

ORDINARY MEETING	3
21 DECEMBER 2023	

CAIRNS WATER SECURITY STAGE 1 – PROJECT CONSTRUCTION MATTERS

63/5/3 | #7310757

RECOMMENDATION:

That Council:

1. **Awards Contract 75692 – Design and Construct Contract, Cairns Water Security Stage 1 Project to John Holland Queensland Pty Ltd for a Lump Sum price of \$325,446,316 excluding GST and/or Schedule of Rates.**
2. **Approves the Project Launch Approval (PLA) for the Cairns Water Security Stage 1 (CWSS1) Project Construction Works with a Project Launch Budget (PLB) of \$447,369,705 and an Approved End Date (AED) of 30 June 2028.**
3. **Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contract, negotiate, finalise and execute any and all matters associated with or in relation these recommendations subject to Council’s normal procurement policies and practices.**

INTERESTED PARTIES:

- FGF Developments Pty Ltd;
- GHD Pty Ltd;
- Haslin Constructions Pty Ltd;
- John Holland Queensland Pty Ltd;
- Seymour Whyte Constructions Pty Ltd & Spiecapag Australia Pty Ltd (known as Spiecapag Seymour Whyte Joint Venture (SSWJV));
- Veolia Water Technologies Pty Ltd; and
- Water Treatment Australia Pty Ltd;

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

The Cairns Water Security – Stage 1 (CWSS1) Project has been identified as the next water supply to serve the growing demand in the Cairns Region Local Government Area. In November 2020, Council endorsed the procurement of a Design and Construct (D&C) contract with an Early Contractor Involvement (ECI) phase and endorsed the procurement strategy for the CWSS1 project, which was subsequently updated and endorsed in October 2022.

In November 2022 Council subsequently sought Expressions of Interest (EOI) submissions from suitably qualified respondents to provide ECI services as part of the project's procurement model. In March 2023 Council endorsed entering into an ECI Agreement with two parties:

- John Holland Queensland Pty Ltd; and
- Seymour Whyte Constructions Pty Ltd & Spiecapag Australia Pty Limited (known as Spiecapag Seymour Whyte Joint Venture (SSWJV)).

At the end of this ECI phase of procurement, D&C Contract offers were submitted by these two parties and evaluated.

On the basis of the evaluation undertaken, the recommendation is to award Contract 75692 – Design and Construct Contract, Cairns Water Security Stage 1 Project, to John Holland Queensland Pty Ltd for the total lump sum of \$325,446,316 excluding GST and/or Schedule of Rates.

BACKGROUND:

In November 2020, Council endorsed the procurement strategy for the CWSS1 project. The resolution endorsed the adoption of a Design and Construct (D&C) contract with an Early Contractor Involvement (ECI) phase as the delivery model for the project. This approach was reinforced during an update that was then endorsed by Council in October 2022.

Prior to the Expression of Interest (EOI) being released for the ECI phase, a Market Sounding Exercise (MSE) was undertaken with local and national contractors to evaluate and confirm matters relating to the project, including but not limited to the transaction/procurement model, market availability, ECI works reimbursement confirmation, and packaging of works.

In November 2022 Council invited EOIs, pursuant to section 228 of the *Local Government Regulation 2012* (Qld) (Regulation), from suitably qualified respondents to provide ECI services as part of the project's procurement model. In March 2023 Council endorsed entering into an ECI Agreement with two parties:

- John Holland Queensland Pty Ltd; and
- Seymour Whyte Constructions Pty Ltd & Spiecapag Australia Pty Limited (known as Spiecapag Seymour Whyte Joint Venture (SSWJV)).

The ECI Agreement outlined specific deliverables that were required to be produced as part of the ECI phase. The ECI Agreement also outlines a payable fee of \$1,900,000 to the respondent who is not awarded the D&C Contract at the conclusion of the ECI phase.

