



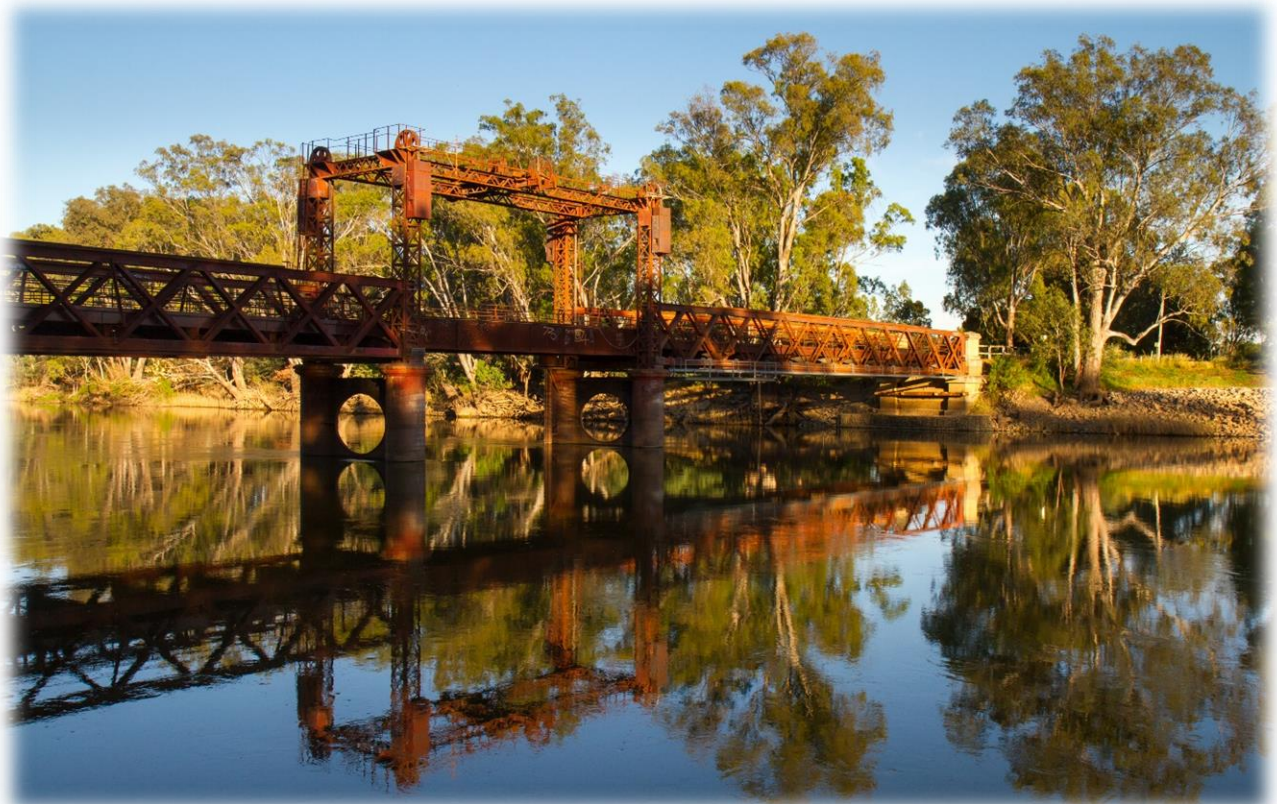
ORDINARY MEETING OF COUNCIL

Wednesday 20 May 2020

at 11:00am

Council Chambers

56 Chanter Street, Berrigan



Agenda

The Ordinary Meeting of the Council of the Shire of Berrigan will be held in the **Council Chambers**, Berrigan, on **Wednesday 20th May, 2020** when the following business will be submitted:-

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No business, other than that on the Agenda, may be dealt with at this meeting unless admitted by the Mayor.

ROWAN PERKINS
GENERAL MANAGER



Council Meeting

Wednesday 20th May, 2020

BUSINESS PAPER

This meeting is being webcast and those in attendance should refrain from making any defamatory statements.

1. **APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE**

2. **DECLARATION OF ITEMS OF PECUNIARY OR OTHER INTERESTS**

3. **VISITORS**

4. **CONFIRMATION OF MINUTES**
RECOMMENDATION: that the Minutes of the meeting held in the Council Chambers on Wednesday 15th April, 2020 be confirmed.

5. **MAYORAL MINUTES**
Nil

6. **NOTICE OF MOTION**
Nil

7.1 FINANCE - ACCOUNTS

AUTHOR: Finance Manager

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.1 Berrigan Shire 2027 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

FILE NO: 12.066.1

RECOMMENDATION: that the Financial Statement, Bank Reconciliation Certificate and Petty Cash Book made up to 30 April 2020, be received and that the accounts paid as per Warrant No. 04/20 totaling \$2,671,523.12 be confirmed.

REPORT:

- a) A Financial Statement covering all funds of the Council indicating the Bank Balances as at 30 April 2020 is certified by the Finance Manager.
- b) The Finance Manager certifies that the Cash Book of the Council was reconciled with the Bank Statements as at 30 April 2020.
- c) The Finance Manager certifies the Accounts, including the Petty Cash Book made up to 30 April 2020, totaling \$2,671,523.12 and will be submitted for confirmation of payment as per Warrant No. 04/20.
- d) The Finance Manager certifies that all Investments have been placed in accordance with:
 - i. [Council's Investment Policy](#),
 - ii. [Section 625 of the Local Government Act 1993 \(as amended\)](#),
 - iii. [the Minister's Amended Investment Order gazetted 11 January 2011](#),
 - iv. [clause 212 of the Local Government \(General\) Regulations 2005](#), and
 - v. Third Party Investment requirements of the Office of Local Government Circular 06-70
- e) April has shown a slight decrease in total funds held in comparison to the end of March. The movement in cash holdings is largely comparable with the same period last year and represents the general pattern in cash holdings over the year.

Overall funds however have grown from the same period last year and are expected to remain stable in the coming months.

Statement of Bank Balances as at 30 APRIL 2020

Bank Account Reconciliation

Cash book balance as at 1 APRIL 2020	\$ 7,891,780.28
Receipts for APRIL 2020	\$ 1,192,488.59
Term Deposits Credited Back	\$ -
	\$ 9,084,268.87
<i>Less Payments Statement No 04/20</i>	
No Chq Payments	\$ -
Electronic Funds Transfer (EFT) payroll	\$ 833,535.09
Electronic Funds Transfer (EFT) Creditors E034181-E034421	\$ 1,817,961.49
Term Deposits Invested	\$ -
Loan repayments, bank charges, etc	\$ 20,026.54
Total Payments for APRIL 2020	\$ 2,671,523.12
Cash Book Balance as at 30 APRIL 2020	\$ 6,412,745.75
<i>Bank Statements as at 30 APRIL 2020</i>	\$ 6,412,745.75
Plus Outstanding Deposits	\$ -
Less Outstanding Cheques/Payments	\$ -
Reconciliation Balance as at 30 APRIL 2020	\$ 6,412,745.75

INVESTMENT REGISTER

INSTITUTION	DEPOSIT NO.	TERM (days)	RATE	MATURITY DATE	INSTITUTION TOTAL	S&P RATING
AMP	133/17	181	**1.90%	26/05/2020	\$ 1,000,000.00	BBB+
AMP	125/16	182	**1.90%	3/06/2020	\$ 2,000,000.00	BBB+
AMP	136/18	365	**1.60%	17/10/2020	\$ 2,000,000.00	BBB+
AMP	144/19	365	**1.80%	23/03/2021	\$ 2,000,000.00	BBB+
Goulburn Murray Credit Union	124/16	365	2.65%	13/05/2020	\$ 2,000,000.00	UNRATED
Bendigo Bank	141/18	364	*1.45%	11/09/2020	\$ 2,000,000.00	BBB+
Bendigo Bank	142/18	365	*1.60%	25/09/2020	\$ 2,000,000.00	BBB+
Central Murray Credit Union	126/16	365	1.85%	30/08/2020	\$ 2,000,000.00	UNRATED
Defence Bank Limited	106/14	365	2.05%	29/08/2020	\$ 2,000,000.00	BBB
Defence Bank Limited	146/19	365	1.70%	30/08/2020	\$ 2,000,000.00	BBB
Defence Bank Limited	138/18	365	1.70%	10/01/2021	\$ 2,000,000.00	BBB
Defence Bank Limited	102/14	364	1.65%	5/04/2021	\$ 2,000,000.00	BBB
G&C Mutual Bank	145/19	364	1.70%	6/04/2021	\$ 2,000,000.00	BBB
NAB	143/18	365	1.45%	19/11/2020	\$ 2,000,000.00	AA-
					\$ 27,000,000.00	

Total Funds Held at 30 APRIL 2020

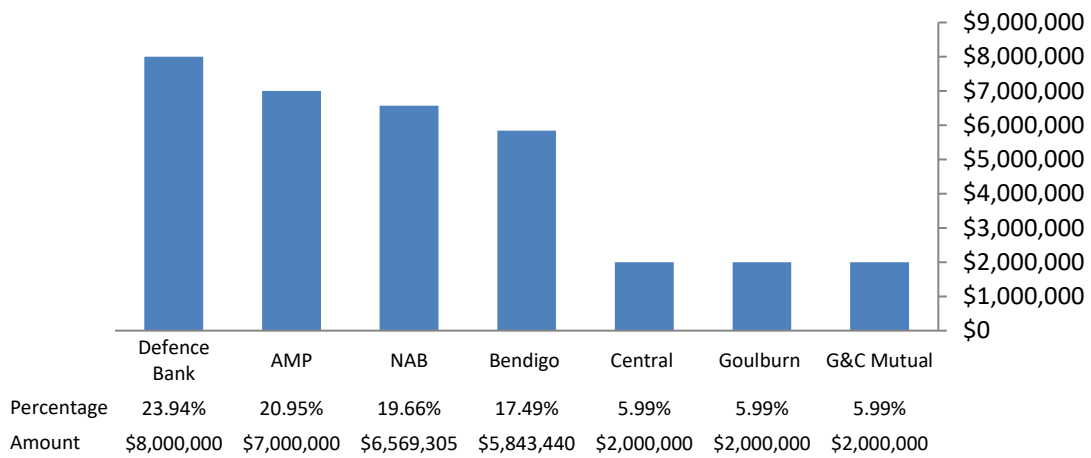
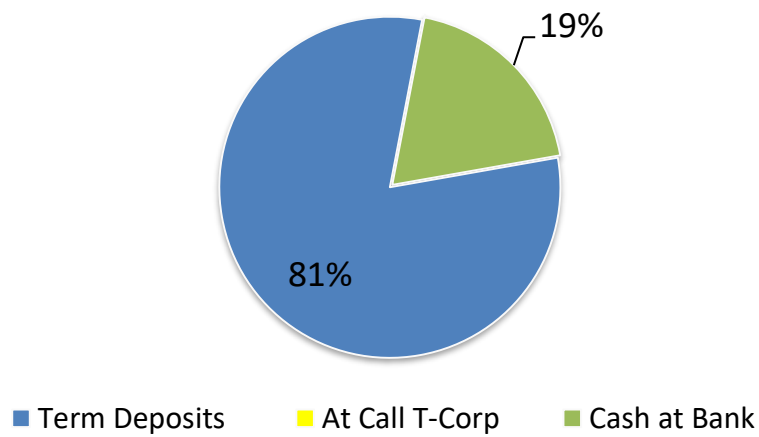
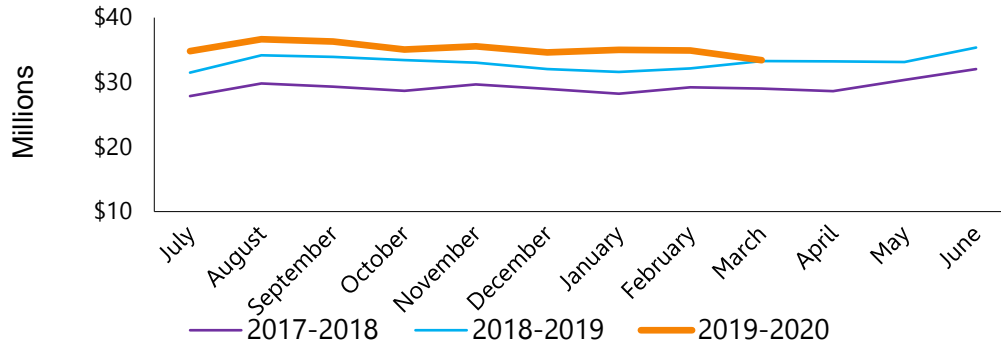
\$33,412,745.75

Tahlia Fry - Finance Manager

*The Council also receives an additional 0.25% commission

**The Council also receives an additional 0.20% commission

Total Cash and Investments

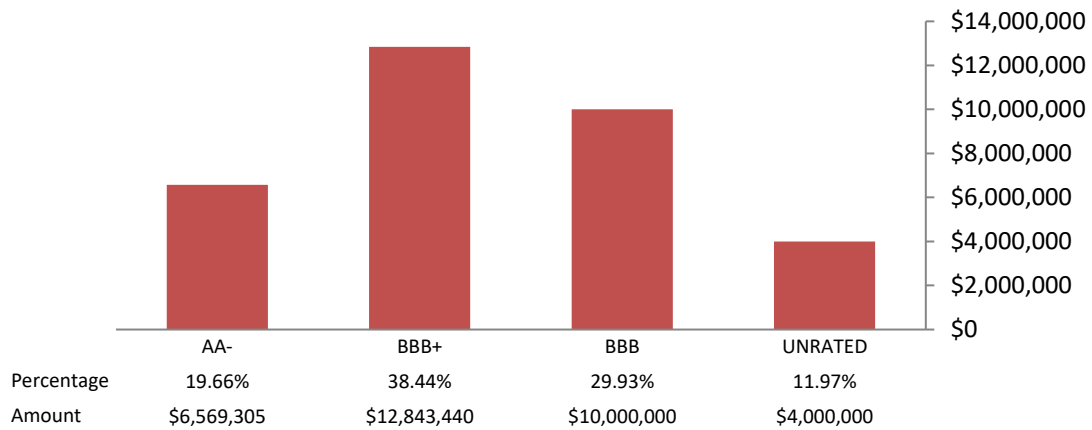


Term Deposits Credited Back

Prior Financial Institution	Term (Days)	Amount	Interest Rate	Maturity Date	S&P Rating
DEFENCE BANK LTD	365	\$ 2,000,000.00	2.75%	4/04/2020	BBB+
G&C MUTUAL BANK	364	\$ 2,000,000.00	2.63%	6/04/2020	BBB

Term Deposits Invested / Reinvested

Current Financial Institution	Term (Days)	Amount	Interest Rate	Maturity Date	S&P Rating
DEFENCE BANK LTD	366	\$ 2,000,000.00	1.65%	5/04/2021	BBB+
G&C MUTUAL BANK	365	\$ 2,000,000.00	1.70%	6/04/2021	BBB



7.2 OPERATIONAL PLAN MARCH QUARTER REVIEW

AUTHOR: Strategic & Social Planning Coordinator

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.1 Berrigan Shire 2027 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

FILE NO: 04.121.6

RECOMMENDATION: That the Council note and adopt the appended March Quarter Review of the Council’s Annual Operational Plan 2019/20



REPORT:

Circulated with this Agenda as **Appendix “A”** is the Council’s March Quarter Review of the Council’s *Annual Operational Plan 2019/20*.

This report provides a traffic light review with comments by Responsible Officers of the status of:

- Council actions that support and promote *Berrigan Shire 2027* outcomes (these are outcomes which match Department of Local Government’s quadruple bottom line reporting requirements: Social, Economic, Environmental and Civic Leadership);
- *Delivery Program* Objectives;
- *Annual Operational Plan* Objectives; and
- *Annual Operational Plan* Actions.

The traffic light format provides a visual update on the status of *Council’s Annual Operational Plan* and Council’s progress toward full implementation of its *4-year Delivery Program*. It should be read in accordance with the following key:

				
Complete	On Target	Not on Target	Past Due	No Status / Deferred

Additional information in the appended March Quarter Review of the Council’s Annual Operational Plan 2019/20 includes:

1. A Year to Date (YTD) assessment by the responsible Council Officer of progress toward completion and or the achievement of the set target.
2. Comments from the Responsible Council Officer highlighting service achievements and or the challenges relevant to the Council operation and action being reported and its status.

The following actions are past due or not on target. The responsible Officer's comments are included in the attached review.

OP Code	Action
1.2.1.3	Undertake tree assessments and establish a tree register
1.3.1.1	Review and implement asset management plans which maintain a balance between improving and maintaining flood levees, stormwater, council roads, paths and trails
2.1.2.2	Implement and further develop the Berrigan Shire Council Integrated Management System
2.1.3.4	Conduct service review and develop the Corporate Services Strategic Plan
4.1.2.3	Upgrade the Finley Saleyards

The following table provides a summary by strategic outcome of Council's progress and performance as at 31 March 2020.

	Completed	On target	Not on target	Past Due	Deferred / Not due to start	Total
Sustainable natural and built landscapes	3	14	2	0	0	19
Good government	0	14	2	0	0	16
Supported and engaged communities	2	12	0	0	0	14
Diverse and resilient business	0	13	1	0	2	16
Total Actions	5	50	7	1	2	65

7.3 FAMILY AND DOMESTIC VIOLENCE POLICY

AUTHOR: Enterprise Risk Manager

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.2 Ensure effective governance by Council of Council operations and reporting

FILE NO: 22.155.1

RECOMMENDATION: That the Council adopt the Family and Domestic Violence Leave policy as follows:



Policy

102 FAMILY AND DOMESTIC VIOLENCE POLICY

Version 01

File Reference No: 22.155.1

Strategic Outcome: Good government

Date of Adoption: 20/05/2020

Date for Review: 17/05/2023

Responsible Officer: Enterprise and Risk Manager

1. POLICY STATEMENT

Berrigan Shire Council acknowledges that employees may face situations of violence or abuse in their personal life that may affect their attendance or performance at work.

