



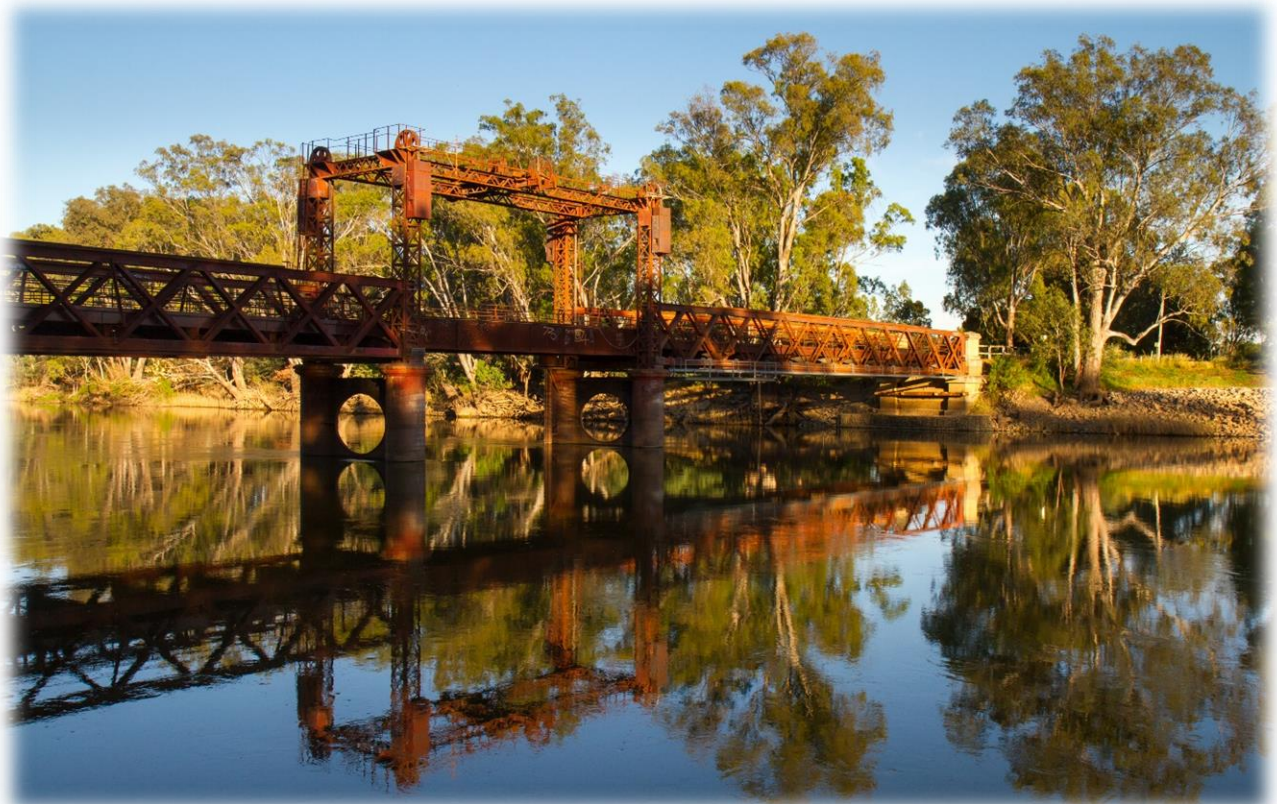
ORDINARY MEETING OF COUNCIL

Wednesday 17 June 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 17th June, 2020** when the following business will be submitted:-

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13.	CLOSE OF MEETING	

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 17th June, 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

Nil

4. CONFIRMATION OF MINUTES

RECOMMENDATION: that the Minutes of the meeting held in the Council Chambers on Wednesday 20th May, 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 31 May 2020, be received and that the accounts paid as per Warrant No. 05/20 totaling \$1,960,731.50 be confirmed.

REPORT:

- a) A Financial Statement covering all funds of the Council indicating the Bank Balances as at 31 May 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 31 May 2020.
- c) The Finance Manager certifies the Accounts, including the Petty Cash Book made up to 31 May 2020, totaling \$1,960,731.50 and will be submitted for confirmation of payment as per Warrant No. 05/20.
- 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) May has shown a significant increase in total funds held due to the receipt of the fourth instalment of rates and approximate 50% in advance payment of the 2021 Financial Assistant Grant. Note that these funds are already committed for expenditure in the draft 2020/21 operating budget on public exhibition.

Overall funds have increased by \$5.06M from the same period last year and are expected to remain stable in the coming months.

Further information regarding Council's investments is attached to this Agenda as **Appendix "A"**.

Statement of Bank Balances as at 31 MAY 2020

Bank Account Reconciliation

Cash book balance as at 1 MAY 2020	\$ 6,412,745.75
Receipts for MAY 2020	\$ 6,761,567.30
Term Deposits Credited Back	\$ -
	<u>\$ 13,174,313.05</u>
<i>Less Payments Statement No 05/20</i>	
No Chq Payments	\$ -
Electronic Funds Transfer (EFT) payroll	\$ 624,373.96
Electronic Funds Transfer (EFT) Creditors E034422-E034662	\$ 1,313,533.84
Term Deposits Invested	\$ -
Loan repayments, bank charges, etc	\$ 22,823.70
Total Payments for MAY 2020	<u>\$ 1,960,731.50</u>
Cash Book Balance as at 31 MAY 2020	<u>\$ 11,213,581.55</u>
<i>Bank Statements as at 31 MAY 2020</i>	\$ 11,213,581.55
Plus Outstanding Deposits	\$ -
Less Outstanding Cheques/Payments	\$ -
Reconciliation Balance as at 31 MAY 2020	<u>\$ 11,213,581.55</u>

