sectors</i>
<b>Service Activity</b>	<i>Work with partners to create a more sustainable economy for Penrith and the region</i>

**Executive Summary**

The purpose of this report is to allow Council to consider submissions received in response to the Request for Proposals (RFP) for development of Council's Union Road car park site to deliver an additional 1,000 public parking spaces. The site is located at 15-61 Union Road and 101-107 Station Street. The site is approximately 1.94 hectares and is zoned B4 allowing mixed use development. The site is shown edged in heavy red in the map below.



Figure 1: Union Road car park site

A detailed report that included commercial-in-confidence information was submitted to the Council Committee of the Whole on 10 July 2017 to enable Councillors to consider the recommendation of the Evaluation Panel as a result of assessing the submissions received.

This report outlines the evaluation process and recommends that Frasers Property Australia (Frasers) be nominated as the preferred proponent for the purposes of entering into further negotiations based on their 'alternate' proposal.

The Union Road car park site is identified in Council's Parking Strategy as one of three sites for the provision of additional and consolidated public parking. While the provision of public parking is a key driver for this project, the redevelopment of the site provides an opportunity for a mixed use development that delivers public parking while also making a positive contribution to the vision for the City Centre consistent with *Penrith Progress: a call to action*. Development of the site could improve the built form, increasing the 'walkability' of the city, creating new public open spaces and strengthening our local economy.

A two stage process was commenced in November 2015 to seek innovative and creative solutions to provide an additional 1,000 public parking spaces in addition to the existing 631 at-grade public parking spaces on the Union Road site as part of a mixed use development. Stage 1 was an initial Expression of Interest (EOI). In response to the EOI, three proponents came forward with proposals for the site. After assessment of their proposals, two proponents (being St Hilliers and Frasers Property Australia), were short-listed and invited to participate in Stage 2 – Request for Proposal (RFP) on the basis that it was considered that those proponents were able to fulfill the requirements of the Council's brief. This allowed the proponents to submit detailed proposals in response to Council's brief for the site.

In response to the RFP process Council has received two strong, but very different proposals.

#### Frasers Alternate Proposal

- A city transformational development that will set a new standard for urban living and sustainability in Penrith. The proponent is an industry leader in sustainable development and responds to Council's Cooling the City Strategy.
- The proposal includes 6 residential apartment buildings of varying sizes ranging from 17 to 34 storeys that integrates a Council-owned public car park with 1,631 spaces into a podium. The ground level includes a mix of uses to sleeve the podium car park, providing for street level activity and adding to the architectural diversity of the podium. The development proposed includes residential, retail, child care, public plaza and landscaped communal spaces.
- Given the integrated nature of the development, the public parking is forecast to be delivered progressively in development stages from 2020 to 2027, subject to market conditions.
- The public car park has been designed for future adaptive reuse with an increased floor to ceiling height.
- The proposal provides for the public carpark of 1,631 spaces to be delivered at no capital cost to Council. The proposed financial arrangements for the delivery of the Council-owned public parking would create an opportunity for Council to bring forward other parking projects within the city.
- A Planning Proposal will be required to amend planning controls applying to the site to increase the FSR to 6:1 and with potential building heights up to 110m. The community will be engaged during the planning processes, including when a planning proposal is submitted and once a development application is submitted, and as required by the *Environmental Planning and Assessment Act*.

### St Hilliers Conforming Proposal

- The St Hilliers conforming proposal is an evolution of current city centre developments, building upon their strong local knowledge and experience.
- The proposal has good connectivity and sustainability commitments and has focused on the activation of Union Lane.
- The proposal would deliver a free standing 1,631 multi-level public carpark by December 2019 that is owned by Council.
- The carpark would sit on approximately 1/3 of the site, with the remaining land to be used for a mixed use development including residential, retail and commercial uses.
- This proposal does not require a Planning Proposal to amend planning controls.
- The St Hilliers proposal requires Council to fund the capital cost of constructing the public carpark. These costs will be in excess of the land payments to be received by Council as the mixed-use development progresses.

In accordance with the RFP Evaluation Plan, an Evaluation Panel was established to assess the RFP submissions. The Evaluation Panel prepared a detailed report to document their assessment of the proposals and support their recommendation regarding selection of a "Preferred Proponent".