A Project Launch Approval (PLA) is recommended for the construction works phase of the project, with a Project Launch Budget (PLB) of \$447,369,705 and an Approved End Date (AED) of 30 June 2028. This PLB has been informed by the project's Cost Estimating Advisor, Ranbury Group Management, and includes various costs required throughout the construction phase of the project, through to Practical Completion of the Contract.

COMMENT:

At the end of this Early Contractor Involvement (ECI) phase of procurement, Design and Construct (D&C) Contract offers were submitted by these two parties according to the ECI Agreement and evaluated.

Offers were checked for conformance against the requirements of the ECI Agreement. In selecting the successful Tenderer, the evaluation panel had regard to the sound contracting principles in accordance with section 104 of the *Local Government Act 2009* (Qld). Due to the complex nature of the project, and a criteria-based evaluation used when evaluating responses to the Expression of Interest (EOI) process, a Risk-Based Evaluation method aligned to Council's Enterprise Risk Framework was utilised for evaluating the offers. A dedicated Evaluation Plan was developed for the evaluation of the offers.

The evaluation process was undertaken by an Evaluation Panel, supported by a team of Subject Matter Experts (SME), including Council engaged specialists to assist with feedback during the evaluation process, ensuring a best value offer could be recommended.

The specialist services that were provided include:

- Probity overview (O'Connor Marsden and Associates);
- Financial reviews to ensure that the tendering consortia have the financial capacity to complete the project within the accepted risk profile (Due Diligence Consulting Pty Ltd);
- Legal reviews; feedback on any litigious issues; and review of proposed contract departures (Minter Ellison);
- Reviews of Delivery Phase Programmes and Cost Schedules provided by the Proponents (Ranbury Management Group); and
- Technical review by CWSS1 Project Owner's Engineer (AECOM).

Post offer closing clarifications were issued to clarify information and/or risks as part of the evaluation process, leading to a Best and Final Offer (BAFO).

As per the Evaluation Plan, any outstanding quantifiable risks were then converted to financial consequences where appropriate to do so, and a price adjustment was made to the Proponent's submitted price. These price adjustments were then included as contingency when determining a Project Launch Budget (PLB).

The evaluation process highlighted the risk-adjusted D&C Contract BAFO submitted by John Holland Queensland Pty Ltd (JHQ) to be the best value offer, on a risk adjusted price basis. In addition to a lower price risk-adjusted D&C Contract BAFO, JHQ submitted a high quality and high coverage submission. Particular strengths were demonstrated in the approach to the design and construction methodology, with safety in design a foundational consideration, and strong demonstrated experience and approach to Local Industry Participation. JHQ provided practical and demonstrated responses across all deliverables.

Seymour Whyte Constructions Pty Ltd & Spiecapag Australia Pty Limited (known as Spiecapag Seymour Whyte Joint Venture (SSWJV)) provided a sound BAFO submission, reflecting their top-tier joint experience and respective consortium specialist fields. SSWJV submitted a materially higher price risk-adjusted D&C Contract BAFO.

Therefore, based on the evaluation undertaken, the recommendation is to proceed to enter into a Design and Construct Contract with John Holland Queensland Pty Ltd.

The ECI Agreement outlines a payable fee of \$1,900,000 to the respondent who is not awarded the D&C Contract.

The ECI Phase of the project was undertaken in a Pre-Construction Project Launch Approval (PLA), with the Construction phase to be undertaken under a new Construction PLA. The Pre-Construction PLA was endorsed by Council in October 2022, and included, activities such as procuring the project team and consultancies, reference design development and technical risk reduction activities, commercial and legal advice, and all activities during the ECI stage including the fee payable for the unsuccessful proponent.

With the ECI Phase and offer submissions informing a revision of the construction phase requirements, including time and cost milestones, a Project Launch Approval (PLA) is recommended for works until the Practical Completion of the Contract, with a Project Launch Budget (PLB) of \$447,369,705 and an Approved End Date (AED) of 30 June 2028.