INVESTMENT REGISTER

INSTITUTION	DEPOSIT NO.	TERM (days)	RATE	MATURITY DATE	INSTITUTION TOTAL	S&P RATING
AMP	125/16	180	**1.90%	1/06/2020	\$ 2,000,000.00	BBB+
AMP	136/18	365	**1.60%	17/10/2020	\$ 2,000,000.00	BBB+
AMP	133/17	181	**1.65%	24/11/2020	\$ 1,000,000.00	BBB+
AMP	144/19	365	**1.80%	23/03/2021	\$ 2,000,000.00	BBB+
Goulburn Murray Credit Union	124/16	365	1.30%	13/05/2021	\$ 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	102/14	364	1.65%	5/04/2021	\$ 2,000,000.00	BBB
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
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-
					<u>\$ 27,000,000.00</u>	

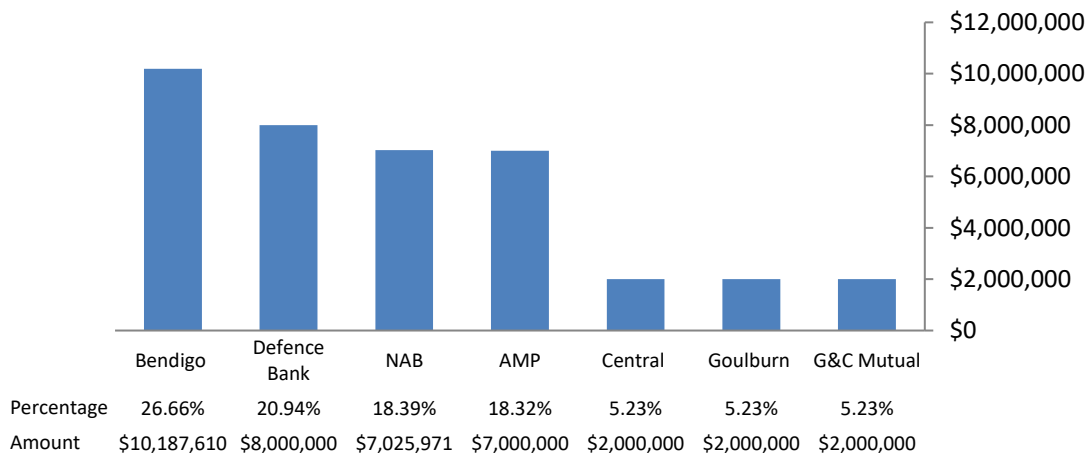
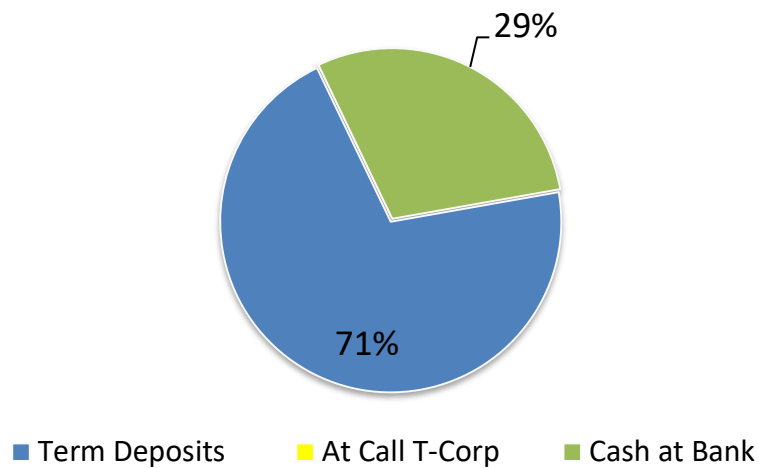
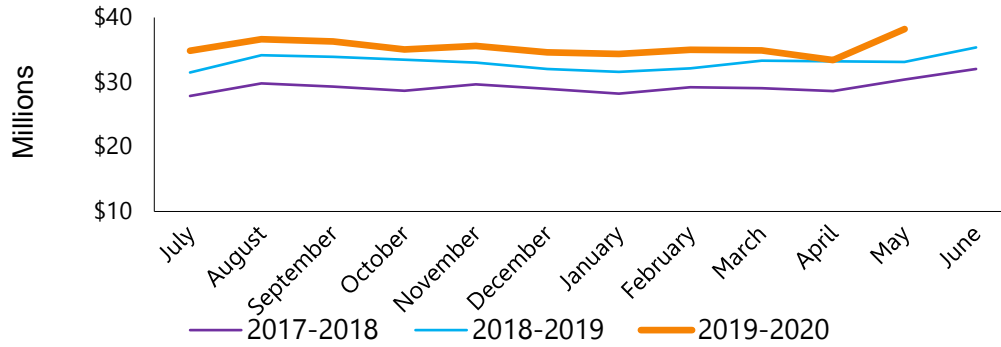
Total Funds Held at 31 MAY 2020

\$38,213,581.55

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



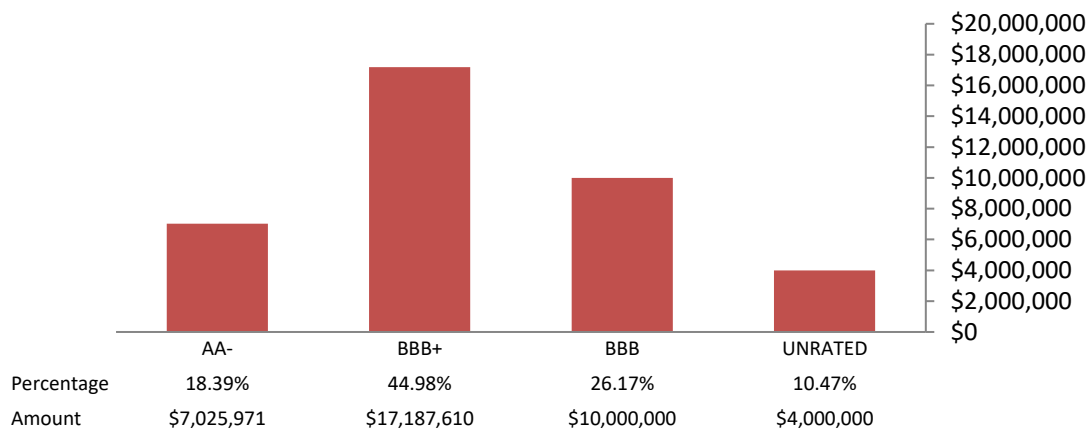
Term Deposits Credited Back

Prior Financial Institution	Term (Days)	Amount	Interest Rate	Maturity Date	S&P Rating
GOULBURN MURRAY	365	\$ 2,000,000.00	2.65%	13/05/2020	UNRATED
AMP (IMPERIUM)	182	\$ 1,000,000.00	*1.90%	26/05/2020	BBB+