The Evaluation Panel has recommended that Council nominate Frasers as the Preferred Proponent and to commence negotiations with them based on their 'alternate proposal'. A Preferred Proponent status will enable Council to negotiate with Frasers and prepare transaction documents for future approval by Council prior to execution. Importantly, a resolution to commence negotiations does not commit Council to proceed with the development at this time.

At this stage the commercial aspects of the Proponents proposals remain commercial-in-confidence to enable negotiations to be undertaken and for further studies to be undertaken to understand the broader community impacts of the Frasers alternate proposal.

During the negotiation phase it is also intended to commence the engagement with relevant stakeholders including the Department of Planning and Environment, Office of Local Government and Greater Sydney Commission.

To facilitate the proposed development, an amendment to planning controls relating to building height and FSR is required. As part of the normal process of preparing a Planning Proposal, Council will consult with the community and relevant government agencies.

### **Background**

Penrith is the New West, a place of limitless opportunities. As a Regional City with an economic catchment growing to over 1 million people, Penrith is transforming. The commitment of the Federal Government to build the Western Sydney airport at Badgerys Creek will contribute to the accelerated transformation of Penrith, which is the closest city centre to the new airport.

Penrith Council is a significant land owner in the city centre and has a stated commitment to use its assets strategically to deliver community outcomes. Council has been working to establish Penrith as a regional city centre over a number of years and particularly engaging in discussion with the community to prepare the *Penrith Progression: a call to action*.

Council has sought advice from industry experts, creatives and the community to establish a bold vision for the City Centre that is underpinned by a desire to strengthen our local economy and create local jobs. Penrith Progression established a target of providing 10,000 jobs and 10,000 residents within the city centre. A vibrant and attractive city centre provides amenity for a residential population that will sustain local businesses and further attract others to our city centre.

*Penrith Progression* identified a number of opportunity precincts to focus activity that will transform the city centre, stimulating investment and building a vibrant population to support the local economy. Additionally, Council's Community Strategic Plan identifies the long term community aspirations for the City. This includes outcomes related to being able to work close to home, planning for future growth and being able to get around the city. Council's Parking Strategy supports the vision and growth of the city centre by identifying sites for consolidated public parking. The Union Road site is the first of these consolidated parking structures to be delivered and is currently an at-grade public carpark providing 631 car parking spaces on 1.94 Hectares of land that is zoned B4 allowing mixed use development. Development of the site contributes to delivery of the outcomes identified in the Community Strategic Plan and supports the growth of the city centre.

Advice was sought from Council's Property Development Advisory Panel (PDAP), which is made up of leading property industry experts, on how best to approach the Union Road site from a property development perspective. Rather than build a free standing car park in isolation, it was generally considered that Council could potentially achieve a better urban outcome and economic boost for the City Centre if it called for Expressions of Interest to develop the site for mixed-uses in conjunction with the public parking requirement.

This is consistent with the aspirations for the City Centre set out in *Penrith Progression: a call to action* and Council's efforts to promote investment in Penrith. In November 2015, Council subsequently called for Expressions of Interest for development of the site which was to include provision of an additional 1,000 public parking spaces.

As a result of the Expression of Interest process, two proponents were invited to participate in a more detailed Request for Proposal (RFP) process. The purpose of the RFP was to request detailed submissions from proponents to enable Council to potentially select a preferred proponent for the future redevelopment of the Union Road site.

To inform the RFP process and to provide a base line for assessment, Council engaged Cloustons to prepare a Reference Design for the site to identify how the site could be developed in conjunction with a public carpark structure. It considered urban design principles, desired urban form and the future development of the City Centre. Hill PDA was engaged to provide advice regarding the development feasibility of the Reference Design.

Council prepared an RFP document to further articulate its expectations of the development, which was informed by the Reference design and site investigation works including geotechnical and contamination studies. To move forward in the process, proponents were required to submit a "conforming" bid. To be a conforming bid, the proponent had to demonstrate how they would deliver 1,000 additional public parking spaces by December 2019. Proponents were then also able to submit an "alternate" bid, allowing them to offer other development options for the site that would be considered at Council's discretion. The alternate proposals could deliver better outcomes for the Council and community by varying timeframes for delivery, number of car parking spaces, type of car spaces and ultimately, returns to Council.