This Construction PLB includes for costs during the Construction, Commissioning, and Proof of Performance Testing period and includes for, but is not limited to allowances made for:

- Award of the D&C Contract as outlined in the recommendation;
- Owner's costs, including for external specialist advice, project management and contract management, and other allowances through to Practical Completion;
- Scope items not currently included in the D&C Contract scope, such as revegetation requirements, Behana Creek Intake Upgrade Works, and land acquisitions required for construction; and
- Contingency provisions to account for project risk.

This Construction PLB has been informed by the project's Cost Estimating Advisor, Ranbury Group Management.

Including this Construction PLB, a revised Total Project Cost Estimate (TPCE) accounts to \$471,694,237. This TPCE includes, but is not limited to, costs encountered for:

- Historical land acquisition costs required for the Water Treatment Plant;
- Detailed Business Case and related costs;
- Pre-Construction PLA endorsed by Council in October 2022; and
- The Construction PLA and relevant PLB as outlined above.

OPTIONS:**Option 1: (Recommended)**

It is recommended that Council:

1. Awards Contract 75692 – Design and Construct Contract, Cairns Water Security Stage 1 Project to John Holland Queensland Pty Ltd for a Lump Sum price of \$325,446,316 excluding GST and/or Schedule of Rates.
2. Approves the Project Launch Approval (PLA) for the Cairns Water Security Stage 1 (CWSS1) Construction Works with a Project Launch Budget (PLB) of \$447,369,705 and an Approved End Date (AED) of 30 June 2028.
3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contract, negotiate, finalise and execute any and all matters associated with or in relation to these recommendations subject to Council's normal procurement policies and practices.

Option 2:

Council opts not to award a D&C Contract but to progress to a Design phase and then a Construction phase.

This is not recommended on the following basis:

- This would introduce additional risk and cost to the delivery process,
- Not regarded as industry best practice, and
- Significant loss of efficiencies (time and cost) in the delivery of the overall project.

Option 3:

Council opts not to award a D&C Contract and the project is not progressed.

This is not recommended on the basis that the project is of a high priority and requires immediate action. Without this project, the Cairns region will face a critical drinking water shortfall by 2026.

CONSIDERATIONS:**Risk Management:**

The recommended party is a top-tier construction company and has extensive experience in large-scale projects with ECI/D&C phases.

The CWSS1 Project Team includes various specialist support services across technical, commercial, and legal matters, to identify and mitigate potential project risks.

The Risk-Based Evaluation method used aligns to Council's Enterprise Risk Framework. During the evaluation, risks have been identified and mitigated according to the Evaluation Plan, whereby any outstanding quantifiable risks were then converted to financial consequences where appropriate to do so, and a price adjustment was made to the Proponent's submitted price. These price adjustments were then included as contingency when determining a Project Launch Budget (PLB).

The implementation of the CWSS1 project will mitigate the treatment risk currently associated with the Behana Creek water source. It will also provide a second major water treatment facility into the Cairns water supply scheme, thereby providing redundancy in the existing system. The implementation of the CWSS1 will enable the preservation of the stored volume in Copperlode Falls Dam, thereby minimising the requirement for the imposition of water restrictions.

Council Finance and the Local Economy:

The revised estimated Total Project Cost Estimate (capital cost) exceeds allowances made in Council's current adopted Long Term Financial Plan by \$93 Million. There is however a slight improvement in the estimated ongoing operational cost of the assets delivered under this program by approximately \$1Million per annum.

As part of 2024/25 Budget deliberations, Council will need to determine how the additional capital expense will be accommodated. Options available include increasing Council planned loan borrowings which will require additional revenue or reduced expenses elsewhere in Council's budget to service or reducing planned capital expenditure elsewhere which potentially increases asset management and service level risk.

An additional recommendation report has been submitted to Council to revise funding contributions by the State and Federal Governments which would mitigate the risk of further impacts to ratepayers and/or Council services borne by the capital cost escalation.

Benefits to the Local Economy formed a key component of the Evaluation Comparative Criteria via requirements for Local Industry Participation Plans (LIPP), with both ECI Proponents supporting strong results for the local region. The recommended party has demonstrated strong previous LIPP Experience, Local Industry Assessments, and Proposed LIPPs including stretch targets for the project.