Term Deposits Invested / Reinvested

Current Financial Institution	Term (Days)	Amount	Interest Rate	Maturity Date	S&P Rating
GOULBURN MURRAY	365	\$ 2,000,000.00	1.30%	15/05/2021	UNRATED
AMP (IMPERIUM)	182	\$ 1,000,000.00	*1.65%	24/11/2020	BBB+

*The Council also receives an additional 0.20% commission



7.2 BERRIGAN SHIRE OFFICIAL VISITORS GUIDE (OVG)

AUTHOR: Economic & Industry Development Liaison

STRATEGIC OUTCOME: Diverse and resilient business

STRATEGIC OBJECTIVE: 4.2 Diversify and promote local tourism

FILE NO: 08.160.2

RECOMMENDATION: That the Council adopt recommendations 1 to 7 as described in the Berrigan Shire Council Scholarships Report 2020 attached as **Appendix "B"**

REPORT:

At the 2020 Corporate Workshop the Councillors participated in an initial presentation and discussion around the different "scholarship type" programs that the Council offers. It was decided that the subject needed more in-depth investigation to determine if any of the desired outcomes of the various programs have been met and that a full report should be brought to the Council.

The Berrigan Shire Council Scholarships Report details the programs that are corralled under the Scholarship title, describes what they are and what they have been achieving over time. All programs except for the Finley TAFE funding have been running or been available for more than 10 years.

The recommendations have been designed to address the sentiment expressed at the Corporate Workshop for the Council to offer something for local youth in the education space and to also promote the LGA as a great place to stay or to return to after study.

If the recommendations are accepted \$8,000 would be returned to the budget, however new spending is also recommended. An extra \$1,000 for the Finley TAFE, \$10,000 for a new program for Year 10 students that would be allocated \$6,000 in subsequent years after the initial startup year of 2021 and a startup cost of \$2,000 for the Interns and Trainees program. There is no funding required at this stage for the possibility of engaging with tertiary graduates as a program is yet to be designed around the concept.

Year	Funding required
2019/2020	\$15,000
2020/2021	\$19,000
2021/2022	\$13,000

7.3 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. Adopt the Finley Saleyards Engagement Strategy;
2. The Council delegate authority to the General Manager to:
 - (a) negotiate with the Lessee for an early surrender of the existing Lease on the basis of both parties entering into an appropriate Deed releasing one another from all claims and liabilities;
 - (b) In the event that the Lessee is not prepared to surrender the Lease prior to the expiration of the existing term, the General Manager is to serve a Notice of Default under the Lease.
3. In the absence of the Lessee voluntarily agreeing to cease operation of the facility forthwith, the General Manager is to serve the Lessee with an Order under the Environmental Planning and Assessment Act to immediately stop the use of the Saleyards pending compliance with all Work, Health and Safety obligations identified within the Safety Report of January 2019;
4. Council officers to investigate future alternatives for the Finley Saleyards, including, but not limited to, options to repair, develop, sell, pursue expression of interest campaign and then present a further report to Council for consideration.

REPORT:

The Council, at its meeting held on 20th May 2020, resolved to defer consideration of this matter to the June 2020 Strategy and Policy Workshop. The original Council report that was referred to that workshop is included in this report.

Following consideration at the Strategy and Policy workshop the Council indicated that its preferred position to take the issue forward was *“that Council refurbish the Finley Saleyards Phase 1 and Phase 2 as amended below subject to the receipt of grant funding over and above the existing budget of \$877k and review in 3 months.*

<i>Relocate overhead power lines on Hamilton St underground</i>	<i>\$188,000</i>
<i>Renovate two cattle forcing yards</i>	<i>\$25,000</i>
<i>Ramp nibs</i>	<i>\$17,000</i>
<i>3 Sheep ramps</i>	<i>\$165,000</i>
Total Indicative Cost - Phase One	\$395,000

<i>Replace existing yards with new fences and gates</i>	<i>\$494,000</i>
<i>Improve existing toilets</i>	<i>\$20,000</i>
<i>Safety hide</i>	<i>\$1,000</i>
Total Indicative Cost - Phase Two	\$515,000

That earlier report is preceded by an update of information determined since it was written and incorporates the queries that staff believe flowed from the initial consideration by the Council on 20th May 2020.

The recommendation attached to this report reflects suggested by the Council's legal representative.

Elsewhere in this Agenda a report the Council's funding options for various projects, including the Finley Saleyards, and grant funded project funding shortfalls are discussed and should be referred to when considering this report.

Update

Proway Report

In terms of clarification, the Proway Report was not prepared to "improve" the Finley Saleyards, rather it was commissioned to identify what works were required to bring the yards to a point where it could meet acceptable work health and safety standards. The report was not designed to consider animal welfare issues although there are some works in the report that relate to this.

Importantly, other than the stock loading systems, the report does not prioritize the recommended works.

The report was prepared in consultation with stakeholders and they were provided with a copy of the report about twelve months ago. Until the present Council consideration stakeholders have raised no issues with the contents of the report.