Council is committed to supporting staff members experiencing domestic and family violence to continue to participate in the workforce and maintain their employment.

2. PURPOSE

The purpose of this policy is to outline Council's commitment to supporting the health and wellbeing of our staff.

3. SCOPE

This policy relates to all employees of the Berrigan Shire Council.

4. OBJECTIVE

This policy is developed to assist Council with Delivery Plan Objective 2.1.3.5

Manage human resource and workforce development activities through the implementation of the Berrigan Shire's Workforce Development Plan 2017-2021

5. DEFINITIONS

Family and domestic violence is defined to mean violent, threatening or other abusive behaviour, by a family member of an employee or another person living in



Policy

the same household as the employee, that seeks to coerce or control the employee and that causes them harm or to be fearful.

Family member is defined to mean a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or a person related to the employee according to Aboriginal or Torres Strait Island kinship rules.

6. POLICY IMPLEMENTATION

6.1 Leave Provisions

In accordance with the Award, employees (other than casual employees) experiencing family and domestic violence and who require flexibility to deal with the impact of family and domestic violence are entitled to up to ten days' paid family and domestic violence leave.

Casual employees, whilst not eligible for paid leave, may make themselves unavailable for work without consequences to deal with the impact of family and domestic violence.

Family and domestic violence leave is available at the start of each 12-month period of an employee's employment and does not accumulate from year to year.

6.2 Accessing Leave

Council acknowledges that some employees may feel uncomfortable accessing this leave, and speaking to others. Employees requiring family and domestic violence leave are encouraged to access Council's Employee Assistance Program, and speak with the General Manager to arrange for this leave to be utilised.

Ideally, the employee will provide notice before the leave is taken. Where this is not possible, the employee must notify the General Manager as soon as practicably possible during the leave.

6.3 Supporting Documentation

An employee will need to provide evidence to support the use of family and domestic violence leave. This may be in the form of a document issued by the police, a court order or statutory declaration.

6.4 Confidentiality

All personal and information regarding family and domestic violence will be kept confidential in accordance with Council policy and relevant legislation.

7. RELATED LEGISLATION, POLICIES AND STRATEGIES

- *Fair Work Act 2009 (Cth)*
- *Privacy and Personal Information Protection Act 1998*



Policy

- *Local Government (State) Award 2017*
- Berrigan Shire 2027: Workforce Management and Development Plan 2017-2021
- Equal Employment Opportunity Policy
- Work Health and Safety Policy
- Employee Assistance Program Policy
- Berrigan Shire Council Human Resource Manual

REPORT:

On the 24th February, 2020 the Industrial Relations Commission of NSW (the “Commission”) varied the *Local Government (State) Award 2017* (the “Award”) to provide an entitlement of up to 10 days paid leave to employees who require flexibility to deal with the impacts of family and domestic violence.

Elements of the Family and Domestic Violence Leave provision include the following:

- Family and domestic violence is defined to mean “...violent, threatening or other abusive behaviour, by a family member of an employee or another person living in the same household as the employee, that seeks to coerce or control the employee and that causes them harm or to be fearful”;

- Family member is defined to mean "...a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules";
- Employees, other than casual employees, experiencing family and domestic violence and who require flexibility to deal with the impact of family and domestic violence are entitled to up to 10 days' paid family and domestic violence leave (casual employees, whilst not eligible for paid leave, may make themselves unavailable for work without consequences to deal with the impact of family and domestic violence);
- Family and Domestic Violence Leave is available at the start of each 12 month period of an employee's employment;
- The leave does not accumulate from year to year; and
- Time where an employee is on paid leave to deal with family and domestic violence counts as service and does not break the employee's continuity of service.

In response to the award changes, Council have developed the Family and Domestic Violence Policy. The policy explains what the leave provisions are, how staff can access the leave, and what will be required as evidence in order to support the leave application.

7.4 TRAINING AND DEVELOPMENT POLICY

AUTHOR: Enterprise Risk Manager

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.2 Ensure effective governance by Council of Council operations and reporting

FILE NO: 22.112.1

RECOMMENDATION: That the Council:

1. Revoke the Training Policy; and
2. Adopt the Training and Development Policy as follows:



Policy

26 TRAINING AND DEVELOPMENT POLICY

Version 02

File Reference No: 22.178.1

Strategic Outcome: Good government

Date of Adoption: 20/05/2020

Date for Review: 17/05/2023

Responsible Officer: Enterprise and Risk Manager

1. POLICY STATEMENT

Berrigan Shire Council recognises the importance of training and developing its staff and understands that employees and volunteers are vital to the continued operations and improvement of Council.

Council acknowledges that training and development of staff provides benefits to its employees and volunteers in terms of their overall career prospects for advancement within Council and personal development, as well as being central to the continual improvement of Council's services.

2. PURPOSE

The purpose of this policy is to outline Council's commitment to meeting its obligations under the *Local Government (State) Award 2017*, and to describe the training program, and its objectives for Council's workforce.

3. SCOPE

This policy relates to employment of all staff, councillors and volunteers.

4. OBJECTIVE

This policy is developed to assist Council with the following Workforce Management and Development Plan objectives:

2.1.3.5.2 *Increase the engagement and retention of Council's professional and technically skilled workforce;*

2.2.2.5.3 *Strengthen workplace training and skills*

5. DEFINITIONS

6. POLICY IMPLEMENTATION



Policy

6.1 Identifying Training Needs

Council uses a number of mechanisms to identify training needs. These include:

- Identifying individual training needs through performance review;
- Establishing training programs as part of position requirements, changes in legislation or as part of continual improvement;
- In response to employee requests, following an assessment of the need and benefit to the position and Council.

6.2 Training Budgets

Council's training budgets are established each year to cover regular compulsory training, and identified training needs where possible.

As budgets are limited, alternative avenues to reduce training costs are encouraged. These include accessing funded programs, accessing training within close proximity to the Berrigan Shire, conducting in-house programs and inviting neighbour Councils, and utilising training expertise within Council's workforce.

Where the training need identified is urgent, Council will make every effort to ensure the training program is made available.

6.3 Staff Training Plans

Individual training plans are developed for all staff during the Performance Management Review process. This process allows the Manager to discuss with the employee, areas for improvement, aspirations, career goals and opportunities.

The individual training plan identifies and schedules a program of training that will develop skills and attributes of the employee relevant to their position or future position with the Council.

The Human Resource Services Officer will research appropriate training providers and courses, and will provide information around costs in order for the Manager to establish an accurate training budget, and schedule in accordance with Council's training and development procedures.

6.4 Workforce Management and Development Plan

The Workforce Management and Development Plan (the 'Plan') outlines the workforce development issues facing the Council, and identifies strategies and actions to implement the Shire's four year Delivery Program and Operational Plans.

Actions around training and development of Council's workforce have been identified and included in the Plan. These are broader concepts focused on addressing gaps in professional positions, attracting and retaining staff, dealing with an ageing workforce and establishing succession plans.



Policy

Training to address the actions in the Plan will be scheduled in accordance with budgets, staff availability, course opportunities and Council's training and development procedures.

6.5 Councillor Training and Development

At the beginning of a councillor's term, an individual Councillor Development Plan will be established based on self-assessment and available training opportunities. Councillors will be provided access to internal and external training to assist them in meeting their obligations.

6.6 Volunteer Training

Volunteer training will be provided to registered volunteers of Council's S355 Committees, in accordance with the activities that have been identified and delegated to the Committee, and to assist them in completing their duties safely.

7. RELATED LEGISLATION, POLICIES AND STRATEGIES

- *Local Government (State) Award 2017*
- Berrigan Shire 2027: Workforce Management and Development Plan 2017-2021
- Equal Employment Opportunity Policy
- Work Health and Safety Policy
- Berrigan Shire Council Human Resource Manual

REPORT:

During negotiations for the new *Local Government State Award*, the industry's unions claimed that employees were being denied the opportunity to progress through the salary range for their positions because Councils did not have adequate training plans or training budgets.

This prompted the Industrial Relations Commission of New South Wales to request all Councils produce copies of their training plans and budgets.

Council have been active in the training space and have provided opportunities to staff to pursue qualifications and knowledge expansion through various training mediums. However, during the collation of the requested documentation, a review of the Training policy was conducted and this highlighted a number of areas that needed revising.

Specifically, a more concise explanation of Council's process when training needs are identified; identifying other avenues, such as through the Workforce Management and Development Plan where the need for additional training will be highlighted; and including training needs for others such as councillors and volunteers.

7.5 TREE WORKS – FINLEY RECREATION RESERVE

AUTHOR: Enterprise Risk Manager

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 1.1 Support sustainable use of our natural resources and built landscapes

FILE NO: 11.151.1

RECOMMENDATION: That the Council approve the tree works identified in the Arborist Report for Finley Recreation Reserve, and included as **Appendix “B”**

REPORT:

Following a request from the Finley Recreation Reserve Committee, tree assessments were conducted on all trees along the Pinnuck Street boundary of the Finley Recreation Reserve.

In total, 41 trees were assessed, with the predominant species being Sugar Gums. The majority of the trees were exhibiting poor or very poor health with a significant number of them, dead.

Axiom Tree Management was the contracted arborist, who have found it difficult to determine the cause for decline. They believe it is a combination of factors including compaction, low rainfall, periodic waterlogging and excavation.

Given the number of dead or declining trees, it is likely that risk of failure will increase into the future. Due to the nature of the reserve and close proximity of the trees to reserve patrons, and school parking on the opposite side of the fence, tree works identified in the arborist report are recommended.

Works are identified for 33 trees, with 15 requiring removal, and the balance requiring deadwood removal and pruning. Following the works, further assessment is recommended regarding a replanting program.

7.6 HILLTOP ACCOMMODATION CENTRE

AUTHOR: General Manager

STRATEGIC OUTCOME: Supported and engaged communities

STRATEGIC OBJECTIVE: 3.1 Create safe, friendly and accessible communities

FILE NO: 02.163.1

RECOMMENDATION: that the Council contribute \$10,000 towards the Stage 2 development of the Hilltop Accommodation Centre.

REPORT:

During 2010-2012 the Rotary Club of Albury North, the Fight Cancer Foundation, Lions District 201V6 and the Zonter Club of Albury Wodonga built the Albury Wodonga Carer Accommodation Centre. The Centre was built to accommodate cancer patients and their carers that attend Albury for Cancer treatment. The Centre is adjacent to the Albury Base Hospital.

The Centre provides 20 motel style rooms, lounge and kitchenette facilities. It also provides communal facilities including full kitchen, dining area, lounge, library, BBQ and children's play area.

The Centre is available to all regional cancer patients at a vastly subsidized rate and is often full. In the last 24 months 11,077 bed nights have been provided, of which 3,241 were used by residents of Berrigan Shire.

The Council contributed \$10,000 to the project.

The parties are now proposing to extend the Centre to provide 10 more rooms, library area/quiet room, gymnasium, additional laundry facilities, additional utility rooms and an administrative area.

The proposed expansion is estimated to cost \$3.8m with the Building Better Regions Fund contributing \$1.9m, available cash being \$1.135m leaving a short fall of about \$765k.

The parties are, again, requesting funding from the Council to help fund the budget shortfall.

Naming rights will be granted for the following gifts:

Stage II Development	\$250,000
Stage II Floor	\$125,000
Lounge / Library	\$50,000

Reception / Administration	\$40,000
Accommodation Suite	\$35,000
Gymnasium	\$25,000
Guest Lift	\$20,000
Guest Laundry	\$10,000

Gifts of \$5,000 and more will be acknowledged on the perpetual Honour Boards and prominently displayed in the foyer.

Gifts to assist with the furnishings and equipment will be gratefully received:

Fully Furnish Lounge Room	\$9,500
Fully Furnish Accommodation Suite	\$6,800
Heavy Duty Washer Dryer	\$5,000
Gymnasium Equipment	\$2,500
Electrical Package Accommodation Suite	\$1,800
Original Artwork Accommodation Suite	\$1,000

Given that Berrigan Shire residents have, over the last 2 years, occupied about one third of the total bed nights it appears that it would be appropriate to again contribute to the project.

7.7 NATIVE VEGETATION REMOVAL – MULWALA – BAROOGA RD, BOOMANOOMANA

AUTHOR: Assets & Operations Manager

STRATEGIC OUTCOME: Sustainable natural and built landscapes

STRATEGIC OBJECTIVE: 1.3 Connect and protect our communities

FILE NO: 11.151.1

RECOMMENDATION: That the Council, having considered the content of the Arborist report (**Appendix “C”**) prepared by Axiom Tree Management Pty Ltd for the assessment of the native trees at 2521 Mulwala-Barooga Road, Boomanoomana, authorise the removal of 11 of the 13 trees identified in said report to address safety issues pursuant to the authority provided in the *Roads Act 1993 – Section 88* Tree felling based on condition of the trees and risk posed.

REPORT:

Concerns were raised regarding the condition of the trees by the occupants at 2521 Mulwala-Barooga Rd, Boomanoomana.

Council engaged an Arborist to assess the following key objectives:

- Identify and record the dimensions of specified trees within the road reserve adjoining 2521 Mulwala-Barooga Road, Boomanoomana;
- Provide an assessment of the health and structure of the tree specimens;
- Assess the risk that the trees present in the landscape;
- Provide recommendations for management of trees to ensure that their health and structure is maintained or improved, whilst ensuring the trees remain at an acceptable level of risk for the short to long-term

A copy of the report is attached at **Appendix “C”** for Councillors consideration.

Conclusion:

*Thirteen specified trees were assessed adjoining the subject property. The trees consisted of planted *Eucalyptus cladocalyx* and self-sown *Eucalyptus melliodora*.*

*Most trees assessed exhibit ‘Very poor’ health or are dead: o Most of the large *Eucalyptus cladocalyx* are dead or have reached the end of their lives;*

Major excavation has been carried out within proximity of the trees over a number of decades;

The cumulative effect of excavation for the swale drain and for irrigation pipe installation is likely to be major factors in the decline and death of the trees.

Most trees assessed exhibit poor structure:

The trees contain large dead branches and decay cavities that are likely to fail in the short to medium term.

The useful life expectancy of a tree is assigned by the assessor based on many factors including; species longevity, suitability to the site and current age and condition both regarding health and structure:

Most of the Eucalyptus cladocalyx are reaching or have reached the end of their useful life and should be removed

Trees 12 and 13 exhibit good health and structure and have the potential to live for many decades.

Excavation has occurred to the north and south of the subject trees damaging or removing roots. Maintenance of the swale drain has damaged roots over time with surface roots showing visible signs of mechanical damage. Development of the agricultural land to the south of the trees has resulted in excavation for installation of underground irrigation pipes damaging or removing roots and contributing to the decline in tree health and death.

The trees are located along a rural road with relatively wide road verges. Large branch failure is 'Probable' in the short term with most of the Eucalyptus cladocalyx. However, given the wide nature strip and agricultural land directly beneath the canopy of the trees, the likelihood of impact with people or property is 'Very low'.

Given the number of dead or declining trees it is likely that risk will increase in the future. Complete removal of Trees 1-11 should be removed in the medium term to reduce the risk of complete tree failure onto the road or within private property. No works have been recommended for Trees 12 and 13.

Council should consider the consequences of the proposed works on the environment and be satisfied that they will not have a significant effect on any of the identified threatened species and ecological communities and their conservation that is not more than balanced by the benefits of constructing a safer levee.

7.8 CONTRIBUTORY SCHEMES - FOOTPATHS

AUTHOR: Engineering Services Manager

STRATEGIC OUTCOME: Sustainable natural and built landscapes

STRATEGIC OBJECTIVE: 1.3 Connect and protect our communities

FILE NO: 28.5.2

RECOMMENDATION: That a request be made to the NSW Government via correspondence to the Premier, the Minister for Local Government, the Minister for Roads and Transport and the Minister for Regional Transport and Roads for NSW Legislation to be amended to provide a more equitable method of recouping the costs of construction of new footpaths from benefiting landowners.

REPORT:

At the Corporate Workshop in February, in my presentation on the review of the Pedestrian Access and Mobility Plans, I raised the issue of costs to landowners in contributing to footpath construction impeding the process of constructing the right footpath in the right location. The fact that landowners know they will have to contribute colours their vision on the actual need for the footpath network.

The process of developing the PAMP should be an open one with all stakeholders made aware of the content and given the opportunity to voice their views and have them considered by Council prior to adoption of the plans.

Once the PAMPs are adopted Council should endeavour to implement the construction of the paths in the priorities agreed in the plan. This construction program should be subject to Council's budget constraints but should not be constrained or amended simply because the residents of the street object when the contributory scheme is commenced.

Historically Council has recouped a percentage of the cost of new footpaths from the property owner pursuant to Section 217 of the Roads Act 1993 as set out below:

ROADS ACT 1993 - SECT 217 Roads authority may recover cost of paving, kerbing and guttering footways

ROADS ACT 1993 - SECT 217

Roads authority may recover cost of paving, kerbing and guttering footways
217 ROADS AUTHORITY MAY RECOVER COST OF PAVING, KERBING AND GUTTERING FOOTWAYS

(1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.

(2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine.

(3) The owner of land the subject of such a determination becomes liable to pay the amount determined on receiving notice of that amount.

(4) This section does not apply to the renewal or repair of any paving, kerb or gutter in respect of which contributions have previously been paid and does not apply to the Crown as regards public open space.

(5) In this section, a reference to a gutter includes, in the case of a roadway that is laid to the kerb in a permanent manner, a reference to such part of the roadway as is within 450 millimetres of the kerb.

Council has also adopted a policy attached as **Appendix "D"** to guide the application of this section and the relevant part is set out below:

40 CONTRIBUTORY FOOTPATH AND KERB AND GUTTER SCHEMES

6.4. How the Council will charge landholders

6.4.1. Allocation of costs

Contributions by landholders to the cost of eligible works under a contributory scheme will be determined on the following basis.