The following is an overview of the process to date:

- 25 July 2016 - Council resolved to proceed to the RFP stage with two short-listed proponents, Frasers Property Australia and St Hilliers.
- From June 2016 to October 2016 Council prepared the RFP document that was informed by site investigation work, risk assessments, a reference design and market analysis.
- The RFP was released on 28th October 2016.
- An Evaluation Plan was endorsed by O'Connor Marsden and Associates (Council's probity advisor) to guide the evaluation of RFP submissions.
- RFP submissions closed on 15th February 2017.
- An Evaluation Panel was established to review the RFP submissions that included experts with experience in city planning and delivery of major projects involving government. They were supported by a range of technical advisors. The Evaluation Panel completed their report, which was reviewed and supported by the Property Development Advisory Panel on 10 April 2017.
- On 8 May 2017, the New West Steering Group reviewed the Evaluation Report and approved that a recommendation be submitted to Council for consideration.
- A review of public parking in the city centre has also been undertaken to consider potential options to support the provision of 1,000 additional public parking spaces by December 2019.
- A detailed report that included commercial-in-confidence information was submitted to the Council Committee of the Whole on 10 July 2017 to enable Councillors to consider the recommendation of the Evaluation Panel as a result of assessing the submissions received.

### **Evaluation Process**

O'Connor Marsden and Associates (OCM) has provided the probity advice for the Union Road RFP process including the preparation of the RFP document, Evaluation Plan, managing conflicts of interest, RFP proponent interactive workshops and the RFP evaluation process. OCM has been actively engaged throughout the entire RFP process to ensure that probity matters have been carefully considered and addressed.

The Evaluation Criteria and weightings used by the Evaluation Panel for the assessment of proposals were articulated in the RFP document. The information required for the assessment of submissions was detailed in the RFP document returnable schedules and made known to the proponents. Value for money and risk were considered as part of the review of each of the criteria, which were:

- Concept (30% weighting)
- Sustainability (15% weighting)
- Commercial Terms (35% weighting)
- Delivery Certainty (20% weighting)

Both proponents submitted conforming and alternate proposals that were assessed by the Evaluation Panel.

The St Hilliers conforming proposal was assessed in detail and proposed a freestanding public carpark and a mixed use development on the residual land. The St Hilliers alternate proposal was not submitted in accordance with the returnable schedules and there was insufficient information for the Evaluation Panel to undertake a detailed assessment.

The Frasers conforming proposal met the RFP requirements but the Evaluation Panel considered the Frasers alternate proposal to be stronger in addressing the RFP requirements. The Frasers alternate proposal related to the construction of a mixed-use development with a fully integrated public car park of 1,631 spaces, but did not meet the requirement to complete the public parking component by December 2019.

The Frasers alternate proposal was assessed in detail as it demonstrated it could deliver better outcomes for the Council and community by varying timeframes for car park delivery and improving returns to Council. It provided opportunities for Council to bring forward other public parking provision within the city centre by December 2019, resulting in an overall increase in public parking beyond the 1,000 additional spaces on the Union Road site.

The Evaluation Panel completed their assessment of the RFP submissions and has recommended that Frasers be nominated as the Preferred Proponent based on their Alternate Proposal noting particularly:

#### *Concept Design and Sustainability*

- The Frasers proposal is a project that is catalytic for the transformation of the City Centre. It is of a scale that is city shaping and will set a new benchmark for city projects.
- Frasers have a strong, demonstrated commitment to sustainability and are considered industry leaders in this regard.
- The integrated podium public carpark has the capacity for adaptive re-use in the future given the increased floor to ceiling heights (proposed to be 3.1m).
- Frasers have assembled a strong team of award winning consultants to complement their in-house team.

#### *Commercial Terms and Delivery Certainty*

- Council, subject to the full extent of the planning proposal being approved, will not be required to contribute to the capital cost of constructing the 1,631 public parking spaces. Council will then have the opportunity to reallocate funding to provide additional public car parking on other city centre sites in parallel with the Union Road redevelopment.
- Fraser has demonstrated capability and experience in delivering projects in partnerships with Government and Council.
- Frasers have been independently assessed by Council using *Corporate Scorecard* who have concluded that Frasers have an appropriate credit rating

### **Public Parking Proposal to meet 1,000 additional public car spaces by December 2019**

As previously noted, due to the integrated design of the Frasers alternate proposal the public parking will be progressively delivered on-site over a period of time. This is expected to be a period 2020 to 2027.

