

### **3.1. DAINTREE RIVER FERRY OPTIONS - MAY 2021**

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#### **RECOMMENDATION**

**That Council:**

- 1. Purchases the current Daintree River Ferry for the agreed amount as per Confidential Report provided to Councillors.**
- 2. Delegates authority under Section 257 of the Local Government Act 2009 to the Chief Executive Officer to determine and finalise all matters associated with the purchase of the ferry and associated key infrastructure components.**

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#### **EXECUTIVE SUMMARY**

The current Daintree River Ferry contract (Contract No. 5-05/06) expires on 30 June 2021, and, to date, Council has not been able to secure a service beyond this date. For several reasons highlighted below, the longer-term contract set to commence on 1 July 2021 has not been finalised and an interim solution is required. Officers sought to negotiate a contract extension with Sirron Enterprises (QLD) Pty Ltd ('Sirron'), but to no avail. Sirron was the preferred tenderer for the longer-term contract, however this tender has now expired without an agreed position being reached.

Several attempts to negotiate an extended service with Sirron under the current contract has not resulted in a mutually acceptable position. A summary of the history is provided in this report. The current offer for an interim service has been reviewed and is not recommended based on a legal and commercial basis.

A review of available alternatives has been completed, ranging from landing crafts to retrofitted barges; these are further detailed in the below report.

Based on the options currently available, and the short timeframe to 1 July 2021, Officers recommend the purchase of the current Daintree River Ferry.

#### **BACKGROUND**

The Daintree River Ferry provides the only local public service connecting the south and north sides of the Daintree River. It provides a critical transport link for approximately 700 residents and tens of thousands of annual visitors per annum on whom the businesses north of the river depend. Anecdotal evidence indicates that this tourist season will see a lot of venues at capacity north of the river. The only alternate route to the area north of the Daintree from Mossman is via Mulligan Highway, Wujal Wujal, and the Bloomfield Track, which is an unsealed track and inaccessible for part of the year.

The current contract was awarded to Sirron in 2005 with operations commencing in July 2006. The contract includes a base fee, ticket commission and payment for additional labour to operate the ticket booth and a priority lane. Dredging is managed under a separate contract. In 2015, a five-year extension to the contract was awarded to Sirron to extend the termination date to 30 June 2021.

In 2018, a community consultation was held with the goal of soliciting ideas on how the ferry service might be improved; with the preferred option being a dual ferry service. Based on this consultation a tender for an improved service was released in 2019. The tender had an open scope and asked the market how best to improve the wait times experienced with the current arrangement during peak times. Council received tenders from four companies and at the Ordinary Council meeting held on 3 December 2019, Sirron was announced as preferred tenderer. Negotiations on the details of the contract commenced. Agreement had not been reached when Council entered caretaker mode in February 2020 at which point a contract could not be executed.

In April 2020, after the new Council had been elected, a Mayoral minute was passed to formally halt the negotiations on the terms of the contract with Sirron and provide further information to the community on the cost of the two-ferry solution and comparison to a bridge option.

In June 2020, Council resolved to offer an extension to the current contract to Sirron for up to seven years to allow for a continued service while either the two-ferry contract was executed or a bridge was built, dependent on the community consultation results.

In August 2020, Council released the Daintree Crossing Options Report and Consultation Plan. This was followed in September and October by seven community meetings, three focus group meetings and a community-wide survey.

In September 2020, Sirron formally responded to the extension offer, modifying the term offered and substantially increasing the price for the service.

In November 2020, the results from the survey were presented with the community preferring two ferries to a bridge by approximately two to one. Council accepted the community's preference and resolved to recommence the two-ferry negotiations at the December 2020 Ordinary Council Meeting. An updated two-ferry contract was issued to Sirron in January 2021, based on negotiations to date and departures requested in the tender.

After receiving legal advice on Sirron's offer to extend the service, Council resolved to offer a compromise to the requested increase. Legal advice suggested that without testing the market, Council would not know if Sirron's offer was the best value for the Shire. On rejection of Council's offer, Council released an "Interim Contract" tender in February 2021, which Sirron were invited to bid on. As the timeframe to build a new ferry was more than the time remaining on the current contract, Council also commenced the process to purchase the ferry from Sirron, as per the current contract, and engaged two marine valuers to provide market valuations. The tender was based on the purchase process being successful but allowed the tenderers to submit a bid based on the provision of their own vessel.