- The total cost of the works will be proportionately allocated across each affected property on the basis of the length of the property boundary adjacent to the works.*
- Each property where the front boundary is adjacent to the works will be charged **50%** of the cost allocated to the property*
- Where a boundary other than the front boundary is adjacent to the works, the property will only be charged **25%** of the cost allocated to the property.*

The Council may choose to allocate an amount less than the total cost to one or more of the affected properties. This may occur where technical issues associated with the site raise the cost of the works significantly above the normal costs incurred.

If a property has already contributed to the existing footpath and/or kerb and gutter works associated with a particular proposal, it will not be required to make a further contribution.

6.5.2. Payment and collection

Affected landholders will have two options to pay the contribution owing.

- Payment in full within 30 days of the invoice being issued*
- A repayment program over a three year period*

The typical cost for a property where a standard width footpath is constructed would be \$1500 to \$2000 and although they are generously allowed to pay this over 3 years there is always considerable objection from landowners that do not want to contribute.

There are genuine objections from property owners that would suffer hardship and Council has provisions for dealing with these in a sensitive fashion.

However, the main objection raised is that the charge is simply unfair as the property owners do not agree that they will receive any benefit from the path and that it will not add value to their property.

It is also regularly claimed that it is unfair the properties on one side of the street should have to pay their allocated portion and the properties on the other side of the street do not have to pay anything even though they will also have access to the footpath.

In recent times there have been occasions when Council has bowed to the objections and not proceeded with the construction of the footpath or agreed to construct the footpath without applying the charge.

This inconsistency makes it difficult for staff to advise landowners and to justify why they have to participate in the schemes.

In an attempt to find a workable solution for the future there are a few options explored below for Council consideration:

Current Position

Staff are in the process of reviewing the Pedestrian Access and Mobility Plans for each of the towns and this process is the subject of two separate reports presented for consideration at this workshop.

The draft PAMPs have estimated costs for completion of the footpath network to the proposed standards recommended and copies of the estimates are set out below for reference.

In summary the recommended works ignoring paths that do not require a contribution are:

Town	Total Cost	Owners Cost
Barooga	\$593,520	\$147,364
Berrigan	\$351,600	\$115,346
Finley	\$649,200	\$223,850
Tocumwal	\$528,800	\$187,484
TOTAL	\$2,123,120	\$674,044

The draft budget for new footpath construction is currently:

Year	Total Cost	Owners Cost
20-21	\$128,000	\$48,000
21-22	\$148,000	\$48,000
22-23	\$75,000	\$35,000
23-24	Nil	Nil
24-25	Nil	Nil
TOTAL	\$351,000	\$131,000
AVERAGE ANNUAL	\$70,200	\$26,200

At the budgeted level of funding it would take 30 years to complete the works proposed in the draft PAMPs but assuming expenditure levels can be restored to around

\$150,000 annually we can also assume that the level of contributions we are talking about would be around \$50,000 annually.

Option 1 – Forego Contributions

Obviously the simplest option as it would only require amendment to the Contributory Schemes Policy to remove footpaths.

The downsides are:

- It would put a \$50,000 hole in Council's annual budget with no way of replacing the funding;
- It may not be considered equitable by owners that have paid contributions in the past.

Option 2 – Seek a Special Rate Variation

A special rate variation could be sought to allow the lost income to be recouped by increasing the rates charged to all residential ratepayers.

This would allow the level of income to be maintained.

Downsides are:

- The effort and expense required to make application for a special rate variation would be excessive for the \$50,000 to be recouped each year.
- The equity issue remains.

Option 3 – Seek an Amendment to the Local Government Act or Roads Act

The direction agreed at the Corporate Workshop was to write to the relevant Minister and seek changes to the Roads Act to allow for contributions for footpaths to be levied on owners on both sides of streets where only one footpath is to be constructed.

This is the current situation in Victoria where Councils are able to levy Special Rates and Charges where Council considers there is special benefit to the persons required to pay the special rate or charge. The relevant clause of the Victorian Local Government Act is set out below:

Special rate and special charge

- (1) *A Council may declare a special rate, a special charge or a combination of both only for the purposes of—*
- (a) defraying any expenses; or*
 - (b) repaying (with interest) any advance made to or debt incurred or loan raised by the Council—*

in relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the

exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge.

Special rates or charges can be applied to particular works or services (such as footpaths, roads, kerbs and channels, or drains) and for providing services like promotion, marketing or economic development.

If the NSW Local Government Act was amended to include similar provisions it would allow Council to determine who would receive the special benefit from construction of the footpath and set proportionate charges for contributions.

This would also protect the income stream and while not totally addressing the equity issues it would be easier to present a supporting argument to residents that have already contributed on the basis that Council has moved to a fairer system of charging.

A draft letter is attached at the end of this report for consideration should Council wish to pursue this option.

Downsides are:

- The State would have to be convinced to change the Roads Act and/or the Local Government Act;
- The timelines to effect such changes would probably be extensive;
- Determining the benefit and who receives it and should therefore be subject to the charge can be complex and difficult to justify;
- There would be a need for an independent body to assess objections to the Councils determination of the degree of benefit.

Option 4 – Seek Grant Funds to Complete Footpath Works

It may be possible to package all PAMPS proposals into a single project and procure grant funds for the completion.

This would reduce the time frame for completion of the works and reduce the cost to both Council and the affected landowners.

Downsides are:

- These works may not fit the criteria for grant programs;
- If there is a grant program for which such a program was eligible it may require up to a 1:1 contribution from Council and this would result in Council having to find the matching funds within the period of the grant.

Draft Letter

To
Premier
Minister for Local Government
Minister for Roads and Transport
Minister for Regional Transport and Roads

Landowner Contributions to the Cost of Footpath Construction

Council writes to request your consideration to making changes to NSW Legislation to provide a more equitable method of recouping the costs of construction of new footpaths from benefiting landowners.

Currently Councils can charge the adjoining landowner up to half of the cost of construction of a footpath that is constructed on a public road in front of their property pursuant to Section 217 of the Roads Act 1993 as set out below.

ROADS ACT 1993 - SECT 217 Roads authority may recover cost of paving, kerbing and guttering footways

ROADS ACT 1993 - SECT 217

Roads authority may recover cost of paving, kerbing and guttering footways

217 ROADS AUTHORITY MAY RECOVER COST OF PAVING, KERBING AND GUTTERING FOOTWAYS

- (1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.*
- (2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine.*
- (3) The owner of land the subject of such a determination becomes liable to pay the amount determined on receiving notice of that amount.*
- (4) This section does not apply to the renewal or repair of any paving, kerb or gutter in respect of which contributions have previously been paid and does not apply to the Crown as regards public open space.*
- (5) In this section, a reference to a gutter includes, in the case of a roadway that is laid to the kerb in a permanent manner, a reference to such part of the roadway as is within 450 millimetres of the kerb.*

For the majority of residential streets footpaths are only planned to be constructed on one side of the street and are intended for use by residents of both sides of the street. The current provisions for recouping a portion of the cost from landowners is inequitable as although residents on both sides of the street are obtaining the benefit of a paved footpath only the landowners on the side of the street that it is constructed can be legally charged a contribution.

While it is agreed that the residents on the side that has the footpath constructed will receive a little more benefit in that they do not have to cross the road to use the footpath, it is contended that those on the other side of the street should also have to contribute.

As an example only – The Victorian Local Government Act has the following provisions for the declaration of special rates and charges that provide far more flexibility for Councils that is currently afforded in NSW by the Roads Act.

Special rate and special charge

(1) *A Council may declare a special rate, a special charge or a combination of both only for the purposes of—*

(a) defraying any expenses; or

(b) repaying (with interest) any advance made to or debt incurred or loan raised by the Council—

in relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge.

Special rates or charges can be applied to particular works or services (such as footpaths, roads, kerbs and channels, or drains) and for providing services like promotion, marketing or economic development.

Berrigan Shire Council is not professing that this is the answer but does request that the NSW Government give consideration to amending the Roads Act 1993 to provide flexibility for Councils to charge properties on either side of the street for footpath construction costs or remove the current provisions from the Roads Act 1993 and provide more flexible provisions in the Local Government Act 1993 for recouping part of the cost of works that are of specific benefit to landowners.

Looking forward to you positive response in relation to this important matter.

Yf

GM

APPENDIX 2 - NOMINATED PROJECTS 2020 PAMP BAROOGA

Concrete Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST	
Priority Level 1				
Priority Level 2				
Golf Course Road/ Gormley Court - Adventure Playground to Swing Bridge	650	130000	0	Grant Project?
Cobram Road - Reconstruct Shared Path	2000	400000	0	RMS?
Lawson Drive - Swing Bridge to Buchanans Road	360	43200	4840	
	540	64800	26532	
Priority Level 3				
Vermont Street – South side Golf Course Road to McFarland Street	190	22800	9152	
McFarland Street – Vermont Street to Barinya Street	280	33600	13904	
Barinya Street – McFarland Street to Banker Street	200	24000	10560	
Barinya Street – Brooks Avenue to Wiruna Street	210	25200	9328	
Wiruna Street – Barinya Street to Amaroo Avenue	500	60000	15840	
Brooks Avenue – Botanical Gardens to Barinya Street	46	5520	2428.8	
Amaroo Avenue – Wiruna Street to Hughes Street	210	25200	11088	
Kamarooka Street – Snell Road to Nangunia Street	445	53400	22616	
Snell Road – Sports Centre to Takari Street	479	95800	21076	
Golf Course Road – Vermont Street to Burkinshaw Street	700	140000	15400	
TOTAL		1123520	147364.8	

APPENDIX 2 - NOMINATED PROJECTS 2020 PAMP BERRIGAN

Concrete Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST	
Priority Level 1				
Priority Level 2				
Jerilderie Street and Stafford Street- From Greggerys Road to Recreation Reserve. Links town with Reserve.	500	60000	15400	
Momalong Street - Davis Street to Jerilderie Street	110	13200	5808	
Mitchell Street - Chanter Street to Budd Street.	220	26400	7876	
Budd Street - Drummond Street to Cobram Street	295	35400	15576	
Jerilderie Street - East side from Momalong Street to Orr Street	650	78000	24640	Part in Park Redevelopment
Priority Level 3				
Nangunia Street – Jerilderie Street to Denison Street	215	25800	6622	
Flynn Street – Stafford Street to Drohan Street	290	34800	15312	
Drohan Street – Flynn Street to Drummond Street	90	10800	2376	
Drummond Street – Drohan Street to Corcoran Street	190	22800	9152	
Barooga Street – Carter Street to Gregory’s Road	140	16800	6512	
Mary Street – Jerilderie Street to William Street	110	13200	2904	
Creed Street – Nangunia Street to Robertson Street	120	14400	3168	
TOTAL		351600	115346	

Gravel Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST
Priority Level 3			
Racecourse Road - Cobram Street to Jerilderie Street	970	38800	
Denison Street – Nangunia Street to Osborne Street	480	19200	
Creed Street – Robertson Street to Momalong Street	200	8000	
Momalong Street – Denison Street to Cemetery	760	30400	
TOTAL		66000	0

APPENDIX 2 - NOMINATED PROJECTS 2020 PAMP FINLEY

Concrete Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST	
Priority Level 1				
Dawe Avenue. Access to Pre-school, park, Hospital, Aged Care.	350	40000	15000	
Priority Level 2				
Coree Street - Tuppal Street to Wollamai Street	200	24000	6160	
Coree Street - Pinnuck Street to Ulupna Street	200	24000	8800	
Donaldson Street - Dawe Avenue to Scoullar Street	120	14400	6336	
Scoullar Street- Donaldson Street to Aged Care Residences	70	8400	3696	
Tocumwal Street -Wollamai Street to Tuppal Street	200	24000	9680	
Tuppal Street - South side, Tocumwal Street to Denison Street	215	25800	5676	
Murray Street - East side - Newell Highway Crossing to Murray Hut Drive	320	38400	16896	
Tongs Street - Burke Street to Murray Street	540	64800	26532	
Priority Level 3				
Warmatta Street- Finley Street to Howe Street	215	25800	10252	
Finley Street - Wollamai Street to Townsend Street	880	105600	45584	
Osborne Street- Finley Street to Howe Street	215	25800	10252	
Lewis Crescent - Finley Street to Malone Mews	55	6600	1694	Railway Park Project?
Lewis Crescent - Railway Park south to Finely Street	390	46800	5280	Railway Park Project?
Drainage Basin - Lewis Crescent to Endeavour Street	160	19200	0	Railway Park Project?
Coree Street - Ulupna Street to Tongs Street	840	100800	42592	
Endeavour Street - Connections from car parks to public amenities	50	6000	0	
Atkinson Street - Murray Street to Hampden Street	260	31200	6864	
Hampden Street - Atkinson Street to Murray Hut Drive	370	44400	17556	

Bridget Street - Hampden Street to Kelly Street	230	27600	11264
Murray Hut Drive - Hampden Street to Murray Street	90	10800	2376
TOTAL		674400	223850

Gravel Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST
Priority Level 3			
Tongs Street - Cemetery to Burke Street	270	10800	
Mary Lawson and Old Fire Track Park - Tongs Street to Endeavour Street	670	26800	
Railway Reserve - Wollamai Street to Scoullar Street	720	28800	
TOTAL		66400	0

APPENDIX 2 - NOMINATED PROJECTS 2020 PAMP TOCUMWAL

Concrete Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST	
Priority Level 1				
Jerilderie Street - from end of Concrete path to Kelly Street.	260	52000	0	
Dean Street - from Hillson Street to Deniliquin Road	75	15000	3300	
Priority Level 2				
Levee - Bridge Street to road bridge	220	44000	0	Grant
Bridge Street - Tuppal Road to Levee	370	44400	9768	Part Grant
Hennessy Street - Town Beach Road to Morris Street	160	19200	7348	
Charlotte Street - Bruton Street to Hennessy Street	410	49200	10824	
Kelly Street - Charlotte Street to Jerilderie Street	550	66000	7260	
Falkiner Street - Charlotte Street to Hannah Street	410	49200	19448	
Bruton Street – Anthony Avenue to Hannah Street	270	32400	14256	
Hannah Street – Bruton Street to Hennessy Street	430	51600	20504	
Jerilderie Street – Kelly Street to Golf Course entry	1750	350000	0	Grant
Priority Level 3				
Hill Street – Murray Street to Dean Street	420	50400	17776	
Sugden Street – George Street to Hill Street	450	54000	23760	
Hannah Street – Hennessy Street to Kelly Street	390	46800	10296	
Kelly Street – Hannah Street to Charlotte Street	430	51600	21604	
Murray Street – West side Finley Street to George Street	550	66000	24640	
TOTAL		974800	187484	

Gravel Paths

PROJECT	LENGTH	TOTAL COST	OWNERS COST
Priority Level 3			
Murray Street – George Street to Racecourse Road	670	26800	
Racecourse Road – Murray Street to Racecourse Entry	700	28000	
Bruce Birrell Drive – Bruton Street to Racecourse Road	1120	44800	
TOTAL		99600	0

7.9 PEDESTRIAN ACCESS AND MOBILITY PLANS

AUTHOR: Engineering Services Manager

STRATEGIC OUTCOME: Sustainable natural and built landscapes

STRATEGIC OBJECTIVE: 1.3 Connect and protect our communities

FILE NO: 28.5.2

RECOMMENDATION:

1. That Council adopt the Pedestrian Access and Mobility Plans for Barooga, Berrigan, Finley and Tocumwal included as **Appendix “E”** as draft plans to be released for a community engagement process that will encourage input from affected stakeholders prior to Council deliberations to finalise and adopt the plans.
2. That the community engagement process include the following elements:
 - A community based group to consider the draft plans and submissions and report to Council with recommendations on changes to the PAMPS content and on priorities for works;
 - Broad advice to the community via local press and Council’s website of the process of review of the PAMPS and where to access copies of them; and
 - Specific advice to directly affected property owners of the process via letterbox drop of summary documents explaining the process.

REPORT:

The Pedestrian Access and Mobility Plans have been reviewed by staff and amended to draft stage to enable community engagement to be undertaken prior to finalizing the plans.

A proposed Community Engagement Strategy that can be completed during the current COVID 19 restrictions has been prepared in conjunction with the Strategic and Social Planning Coordinator and includes the following elements:

- A community based group to consider the draft plans and submissions and report to Council with recommendations on changes to the PAMPS content and on priorities for works;
- Broad advice to the community via local press and Council’s website of the process of review of the PAMPS and where to access copies of them; and
- Specific advice to directly affected property owners of the process via letterbox drop of summary documents explaining the process.

The draft plans have been prepared generally along the lines outlined to Councillors at the Corporate Workshop in February this year.

An ongoing program of capital works to complete all paths listed as Priority 1, Priority 2 and Priority 3 routes has been prepared.

Priority levels are assigned according to the degree to which the route in question satisfies the criteria, as follows:

Priority Level 1	Satisfies all key route criteria
Priority Level 2	Satisfies at least one key route criteria strongly.
Priority Level 3	Non – key routes, to extend footpath network to within 250m of the majority of residences.

Key routes criteria:

- link the majority of attractors and generators of pedestrian traffic, or a significant individual feature, such as a school
- carry significant pedestrian and vehicle traffic
- play an important linking role in relation to subordinate streets in the subdivision or settlement pattern.

The works programs included in Appendix 2 of each plan do not have the jobs currently listed in priority order as it is envisaged that the priorities will be determined by the community engagement process and Council's consideration of the recommendations from this process.

The PAMPS are attached as **Appendix "E"** and Councillors are requested to closely consider the content of the draft documents and provide advice on any changes they think are required prior to the community engagement strategy commencing.