As part of their proposal, Frasers have suggested that some temporary public parking could be provided on Council's Carpenters site (located on the corner of High Street and Mulgoa Road). To offset any loss of parking on the Union Road site while it is under construction, Frasers have proposed to construct 510 spaces on the Carpenters site, serving the western end of the city. This provision is subject to RMS approval and Council agreement. Frasers have proposed that 158 public spaces will remain available on the eastern edge of the Union Road site, while construction commences initially on the western end. Retaining some existing parking plus the introduction of the Carpenters site will result in the no net loss of parking during construction.

The Frasers alternate proposal will meet Council's requirement to provide 1,000 additional public parking spaces on the site, but not by December 2019. Despite not meeting Council's preferred timing, the proposal has other merits that make it attractive. One of these merits is that the proposal creates an opportunity for Council to reallocate funds to bring forward other public parking provision with the city centre. This generates the potential for Council to deliver well in excess of the 1,000 additional parking spaces by 2027. As a result, a preliminary review of other city centre sites that could be used to provide public parking has been undertaken.

Preliminary work has indicated that an additional 1,000 public car parking spaces can be provided by December 2019 by providing at grade parking at the Paceway and the North Street site and potentially a multi-level carpark on Soper Place consistent with Council's Parking Strategy.

Further design and planning is required over the Soper Place and North Street sites to determine the final layouts and formats. This report recommends that \$1.2m, which has previously been reserved for the design of a multi deck car park, be allocated from the Financial Management reserve.

### **Commercial Terms and Risk**

The commercial and financial aspects of the RFP responses are commercial-in-confidence and were considered by the Committee of the Whole at the extraordinary meeting on 10 July 2017. This report seeks Council's resolution to enter into further negotiations with Frasers as a preferred proponent. When the commercial negotiations are concluded the details will be reported to Council to allow consideration of whether to enter into contractual arrangements.

The Frasers Alternate proposal has been based on Council entering into a Project Delivery Agreement (PDA) where Council retains land ownership and Frasers undertakes the development activities (including responsibility for all costs and development warranties to purchasers). This is a common form of transaction document that has been used by government for the Rouse Hill Town Centre and a number of Land and Housing Corporation Contracts.

The responsibilities of the Landowner and Developer for Union Road will be defined in the PDA and will be generally consistent with the following:

- The Landowner (Council's) responsibilities are limited. Council's planning approval responsibilities will remain unfettered.
- The Developer will be responsible for all costs, approvals, warranties, design and construction delivery obligations, titling, holding costs, Purchaser sale obligations and revenue risks, programing etc.

- The Developer will indemnify Council against any Home Building Warranty liabilities that arise.
- The PDA typically includes a pro forma sales agreement. This means that Council's name will appear on the sale contracts of the apartments, however the cost and responsibility for the sale of the apartments is that of the Developer.
- Council will receive a stratum public carpark for 1,631 car spaces in the podium (some of these spaces will be designated for disabled car spaces).

The following is an overview of the due diligence work undertaken as part of the evaluation of the RFP proposals.

- Council has obtained a valuation report from Hill PDA (May 2017) for the 1.94 Hectare Union Road site being 101-107 Station Street and 13-61 Union Road (the Land). The Frasers alternate proposal represents good value when compared to the land valuation.
- Frasers credit rating has been independently assessed by Council using Corporate Scorecard and this concluded that 'Frasers Property Group' have the Financial capacity to undertake the Union Road project.

The funding arrangements proposed by Frasers provides Council with an opportunity to reallocate funds for public parking to bring forward other public parking provision within the city centre by December 2019. This provides an opportunity for Council to deliver in excess of the planned 1,000 additional public parking spaces on the Union Road site.

Council will need to adjust its Long Term Financial Plan and Asset Management Plan to accommodate any additional operational, asset renewal and maintenance costs of the Union Road car park facility and other additional parking in the city centre.