The CWSS1 project enables the opportunity for developing and enhancing the local industry, rather than simply just subcontracting to local companies. Specific obligations are outlined as Key Result Areas under the contract, to further develop and enhance local industry capabilities, including in (for example only) works planning, risk management, safety, quality control systems, and commercial processes. In practice, this approach could derive initiatives such as integrating head contractor Quality Engineers into sub-consultancies for mentorship, or community forums and 'Meet the Buyer' events.

Community:

The CWSS1 project has been identified as the next water supply to serve the growing urban demand in the Cairns Region Local Government Area. Extensive and ongoing consultation and community engagement will be continued to inform the local and/or wider community of project updates and any impacts on the community if required.

The implementation of the CWSS1 project will mitigate the treatment risk currently associated with the Behana Creek water source. It will also provide a second major water treatment facility into the Cairns water supply scheme, thereby providing redundancy in the existing system. The implementation of the CWSS1 will enable the preservation of the stored volume in Copperlode Falls Dam, thereby minimising the requirement for the imposition of water restrictions.

The CWSS1 project will deliver a range of benefits:

- Social stability through the provision of a consistent and reliable drinking water supply to the Cairns region
- Supporting regional economic prosperity
- Providing local employment and training opportunities
- Sustainable liveability and public amenities
- Supporting community health by maintaining a clean water supply
- Improved water system redundancy
- Increased cultural and water education opportunities

Natural Environment and Cultural Heritage:

As part of their engagement, the ECI proponents have been required to further develop Environmental Management Plans to ensure that all environmental legislative requirements will be met during the D&C phase.

The CWSS1 project is being developed on Yidinji Country and the project team have continued engagement with Traditional Custodians of the lands covered by the project area, the Gimuy Walubara Yidinji, Dulabed and Malanbarra Yidinji, and Madjandji peoples.

Corporate Plan 2021-2026:

The contract works will assist Council with meeting the following corporate goals:

- Focus One – Robust Economy;
- Focus Two – Natural Assets; and
- Focus Three – Design for Liveability.

The works will also meet Cairns Infrastructure and Asset's charter for "Planning for and delivering water, wastewater and waste infrastructure".

Operational Plan 2022-2023:

The CWSS1 is included as part of Focus Two: Natural Assets in the Operational Plan:

1. Prioritise water security to accommodate population growth – Implement the project plan for Cairns Water Security – Stage 1.

Statutory:

Relevant procurement provisions in the *Local Government Act 2009* and *Local Government Regulation 2012* have been adhered to.

O'Connor Marsden & Associates have been engaged as the independent Probity Advisors on the project. They provide specialist services including probity reviews and advice relating to the procurement and governance of the process for this procurement activity. They have provided a Probity Assurance Report based on the work they performed to confirm that the process was conducted in accordance with the project Evaluation Probity Plan, there are no unresolved probity issues at the date of their report and that nothing has come to their attention to indicate that the evaluation process did not address the probity principles in all material respects. Thereby ensuring alignment with Council's corporate governance requirements.

As a registered water service provider under Queensland's *Water Supply (Safety and Reliability) Act 2008*, Council has obligations to provide for the safety and reliability of water supply to its customers.

Policy:

The tender process was undertaken in accordance with Council's adopted Procurement Policy.

CONSULTATION:

Extensive consultation with internal and external stakeholders has been undertaken throughout the project to date, and will be ongoing as the project progresses.

The CWSS1 project has been identified as the next water source for the Cairns Region LGA through an extensive community engagement process between 2014 and 2015. Community consultation will be an ongoing process throughout the life of the CWSS1. Key decision milestones throughout the delivery process will be presented to Council for endorsement.