7.10 HALF COST SCHEME 02-19-20 KERB AND GUTTER CONSTRUCTION – JERSEY STREET, TOCUMWAL (WEST SIDE, TUPPAL ROAD TO BROWN STREET)

AUTHOR: Director Technical Services

STRATEGIC OUTCOME: Sustainable natural and built landscapes

STRATEGIC OBJECTIVE: 1.3 Connect and protect our communities

FILE NO: HCS 02-19-20

RECOMMENDATION: that pursuant to Section 217 of the Roads Act 1993 and Council's Administration of Contributory Footpath and Kerb and Gutter Schemes Pursuant to clause 217, 218 & 219 of the Roads Act 1993 Policy, the Council proceed with the construction of kerb and gutter in Jersey Street, Tocumwal (west side), from Tuppal Road to Browne Street and make a charge on abutting property owners in accordance with the Schedule for Scheme 02/19/20 as set out below.

SCHEDULE: SCHEME NO. 02/19/20
KERB AND GUTTER CONSTRUCTION – JERSEY STREET, TOCUMWAL (WEST SIDE, TUPPAL ROAD TO BROWN STREET)

Estimated full unit rate is \$130.00 excluding GST per meter, inclusive of survey, design, construction and supervision.

LOT N°	DP N°	Owner's Percentage	Frontage (m)	Total Cost \$	Owner's Cost Excl. GST \$	GST \$	Total Owner's Cost Incl. GST \$	Council Cost \$
299	722009	50%	10.19	\$1,324.31	\$662.16	\$66.22	\$728.37	\$662.16
299	722009	25%	66.64	\$8,662.81	\$2,165.70	\$216.57	\$2,382.27	\$6,497.11
300	722009	50%	55.12	\$7,165.86	\$3,582.93	\$358.29	\$3,941.22	\$3,582.93
301	722009	50%	39.95	\$5,193.11	\$2,596.56	\$259.66	\$2,856.21	\$2,596.56
231	257014	50%	66.98	\$8,707.92	\$4,353.96	\$435.40	\$4,789.36	\$4,353.96
50 & 71	752296	50%	100.43	\$13,055.25	\$6,527.63	\$652.76	\$7,180.39	\$6,527.63
	Council		46.03	\$5,983.77	\$0.00	\$0.00	\$0.00	\$5,983.77
		Total	385.33	\$50,093.03	\$19,888.93	\$1,988.89	\$21,877.82	\$30,204.10

REPORT:

The Building Better Regions Grant Project includes the construction of kerb and gutter on the west side Jersey Street, Tocumwal from Tuppal Road to Browne Street.

Due to time constraints, at the time of the grant application there was no consultation carried out with the property owners of Jersey Street, Tocumwal indicating that there would be a request from Council seeking up to a 50% contribution for the installation of kerb and gutter adjacent to their property. However, at the Council meeting in February 2020 the Council resolved to seek up to 50% contribution for adjoining land holders for the installation of kerb and gutter, which was primarily driven on precedence of previous half cost schemes for kerb and gutter throughout the shire in accordance with Council's policy 'Administration of Contributory Footpath and Kerb and Gutter Schemes pursuant to clauses 217, 218 & 219 of the Roads Act 1993'.

Affected owners have been advised of the proposed works and contributions in accordance with the policy and asked to advise of their agreement or otherwise to participate in the scheme. The notification advised them that if they did not respond by 18th March, 2020 for Kerb and Gutter Schemes 02/19/20, it would be assumed that they did not object.

There were no requests for a site meeting to be held.

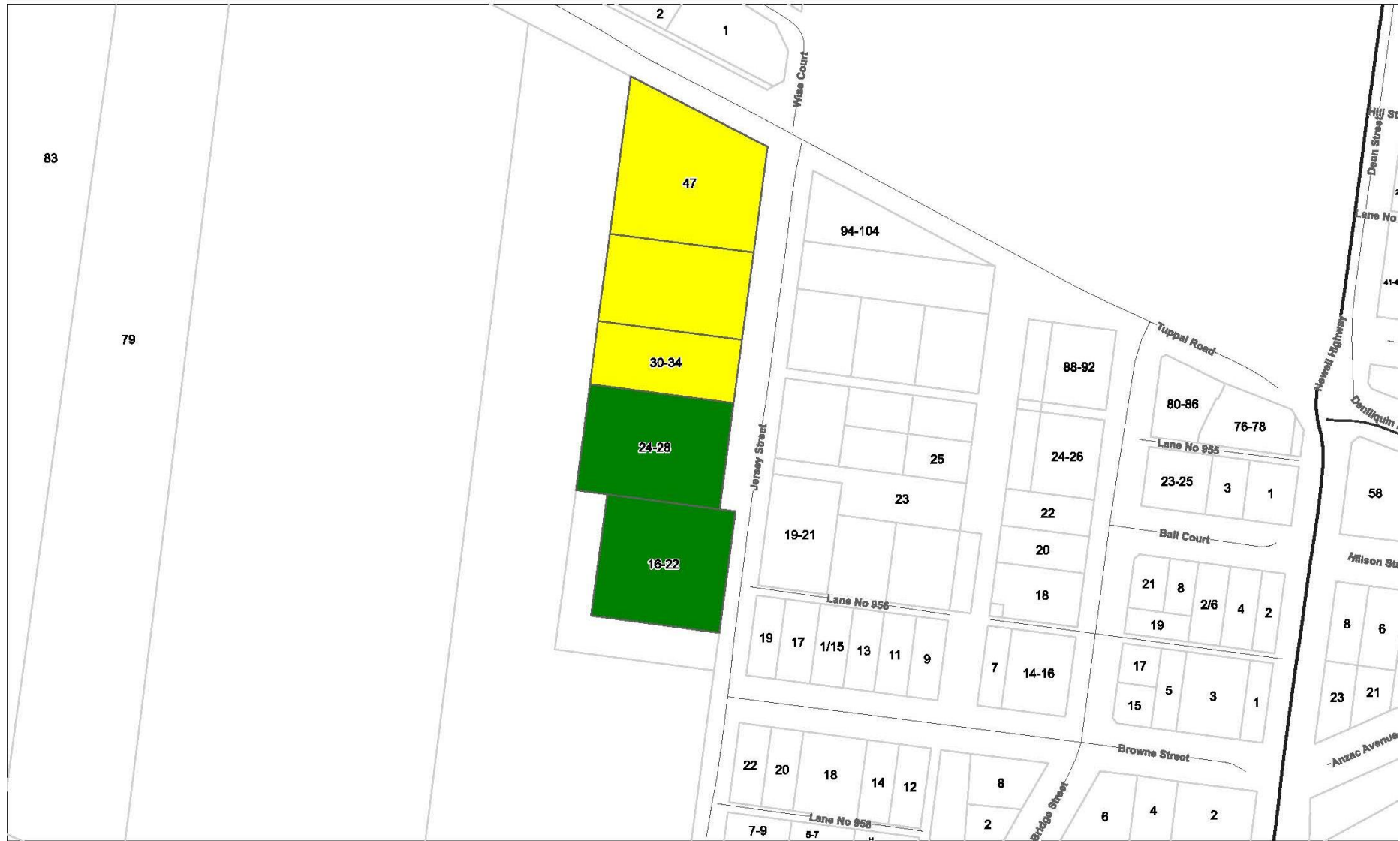
Set out below are the details of scheme 02/19/20 along with a map showing the affected properties. Red shading indicates that the landowner is NOT in agreement. Green shading indicates that the landowner IS in agreement and Yellow shading indicates those that have not responded to the Council's notification letter. Note: all properties shaded red are based on written responses.

Copies of letters received are attached as **Appendix "F"**.

Initial letters were sent out the 5 properties affected by the scheme

To date there have been **two** submissions made by affected property owners: both in favor of the half cost scheme. 3 properties did not respond and therefore could be considered to be in favor of the half cost scheme.

The Council needs to consider this issue in light of its decision at the April Council meeting in relation to the half cost footpath scheme that was proposed for Bridge Street.



7.11 ROAD CLOSURE

AUTHOR: Development Manager

STRATEGIC OUTCOME: Diverse and resilient business

STRATEGIC OBJECTIVE: 4.1 Strengthen and diversify the local economy and invest in local job creation and innovation

FILE NO: 28.152.1

RECOMMENDATION: That the section of Pinchbecks Road, Lalaly adjoining Lot 2 DP 629696, Lot 65 DP 752287 and Lot 832 DP 1257848 be closed and, upon closure, be sold to the adjoining property owner. All costs associated with the closure of the road are to be met by the applicant

REPORT:

Council is in receipt of an application to close a section of Pinchbecks Road, Lalaly to facilitate the future development of the adjoining land as a citrus orchard. A map of the property and the section of road to be closed is attached as **Appendix "G"**

The road is not constructed and has been used for property access only in the past.

The applicant has recently purchased the land to the west of the road and has obtained development consent to construct a water storage dam and sump to support the future development of the orchard to the east of the road.

The closure of the road will limit potential traffic flow through the property and assist in protecting the biosecurity of the farm.

The proposed closure will not have an impact on other properties in the locality as physical access is currently obtained via other roads.

The applicant had initially applied to Crown lands to close the road however Crown Lands has advised that the land is a Council Public Road which can be closed by the Council under the provisions of the Roads Act 1993. Further evidence has been obtained whereby the road was gazetted as a public road on the 27.6.1930 and is therefore under the control of the Council.

Given that the road is unconstructed at present and is unlikely to be required in the future it is considered that the closure of the road will contribute positively to the operation of the proposed development which will then result in substantial employment and economic benefits to the locality and wider region.

Should the Council support the road closure it would be appropriate to ensure that all costs associated with the closure are met by the applicant.

It is recommended that the closure of an unconstructed and unused section of Pinchbecks Road, Lalaly be closed under the provisions of the Roads Act 1993 and, upon closure, be sold to the adjoining property owner to support the development of the land.

7.12 DRAFT INTEGRATED PLANS

AUTHOR: Strategic & Social Planning Coordinator

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.1 Berrigan Shire 2027 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

FILE NO: 04.121.4

RECOMMENDATION:

1. That the Council adopt the following draft plans and strategies and policy for public exhibition:
 - Review of the Long Term Financial Management Plan 2020 - 2030 (**Appendix “H”**);
 - Review of the Asset Management Strategy 2020 – 2030 (**Appendix “I”**);
 - Review of Workforce Development Plan 2020 – 2024 (**Appendix “J”**);
 - Review of Delivery Program 2017 – 2022 (**Appendix “K”**);
 - Draft Annual Operation Plan 2020/21 (**Appendix “L”**); and
 - Draft Revenue Policy included in the Draft Operational Plan 2019/20
2. That the Council convene an extraordinary meeting to be held on Wednesday 24th June, 2020 commencing at 9:00am to consider and order upon submissions received in relation to its draft Integrated Plan and to fully adopt such Plan.
3. That the Council place it’s Integrated Plan on public exhibition for a period of 28 days closing at 5:00pm on 18th June, 2020.

REPORT:

At the Council’s Ordinary Council Meeting 20 November 2019, the Council resolved that Council staff would present to the Council for endorsement and public exhibition and comment:

- Reviewed Long Term Financial Management Plan 2020 – 2030;
- Reviewed Asset Management Strategy 2020 – 2030;
- Reviewed Workforce Development Plan 2020 – 2024;
- Reviewed Delivery Program 2017 – 2022;
- Draft Operational Plan 2020 – 2021 inclusive of:
 - Draft Rating and Revenue Policy 2020 – 2021); and

- Draft Fees and Charges 2020 – 2021 with these items previously presented to the Council as a separate report by the Director of Corporate Services.

The appended Delivery Program has been rolled forward by one year to (2022) to accommodate the extension of the Council's term due to the COVID-19 pandemic. There are no material changes to the Council's Delivery Program other than the extension of this program by an additional 12-months.

The appended Draft Operational Plan 2020/21 includes several new actions discussed at the Council's Corporate Workshop and endorsed at the Council's Ordinary Council Meeting held 19 February 2020 these include:

- The development of a business case for the following possible waste projects: Tip shop, emoluments recycling, recycling mattresses, wood, and building waste etc.
- The development to a shovel-ready stage of the following:
 - Denison Street median per the Finley Town Plan
 - Improvement of the Jerilderie Street, Berrigan (North of Chanter Street)
- Finley stormwater retention expansion

These are actions which are in addition to the completion of the Tocumwal Foreshore Project and Drought Communities funded projects which include the construction of aviation – museum at the Tocumwal Aerodrome and main-street upgrades in Berrigan and Finley.

The Draft Operational Plan 2020/21 also includes summary commentary on the Council's draft budget, the draft budget and the detail of the draft Capital Works budget.

As the next Ordinary Council Meeting is scheduled for the 17 June 2020, an Extraordinary Meeting will need to be convened to comply with the statutory requirement that the Council's draft suite of integrated plans are exhibited, and public comment sought for a minimum of 28 days.

7.13 BERRIGAN SHIRE LOCAL STRATEGIC PLANNING STATEMENT

AUTHOR: Town Planner

STRATEGIC OUTCOME: Sustainable natural and built landscapes

STRATEGIC OBJECTIVE: 1.1 Support sustainable use of our natural resources and built landscapes

FILE NO: 18.123.1

RECOMMENDATION: That the Council:

1. Having considered submissions received, adopt the Berrigan Shire Local Strategic Planning Statement (LSPS), as presented as final (**Appendix "M"**)
2. Publish the adopted Berrigan Shire LSPS on the NSW Planning Portal.

REPORT:

Background

At its ordinary meeting 18 March 2020, Council endorsed the content of the draft Berrigan Shire Local Strategic Planning Statement (LSPS) and resolved to place the draft on public exhibition for 28 days to invite submissions on the draft document.

Public Exhibition

The draft Berrigan Shire LSPS was placed on public exhibition from 25 March until 1 May 2020. During the public exhibition period the draft was exhibited on the Council website and two advertisements were placed in the Southern Riverina News (in two week intervals). The draft document was also referred to State Government and related agencies for comment.

During the public exhibition period, seven submissions were received on the draft Berrigan Shire LSPS from the following agencies:

- NSW Department of Planning, Industry and Environment - Crown Lands,
- NSW Department of Primary Industries – Agriculture,
- Cancer Council NSW,
- Heritage NSW,
- Odonata,
- Murray-Darling Basin Authority and
- NSW Department of Primary Industries – Fisheries (submission received 6 May 2020).

The submissions received were reviewed and modifications to planning priorities and actions were made to ensure the submissions were addressed where required. A

detailed summary of submissions, Berrigan Shire Council's comment on the submissions and a detailed list of modifications made to draft Berrigan Shire LSPS is provided as **Appendix "N"**.

Specific modifications to the draft Berrigan Shire LSPS (as detailed in **Appendix "N"**) is summarised as the following:

- In planning priority 2 'Enabling Infrastructure'
'planning priorities in the Riverina Murray Regional Plan and other state government policy mechanisms such as the NSW Renewable Energy Action Plan (2013) need to include policy settings to identify appropriate renewable energy priority zones',

additional wording has been included to link the need to identify the location of productive agriculture land and protection mechanisms required to ensure future investment has guidance to determine appropriate locations for specific development (as detailed in planning priority 1 "Agriculture and Agribusiness"). This modification was assessed as required as per submission from DPI – Agriculture.

- In the introduction section, information on both Aboriginal and Non Aboriginal history is now group together to make it clearer to the reader that this is the heritage identified in the cultural objectives to protect and enhance culturally significant sites. This modification was assessed as required as per submission from NSW Heritage.
- Additional wording was included in planning priority 6 'Protect and Enhance Cultural and Natural Environmental Assets' to recognise that if current trends in climate conditions continue, the importance of the environment assets such as the irrigation network will become increasingly important for threatened species recovery. Additional wording in the opportunities for joint management of stewardship sites in this section to include also cultural groups to assist in the protection and enhancement of sites. This modification was assessed as required as per submission from Odanata.
- Within the challenges identified in planning priority 1 "Agriculture and Agribusiness", additional wording has been included to support the increasing pressures from recent trends of a drying climate on the River Murray and the irrigation network. The *Murray Regional Environmental Plan No 2 – Riverine Land* was also added to the list of relationship to other plans. This modification was assessed as required as per submission from Murray-Darling Basin Authority.

The above public exhibition process satisfactorily meets the public exhibition of the draft Berrigan Shire LSPS as per the Community Participation Plan for the Berrigan Shire Council and Department of Planning, Industry and Environment (DPIE) guidelines for public exhibition during the COVID-19 Pandemic.

Finalisation

The final Berrigan Shire LSPS is now being presented to Council for approval. The final document is presented in **Appendix “M”**. This is the content of the final Berrigan Shire LSPS, note however, to publish the final document there might be minor formatting changes to publish the document.

Adoption of the final Berrigan Shire LSPS will meet the DPIE guidelines that Council’s LSPS must be finalised by 1 July 2020. Once the document has been adopted by Council, it must then be published on the NSW Planning Portal.

The Berrigan Shire LSPS will require a review at least every seven years as per the *Environmental Planning and Assessment Act 1979* (EPA Act 1979),

Conclusion

The final Berrigan Shire LSPS has met the community consultation requirements as per the Community Participation Plan and DPIE guidelines. Seven submissions were received on the draft Berrigan Shire LSPS and modification to the document have been made to planning priorities and actions as per submissions received where required. The final Berrigan Shire LSPS is now being presented for Council’s approval.

Recommendation

That Council:

1. Approve the content of the Berrigan Shire LSPS, as presented as final’ and
2. Publish the adopted Berrigan Shire LSPS on the NSW Planning Portal

7.14 FINANCIAL REVIEW

AUTHOR: Director Corporate Services

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.2 Strengthen strategic relationships and partnerships with community, business and government

FILE NO: 12.019.1

RECOMMENDATION: that the Council:

- Note the third quarterly review of the 2019/20 budget and vote the funds contained therein as shown in **Appendix “O”**
- Note the Quarterly Budget Review Statement attached also as **Appendix “P”**

REPORT:

Circulated with the Agenda as **Appendix “O”** is the Quarterly Financial Review for the period 1 January 2020 to 31 March 2020. This report takes into account all known factors and work variations until 31 March 2020 and later where possible, including budget allocations for the 2019/20 financial year.