Scanclear Pty Ltd Rent Payments

Following advice from agents in relation to the fees they have paid this matter is being pursued with Scanclear Pty Ltd. No final position is available at the present time however all things being equal this might amount to about \$11,000 for the term of the current lease based on information provided by Scanclear Pty Ltd and which appears less than that suggested by agents.

Scanclear Pty Ltd Insurances

Following receipt of legal advice that the lessee's insurance cover, in terms of public risk does not satisfy the requirements of the lease, clause 28.1, this matter has been pursued with Scanclear Pty Ltd. To date this concern has not been satisfied and Scanclear Pty Ltd has been reminded of its duty of disclosure in relation to the Proway report and its insurance policy.

National Saleyards Quality Assurance

The Finley Saleyards appears to have apparent accreditation under the NSQA program. It needs to be noted that this program is almost entirely devoted to issues of saleyards reporting and animal welfare issues, not issues of work health and safety.

Capital Expenditure Review

According to the Office of Local Government "As councils are responsible for the prudent management of community resources, it is important that as part of a council's normal planning process, councils undertake a Capital Expenditure Review before committing to any major capital project. The Office of Local Government has prepared Capital Expenditure Guidelines to assist councils. These guidelines are prepared under S23a of the Local Government Act and which Councils are required to consider.

These Guidelines have been developed to assist NSW councils prepare Capital Expenditure Reviews. Capital expenditure is incurred when a council spends money to buy, construct, renovate or acquire an asset.

The Guidelines have been designed to:

- encourage councils to evaluate major capital expenditure by means of a consistent methodology
- improve the quality of council's analysis performed in supporting all forms of project funding and capital expenditure
- enable the financial impact of projects on a council to be quantified, identified and controlled.

The Guidelines aim to ensure that a council's evaluation of the proposed capital expenditure is consistent and rigorous, the merits of projects can be compared and resource allocation can be made on an informed basis. It is important that the evaluation of the project is carried out in a clear, transparent and systematic way. The process of evaluation and reporting methods outlined in these Guidelines will enhance the transparency and rigour of capital expenditure project evaluation.

Capital Expenditure Review is a necessary part of a council's capital budgeting process and as such should be undertaken as part of the Integrated Planning and Reporting requirements in the preparation of the Community Strategic Plan and Resourcing Strategy.

These guidelines apply to capital projects for infrastructure facilities, including renovations and extensions that are expected to cost in excess of 10% of council's annual ordinary rate revenue or \$1 million, whichever is the greater (GST exclusive). In addition to the minimum requirements for a Capital Expenditure Review, a council is also required to complete additional requirements in cases where a project's cost is forecast to exceed \$10 million (GST exclusive). Councils may consider it prudent to undertake Capital Expenditure Reviews for projects under the threshold, but this will be at a council's discretion.

A copy of the Capital Expenditure Review related to implementation of the Proway Report is circulated with this agenda as **Appendix "C"**

Own Source Funding of works

If the Council chooses to fund the works identified in the Proway Report to the level of about \$1.3m it would require either an increased rental or a ratepayer subsidy of \$130k pa over ten years ignoring either the cost of funds via loan or loss of investment returns.

In the case of loan funds the annual rent increase or ratepayer subsidy would be about \$146k pa over 10 years.

In the case of internal funds the annual rent increase or ratepayer subsidy would be about \$140k pa over 10 years.

Grant Funding Opportunities

Council staff are pursuing two grant funding opportunities for works at Finley Saleyards.

- Heavy Vehicle Safety and Productivity Programme (HVSP)
- Local Roads and Community Infrastructure Programme (LRCIP)

HVSP is primarily a road infrastructure program designed to improve access for higher mass vehicles. It does, however, allow for applications for works on saleyards where the saleyard is owned by a council and the works relate to access to or from a local or state road.

Applicants are required to provide a 50% co-contribution

The Council has lodged an application under Round 7 of HVSP the upgrade of the cattle and sheep ramps including relocating the overhead power lines underground.

The application uses the Proway report - the only estimates the Council has - as the basis for the application. The proposed works are estimated at \$563,000 with the Council required to contribute \$281,500. The Council will need to identify how this will be funded.

Relocate overhead power lines on Hamilton St underground	\$188,000
Renovate two cattle forcing yards	\$25,000
Ramp nibs	\$17,000
Double deck loading ramp and forcing yard	\$118,000
Sheep ramps	\$215,000
Total Indicative Cost - Phase One	\$563,000

LRCIP is a new funding program released last week by the Federal Government in response to the COVID-19 economic crisis. As the name suggests the program is designed to fund improvements in local roads and community infrastructure such as parks, playgrounds and halls.

As it is a new program, the funding guidelines have not yet been released and it unclear if work at the saleyards would be eligible. However, the aim of the program is to protect jobs so the Council should be able to put up a reasonable case for inclusion.

Like Roads to Recovery, LRCIP is a non-competitive program with each Council in Australia given an allocation to spend on projects in its area. The allocation for Berrigan Shire is \$877,527. If the saleyards are eligible, this funding could be used to fund replacement of the cattle yards and install a unisex toilet for transport operators at an estimated cost of \$535,000.

Replace existing yards with new fences and gates	\$494,000
Install unisex toilet	\$40,000
Safety hide	\$1,000
Total Indicative Cost - Phase Two	\$535,000

SafeWork NSW

The Council's legal advisor is attempting to seek clarification from SafeWork NSW regarding the safety of the yards and at the time of writing advice in relation to this has not been received.

Legal Advice

Circulated with this agenda as **Appendix "D"** is the legal advice received from the Council legal representative, some of which has slightly superseded above.

This advice is confidential and whilst kept confidential retains legal privilege.

Risk

Aside from risk issues discussed in the previous report, the Council needs to be conscious of its protections under the Civil Liability Act based on limited resources to address risk. Whilst that protection exists is eroded at every instance that the Council expends available resources, either its own or eligible grant funds, on new projects

when it consciously chooses to prioritize these over addressing existing and known exposures.