ATTACHMENTS:

Attachment 1 – Cairns Water Security Services Stage 1 Project – Interim Probity Report, O'Connor Marsden & Associates Pty Limited



Mark Wuth
Director Cairns Infrastructure and Assets

Attachment 1 – Cairns Water Security Services Stage 1 Project – Interim Probity Report, O’Connor Marsden & Associates Pty Limited



**O’Connor Marsden
& Associates Pty Limited**

ACN 135 783 792

Level 13, 144 Edward Street
Brisbane, QLD 4000

T: 1300 882 633

IDD: +61 2 9252 2565

F: +61 2 9247 7161

www.ocm.net.au

06 December 2023

Mr David Stevens
Executive Manager Major Projects
Cairns Regional Council
PO Box 359
CAIRNS QLD 4870

CONFIDENTIAL

Dear Mr Stevens

Re: Cairns Water Security Services Stage 1 Project – Interim Probity Report

We refer to our support for and monitoring of the procurement process undertaken by Cairns Regional Council (subsequently referred to as **Council, CRC, or Principal**) for the Cairns Water Security Services Stage 1 (**CWSS1**) Project (the **Project**).

The design and construction component of the Project is being effected through two phases:

- i. Engagement with proponents in Early Contractor Involvement (ECI) services resulting in the submission of a Design and Construct (D&C) offer to the Principal (**ECI Phase**); and
- ii. The design and construction of the Project (**D&C Phase**).

CRC invited responses to an initial Expression of Interest (EOI) to participate in the ECI Phase and received the following three responses:

1. John Holland Queensland Pty Ltd (**JHG or Proponent 1**)
2. Seymour Whyte Constructions Pty Ltd and Spiecapag Australia Pty Limited (**SWIFT or Proponent 2**)
3. BMD Constructions Pty Ltd (**BMD or Proponent 3**)

Following detailed evaluation of the EOI responses, Proponent 1 and Proponent 2 were shortlisted by CRC to enter into competitive ECI Agreements to participate in the ECI Phase. Throughout the ECI Phase, both Proponents participated in a series of interactive workshops allowing them to further develop their proposals and submit their final D&C offer on 15 September 2023 in accordance with the requirements of the ECI Agreement.

Scope

O’Connor Marsden and Associates (OCM) has been engaged to provide probity services to CRC in accordance with our proposal dated 11 November 2021 and Council’s acceptance letter dated 09 December 2021.

Under this arrangement OCM has provided probity advisory services to CRC with respect to the procurement process for the selection of a preferred Proponent for the Project. This is an interim probity report on our support for and monitoring the probity of the process. We note a final probity report will be provided at the conclusion of the process following any Proponent debriefing session/s.

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The specific components of the probity framework for this procurement included:

- Probity oversight of the engagement of consultants to the Project team;
- A general regime for probity awareness, confidentiality undertakings and conflict of interest disclosures;
- Project Probity Plan (PPP) which is a sub-plan to the CWSS1 Project Management Plan (PMP);
- Probity briefings provided to the Project team and the evaluation teams at key points throughout the process;
- Procurement Process Conditions;
- ECI Agreement;
- EOI Evaluation Plan;
- D&C Offer Evaluation Plan; and
- A governance structure including an Executive Leadership Team (ELT) with representatives from both Proponents to ensure that the principles and collaborative nature of the ECI Agreement were upheld. The recommendations of the Evaluation Panel were sent to the Chief Executive Officer (Sponsor) and associated Directors for consideration.

Probity Principles

Under the Local Government Act 2009, Council officers must have regard to Sound Contracting Principles as set out in the s104 of the Act.

- (a) value for money;
- (b) open and effective competition;
- (c) the development of competitive local business and industry;
- (d) environmental protection; and
- (e) ethical behaviour and fair dealing.

In giving effect to Sound Contracting Principles and Council's policy in this procurement, the following probity principles have been used in probity planning and monitoring of the procurement process.