The summarised results are as follows:

	\$
Revised budget surplus as at 31/12/19	226,503
Increased expenditure as per this report	(360,616)
Increased revenue as per this report	420,658
	<hr/>
Revised budget surplus as at 31/03/20	\$286,546

Significant changes proposed in this review include:

Favourable

The major favourable change is the recognition of additional Financial Assistance Grant (FAG) over and above the budget estimate.

Unfavourable

The Council has set aside an additional \$54,000 for staff training - including the third round of staff leadership training.

An additional allocation of \$37,000 has been made for new Council software licencing

There is also a series of timing adjustments, mainly relating to loans drawdowns and other contributions. While they have an impact in this financial year, these will have an offsetting adjustment in 2020/21.

Significant variations contained in the attached quarterly review document are detailed below. Variances which are unfavourable to the Council's result are shown with a (U) next to them and variances which are favourable are denoted with a (F).

Councillors are invited to make comments or ask questions about any of the variances in this report.

JOB / GL	DESCRIPTION	VARIATION	COMMENT
1008-0124	MANAGEMENT TEAM PROGRAM	(54,100) U	management team program expense - leadiversity
1010-0105	ADMIN SALARIES - CUSTOMER SERV	10,000 F	Budget reallocation to cover other operational expenses
1010-0175	ADMIN SOFTWARE LICENCING	(36,682) U	Additional software programs
1111-0105	DOG ACT EXPENSES	(16,713) U	Additional activity
1114-0105	CONTRIBUTION NSW SES	(218,681) U	Timing matter with payment - no additional cost
2120-1950	RFS OPERATIONAL GRANT (B&C)	59,400 F	Increase in grant funds
1214-0300	Reduce Impact Invasive Species	(23,937) U	Reallocation of weed spray budget
1214-0400	Capacity Building	10,000 F	Reallocation of weed spray budget
1214-0600	Noxious Weeds Depot Finley	10,000 F	Reallocation of weed spray budget
2800-1500	WEEDS ACTION PLAN GRANT	62,185 F	Increase in grant funds
1416-0110	STORM WATER DRAINAGE MTCE	(24,769) U	Over budget
1417-0830	BRUTON ST ELEC & PIPEWORK	60,789 F	Job reallocations
3660-1500	DWM TIPPING FEES	50,881 F	Increase in activity
3670-2026	DWM TRANSFER TO RESERVE	(39,754) F	Transfer or additional income
1510-0160	WATER SUPPLY INTEREST ON INT LOAN 390	(37,313) U	Change in loan drawdown date
1510-0165	WATER SUPPLY INTEREST ON EXT LCLI LOAN 400	71,082 F	Change in loan drawdown date
1510-0530	WATER SUPPLIES PRINCIPLE ON INT LOAN 390	(114,125) U	Change in loan drawdown date

1510-0535	WATER SUPPLIES PRINCIPLE ON LCLI LOAN 400	170,136	F	Change in loan drawdown date
1510-0560	MAINS RETIC - BGA	(10,573)	U	Increased Activity
1510-0575	MAINS RETIC - TOC	14,805	F	Decreased Activity
1510-0895	BGN - STATIC MIXER	18,324	F	Funds reallocated to cover over expenditure in other areas
1511-0180	WATER TREATMENT - OP EXP - FIN	15,826	F	Funds reallocated to cover over expenditure in other areas
1511-0195	WATER TREATMENT - OP EXP - TOC	(31,882)	U	Over budget due to the replacement of water treatment process components
1511-0285	RETIC & METERS - OP EXP - BGN	31,966	F	Funds reallocated to cover over expenditure in other areas
4110-1701	LCLI INTEREST SUBSIDY	(35,541)	U	Change in loan drawdown date
4110-1926	WATER TRANSFER FROM RESERVE	(44,841)	F	Transfer or additional income
1610-0743	UPGRADE SEWER TELEMETRY	(10,000)	U	Over budget
1610-0883	FIN - GRAVEL POND BANKS	10,000	F	Funds reallocated to cover over expenditure in other areas
1611-0110	SEWER TREATMENT - OP EXP - BGA	(17,390)	U	Over budget
1611-0125	SEWER TREATMENT - OP EXP - BGN	10,000	F	Funds reallocated to cover over expenditure in other areas
1611-0201	RETIC OP EXP ELECTRICITY - FIN	(12,177)	U	Over budget
1612-0175	FIN TRUCK WASH MTCE	(10,696)	U	Pump failure and replacement
5110-1750	LOAN 390 INTEREST INCOME	37,313	F	Change in loan drawdown date
5110-2026	SEWER SERVICES TRANSFER TO RESERVE	(150,161)	F	Transfer or additional income
5110-3750	Loan 390 Receivable - Current	114,125	F	Change in loan drawdown date
5280-1500	TRUCK WASH (AVDATA) INCOME	18,875	F	Increase in activity
1710-0180	LIBRARY SALARIES & ALLOWANCES	10,000	F	Budget reallocation
1714-0165	INTEREST EXPENSE EXT LOAN 405 LCLI	20,000	F	Change in loan drawdown date
1714-0535	EXT LCLI LOAN 405 PRINCIPAL - CURRENT	72,308	F	Change in loan drawdown date
1718-0000	PARKS & GARDENS MAINTENANCE	18,071	F	Funds reallocated to cover over expenditure in other areas
6200-1700	LCLI LOAN INTEREST SUBSIDY FINLEY HOUSING	(12,382)	U	Change in loan drawdown date

0015-0226	MR226 NANGUNIA ST & HUGHES ST	(14,204)	U	Within overall block and repair budget
0015-0363	MR363 BERRIGAN - BAROOGA RD	(23,920)	U	Within overall block and repair budget
0015-0550	MR550 TOCUMWAL - MULWALA RD	(23,522)	U	Within overall block and repair budget
0015-0564	MR564 BERRIGAN - JERILDERIE RD	(41,870)	U	Within overall block and repair budget
0015-0999	RTA MR BLOCK GRANT BUDGET ONLY	110,148	F	Within overall block and repair budget
1911-0108	RESEAL DALGLIESHS RD	10,501	U	Funds reallocated to cover over expenditure in other areas
1911-0223	RESEAL DRAYTONS RD - 1.24W/YAR	(61,390)	U	Extended work area for logistical reasons
1912-0003	RESHEET ENNAL RD	(48,169)	U	Pavement failure
1912-0059	RESHEET LAWLORS RD- THORNT/1.6E	64,000	F	Funds reallocated to cover over expenditure in other areas
1912-0184	RESHEET JONES RD - FULLERS/3.7	60,000	F	Funds reallocated to cover over expenditure in other areas
1914-0077	BUSHFILEDS RD 00-5KM	104,909	F	Funds reallocated to cover over expenditure in other areas
1914-0090	BARNES RD-MAXWELL TO STH COREE	(104,909)	U	Extended work area for logistical reasons
1914-0592	YARRAWONGA RD 23608-23710	15,003	F	Funds reallocated to cover over expenditure in other areas
1914-0595	CROSBIES RD 4.4-5.7	(15,003)	U	Incorrect job number used – should have went to 1914-0095
1916-0846	DENISON ST - WOLLAMAI- WARMATT	(120,469)	U	Over budget – difficult work site
1916-0850	BRUTON ST - EXISTING/BRUCE BIR	49,500	F	Funds reallocated to cover over expenditure in other areas
1916-0851	BRUTON ST - LANE 961/PARKES ST	70,000	F	Funds reallocated to cover over expenditure in other areas
1917-0541	NEW FOOTPATHS - VARIOUS LOCATIONS	10,000	F	Funds reallocated to cover over expenditure in other areas
1920-0170	TOC AERODROME OPERATING EXPENS	(30,000)	F	Exceeded operations budget due to events
1920-0184	TOC AERO RUNWAY 18-36 HEAVY PA	30,000	U	Reallocated to cover operational expenses
2010-0004	P/W - YACTAC NOXIOUS WEEDS	(13,058)	U	Increased activity, additional income shown to cover expenses
2015-0165	BUSINESS & ENVIRONMENT AWARDS	18,102	F	Reduced income and expenditure as it's not going ahead
2015-0189	COBRAM & DIS FOODBANK DONATION	(15,000)	U	Council vote for additional funds
7100-1950	RURAL LOCAL ROADS GRANT (RLR) (FAG)	35,939	F	Increase in grant funds

8900-1521	Private Works Noxious Weeds Income	24,573	F	Additional income due to increased activity
9200-1950	FINANCAL ASSISTANCE GRANT (FAG)	156,427	F	FAG Grant indexing higher than budgeted

The Quarterly Budget Review Statement (QBRS) for the period 1 January 2020 to 31 March 2020 is attached as **Appendix “P”**.

The QBRS consists of six statements:

1. **Report by Responsible Accounting Officer** – The Responsible Accounting Officer is satisfied that the Council’s financial position at 31 March 2020 is satisfactory.
2. **Income & Expenses Budget Review Statement** – This statement projects the Council’s annual operating statement for the financial year based on the budget position on 31 March 2020.

The Council’s budgeted net operating result before capital items was projected to improve by \$72,000 during the March quarter. The result including capital items has also improved - largely through increased capital grants.

The budgeted net operating result at the end of the December quarter is a \$8.6m surplus, becoming a deficit of \$0.2m after deducting \$8.8m of capital grants and contributions. This deficit is solely as a result of the Federal Government’s decision to pay 50% of the 2019/20 FAG in June 2019 and is solely a timing matter.

3. **Capital Budget Review Statement** – This statement tracks the Council’s capital expenditure and the sources of funding used to pay for the capital works.

The Council’s 2019/20 capital works program was largely unchanged over the quarter. Note that the program includes the construction of two water treatment plants that will not commence until 2021 at the earliest

4. **Cash and Investments Budget Review Statement** – This statement indicates what the Council’s expected end-of-year cash position is likely to be taking into account all known budget changes until the end of the quarter.

5. **Key Performance Indicators Budget Review Statement** – This statement is designed to provide some simple financial indicators to give the Council a snapshot of how it is performing financially.

Unlike the earlier reports there is some freedom here for the Council to choose what indicators it would like to see included in the report. The finance team have chosen three that seem reasonably useful for the Council to track.

- Debt Service Ratio – an indicator of how much of the Council’s income is used to service its debt

- Rates & Annual Charges Coverage Ratio – an indicator of how reliant the Council is on its rates revenue
- Building and Infrastructure Renewal Ratio – an indicator of the Council's effort in renewing its assets as they deteriorate.

All indicators show that the Council is on target to meet its overall objectives.

6. **Contracts and Other Expenses Budget Review Statement** – This statement is an attempt to provide the Council with some detail about the Council's new contractual arrangement and expenditure on consultancies and legal expenses.

7.15 FINLEY SALEYARDS

AUTHOR: General Manager

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.1 Berrigan Shire 2027 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

FILE NO: 27.121.2

RECOMMENDATION: that the Council:

1. Delegate to the General Manager the ability to negotiate a mutual termination of the lease with Scanclear Pty Ltd;
2. Close the Finley Saleyards and direct Scanclear Pty Ltd that no further sales are to occur at the Finley Saleyards;
3. Allow Scanclear Pty Ltd access to the Finley Saleyards site for a period of six weeks to remove its possessions and to make the site safe;
4. Take action to prevent access to the Finley Saleyards by unauthorized users or trespassers; and
5. Adopt the Finley Saleyards Engagement Strategy.

REPORT:

History

The Council is believed to have taken over the Finley Saleyards from the Finley Associated Agents in about the mid 1970's.

The Council successfully operated the yards until about the mid 1990's when it made a significant investment in new sale ring, stack pens, kitchen, toilets and office space. During this time the yards operated well financially with all capital and operating costs met by the yards revenues.

The yards typically conducted a weekly cattle sale, a fortnightly store sale and a fortnightly sheep sale. The weekly cattle sale attracted about 2,000 – 2,500 head and the store sale about 1,000 – 1,500 head. The fortnightly sheep sale averaged about 8,000 head.

While the Finley saleyards have never been a recognized sheep market the fortnightly sales generated most of the yard profits due to the lower operating and capital costs.

Despite the above sales volumes have showed a steady decline since about the mid 1990's to the point where there is now a fortnightly cattle sale, usually a fortnightly sheep sale and no store sales.

Cattle sales volumes have declined from the above figures to about 650 per fortnight on average and sheep sales about 3,150 per fortnight.

Average sales over the past twelve years show long average sheep sale is 3,440 per sale and cattle 580 per sale

With the continued decline in sales numbers the Council in 2008 leased the operation of the yards to Scanclear Pty Ltd on the basis that until turnover reached \$185,000 pa no rent was payable. Rent of 3% of turnover was payable on turnover in excess of \$185,000. To date no rent has been paid despite this amount subsequently being reduced to \$100,000 pa.

While the Council was incurring significant financial losses prior to 2008 the lease arrangement has abated this so while no rent has been received the yards have continued to operate at only minimal cost.

Ironically what has been experienced over time is the transfer of a Council “business” operation to something more akin to a “community service”.

At the time of leasing the yards the Council recognized that despite the deteriorating financial position of the yards, the condition of yards themselves was deteriorating while safety standards were increasing. For this reason the Council maintained responsibility for future capital expenditure at the yards and implemented a small reserve fund that would build up over time and hopefully offset future capital costs. This was never realized to any significant level.

The operation of the yards has now reached the point where there are significant capital costs required to meet the known improvement costs to address safety issues yet there is no sustainable business case to justify the required investment.

The Council has proposed, during the current financial year to spend some funds to address some secondary safety issues however that cost has been delayed because of associated electrical works that the almost doubling of the required funds from about \$213,000 to \$395,000. This cost is partially offset by the use of the saleyards reserve funds of \$80,000.

While the Council has been attempting to find a way forward with those works SafeWork has received a complaint about the safety of the yards and while it has decided to take no action in relation to that complaint it has put the safety issue on its radar and it has reminded the Council of its duty of care.

A report to the Council at August 2008 provides some useful background to the present situation and is circulated with this agenda as **Appendix “Q”**.

Issues

Proway

In January 2019 the Council received an assessment from Proway Livestock Equipment following a request to investigate existing and potential safety concerns

at Finley saleyards and provide a report detailing prioritised solutions and the estimated costs of rectification.

A copy of the report is circulated with this agenda as **Appendix "R"**

According to Proway "ProWay has completed a review of the Finley Saleyards and discovered the safety concerns of the stakeholders in terms of the current infrastructure within facility and how it performs when compared to industry best practice.

This has been undertaken with the understanding that Finley Saleyards, as a saleyard with a relatively small throughput, has restrictions on its capacity to best practice.

Notwithstanding these restrictions, ProWay has provided options with regard to infrastructure investment that will improve work health and safety, safety to other users of the saleyards and animal welfare:

- 1. ProWay has recommended that the Berrigan Shire Council upgrade two of the current loading docks with new forcing yards;*
- 2. Build nibs on the front of the retaining wall to change the angle the truck when parked for loading and unloading*
- 3. Install a new loading out facility with a modern design that promotes cattle flow and operator safety. This loading ramp would service both the bottom deck and top deck of a cattle truck. The gradient of these ramps is such that unloading cattle (especially those in weak condition) is easier than using the steep internal ramps of the truck*
- 4. Construct a 24m x 8m roof over the two lanes used to stack cattle in before the sale ring to provide shelter for staff.*
- 5. By far the biggest problem from a WH&S point of view is the problem the main cattle yards have with the gates not stopping against the other side of the lane. If a beast was to hit the gate with a person standing behind it there is potential for severe injury. A design with pricing has been provided to strip the internals of the saleyards, which are old and hard to maintain and renew this area*
- 6. New ceiling fans for the sale ring gallery*
- 7. Safety Hide for operator letting cattle out of the ring*
- 8. Replace the existing sheep ramps with new ones that are raised and lowered by an electric hoist. The angle of the ramps to be changed so that the trucks do not have to drive across the road when backing up to them. New sheepyards at the base of the ramps are required for the modification*

9. ProWay recognises that there is very little shelter in the sheepyards for both animals and operators. It is for this reason that there are two types of rooves proposed.
 - a. Rooves over the draft areas
 - b. Covered Walkways over the buyers./sheep lanes
10. The installation of six new ceiling fans in the buyers. gallery around the sale ring would make it much more comfortable during hot summers
11. The Sheep ramp known as .Ramp 5. which faces Townsend Street (in the north east corner of the complex) is too close to the road so it is proposed that the angle of this ramp changed so that B Doubles can use this ramp and have access to the back-holding yards.
12. Like the main sheepyards, there is a draft over the back that would benefit from a roof over it.

While some of the above are a higher priority than others, the cost of the works at the time of the Report preparation were estimated to be:

	Recommendation	Cost
1	Renovate two cattle forcing yards	\$ 24,947.64
2	Ramp Nibs	\$ 16,940.00
3	Double decker Loading ramp and force yard	\$ 118,135.00
4	Roof over cattle stack pens	\$ 52,160.00
5	Replace existing yards	\$ 493,864.00
6	New ceiling fans	\$ 8,920.00
7	Safety hide	\$ 720.00
8	Sheep ramps	\$ 215,251.69
9	Roofs and covered walkways in sheep yards	\$ 417,960.00
10	Townshend St Sheep Ramp	\$ 77,985.22
11	New roof over back draft	\$ 14,355.00
12	Relocate overhead power lines*	\$ 188,000.00
	TOTAL	\$ 1,629,238.55

* Not in Proway report but required to complete works.

In terms of required works, the only works which appear to have a discretionary nature are installation of the ceiling fans - \$8,920 and the Sheep yards roofing etc. - \$417,960 which means that the cost of the required works (recommended in the Report) are between \$1,629, 238 and \$1,202,358.