Previous 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 "E"**.

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 "F"**

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
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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	<i>Livestock Exchange Consultancy conduct a QA Audit and make recommendations.</i>
03/07/2009	<i>Injury sustained to livestock agent employee – hit by charging steer into gates.</i>
04/08/2009	<i>Injury sustained to livestock agent employee – hit by charging steer into gates.</i>
25/08/2009	<i>Council risk assessment conducted in response to complaints received on 19/08/2009</i>
15/08/2012	<i>SafeWork NSW conduct an audit at the saleyards. A plan of action is prepared.</i>
04/09/2012	<i>Border Lifting identify sheep ramps as non-compliant in bi-annual lifting gear inspection program. They are condemned but continue to operate.</i>
08/07/2015	<i>Letter received from Livestock and Bulk Carriers Association (LBCA) surrounding complaints from transport drivers over the safety of the Finley Saleyards.</i>
27/09/2018	<i>Complaint received regarding latch failure on the gate and failure by Lessee to repair</i>

19/09/2018	<i>Complaints received from transport drivers re accessing cattle ramps</i>
12/12/2018	<i>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</i>
25/01/2019	<i>Proway submit a report and pricing for proposed works at the saleyards</i>
01/05/2019	<i>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</i>
28/04/2020	<i>Notified by SafeWork NSW that they have received a Request for Service from a transport driver utilizing the facility claiming they are unsafe.</i>

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:

<i>Incident</i>	<i>Claim Cost</i>
<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>

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.

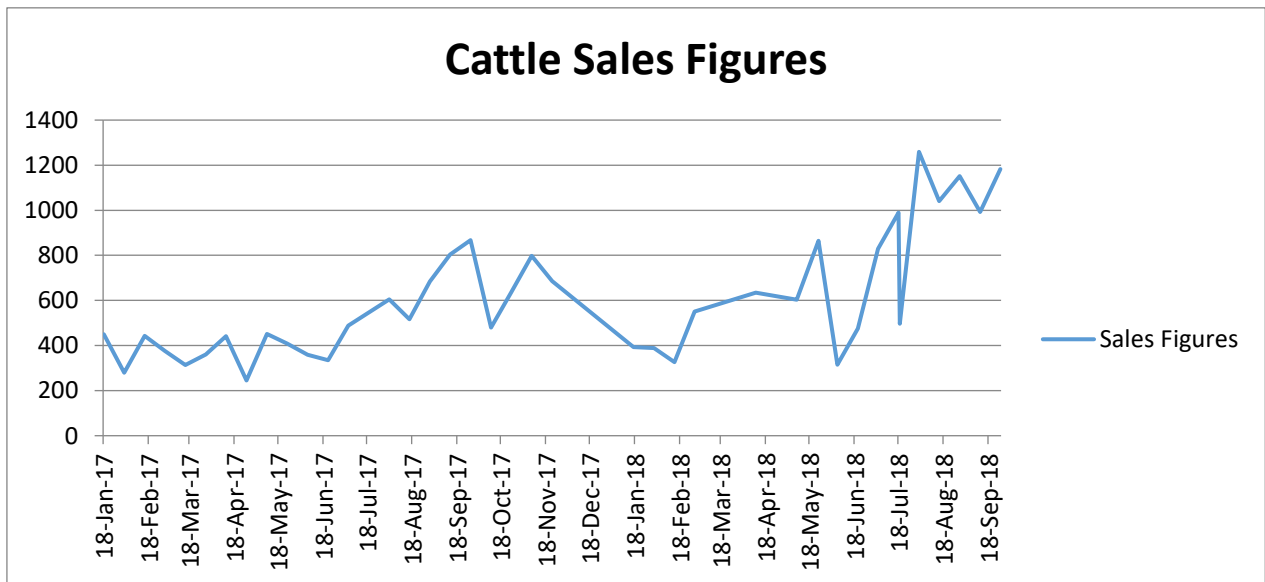
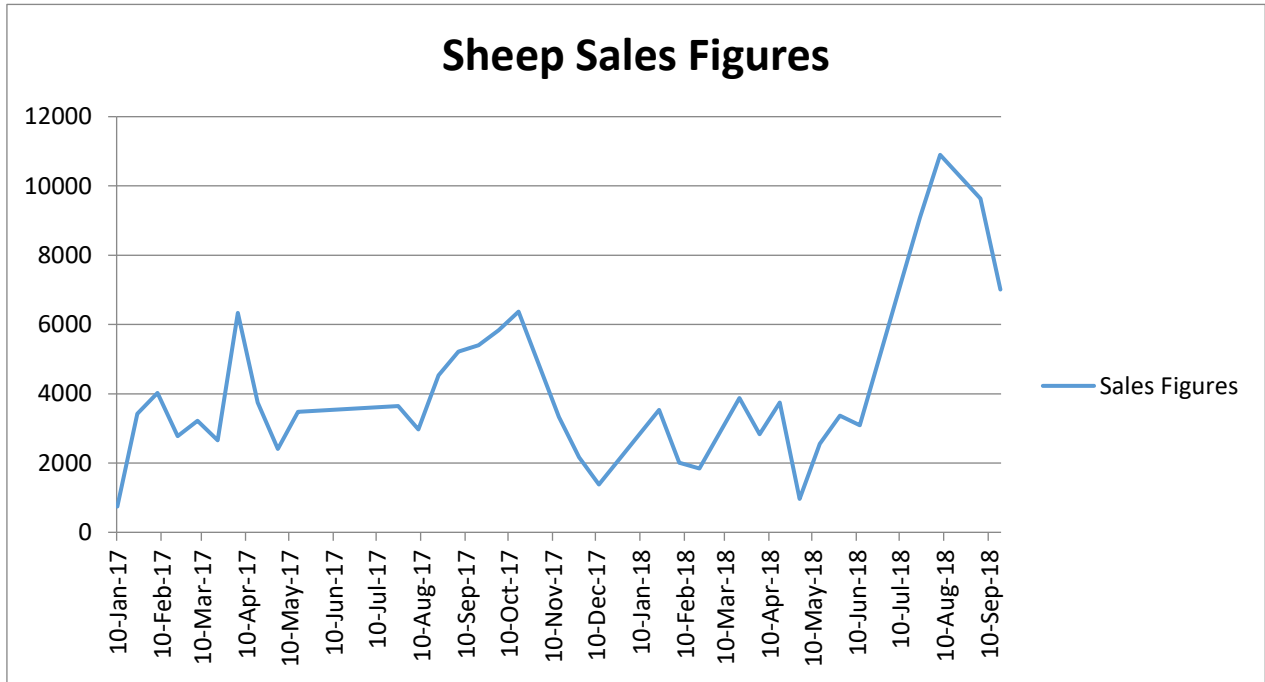
Replacing one cattle ramp on an angle, as suggested by the transport operators, would then reduce the number of trucks able to access the other ramps if the angled ramp was in use. If Council are going to consider replacing the cattle ramps at an angle, more than one will need to be replaced.