1. Fairness and impartiality	Ensuring fairness and impartiality of commercial processes through: <ul style="list-style-type: none"> • unbiased, reasonable, and even-handed behaviour; • appropriate process and governance design; • consistency in approach; and • control over external parties.
2. Transparency and accountability	Providing transparency and accountability in order for the process to be clear, defensible, and able to withstand external scrutiny. This includes: <ul style="list-style-type: none"> • documenting decisions and approvals at key stages throughout process; • communicating the results of the process to management and governance bodies; and • monitoring and review at the point of recommendation for process compliance.
3. Confidentiality and security of information	Protecting the security of confidential information. This includes access controls to the office, data, IT systems and paper and electronic records and strict care in document handling.
4. Conflicts of interest	Identifying and managing conflicts of interest including requiring declarations of interests and associations as well as actual, potential, or perceived conflicts of interest by all involved in transactions.
5. Acting ethically	Participants must act ethically in the conduct of all procurement activities. This includes compliance with the general standards of work behaviour, integrity, and ethical conduct as detailed in the Cairns Regional Council Code of Conduct.

Table 1 – Probity principles

Summary of work performed

OCM has provided probity advice and support throughout the evaluation process and notes the following in particular:

- OCM provided briefings on probity awareness and obligations to the project team, councillor workshops, foundation workshops and regularly in meetings during the ECI Phase and throughout the procurement process;
- OCM confirmed that conflicts of interest / confidentiality declarations were completed and provided advice on managing any matters declared;
- OCM attended and observed the behaviours of all parties at the interactive workshops and confirmed that they included processes to conduct and manage them in line with the open, cooperative, and collaborative principles outlined in the ECI Agreement and Interaction Protocols and were respectful of confidentiality and fairness between the parties from a probity perspective;
- OCM consulted on potential councillor conflict of interest issues and style of attendance at “Meet the Buyer” event with the Executive Manager Major Projects, CRC;
- OCM reviewed the tender documentation and provided probity input;
- OCM was consulted on the probity of process issues and incidents that arose during the procurement and provided advice on those issues;
- OCM received and reviewed, in draft form, the Evaluation Plan (received 28 August 2023) and noted that the process detailed in the plan was sound and fair to all parties from a probity perspective. Feedback provided reflected commentary made during the Evaluation Phase Information Sessions which highlighted some areas that could benefit from additional clarity;
- OCM confirmed that the relevant Evaluation Plan was approved prior to evaluation commencing and that any amendments were procedural and approved as provided for in the plan and were acceptable from a probity perspective;
- OCM confirmed that the procedures adopted for receiving the submissions were fair and suitable for this process;
- OCM attended the evaluation meetings and confirmed that Evaluation Panel members including Subject Matter Experts (SMEs) were briefed on their roles and that the evaluation was carried out in a manner consistent with the Evaluation Plan including any approved amendments;
- OCM confirmed that the evaluation criteria were applied consistently through the evaluation process;
- OCM participated in leadership meetings conducted by both Proponents with CRC and provided each Proponent’s bid leader an opportunity to raise probity concerns. We are not aware from those meetings that there are any outstanding probity concerns from the Proponents;
- OCM sought Council endorsement to issue written probity confirmations to both Proponents on 09 November 2023; and
- OCM attended Councillor Workshops where the commercial offers, total project cost estimate and implications for Council finance were presented.

At the time of this interim report, we have monitored discussions on the proposed recommendation from this process and have been provided with the draft Evaluation Recommendation Report for review.

Conclusion

Based upon the work performed as described above and at the time of this report, nothing has come to our attention to indicate that the evaluation process undertaken by the Evaluation Panel has not followed the evaluation process and procedures in all material respects. OCM confirms that they have no unresolved probity issues to raise in respect of the evaluation process as of the date of this report.

We note a final probity report will be provided to CRC upon conclusion of the process, following Proponent debriefings.

Disclaimer

This report is being provided to Cairns Regional Council (CRC) and should not be distributed to any individual or entity outside CRC or other Queensland Government entities participating in the Project without the prior written approval of OCM. No party other than CRC is entitled to rely on the contents of this report and we disclaim all responsibilities to all parties other than CRC.

Signed by:

A handwritten signature in black ink, appearing to read 'Rory O'Connor', is written over a light blue horizontal line.

Rory O'Connor
Director
O'Connor Marsden & Associates