In addition to the above is the need to provide a 24 hour accessible toilet, at say, \$50,000 plus the associated operational cost.

At the 2019 Corporate Workshop it was agreed that the following works would be prioritized:

1. *Replace cattle loading docks*
2. *Replace existing sheep ramps (Townsend Street)*
3. *Build nibs on retaining wall to change angle when parked for loading and unloading*
4. *Safety hide*

Estimated cost \$245,000

This amount was, broadly, included in the 2019/2020 budget with an offset of \$80,000 from the Saleyards Reserve.

Risk Assessment

As a part of the review of the operation of the Finley Saleyards staff have prepared an updated risk assessment which is set out below. **Note that this is not an assessment of the Work Health and Safety risks present at the Finley Saleyards, rather, it is an assessment of the risk exposure faced by the Council itself and the personal risk to staff, in continuing to operate the yards if the required works are not completed.**

Risk Report – Finley Saleyards

Operating saleyards carries with it some serious and significant risks. This is highlighted by Council's insurer, Statewide reporting an average of 5 claims per year around saleyards.

The Finley saleyards present their own set of risks, identified in an initial risk assessment conducted by the Enterprise Risk Manager in 2009, following a complaint lodged by a transport driver. Prior to, and following this, Council has received numerous complaints as the state of the saleyards deteriorate, and the expected standard for safety increases.

The following is a timeline of incidents, complaints and investigations for the Finley Saleyards:

Date	Activity
01/10/2008	Livestock Exchange Consultancy conduct a QA Audit and make recommendations.
03/07/2009	Injury sustained to livestock agent employee – hit by charging steer into gates.
04/08/2009	Injury sustained to livestock agent employee – hit by charging steer into gates.
25/08/2009	Council risk assessment conducted in response to complaints received on 19/08/2009
15/08/2012	SafeWork NSW conduct an audit at the saleyards. A plan of action is prepared.
04/09/2012	Border Lifting identify sheep ramps as non-compliant in bi-annual lifting gear inspection program. They are condemned but continue to operate.
08/07/2015	Letter received from Livestock and Bulk Carriers Association (LBCA) surrounding complaints from transport drivers over the safety of the Finley Saleyards.
27/09/2018	Complaint received regarding latch failure on the gate and failure by Lessee to repair
19/09/2018	Complaints received from transport drivers re accessing cattle ramps
12/12/2018	Expressions of Interest sought to prepare a report for the Finley Saleyards on what is required to bring the yards up to a safe operating standard
25/01/2019	Proway submit a report and pricing for proposed works at the saleyards
01/05/2019	Meeting held with Essential Energy to discuss proposed works under powerlines. Advised that works will not be able to commence until power relocation works happen
28/04/2020	Notified by SafeWork NSW that they have received a Request for Service from a transport driver utilizing the facility claiming they are unsafe.

Where complaints have been raised that can be addressed easily, Council and Scanclear, as the Lessee have addressed them. Where complaints have been made against infrastructure involving higher costs, and site difficulties, these have not been progressed simply because Council did not have the available funds.

Legislation

Under the Work Health and Safety Act 2011, the definition of an officer is:

“A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act”.

In relation to Council, this refers to Rowan Perkins as General Manager, but also includes those “who participate in making decisions”, and can extend to Matthew

Clarke as Director Technical Services, Matthew Hansen as Director Corporate Services, and to some extent Michelle Koopman as Enterprise Risk Manager.

Officers have the responsibility of exercising due diligence to ensure the PERSON CONDUCTING BUSINESS OR UNDERTAKING complies with its duty and obligations under the Act.

“Due diligence” includes taking reasonable steps:

- (a) to acquire and keep up-to-date knowledge of work health and safety matters, and
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations, and
- (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking, and
- (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and
- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act, and

Example.

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include—

- reporting notifiable incidents,
- consulting with workers,
- ensuring compliance with notices issued under this Act,
- ensuring the provision of training and instruction to workers about work health and safety,
- ensuring that health and safety representatives receive their entitlements to training.

Request for Service

Anybody can contact SafeWork NSW and lodge a complaint or concern regarding a workplace and this is called a Request for Service. The Inspector will contact the workplace and discuss the issue. This is what has happened with the Berrigan Shire Council, and the Finley Saleyards when we were contacted by SafeWork NSW on 28th April.

Whilst the Director Corporate Services has been upfront with SafeWork NSW and their request for information, it has not detracted from the fact that we have

continued to operate a facility with full knowledge of the safety issues, and a history of safety concerns, complaints and incidents.

In general, if we are requested to address something, and we do, and we give a reasonable timeframe for completing the work, then we are meeting our duty of care, and this would satisfy SafeWork NSW. However, we are in a position where completing the works required is challenging – we have to weigh up the exorbitant cost of repairing the facility, against the economic viability and future of the facility.

So as a PERSON CONDUCTING BUSINESS OR UNDERTAKING we need to give consideration to what is reasonably practicable when looking at all the factors, and as Officers we need to exercise our due diligence. Continuing to operate the facility in its current state is exposing the Council, and Officers to serious implications including imprisonment.

Offences

Under the Act, there are three Categories for offences,

Category 1: are the most serious breaches where a duty holder recklessly exposes a person to the risk of death or serious injury;

Category 2: failure to comply with a health and safety duty that exposes a person to risk of death, serious injury or illness;

Category 3: failure to comply with a health and safety duty.

Continuing to operate at present, with the risk of a death possible would place the Council as a PERSON CONDUCTING BUSINESS OR UNDERTAKING, and the Officers, under either a Category 1 or Category 2 offence. This is simply because Council are aware of the issues, have been aware for several years about the issues, and have failed to act.

Where a person commits a Category 1 offence:

- (a) The person has a health and safety duty, and*
- (b) The person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and*
- (c) The person is reckless as to the risk to an individual of death or serious injury or illness*

In the case of an offence committed by an individual as an officer of a PERSON CONDUCTING BUSINESS OR UNDERTAKING, the penalty is \$600,000 or five year's imprisonment – or both; in the case of an offence committed by a body corporate (which has the same definition as a public authority), the fine is \$3,000,000.

A Category 2 offence, the penalty for an officer is \$300,000 or for a body corporate, \$1,500,000.

*Just relying on the cost factor and claiming that the cost of performing the works required is not reasonably practicable does not protect us from legal action. We would be challenged in court – **why didn't you close the facility if you knew that these serious safety issues existed?***

The Council need to be aware also, that this is action under the Work Health and Safety Act 2011, it does not include civil action against the Council for liability.

The NSW Civil Liability Act 2002 (CLA), in section 5B states:

- 1) *A person is not negligent in failing to take precautions against a risk of harm unless:

 - a. *the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known), and*
 - b. *the risk was not insignificant, and*
 - c. *in the circumstances, a reasonable person in the person's position would have taken those precautions.**

- 2) *In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):*
 - a. *the probability that the harm would occur if care were not taken,*
 - b. *the likely seriousness of the harm,*
 - c. *the burden of taking precautions to avoid the risk of harm,*
 - d. *the social utility of the activity that creates the risk of harm.*

Council is exposed with the Finley Saleyards for negligence.

The following is a list of some of the liability claims (confidential information withheld) relating to Council saleyards, similar to the incidents Council has encountered at Finley, and the costs to the Mutual:

Incident	Claim Cost
<i>Claimant was trampled by a beast whilst loading cattle onto truck</i>	<i>\$184,559.73</i>
<i>A man drafting cattle at sales yard went to open a gate when a steer charged him causing injuries</i>	<i>\$375,911.55</i>
<i>Claimant injured by cow in Council stockyard</i>	<i>\$44,681.29</i>
<i>Claimant struck by a gate from a steer striking the gate</i>	<i>\$236,971.00</i>
<i>Enraged cow caused gate to swing violently into claimant</i>	<i>\$77,225.55</i>

<i>Sustained broken arm when pen gate was pen and cattle rushed out running into him</i>	<i>\$89,586.57</i>
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Some of these are covering medical costs only and do not include legal costs, and payments made for damages.

Reputational Risk

Obviously, the Council are considering the reputational risk from within the community if they close the facility. However, Council need to consider the reputational risk if they do not, and also if they proceed with spending the Council funds, the outrage from community members who do not have an interest in the saleyards.

The Request for Service from SafeWork NSW has highlighted the urgency and the seriousness of the situation Council are in. We have failed to address the issues that have been raised over a number of years, and we now face the possibility of a serious injury or death at our facility, where Council and Council Officers' inaction could be deemed reckless, and criminal.

Council need to consider the scenario that in the event of a serious injury or death at the Finley saleyards, there is a possibility of criminal charges due to conduct considered reckless, and the inaction of not considering a "cost-less" option to close the facility. If this occurs, then Council Officers are not covered under Councillors and Officers Liability insurance, and the fines they face are personal, and imprisonment likely. This is in addition to the huge financial cost for the Council.

This is a very real scenario, with deaths occurring at Narrabri and Geelong saleyards in similar circumstances to the incidents we have encountered at Finley. The current risk to Council, Council officers and those people from the community currently using this facility is very high. As a means of protecting all involved, the only option at present is to close the facility.

A previous assessment was presented to a meeting of the Corporate Services Committee on 7th November 2018 and subsequently to the Council itself on 21st November 2018.

Saleyards

In 2008, Council sought to offset losses in the management of the Finley Saleyards by entering into a lease agreement with Scanclear Pty Ltd.

Prior to this, Council was investing heavily to maintain and upgrade the facility in the face of declining stock numbers and changes to the operating environment including closure of regional meat processing facilities, drought, and increased regulatory compliance.

Within the agreement, the facility is provided on an as-is basis with no guarantee of suitability of purpose. Scanclear Pty Ltd is responsible for general and routine

maintenance, whilst Council is responsible for structural repair, latent defects and fair wear and tear other than those caused by the Lessee's negligence.

The agreement resolved the issues surrounding funding the day to day management of the saleyards by transferring that to the Lessee, however did not remove the risks associated with ownership and failing infrastructure. Council as the owner of the facility is still responsible for the property, and the liability.

Issues have arisen since the establishment of the agreement and these have been resolved without injection of funds from Council however the facility has gradually deteriorated and what was once considered a quality venue has areas within it which are sub-standard at best.

Since the establishment of the lease, we have been notified of two incidents and have had numerous complaints. Both incidents involved employees of Stock and Station Agents being put into a position where cattle have crashed into gates, causing the gates to swing at high force and hit them. The incidents occurred one month apart and were the result of poorly designed gates and a failure to adhere to operating procedures. Both men were injured and were taken to Finley hospital and have made full recoveries. There were no follow up works conducted to address issues with the gates after these incidents.

The complaints we have received have come from transport operators. Predominantly these are truck drivers who are accessing the loading areas at night without adequate lighting, and are working alone.

Recently, we have witnessed an escalation in complaints.

Some of the complaints have been around operating procedures and maintenance. These types of complaints are focused on Scanclear and have included issues with releasing stock and making transport operators wait, sometimes for several hours; and response times or even refusal to address maintenance issues.

One of the maintenance issues brought to our attention was around a latch on one of the force pen's gates which was not catching. The driver told us that the latch had been like this for more than 12 months. The name deleted had been advised but continued to ignore the issue. This might seem like a small problem, but the latch is the only thing keeping a driver who is trying to load cattle onto his truck, safe.

Whilst these complaints are not the responsibility of the Council, there are other issues with the design of the saleyards which are contributing to unsafe practices with potentially fatal consequences.

Force Pens

Force pens are designed to hold cattle, and gradually force them up the ramp and onto the truck. They feature a series of gates to assist with this process.

Ideally, a catwalk or isolated area for the person loading the cattle is provided in order to protect them when herding to avoid scared or aggressive animals crushing

them. The issue with the force pens at the Finley Saleyards is that there is no catwalk or isolated area, and those loading the cattle have to climb over the top of the railings and cattle, or even sometimes enter the pens with the cattle.

Cattle Loading Ramps/Loading Areas

Best practice suggests that loading ramps should face North/South so drivers and those herding cattle are not staring into the sun, and they have constant uninterrupted vision of the animals.

The loading ramps at the Finley Saleyards face East/West and therefore do create problems when loading onto the trucks. At an on-site meeting recently, we were able to witness the issues with this first hand.

As the ramps face East/West this has a flow on effect for trucks reversing into the loading area. Trucks are forced to drive across Hamilton Street, or across the Broockmanns Road intersection in order to link up with the loading ramp. This practice happens throughout the day and into the night.

There are also additional issues, where trucks cannot access the vacant ramps if one of the ramps is being used, particularly by a B Double, or if the Saleyard Manager refuses to release the cattle. The trucks are forced to bank up and wait which results in loading happening well into the night, and results in flow on issues such as working at night without adequate lighting, and fatigue.





Sheep Loading Ramps

The sheep loading ramps have been an issue that we have been aware of for several years. These have been identified through our external lifting equipment inspections conducted by Border Lifting as sub-standard, and they have condemned them. We have continued to allow them to be used, and have requested Scanclear to obtain quotes and information on replacing them.

This information has not been forthcoming until recently, however follow up requests for supplier information have stalled.

The ramps are rusted and beginning to fail; the winches are hand operated, require significant force and are difficult to use; they are poorly designed and do not allow for ease of operator access without bumping into side or overhead structures.



Brendan Carey
Manager, Finley Saleyards
PO BOX 936
Shepparton VIC 3639

8 July 2015

Dear Brendan,

I write to seek your assurance of the safety of your facilities at the Finley Saleyards.

The LBCA has been contacted by a number of operators expressing concern about safety at the Finley Saleyard. Specific concerns include outstanding maintenance issues with ramps, difficulty getting stock onto ramps - particularly cattle when loading out, a lack of double decker cattle ramps, lighting issues in the lamb loading docks and amenity facilities remaining locked outside of sale days.

As you would understand, un-safe facilities, especially loading ramps, put transport operators and animals at significant risk.

You may be aware that, recently, new ramps guidelines were released by the Australian Livestock and Rural Transporters Association (ALRTA). These guidelines were prepared with extensive consultation with all parties in the supply chain, including representatives from saleyards, farmers, transporters and safety authorities. The guidelines are an important step forward in protecting operators in environments where they do not have personal control over the safety of equipment they must use to complete their jobs.

I have enclosed a copy of these guidelines for your information.

Could you please provide reassurance that the facilities on site at Finley Saleyards are maintained to ensure safety and advise of any planned upgrades. If you are working on future upgrades to ramps, the LBCA can provide advice on how to ensure transport operators remain safe when using ramps on your site.

I look forward to your response,



Bianca Brownlow
General Manager

PO Box 617 BELCONNEN ACT 2616 P: 02 6230 6290 F: 02 6247 0476 A B N: 19 533 491 960
www.lbca.org.au office@lbca.org.au

Discussions with Stock and Station Agents

A meeting with Stock and Station Agents was held on Monday 8th October. The purpose of the meeting was to obtain information around health and safety issues from the agents' perspective. Issues raised included:

- Lack of water troughs in the sheep and cattle yards creating animal welfare issues particularly in hot weather;
- There is no "out-gate" in the load out area of the sale ring. Some agents have refused to enter the area due to the high risk;
- Drain in the yards is a trip hazard;
- Potholes in the bitumen areas of the sheep lanes.
- Hand winches on the sheep loading ramps are archaic.

The agents acknowledged that accessibility of the load out ramps were an issue and have been aware of the risks around transportation of livestock from the Finley Saleyards.

Discussions with Transport Operators

During our discussions we have been provided with differing opinions on how the saleyards could be improved, however all operators have expressed concern over the East/West situation of the ramps and have requested that if they be replaced, that they are replaced on an angle. The request is for the cattle ramps to be shifted facing Southwest, and the sheep ramps to be shifted to face Northwest.

In addition to the relocation of the ramps:

- The cattle forcing pens are to be addressed with an isolated area to protect the operator when loading the cattle;
- The sheep ramps are replaced with suitable functioning ramps with catwalk and electronic winches;
- The drain in the middle of the cattle pens is addressed to remove the trip hazard;
- Better lighting installed both at the sheep and cattle pens.

Discussions with Lessee

The Manager of Scanclear, Brendan Carey is not entirely receptive of the changes suggested by the agents or the transport operators. This is partly due to the low use of the saleyards, and whilst currently the yards are experiencing significant sales, this is attributed to the drought and offloading of stock and is expected to decline and remain at a low point well into the future.

Mr Carey has arranged for quotes and designs to replace one cattle ramp and forcing pen but for it to remain in the East/West situation, and replace the one sheep

loading ramp as well as lane and lighting works, situated off McNamara Street. He believes that this will address some concerns and will be sufficient works to allay concerns raised by stakeholders.

Works Required

Item	Estimated Costs
Replace four cattle ramps and forcing pens @ \$25,000	\$100,000
Perform kerb and gutter works to address angled truck approaches	\$10,000
Replace four sheep loading ramps along Hamilton Street	\$80,000
Install 3-phase power at Hamilton Street Sheep Ramp area	TBA
Replace sheep loading ramp off McNamara Street	\$20,000
Replace/install water troughs	TBA
Install additional lighting in cattle area – using lights obtained from Berrigan Netball Courts	\$2,036.10
Emergency exit egress points in sales ring	TBA
Estimated current known costs:	\$212,036.10

Under Mr Carey’s recommendations, the cost of the works is approximately \$50,000. This includes \$22,121 for the cattle ramp works, and the remainder an estimate for the sheep ramp replacement, lane reconfiguration works and lighting.

Unfortunately, these works do not address the issues raised by the agents or the transport operators.

Replacing one cattle ramp on an angle, as suggested by the transport operators, would then reduce the number of trucks able to access the other ramps if the angled ramp was in use. If Council are going to consider replacing the cattle ramps at an angle, more than one will need to be replaced.