As part of the RFP process, Council engaged O'Connor Marsden and Associates (OCM) to provide detailed advice on management of probity issues. OCM endorsed an Evaluation Plan for the RFP process and have been actively engaged in overseeing the implementation of the Plan.

A Risk Assessment was prepared and updated throughout the project. The Risk Assessment identifies a number of risks for the Frasers Alternate Proposal that are similar to most large-scale development projects. The risks will also be the subject of further discussions throughout the negotiation phase. The following is a summary of the major risks:

#### Provision of public parking

The Frasers Alternate proposal delivers the 1,000 additional public parking spaces over a period from 2020 to 2027, subject to both planning approvals and market conditions.

This delivery risk can be mitigated by Council expediting the delivery of additional public car spaces on other sites within the city centre (Soper Place/North Street/Paceway) and could be achieved by December 2019.

### Planning Approvals

The scale of the proposal requires an amendment to the planning controls for the site in relation to height and floor space ratio. A Planning Proposal will be prepared to request the changes to the controls and will address the planning merits of the changes and resolution of issues relevant to the site, such as traffic and access, flooding and stormwater management, solar access and site permeability. While some work has been undertaken in the preparation of the proposal submitted by Frasers, there may be a need for further studies.

There will be opportunity for public consultation as part of the normal process of dealing with similar changes to planning controls.

### Commercial risks

The timing of delivery of the project is subject to market conditions. If there is a deterioration in market conditions, this is likely to slow the construction program. The direct impact of this relates primarily to the delivery of public parking on the Union Road site, and as discussed above, can be mitigated by Council completing additional public parking projects as detailed with in this report.

There may be a need to increase the allowances that have been provided for infrastructure works (traffic and intersection improvements, stormwater mitigation and the like). Further technical studies may be undertaken during the negotiation period to inform likely costs and Council's position with respect to the Frasers proposal.

### **CFO comments on value for money and commercial terms**

Having had regard to a land valuation prepared for the site and a detailed assessment of the proposed commercial and financial terms with the assistance of Hill PDA, the Frasers Alternate proposal presents as a good value for money proposal for the development of the site that will include the delivery of an additional 1,000 public parking spaces that will be owned by Council. While there remain some detailed points to be negotiated, Council has received sufficient information to warrant proceeding to a negotiation phase with a preferred proponent. It is noted that this does not commit Council to the development at this time and that a further report will be brought to Council for consideration of the outcomes of the negotiations and to seek a resolution on whether to proceed.

A credit check has been undertaken for Frasers and indicates that they have above average rating for similar companies. They have a strong balance sheet, a proven track record of delivering projects of similar scale and complexity with government partners.

### **Legal Services Manager comments on Report Recommendation**

The recommendation at the end of the report has been carefully considered and drafted to ensure that the process by which the Council progresses the project is clear and unambiguous and so as to ensure the future negotiations are not compromised.

The process adopted for this project is the selective tender process pursuant to clause 168 of the *Local Government (General) Regulation 2005* (the Regulation). The recommendation as drafted ensures that the project remains within that process. If the project fell outside of the tendering process, and thereby failed to adopt the process within clause 168 of the

Regulation, then there is a risk that the project would be considered a Public Private Partnership (PPP) pursuant to Section 400B of the *Local Government Act 1993*.

Having said the above, it is still possible that the Office of Local Government may consider the project to be a PPP. If that is the case, then there are set of Guidelines, issued by the Director General, that are required to be followed, which includes obtaining Ministerial Consent prior to entering into any arrangement with a proponent.

It is preferable that the transaction remains within the tendering provisions. In order to ensure the transaction continues to stay within the tendering process it is recommended that the recommendation at the end of the report is adopted.

### **Probity Comments**

As noted in the report, Andrew Marsden from O'Connor Marsden & Associates was engaged by Council to provide Probity oversight and advice throughout the RFP process, up to and including the assessment of the proposals.

In accordance with the probity principles outlined in the Evaluation Plan, the Probity advice had particular regard to the following principles:

- Accountability of the participants and transparency of the process
- Fairness, impartiality and honesty in carrying out the process
- Management of actual, potential and perceived conflicts of interest
- Maintenance of confidentiality and security of documentation and information, and
- Obtaining best possible value for money under the prevailing circumstances.