The tender period closed in March 2021 with two tenders being received. Unfortunately, Sirron was not one of them. The tenders have been reviewed and a compliant option is available. The award of the interim contract couldn't progress until a suitable ferry vessel was obtained as neither tenderer had a suitable vessel available. To enable the interim contract to progress an offer was presented to Sirron for the purchase of the ferry, based on the average of the two valuations.

The two-ferry contract was also progressed in March 2021, with a workshop held with Sirron, to attempt to resolve the contractual differences. Following the workshop, a revised contract was issued to Sirron with feedback as to why some requests were not acceptable to Council.

In April 2021, a request was sent to Sirron on their acceptance or otherwise of the purchase offer and whether their extension offer was still valid. A request to respond to the two-ferry contract was also issued.

Sirron's tender offer for the two-ferry solution lapsed at the end of April 2021.

On 5 May 2021, Sirron provided two options for Council to consider; Option 1 was their requested price for the purchase of the vessel; Option 2 was a revised contract and price for the extension to the current service and two-ferry contract, with the right to amendments to the contract prior to contract execution.

Since receiving legal advice recommending testing the market before Sirron's extension offer could be accepted, Council Officers have been looking at alternate options, as a contingency plan.

## COMMENT

Council, at time of writing this report, has not been able to execute a suitable Daintree River Ferry service post 1 July 2021. Council has the following options (listed in no particular order):

1.
  - a. Purchase the current ferry from Sirron as per Option 1 in Sirron's proposal submitted 5 May 2021
  - b. Purchase the current ferry from Sirron as per Sirron's revised proposal submitted 13 May 2021
2. Award Sirron's Option 2 in Sirron's proposal submitted 5 May 2021
3. Engage a Cairns based shipping company to provide a landing craft/barge to provide services across the river, until a new purpose-built ferry can be acquired
4. Engage a Cairns based shipping company to provide a double ended vehicle ferry, until a new purpose-built ferry can be acquired
5. Purchase a barge and modify to be suitable as a replacement ferry.

### Option 1a

Sirron have proposed a purchase price for the Daintree River Cable Ferry currently in operation 'as is, where is', including cross river wire cables currently in use, two cable reels currently in use on site, and excess wire cable currently on cable reels on site. This set-up would essentially allow the ferry to keep operating provided the interim contract can be awarded and successful Contractor mobilised by 1 July 2021.

This offer is valid until 21 May 2021, with settlement due 15 June 2021. Sirron will be available to provide information and advice until 31 July 2021.

The offer is still subject to Sirron and the Council entering into an asset sale agreement by 21 May 2021 and the parties will not be bound until such contracts are executed.

The price requested by Sirron is significantly higher than the marine valuers' assessment of current or replacement value. However, the Council needs to consider the importance of continuing to provide the service without interruption.

### Option 1b

Sirron have proposed a revised purchase price for the Daintree River Cable Ferry as per the draft Asset Sale Agreement. This set-up would essentially allow the ferry to keep operating provided the interim contract can be awarded and successful Contractor mobilised by 1 July 2021.

This offer is valid until 17 May 2021, with settlement due 10 June 2021.

The offer is still subject to Sirron and the Council entering into an asset sale agreement by 17 May 2021 and the parties will not be bound until such contracts are executed.

The price requested by Sirron is lower than Option 1a but higher than the marine valuers' assessment of current or replacement value. However, the Council needs to consider the importance of continuing to provide the service without interruption.

### Option 2

Option 2 presented by Sirron on 5 May 2021, would ensure the continuance of the service we currently receive. Option 2 offered a 10-year term plus option for further 5-year term for a single ferry however this could be reduced when Council commenced the two-ferry Contract with Sirron. This option came as a significant increase in cost compared on the previous offer made in September 2020. In addition, there were several material and substantial changes to the current contract terms, increased scope of services by Council and required execution of the two-ferry contract by 31 May 2021. The execution of the two-ferry contract is to be based on a new contract price and modified terms and conditions, including "the Contractor reserves the right to additional amendments prior to Contract execution".