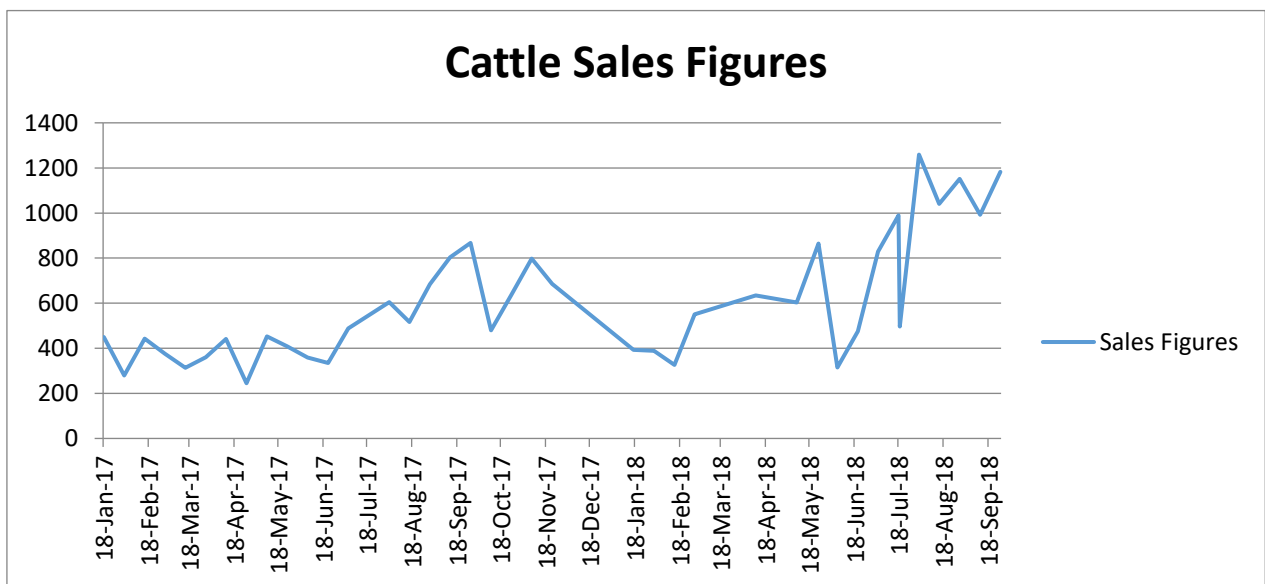
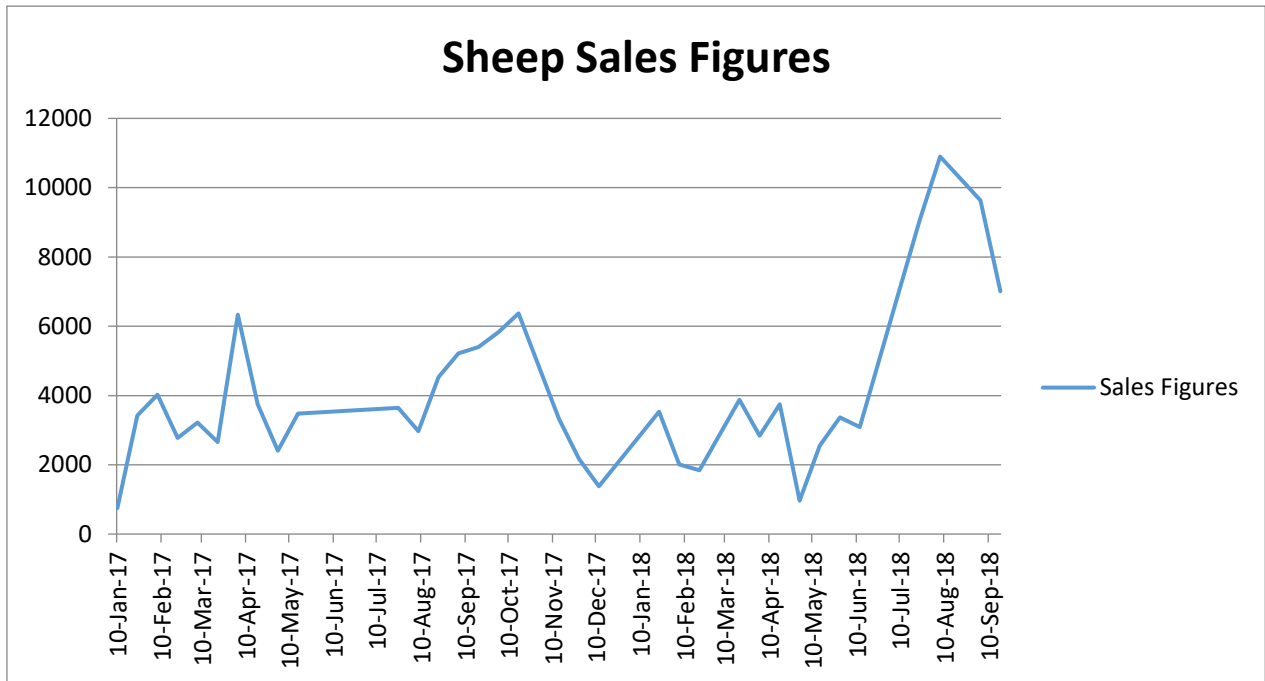
Future of the Finley Saleyards

Obviously the question of sustainability must be asked and whether the forecasted decline in use of the facility justifies the expense. The following charts reflect the current increase in sales at the saleyards, however the yards are still operating on fortnightly sales with some sheep sales suspended due to poor numbers.

According to the Meat and Livestock Australia, direct to buyer sales have steadily increased over the past three decades, and if saleyards are to survive, operators must offer value-added services and adopt industry-driven initiatives designed to preserve the quality and safety of the final consumable product.

“This is particularly pertinent for those local councils or private investors embarking on major saleyard development or upgrades. In some cases, in excess of \$10m expenditure is anticipated; appropriate planning is therefore critically important to the future viability of the facility”¹

¹ Meat & Livestock Australia – Australian Livestock Saleyards: Potential issues for future development and management, reports and recommendations through consultation with Saleyard Operators Association of Australia.



The questions posed to Council are:

- *Do we spend the funds to bring the saleyards up to acceptable standards despite the future viability of the facility looking grim?*
- *Do we perform minimal works despite complaints, and accept the risks? The issues surrounding this are that we are aware of the issues, we have the funds to rectify the issues; ignoring and accepting the risk makes us completely liable and exposes users to potentially fatal incidents, and us to negligence charges;*
- *Do we close the facility?*

As a result of its consideration the Council effectively resolved “that the Council invest in scope works to improve the priority areas at Finley Saleyards.” – which effectively was the driver for the procurement of the Proway Report.

Safework NSW

While the Council has been attempting to deliver some of the works outlined in the Proway Report these have been delayed by the need to underground the electricity and the time it has taken to both get the design and cost of this.

As stated earlier the initial budget of \$213,000 for the proposed works has now blown out to \$395,000 which effectively means that they cannot proceed without a further funding commitment.

Whilst this issue is being considered a user of the saleyards has contacted SafeWork NSW.

The exact nature of that contact is obviously unknown but has resulted in SafeWork NSW contacting the Council, however it resulted in SafeWork NSW calling the Council to discuss the issue. As a result of that conversation the Council sent the following email to SafeWork NSW on 29th April 2020:

Hi <name deleted> and thank you for your phone call yesterday.

As discussed, the Council are aware that there are issues that need to be addressed at the Finley Saleyards and is taking steps to address them.

In response to issues raised by livestock transport operators, the Council commissioned a report from an expert in saleyard design and operation - Proway Systems - in late 2018.

This report was formally delivered to the Council in February 2019. At the March 2019 meeting the Council prioritised the works and agreed to set aside funds for the work in 2019/20 operating budget. The main thrust of the works program was replacement of the ramps.

In July 2019 (i.e. in the new financial year) the Council consulted with the lessee (Scanclear Pty Ltd) and the agents and transport operators about the Council's plans - with general agreement. All parties agreed that while works are required to address the safety concerns identified, in the interim the yards could still be operated safely if correct procedures were followed.

As part of the redesign works, the Council met with Essential Energy regarding the overhead power lines. Council was advised that any changes to the layout of the ramps would require their consent - as the works were underneath power lines. They also advised that consent would be unlikely to be granted and that the lines would need to be relocated away from the ramps - either on the other side of the road or underground.

In December 2019, the Council agreed to commission a qualified engineer to design underground power - GPE HV. There are only a limited number of qualified HV designers and local providers like GPE often booked solid. In addition, Essential Energy must approve the design and their approval process is extremely slow.

Before the Council invests significant money on any improvements, it would be prudent to know how much the necessary works will cost. This will then inform any decision on the future of the saleyards.

A copy of the Proway report, relevant Council reports and minutes, emails from stakeholders and the lessee's contact details are attached.

The Council is committed to providing a safe workplace and welcomes your involvement and input.

Also on the 29th April 2020 SafeWork 2020 responded:

Hi <name deleted>,

Thank you for your time on the phone yesterday and sending all this information through to me.

I will review and get in touch.

A response was received from SafeWork NSW as follows on 1st May 2020:

Hi <name deleted>,

Did you have any contact with the electrical company regarding the design for underground powerlines?

To which the Council responded on the same day:

Hi <name deleted>,

I received an email yesterday afternoon (attached) stating that we should have our detailed estimate today. This will give the Council some information to make their decision on the works although the design is not drawn up sufficiently for tender purposes just yet.

A report on the saleyards, the safety concerns and the power relocation is listed for discussion on the Council's Strategy and Policy Workshop meeting agenda for Wednesday 6 May.

Regards,

SafeWork responded to that email, again, on 1st May 2020 as follows:

Hi <name deleted>,

Thank you for the update and if you could provide me with the outcomes from that meeting it would be greatly appreciated.

It is acknowledged that Council had requested ProWay Systems undertake an audit at the Finley Saleyards and the final report provided has significant costs attached, specifically relating to the removal/replanning of overhead powerlines.

I have concerns that the report clearly identifies potential risks/hazards that should be rectified immediately.

As you would know Council has a "duty of care" obligation to ensure the safety and wellbeing of persons visiting the site and although there is the cost factor relating to the removal/replanning of overhead powerlines the other identified hazards cannot be ignored in the short term.

If an incident were to occur it would have to be noted that Council are fully aware of those risks/hazards as per the ProWay report provided.

If you have any questions please do not hesitate to contact me.

The above email has obvious implications for the Council if it fails to act in response to the required works.

On the 6th of May 2020 and after the Strategy and Policy Workshop, the Council sent the following email to SafeWork NSW:

Hi <name deleted>,

Confirming our discussion re: results of today's meeting.

Council's intent is to arrange a meeting with stakeholders (next week, subject to COVID-19 restrictions) to inform them of the request for service made to SafeWork and the Council's response to the request in the light of the Proway report.

Council has asked staff to prepare an engagement strategy for discussion with the community about the short term future of the yards. This discussion with the community will happen as soon as possible after the meeting with stakeholders.

Council remains of the position – as agreed with stakeholders last year – that the yards can be used safely, subject to compliance with procedure and in line with the resources reasonably available to the Council at this time.

Advice from SafeWork regarding its position on the safety of the yards as they stand now would be very welcome and seriously taken into account in any future decision making.

This email is of real concern as I don't believe that this was the position of the Council at all. This email has pushed the Council further into a position of accepting an unacceptable risk, and further exposed the Council in the eyes of SafeWork.

The above emails are all of the relevant email with SafeWork than I have located however the email of 1st May 2020 from SafeWork is of real concern as it clearly advises Council of its responsibilities and its knowledge of the risks at the Finley Saleyards.

Insurance

The Council has in place two types of insurance to protect them from legal action. These are Public Liability/Professional Indemnity insurance, and Councillors' and Officers' Liability Insurance.

Public Liability insurance broadly covers the Council for the cost of legal action and compensation for third parties who may be injured, or their property damaged as a result of Council's negligence. Councillors' and Officers' Liability insurance covers individuals as elected members or employees of Council for a wrongful act committed in their capacity as an elected member or employee. This cover is usually for fines imposed on individuals under relevant legislation.

Where there is prior knowledge of negligence, or a wrongful act, the cover afforded to us under the Mutual is challenged, and in some cases will not apply.

Specifically, in relation to the Finley Saleyards, and if there was an incident, Council as an entity insured for public liability may have difficulty in lodging a legitimate claim given we had previous knowledge of the issues surrounding the facility, and our failure to act may be classed as an unlawful activity. Below is the specific exclusion in Council's policy wording:

DISHONEST AND FRAUDULENT ACTIVITIES 18. Claims arising out of any intentional deliberate dishonest fraudulent criminal or malicious act or omission of any person at any time employed by The Member, or of any Mayor or Councillor elected to the Council of The Member.

This is certainly the case for Councillors' and Officers' Liability. Council's failure to act on safety issues would be considered criminal negligence. Council Officers as defined under the *Work Health and Safety Act 2011* would be found individually responsible, and would be fined, as would the Council as a PERSON CONDUCTING BUSINESS OR UNDERTAKING. As it would be considered criminal negligence, this fine would not be covered under our insurance, Council would be responsible for paying their own fine, and each Officer fined would be individually responsible. Below is the specific exclusion in Council's policy wording:

4.1.2 Conduct Arising from, based upon, attributable to or as a consequence of: a) any covered person having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or b) any criminal, fraudulent, dishonest or malicious act or omission committed by any covered person.

Lease

A copy of the lease to Scanclear Pty Ltd is circulated with this agenda for information as **Appendix "S"**

The current lease commenced on 1st July 2017 for a period of five years concluding on 30th June 2022.

There is nothing remarkable about the lease and any of its issues have been reflected above.

Legal Advice

A separate confidential report is presented elsewhere in this agenda regarding legal advice that the Council has received.

Business Case

Staff have attempted to reverse engineer an economic impact assessment to anticipated economic impacts of any closure of the Finley Saleyards however this has not been possible. That said, there are obvious outcomes when considering this issue.

Firstly, despite the fact that the closure of the Finley Saleyards is not a desirable outcome for anyone, the fact remains that to invest somewhere between \$1.3m and \$1.8M in a business that make no financial return to the party expected to make that investment makes no sense.

Secondly, is the fact that it is undeniable that the Finley Saleyards make some social and economic return to the community.

Thirdly, it is again undeniable that physical saleyards are an industry in structural decline and while the Council has previously adapted operation of Finley Saleyards

which has extended its operational life by twelve years the yards are definitely in their twilight years.

It may well be that there are others who can also develop an alternative delivery model that might further extend the life of the yards somewhat and the Council could consider selling the yards to anyone with that interest for \$1 with a call option to have it return to the Council for \$1 if the operation ceases. It would be interesting to see if there are any such interested parties.

The Council contacted Scanclear Pty Ltd for an estimate of actual staff hours that would be lost with a closure and these are estimated to be around 2,000, or about 1.1 eft hours annually and at a cost of \$100,000 pa. Scanclear estimates that any job losses associated with Agents operating in the yards is about 0.6 eft.

Engagement Strategy

A draft engagement strategy is circulated with this agenda as **Appendix “T”**

Options

In terms of options for the future, the Council appears to broadly have 4 options for the future and the various advantages and disadvantages of these are set out below:

Maintain Status Quo

Advantages	Disadvantages
Maintains current level of social and economic activity that is generated through the operation of the yards.	Exposes the Council and its staff to high corporate and personal risk.
Assuming some pursuit of the Proway Report, allows the Council to commit improvement funds as and when they become available	Exposes uses of the yards to known work health and safety risks.
	Any funds spent on ramps are for little purpose as the bulk of the risk will remain

Close the Finley Saleyards

Advantages	Disadvantages
Eliminates corporate and personal risk	Realizes social and economic losses that are currently generated by operation of the yards

Eliminates need for investment of improvement funds	Negative commentary from the community – viewed as an attack on Finley residents.
Eliminates work health and safety risks to users of the yards	
Allows for alternative development of the site	
Demonstrates Council’s commitment to providing and operating in a safe work environment	

Sell the Finley Saleyards for a nominal sum and to continue operations with a call back option should they cease to operate

Advantages	Disadvantages
Would allow yards to continue to operate	May continue to expose users of the yards to work health and safety risks if improvement works not completed
Eliminates corporate and personal risk	Directs Council funds to a facility that will eventually close rather than utilise for projects more likely to produce social and economic benefits
Eliminates need for investment of improvement funds by the Council	Negative commentary from users of the facility continues – business as usual
No negative commentary from the community – business as usual	

Council continue to own the yards and invest the required improvement funds

Advantages	Disadvantages
Would allow yards to continue to operate	Would see significant funds invested for little or no return to the Council
Eliminates corporate and personal risk	Would preclude Council investment in other areas of core responsibility
Eliminates need for investment of improvement funds by the Council	No guarantee the yards would remain open in the medium term anyway due to structural change.

It should be noted that under any scenario the Council will receive negative community reaction.

Summary

The Council unfortunately finds itself where it is the operator of a facility that is the subject of significant structural adjustment. This structural adjustment is exacerbated by climatic conditions and disruptions to the water markets.

The bulk of this position is not new and is the reason why the Council leased the yards out in 2008. That leasing option has worked reasonably well in that it has extended the operation of the yards from 2008 until the present.

The Council is also the owner of a facility that it knows is unsafe for its intended use unless it is prepared to invest significant funds and even if it chooses to invest those funds there is no guarantee that it will survive into the future.

Whilst the Council continues to operate the yards without investing the required improvement funds it exposes the Council itself and its staff to significant financial and, in the case of staff, criminal risk. While the Council can prioritize improvements to the yards, the reality is that it will still need to commit all of the required funds.

The Council has been put on notice by Safework NSW that it is aware of the situation and it has reminded the Council of its responsibilities. Whilst Safework NSW presently chooses to take no action it will no doubt, if an incident occur, rely on the fact that it has previously reminded the Council of its responsibilities in pursuing the matter. This fact alone, in my opinion, pushes the Council into the "acting recklessly" category if it continues to allow the yards to operate and does not commit to the required improvements.