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 "G"**

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 “H”**

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.

7.4 SPORTIES HEALTH AND FITNESS CENTRE

AUTHOR: General Manager

STRATEGIC OUTCOME: Supported and engaged communities

STRATEGIC OBJECTIVE: 3.2 Support community engagement through life-long learning, culture and recreation

FILE NO: 02.163.1

RECOMMENDATION: that the Council provide two annual contributions each of \$50,000 pa in its Integrated Plans as contributions to Barooga Sports Club Ltd subject to the following:

- The contribution being recognised as a contribution to the swimming pool operation component of the Barooga Health and Fitness Centre;
- The same level of contributions being received from Moira Shire Council;
- Barooga Sports Club Ltd being responsible for the overall ongoing cost of the Sporties Health and Fitness Centre swimming pool operation and ongoing operation and control of the Centre;
- Maximum annual contribution being \$50,000 pa or 1/3 of the actual annual cash loss if it is less than \$150k pa;
- The Council continuing to provides its ongoing annual donation towards the operation of the Barooga Health and Fitness Centre;
- The swimming pool operation must be open to use by non-members; and
- A review membership / patronage being conducted after month 9 and the reservation of the right to withdraw funding on 3 months notice if usage has not improved over numbers provided.

REPORT:

As Councillors may be aware, Barooga Sports Club Ltd recently advised that the Barooga Health and Fitness Centre would not be re-opening after the imposed COVID-19 closure. This closure is apparently driven by direct long operational losses, COVID-19 financial losses created by COVID-19 restrictions on the general operations of the Club and the ongoing financial sustainability of the Club.

Following the announcement of the long-term closure of the Centre, the community voiced a high level of concern about the closure and the community impacts associated with it.

While the long-term Centre losses have been met by the Club the provision of such facilities is at the core of the purpose of a Registered Club and this has provided long term benefit to the wider community. Current cash losses are estimated to be \$320k pa.

Given the above situation, the Mayors and senior staff of Berrigan and Moira Shire Councils met with representatives of the Barooga Sports Club Ltd and as a result of that meeting the following request or proposal was received from the Club:

Dear Rowan

Sporties Health and Fitness

As discussed at our meeting with yourself, the Mayor Cr Matt Hannan, Moira Shire CEO Mark Henderson and Moira Mayor Cr Libro Mustica on Wednesday the 3rd June I present the following:

As highlighted to Council in several previous briefings, while still operating on a solid foundation, the challenge to our organization of sustaining and supporting a number of large assets that require significant annual operational subsidy (Barooga Recreation Reserve, Cobram Barooga Golf Club and Sporties Health and Fitness) is growing. We have been working hard on both establishing avenues to grow revenue as well as find cost saving initiatives. The support of Council, via rate relief and part funding the condition audit for Sporties Health and Fitness and provision of water to the golf club have been much appreciated and contributed to our ability to continue to provide these.

The emergence of the coronavirus however has had a significant cost impact to the Sporties Group, which we estimate to be around \$800,000 based on us effectively losing all revenue and having a number of ongoing fixed costs. The true impact of the virus is still developing as we face an uncertain operating future of limited capacity, travel restrictions and possible ongoing interruptions and temporary closures.

It is in this context that we have had to make a number of very difficult decisions, but ones that are necessary to ensure our long-term sustainability.

Operationally, we are very proud of Sporties Health and Fitness. The stories that are being shared so much now in social media since the decision to close indefinitely are not news to us. With over 50,000 visits each year it is well patronized and with a net operating cost of around \$150,000 per annum before depreciation is highly efficient. Based on the data provided in the Moira Shire Council Aquatic Strategy 2018-2027 the benchmark operating cost of comparable facilities is more than \$275,000 per annum and visitation with comparable catchment populations around 39,000.

The operational component however was only one part of the equation. The condition assessment undertaken by industry experts Dennis Hunt and Associates highlighted that the facility, now almost 30 years old, could require more than \$850,000 invested in maintenance and capital upgrades to ensure an appropriate level of asset management.

Attached for more detailed information is a copy of the fact sheet presented at our meeting that highlights the operational and financial performance of the facility.

The estimated net operating cost split across key areas indicates that the full annual cost of the dry area program (incorporating the gym and group fitness) last year was around \$146,340 and the aquatic area (incorporating learn to swim, recreational and lap swimming, clubs and squads and aqua aerobics) \$171,735. This is an estimate based on allocation of some shared costs such as staffing reception areas and heating.

In answer to the question asked of us at the meeting regarding our capacity to re-open Sporties Health and Fitness we propose the following arrangement for the next two years would allow that to occur:

1. An annual operating grant of \$100,000 (excluding GST) 50% of which would be provided by the Berrigan Shire Council and 50% by the Moira Shire Council. This grant would be specifically allocated to assist with the provision of the swimming pool operations and offset part of the estimated \$170,000 annual cost.
2. Maintenance of the existing rates relief for Sporties Health and Fitness provided by the Berrigan Shire Council
3. Support and assistance in securing additional funding for capital projects to maintain the facility.