O'Connor Marsden's brief included review of the following:

- the link between procurement planning and the RFP following the New West EOI process
- the documented probity controls, including conflict of interest, confidentiality and security management
- the evaluation procedures, including alignment with RFP documentation, evaluation meetings, criteria assessment and scoring methodology
- the evaluation documentation, including records, scoring and reporting, and
- the communications and meetings between the two proponents and Council.

Andrew Marsden has submitted a Probity Report which has advised that O'Connor Marsden are not aware of any matter to indicate that the evaluation procedures carried out by Penrith City Council for the Union Road Request for Proposals process were not compliant with the probity principles in all material respects.

### **Next Steps**

Subject to approval of the recommendation, then the next steps are generally as follows:

- Frasers Property Group be nominated as the Preferred Proponent to undertake the development based on their "Alternate" Proposal.
- Negotiations with the Preferred Proponent be commenced in accordance with a

negotiation protocol regarding the terms and conditions for the transaction documents.

- St Hilliers be nominated as the Reserve Proponent and Council reserve the right to enter into discussions with them if negotiations with the Preferred Proponent should fail.
- The provision of affordable housing be considered further as part of commercial negotiations.
- Planning and preparation to provide additional public parking spaces in the Penrith city centre by December 2019 be commenced.
- Ongoing community information be a feature of the project as it moves forward.
- Report back to Council on the outcome of the negotiations.

### **Conclusion**

The Frasers Alternate Proposal represents an opportunity to deliver on Council's requirement to create additional public parking in accordance with the adopted Parking Strategy. The Union Road site combined with the other identified sites in the city centre have the ability to deliver well in excess of 1,000 additional public car parking spaces by 2027.

The Frasers Alternate proposal will be a landmark development, setting a new benchmark for urban living, design and sustainability that will significantly contribute to the transformation of the Penrith city centre.

The Frasers Alternate Proposal demonstrates good value for money when assessed against the reference design, the St Hilliers proposal and the market valuation for the site. An independent financial assessment by Corporate Scorecard confirms Frasers have the capacity to deliver their Union Road proposal.

The Evaluation Panel report, financial check on Frasers, property valuation and assessment of 'value for money' have all been discussed with the Property Development Advisory Panel, who remain in support of the recommendation to nominate Frasers as the Preferred Proponent based on their alternate proposal.

To assist in meeting Council's objectives of delivering 1,000 additional public parking spaces in the city centre by December 2019, it is recommended that Council could expedite the delivery of parking on a range of sites as outlined in this report in parallel with the redevelopment of the Frasers alternate proposal for the Union Road site. This would mitigate against potential planning approval and market condition delays in public parking provision on the Union Road site.

The process for seeking RFP submissions and reviewing the proposals received has been undertaken in accordance with the Evaluation Plan endorsed by Council's probity advisor and included the active engagement of OCM throughout the process.

The Evaluation Panel recommends that Frasers Property Group be nominated as the Preferred Proponent to undertake the development based on their "Alternate" Proposal. The nomination of a Preferred Proponent is to enable the commencement of commercial negotiations on the terms and conditions for the transaction documents.

The Evaluation Panel also recommends that St Hilliers be nominated as the Reserve

Proponent to undertake the development based on their Complying Proposal.

The Frasers proposal creates an exciting opportunity for Council to deliver both on provision of additional parking in the City Centre and its overall vision for the City Centre as a thriving regional city.

## RECOMMENDATION

That:

1. The information contained in the report on Union Road Request For Proposal (RFP) be received.
2. After considering the responses to the Union Road Request for Proposal and in accordance with clause 178(1)(b) of the Local Government (General) Regulation 2005 (the Regulation), Council decline to accept any of the tenders.
3. In accordance with clause 178(3)(e) of the Regulation, Council authorise the General Manager to enter into negotiations with Fraser Property Group with a view to entering into a contract in relation to the subject matter of the tender.
4. The negotiations with Fraser Property Group occur on the basis that a Negotiations Protocol is executed by the parties.
5. In the event that the negotiations with Frasers Property Group are unsuccessful then Council authorise the General Manager to enter into negotiations with St Hilliers with a view to entering into a contract in relation to the subject matter of the tender.
6. If negotiations with St Hilliers occur then a Negotiations Protocol be executed by the parties.
7. Pursuant to clause 178(4)(a) of the Regulation, the Council's reasons for declining to invite fresh tenders are:
  - a. The tenders from Frasers Property Group and St Hilliers satisfactorily address the evaluation criteria for the proposal.
  - b. The tenderers and the community would be prejudiced if fresh tenders were called, as both tenders offer value for money.
  - c. The tenders are consistent with the adopted Penrith Progression Action Plan.
  - d. The tenders are consistent with the Community Strategic Objectives as adopted in the Community Strategic Plan.
  - e. The terms of the tenders from Frasers Property Group and St Hilliers are not certain and final to enable the execution of commercial contracts.
  - f. To allow for a process to reach finality and certainty of the contractual terms with Fraser Property Group, and failing negotiations with Frasers Property Group, then St Hilliers.
8. Pursuant to clause 178(4)(b) of the Regulation, the Council's reasons for determining to enter into negotiations with Frasers Property Group are:
  - a. To allow for a process to reach finality and certainty of the contractual terms.

- b. The Frasers Property Group's tender satisfactorily addresses the evaluation criteria for the proposal and based on the evaluation was determined to be the preferred proposal.
  - c. The Fraser Property Group proposal is a project that is catalytic for the transformation of the City Centre. It is city shaping and will set a new benchmark for city projects.
  - d. The provision of 1,631 public parking spaces in Council ownership on beneficial commercial terms.
  - e. The podium public carpark has the capacity for adaptive re-use in the future given the increased floor to ceiling heights.
  - f. Fraser Property Group has demonstrated capability and experience in delivering projects in partnerships with Government and Council.
  - g. Fraser Property Group have a strong, demonstrated commitment to sustainability and are considered industry leaders in this regard.
  - h. Fraser Property Group have assembled a strong team of award winning consultants to complement their in-house team.
9. If negotiations with Frasers Property Group are unsuccessful, and pursuant to clause 178(4)(b) of the Regulations the Council's reasons for determining to enter into negotiations with St Hilliers are:
- a. To allow for a process to reach finality and certainty of the contractual terms.
  - b. The St Hilliers' tender satisfactorily addresses the evaluation criteria for the proposal.
  - c. The St Hilliers' proposal would be an evolution of current City Centre developments with residential apartments provided in buildings up to 7 storeys and retail for ground plane activation.
  - d. The 1,631 public parking spaces are proposed to be located within a free standing multi deck car park at the western end of the Union Road site with a total of 8 parking levels (2 basements and 6 upper levels).
  - e. St Hilliers have a strong team including an architect who has local experience from Thornton and Penrith, as well as their broader national experiences. A strength of this submission is the permeability of their Proposal and the focus on the activation of Union Lane.
  - f. The development is generally compliant with current planning controls and does not appear to require a Planning Proposal.
  - g. Council would own the completed carpark.
  - h. Favourable commercial terms are being offered.
10. The terms of the Negotiations Protocol include aims, objectives, constraints and agreed minimum bargaining positions and be substantially in accordance with the proposals submitted by Fraser Property Group or St Hilliers if negotiations fail with Frasers Property Group. The Negotiations Protocol is also to be consistent with:
- a. The Direct Negotiations Guidelines of the Independent Commission Against Corruption;
  - b. Council's Code of Conduct;
  - c. The Tendering Guidelines issued by the Office of Local Government;
  - d. and be adopted by the Chief Governance Officer.

11. It is noted that Council has adopted a selective tender process in accordance with clause 168 of the Regulation in relation to the development of the Union Road site.
12. Notwithstanding Council's intention that this matter be dealt with as a selective tender process, if the Office of Local Government determines that this matter be dealt with as a PPP (Public Private Partnership), the General Manager be delegated authority to commence the PPP process with the Office of Local Government and the Preferred Proponent.
13. Council allocate \$1.2m from the Financial Management Reserve to commence design and planning for the car park solutions at Soper Place and North Street as detailed in this report.

#### **ATTACHMENTS/APPENDICES**

There are no attachments for this report.