It is also important to note that, firstly the Council cannot insure a criminal act and, secondly, that while the Council insures its public liability risk it is not clear cut that its insure would extend that to any wilful negligence.

In terms of going forward, the reality is that only two of the available options are viable.

I dismiss the options of maintaining the status quo because this is simply reckless.

I dismiss the investment option as this reflects a very poor use of ratepayer funds and may not in any case meaningfully extend the future of the yards and if does so this if for some undefined period.

The option of selling the yards with a call back option may have some viability but, again, the reality is that any purchaser will confront exactly the issues that the Council is currently facing.

Given the above that leads me to the conclusion that the only real live option is to close the yards and to terminate the lease with Scanclear Pty Ltd.

RECOMMENDATION that Items for Noting numbered 8.1 to 8.1 inclusive be received and noted.

8.1 DEVELOPMENT DETERMINATIONS FOR MONTH OF APRIL

AUTHOR: Executive Support Officer

STRATEGIC OUTCOME: Good government

STRATEGIC OBJECTIVE: 2.1 Berrigan Shire 2027 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

FILE NO: 7.143.7

REPORT:

APPLICATIONS DETERMINED FOR APRIL 2020

Application	Description	Property Location	Applicant	Owner	Status	Value	Days Taken	
112/20/DA/DM	HOME STAY – BACKPACKERS	61-63 MURRAY STREET, TOCUMWAL NSW 2714 (Lot14//DP841714)	MURRAY STREET HOME STAY	MR MJ LOFFLER AND MRS WA LOFFLER	Approved 15-04-2020	\$ 0.00	Active 53	Total 53
123/20/DA/DM	HANGAR	27 WIRRAWAY COURT TOCUMWAL NSW 2714 (Lot43//DP1233177)	RUSSELL JOHN BANKS	DEJA BLUE SUPER PTY LTD	Approved 01-04-2020	\$110000.00	Active 13	Total 13
121/20/DA/D9	2 LOT SUBDIVISION	30-36 COBRAM STREET, TOCUMWAL NSW 2714 (Lot 145 /PART/DP752296)	NORTH EAST SURVEY DESIGN	MR R C PERRYMAN AND MRS S E PERRYMAN	Approved 02-04-2020	\$ 0.00	Active 24	Total 24
130/20/DA/D9	BOUNDARY REALIGNMENT	148 MCNAIRS ROAD, FINLEY NSW 2713 (Lot 1//DP841328)	DARYLL & JANETTE MORRIS	MR D J MORRIS AND MRS J M MORRIS	Approved 21-04-2020	\$ 0.00	Active 29	Total 29
133/20/DA/DM	HANGAR & RESIDENCE	35 WIRRAWAY COURT, TOCUMWAL NSW 2714 (Lot 45//DP1233177)	ROBIN & JENNIFER HENDY	MR RA HENDY AND MRS JJ HENDY	Approved 01-04-2020	\$ 200000.00	Active 10	Total 10
134/20/DA/D5	RESIDENTIAL STORAGE SHED	52 MURRAY STREET, FINLEY NSW 2713 (Lot 25/A/DP3407)	O'HALLORAN PROPERTY SERVICE	MR ADAM FORDER	Approved 21-04-2020	\$ 28971.00	Active 24	Total 24
138/20/DA/D5	RESIDENTIAL STORAGE SHED	20 CALAWAY STREET, TOCUMWAL NSW 2714 (Lot 92//DP630412)	DES O'BRIEN	MR DJ O'BRIEN	Approved 01-04-2020	\$ 9500.00	Active 4	Total 4
140/20/DA/D1	BV DWELLING & ATTACHED GARAGE	19 GYPSIE CRESCENT, BAROOGA NSW 3644 (Lot 42//DP1110847)	KENNEDY BUILDERS	MR AM SHANNON	Approved 21-04-2020	\$ 567665.00	Active 18	Total 18
141/20/DA/D1	BV DWELLING & ATTACHED GARAGE	36A BARINYA STREET, BAROOGA NSW 3644 (Lot 2//DP1250698)	AFONSO BUILDING SOLUTIONS PTY LTD	MR S R MOREY	Approved 07-04-2020	\$ 370060.00	Active 7	Total 7
142/20/DA/DM	HANGAR & RESIDENCE	31 WIRRAWAY COURT, TOCUMWAL NSW 2714 (Lot 44//DP1233177)	BRYAN LAW	MS F E LAW	Approved 21-04-2020	\$ 200000.00	Active 12	Total 12
144/20/DA/D6	DWELLING ADDITIONS	5 MARY STREET, BERRIGAN NSW 2712 (Lot 1//DP235492)	MARY- ANNE FERGUSON	MR P D BARNES AND MISS M A L FERGUSON	Approved 27-04-2020	\$ 50000.00	Active 16	Total 16
145/20/DA/DO	RURAL SHED	774 NEWELL HIGHWAY, TOCUMWAL NSW 2714 (Lot 1241//DP785541)	SCOTT BALDWIN	MR S A BALDWIN	Approved 08-04-2020	\$ 70000.00	Active 2	Total 2
34/20/CD/M6	PERGOLA	GOLF COURSE ROAD, BAROOGA NSW 3644 (Lot 9//DP253590)	HADAR HOMES	MRS CA FISHER	Approved 15-04-2020	\$ 3177.00	Active 6	Total 6

148/20/DA/D5	RESIDENTIAL STORAGE SHED/ADDITIONAL TOILET & SHOWER INSIDE	52 TOCUMWAL STREET, FINLEY NSW 2713 (Lot B//DP366260)	JESSICA LAXTON & TIM HANSFORD	MS J L LAXTON	Approved 23-04-2020	\$ 19000.00	Active 11	Total 11
149/20/DA/DM-M	MODIFICATION TO WATER STORAGE & SUMP	WINTERS ROAD, LALALTY NSW 3644 (Lot 832//DP1257848)	CHRIS KELLY	ACMII AUSTRALIA 5 PTY LTD	Approved 29-04-2020	\$ 0.00	Active 8	Total 8

APPLICATIONS PENDING DETERMINATION AS AT 30/04/2020

Application No.	Date Lodged	Description	Property Location
86/20/DA/D7	06-12-2019	ABOVEGROUND SWIMMING POOL	17-19 ANZAC AVENUE, TOCUMWAL NSW 2714 (Lot B//DP361991)
88/20/DA/DM	16-12-2019	GENERATOR	51-53 DAVIS STREET, BERRIGAN NSW 2712 (Lot 13//DP739679)
93/20/DA/D9	23-12-2019	13 LOT SUBDIVISION	100 BURMA ROAD, TOCUMWAL NSW 2714 (Lot 4//DP802330)
103/20/DA/DM	17-01-2020	HANGAR	16 LIBERATOR PLACE, TOCUMWAL NSW 2714 (Lot 30//DP1190777)
110/20/DA/D2	31-01-2020	STORAGE SHED	204-208 MURRAY STREET, FINLEY NSW 2713 (Lot 3/26//DP758412)
119/20/DA/DM	21-02-2020	AMPHITHEATRE, FISHING PLATFORM & ACCESS TRACKS	TOCUMWAL (Lot 7002//DP1019579)
135/20/DA/D5	18-03-2020	RESIDENTIAL STORAGE SHED & CARPORT	1-3 COREE STREET, FINLEY NSW 2713 (Lot 5/1//DP758412)
137/20/DA/DO	19-03-2020	RURAL SHED	3075 MULWALA-BAROOGA ROAD, BAROOGA NSW 3644 (Lot 8//DP1027384)
143/20/DA/D5-M	03-04-2020	CARPORT	11 TOWN BEACH ROAD, TOCUMWAL NSW 2714 (Lot 41//DP616085)
150/20/DA/D1	17-04-2020	BV DWELLING & ATTACHED GARAGE	6 RUSSELL COURT, BAROOGA NSW 3644 (Lot 19//DP1102913)
151/20/DA/DO	21-04-2020	RURAL SHED	68 HONNIBALL DRIVE, TOCUMWAL NSW 2714 (Lot 2//DP1250417)
152/20/DA/D1	21-04-2020	BV DWELLING & ATTACHED GARAGE	68 HONNIBALL DRIVE, TOCUMWAL NSW 2714 (Lot 2//DP1250417)
155/20/DA/D1-M	29-04-2020	DWELLING	Lot 9 The Riverfront, Bushlands Road TOCUMWAL NSW (Lot 9//DP286078)
157/20/DA/D3	30-04-2020	INDUSTRIAL SHED	48-52 WOLLAMAI STREET, FINLEY NSW 2713 (Lot 6/8//DP758412)
159/20/DA/D5	30-04-2020	RESIDENTIAL STORAGE SHED	233 HUGHES STREET, BAROOGA NSW 3644 (Lot 102//DP1138899)

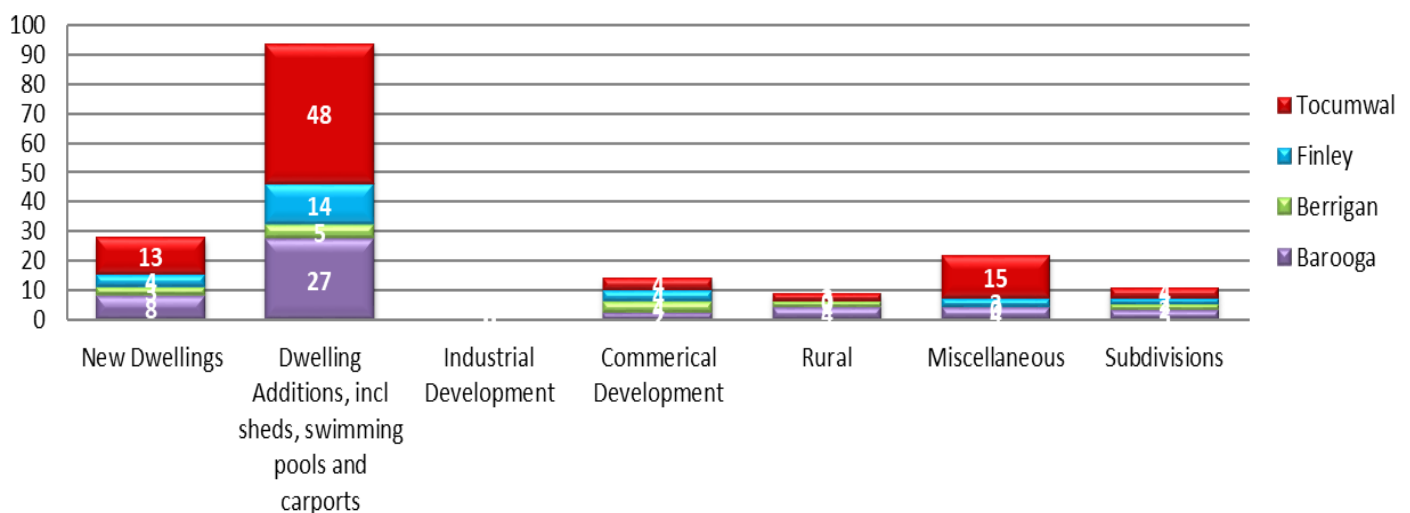
TOTAL APPLICATIONS DETERMINED / ISSUED (including modifications)

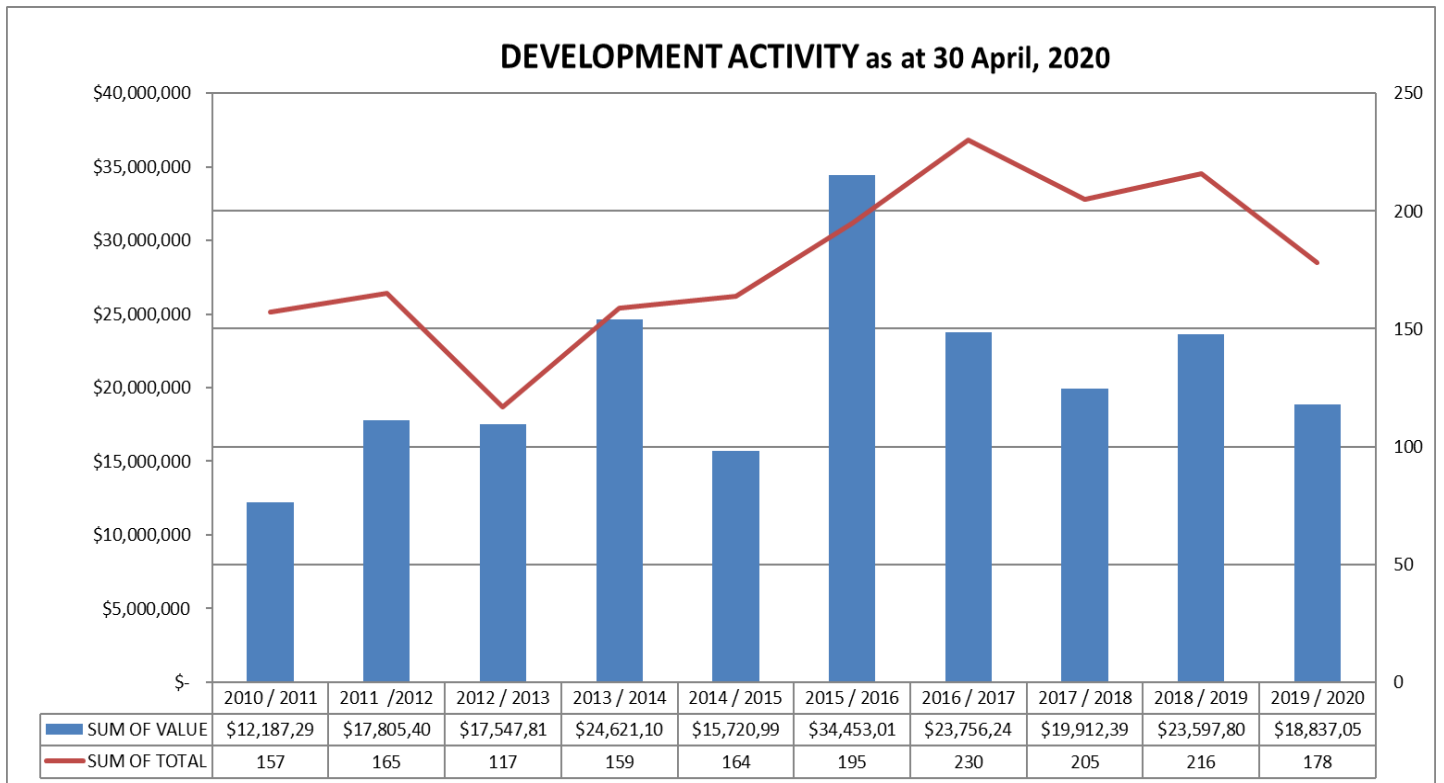
	This Month (APRIL)	Year to Date	This Month's Value (APRIL)	Year to Date Value
<i>Development Applications (DA)</i>	14	146	\$1,625,196	\$15,944,736
<i>Construction Certificates (CC)</i>	11	120	\$1,492,196	\$14,320,991
<i>Complying Development Certificates (CDC)</i>	1	32	\$3,177	\$2,892,319
<i>Local Activity (s.68)</i>	5	61		

OTHER CERTIFICATES ISSUED FOR APRIL 2020

	s10.7(2) Planning Certificate		s10.7(5) Certificate		735A Certificate Outstanding Notices or Orders under LG Act 1993		s9.34 Certificate Outstanding Notices or Orders under EP&A Act 1979		s6.24 Building Certificate		Swimming Pool Certificate	
	APR	Year Total	APR	Year Total	APR	Year Total	APR	Year Total	APR	Year Total	APR	Year Total
BAROOGA	4	84	0	6	0	3	0	1	0	1	1	6
BERRIGAN	6	47	0	3	0	9	1	5	0	1	0	8
FINLEY	6	105	0	15	0	7	1	3	0	1	0	10
TOCUMWAL	3	123	2	7	0	2	0	0	0	5	1	3
TOTAL	19	359	2	31	0	21	2	9	0	8	2	27

DEVELOPMENT ACTIVITY 2019/2020 as at 30 April, 2020





9. CLOSED COUNCIL

In accordance with the *Local Government Act 1993* and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

Set out below is section 10A(2) of the *Local Government Act 1993* in relation to matters which can be dealt with in the closed part of a meeting.

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors)
- (b) the personal hardship of any resident or ratepayer
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret
- (e) information that would, if disclosed, prejudice the maintenance of law
- (f) matters affecting the security of the council, councillors, council staff or council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

9.1 STORES/DEPOT OFFICER

This item is classified CONFIDENTIAL under section 10A(2) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (a) personnel matters concerning particular individuals (other than councillors)

It is not in the public interest to reveal the information provided in this report.

9.2 FINLEY SALEYARDS

This item is classified CONFIDENTIAL under section 10A(2) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege

It is not in the public interest to reveal the information provided in this report.

RECOMMENDATION that the Council move into a closed session to consider the following business together with any reports tabled at the meeting.

And further that pursuant to section 10A(1)-(3) of the *Local Government Act 1993*, the media and public be excluded from the meeting on the basis that the business to be considered is classified confidential under the provisions of section 10A(2) as outlined above and that the correspondence and reports relevant to the subject business be withheld from access to the media and public as required by section 11(2) of the *Local Government Act 1993*.

9.1 STORES/DEPOT OFFICER

9.2 FINLEY SALEYARDS

Council closed its meeting at The public and media left the Chamber.

Open Council resumed at

RESOLUTIONS FROM THE CLOSED COUNCIL MEETING

The following resolutions of the Council while the meeting was closed to the public were read to the meeting by the Mayor:

10. COMMITTEES

11. MAYOR'S REPORT

RECOMMENDATION that the Mayor's Report be received.

12. DELEGATES REPORT

13. BUSINESS ARISING