Under this model the community not for profit Barooga Sporties Group via our members, will still be contributing over \$400,000 over this two-year period.

This arrangement will allow Sporties Health and Fitness to operate while we continue to investigate opportunities and ways to ensure its long term sustainability including an understanding of the medium to long term impacts of coronavirus and other operational changes undertaken by the Sporties Group.

If this outcome was able to come to fruition, we are certain our communities would be extremely grateful for what would be a fantastic example of a partnership between local government and community as represented by the Barooga Sporties Group.

Should you require further information or wish to discuss further please don't hesitate to contact me

Yours Sincerely



Glen Brooks
Chief Executive Officer

The Sporties proposal recognises the issues related to any public subsidy for the gym component of the Fitness Centre given the number of similar privately operated facilities and there the request is only to assist with the operation of the swimming pool facilities.

The FAQ’s referred to above and the comparative financial results are circulated with this agenda as **Appendices “I” & “J”** respectively.

Whilst Council support of the facility has community support and would obviously be appreciated by the Club the Council obviously needs to consider why it would or would not consider supporting the by up to \$50,000 pa for two years. The following table highlights the key issues.

Why Support	Why Not Support
The pool provides a valuable resource for a wide spectrum of the community.	The Council does not, historically, provide such facilities.
The indoor heated pool is the only one of this type of facility in the region that is easily accessible to the community.	70% of the users are from outside the Shire.
The facility in total is an attracter of visitors to the area.	The Club has met these losses for many years and is only in its current position because of its acquisition of the Cobram Barooga golf course.
The support is, at present, only a short term subsidy.	Users should meet the cost of the facility’s operation through increased user charges.
If social media is a guide, there is community support for the assistance to be provided.	The Council has already provided or committed to provide significant assistance to the Club.
	The COVID-19 impacts are short term.
	Registered Clubs purpose is to provide community benefit.

On balance, and because the commitment is relatively short-term the Council could commit to the requested support provided that similar support is shown by both the Club itself and Moira Shire Council.

7.5 T12/19/20 TOCUMWAL FORESHORE BUILDING

AUTHOR: Project Manager

STRATEGIC OUTCOME: Sustainable natural and built landscapes

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

FILE NO: T12/19/20

RECOMMENDATION: That the Council recognise the 4 conforming tender designs and release the alternate plans submitted by Gilchrists, Maire / Bowden and MS Constructions along with the original design prepare by GPG Architects for the community engagement process for the assessment of the tender evaluation criteria – Community Architectural Acceptance in accordance with the previously adopted Engagement Strategy Survey.

REPORT:

Council has received the tender submissions for the proposed Tocumwal Foreshore Building. The tender requests were set out in 2 alternate categories as follows:

- GPG Architects design
- Alternative design

Council has received tender submissions for 4 alternative designs from the following companies:

- CAF BUILD (Appendix “K”)
- GILCHRISTS (Appendix “L”)
- MAIRE / BOWDEN (Appendix “M”)
- MS CONSTRUCTIONS (Appendix “N”)

Council also received 4 tender submissions for the GPG Architects design (Appendix “O”) from the following companies

- MS CONSTRUCTIONS
- KENNEDY BUILDERS
- PRECISE BUILD
- DEZIGN

Each tender submission has been evaluated in line with the assessment criteria subject to the evaluation criteria – Community Architectural Acceptance.

The costs indicated in the tender evaluation reports are following the results of the value for money assessment and are not the prices indicated on all the tender submissions.

The tender evaluation scheme process is based on an equal assessment of all the tender submissions. This framework provides an equal basis to compare tenders and identify the best value for money on the building brief criteria and all the prime cost items included in each submission.

Below are the conforming companies that submitted alternative designs and / or a costing for the GPG Architects design following the value for money assessment:

- GILCHRISTS – Alternate design
- MAIRE / BOWDEN – Alternate design
- MS CONSTRUCTIONS – Alternate design and GPG Architects design
- PRECISE BUILD – GPG Architects design

Summary

The tender specification state the total cost of the project shall be no more than \$1.6m however, Council would consider costs of up to \$1.8.

Based on the tender evaluation assessment subject to the Community Architectural Acceptance, the tender assessment panel has selected the designs of Gilchrists, Maire / Bowden, MS Constructions and GPG Architects to go out to the community for the assessment criteria – Community Architectural Acceptance so to complete the Engagement Strategy Survey attached as **Appendix “P”** prior to completing the final evaluation and selecting a contractor.

7.6 UNFUNDED SPENDING COMMITMENTS

AUTHOR: Director Corporate Services

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:

RECOMMENDATION: the direction of the Council is sought

REPORT:

Over the previous two years, Berrigan Shire Council has obtained grant funding for a range of community infrastructure projects.

While this has enabled the Council to deliver a series of community infrastructure projects well ahead of schedule - improving community amenity and making Berrigan Shire a better place to live, work and invest - many of these grants require a co-contribution from the Council.

Further, some projects have only received a part of the grant funds applied for and rather than tailor the project to meet the available funds, the Council has chosen to continue to complete the project as originally scoped - i.e. LED light replacement at Recreation Reserves.

In addition, the short time frame required to prepare and submit many of these applications has the potential to expose the Council to budget risk from items such as cost escalation, scope creep and other variations.

The Council has also committed itself to some other large-scale non-core infrastructure projects such as rectification works at the Finley Saleyards. This has created a large pool of unfunded Council commitments - i.e. committed expenditure by the Council with no proposed funding source.

Unfunded commitments

Attached as **Appendix "Q"** is a table listing the Council's major spending commitments including those commitments (or potential commitments) without an identified funding source at present.