Council requested legal advice on its ability to accept Option 2. The legal advice provided raised several concerns about Council's ability to accept the offer based on:

- The two-ferry contract tender validity period has lapsed and is no longer capable of being accepted.
- The option requires the Council's agreement to Sirron's terms for both the contract extension and the two-ferry contract.
- Option 2 includes several material and substantial differences and substantially differs from the Request for Tender and could open Council to concerns or complaints regarding transparency, accountability and decision-making in the public interest.
- Council will have no negotiation power as the offer is based on Council agreeing to all previous amendments requested by Sirron in the draft contract (presumably even where the Council has previously disagreed in writing), and Sirron having the ability to make additional amendments to the contract prior to execution.

### Option 3

This option is based on the hire of a small landing craft or barge (up to 12 vehicles). Apart from being significantly smaller than the current ferry, these are also front loading/unloading only and would require the vessel to turn mid-river and vehicles would need to either reverse on or off the vessel.

### Option 4

There is currently, on a mooring in Cairns, a double-ended vehicle ferry larger in size to the current Daintree Ferry. This vessel is currently going through its AMSA (Australian Maritime Safety Authority) inspections and certification process and is not guaranteed to be available on 1 July 2021. The vessel has not been designed for the Daintree River and will require modifications to ensure safe public transport.

### Option 5

Two barges of suitable size have been located for sale in Queensland. The process to convert these barges to a vehicular/passenger ferry would require the assistance of a Naval Architect and is expected to entail 3-4 months of planning, followed by 3-4 months of retrofit works, and finally a month to get to site and perform all operational and safety requirements. This process would likely be nine months in total, requiring option 3 or 4 above as an interim measure.

## **PROPOSAL**

Based on the above analysis of the Options currently available to Council, it is summarised that:

1. Option 1 is legally available to Council under the provisions in the current contract.
2. Legal advice raises concerns about accepting Option 2 for the reasons listed above.
3. Option 3 should only be considered as a short-term emergency solution and is not expected to be adequate given the expected influx in tourism.
4. Option 4 is a possible medium-term option; however, this option is a higher cost than Option 1 and Council will still be reliant on the Ferry Owner for the essential infrastructure.
5. Option 5 should be considered if a short-term option is selected.

Considering the available options and the forecast costings, it is proposed that Council resolves to purchase the current Daintree River Ferry from Sirron.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Acceptance of any of the options listed above will require a review of the 2021/22 Fees and Charges.

Purchase of the Ferry will require Council to commit a large initial capital outlay. These funds may need to be sourced externally via borrowings. The ferry reserve is currently at \$4 million.

## **RISK MANAGEMENT IMPLICATIONS**

By Council securing ownership of the vessel and infrastructure for the Daintree River Crossing, it reduces its reliance on a single contractor to provide this service and therefore reduces its risk profile in this area.

## **SUSTAINABILITY IMPLICATIONS**

**Economic:** Failure to secure a crossing service will have significant economic implications on both Council and the Community.

Owning this critical infrastructure will give Council greater certainty in providing an ongoing service.

**Environmental:** Nil

**Social:** Failure to secure a crossing service will have significant social implications.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

**Goal 1** - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

### Operational Plan 2020-2021 Actions:

**2.1.6** - *Assess alternatives for the Daintree Ferry including a bridge option. Consult with the community on options.*

## COUNCIL'S ROLE

Council can play several different roles in certain circumstances, and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Service Provider** Council provides many services to the community from roads and waste services to libraries and recreational facilities. Services evolve over time, and it is the Council's mission to ensure that these services are appropriate, delivered efficiently, and designed with the customer at the centre.

## CONSULTATION

**Internal:** Finance, Infrastructure, Procurement

**External:** Insurance Provider, Legal Advisor, Local Ferry and Shipping Companies

## COMMUNITY ENGAGEMENT

No Community Engagement has occurred since the Daintree River Crossing Options Survey and consultation, due to the confidential nature of the negotiations that have been conducted.

## ATTACHMENTS

Nil