A summary is below:

Program	Project	Exposure
Regional Growth - Environment and Tourism Fund	Tocumwal Foreshore project	\$199,275
Building Better Regions Fund 3	Jersey St Precinct	\$0.00
Drought Communities Program - Tranche One	Various	\$18,000
Drought Communities Program - Tranche Two	Various	\$178,434
Create NSW	Tocumwal WAAAF Creek Walk	NIL
NSW Showgrounds Stimulus Funding Program	Various	NIL
ORG Infrastructure Grants	Finley Showgrounds Building	-\$44,190
LCLI	Railway Park Upgrade / Lewis Crescent	NIL
Stronger Country Communities - Round 3	Various	\$473,391
Heavy Vehicle Safety and Productivity Program	Finley Saleyards - Ramps and Power	\$67,810
ORG Infrastructure Grants	Finley Netball Courts	\$70,000
Self-funded	Open Space - Murray St, Finley	\$400,000
Self-funded	Finley School Of Arts Hall	NIL
Self-funded	Finley Saleyards - Cattle yards	\$494,000
		\$ 1,856,720

Some things that need to be considered in this review include:

1. The Council has not yet finalized a tender (and cost) for the Foreshore building
2. Prices for the Jersey St project have varied from the original budget with some savings realised in some areas offset by additional costs elsewhere.
3. There are almost certainly additional costs associated with the Tocumwal Air Museum - part of Drought Communities Programme - Tranche 2
4. The Finley Showgrounds building project had a \$44,000 underspend - all the grant funding and matching commitment was spent but not the additional Council commitment.
5. The HVSP application for the Finley Saleyard ramps may not be successful - in which the case the Council will need to reconsider its commitment.
6. The exposure for Stronger Country Communities Round 3 includes an allocation to complete the portion of the LED Lights program that was **not**

funded by the grant as per advice from the Council. The Council is only committed to spend \$237,202 of these funds.

7. The ORG Infrastructure Grant for the Finley Netball Court may not be successful - in which the case the Council will need to reconsider its commitment
8. The Council has not yet committed to spend any money on open space in Murray St in Finley or on the Finley saleyard cattle yards,.

In early 2020, the Council borrowed \$1m to part fund its contributions towards these projects and potential overruns. This was used to meet scope increases for Tocumwal Foreshore (\$700,000) and Finley School of Arts (\$300,000). Note that only half of the additional \$300,000 was actually required and the balance returned to the Council's operating surplus.

The additional commitments (and potential commitments) entered into by the Council since this loan was drawn down will require additional funding. There are three main sources that may be available to meet this funding gap.

- Grant funding
- Working capital
- Borrowing

Grant Funding

The Federal Government has announced a new funding package for local government in response to the COVID-19 crisis - Local Roads and Community Infrastructure Program (LRCIP). The government has not yet issued formal guidelines for this grant but it has [released a fact sheet](#).

The fact sheet states:

Funding is available for local road and community infrastructure projects that involve the construction, maintenance and/or improvements to council-owned assets (including natural assets) that are generally accessible to the public.

Projects will need to deliver benefits to the community, such as improved accessibility, visual amenity and safety benefits.

Eligible local road projects could include works involving any of the following associated with a road:

- *traffic signs;*
- *traffic control equipment;*
- *street lighting equipment;*
- *a bridge or tunnel;*
- *a facility off the road used by heavy vehicles in connection with travel on the road (for example, a rest area or weigh station);*

- facilities off the road that support the visitor economy; and
- road and sidewalk maintenance, where additional to normal capital works schedules.

Eligible community infrastructure projects could include works involving:

- Closed Circuit TV (CCTV);
- bicycle and walking paths;
- painting or improvements to community facilities;
- repairing and replacing fencing;
- Improved accessibility of community facilities and areas;
- landscaping improvements, such as tree planting and beautification of roundabouts;
- picnic shelters or barbeque facilities at community parks;
- playgrounds and skateparks (including all ability playgrounds);
- noise and vibration mitigation measures; and
- off-road car parks (such as those at sporting grounds or parks).

Councils will need to complete all project works by 30 June 2021 to receive their full nominal share of funding.

Councils will also need to demonstrate that projects are additional to their pre-COVID-19 work program for 2020-21. If a project has been brought forward from a future work program it will be eligible for funding.

On this basis, there are several projects from the potential commitments above that could be funded under this funding program.

On the other hand, it is unlikely the Council can use this funding to “top up” existing grant funded projects or use it to match funding for other grants. While Council staff are seeking advice, it is also somewhat doubtful that the Council would be able to use this grant to repair the cattle yards.

Potential projects include:

- The unfunded portion of the LED Light upgrade
- Open Space - Murray St Finley

Use of working capital

Another source of funding is the Council’s working capital.

This section of the report considers:

- The likely effect on the Council’s unrestricted working capital by funding internally
- The effect on the Council’s operations and financial capacity if funds from working capital are used; and

- The feasibility of funding the Council's unfunded commitments from working capital

What is Council's working capital?

Unrestricted working capital is the Council's funds – not otherwise required or allocated – that are used to meet the Council's day-to-day financial obligations. It is the Council's working capital that is used to pay wages, pay bills etc. in the period between the Council incurring the expense and receiving any income.

For the purposes of the Council this can be calculated by deducting Internal and External Restrictions from cash and investments held by the Council.

The Local Government Act 1993 and the Local Government (General) Regulation 2005 impose certain restrictions over certain cash assets of the Council. These restrictions are known as "External Restrictions" and include Developer Contributions, Unexpended Grants, amounts raised under Domestic Waste Management changes and amounts held by the Council's Water and Sewer Funds.

Internal Restrictions over cash arise pursuant to a resolution of the Council to set aside cash reserves either relating to future liabilities or to fund future expenditure.

At 30 June 2019, the Council's unrestricted working capital was calculated as.

	(\$000)
Cash and Investments	35,378
Less External Restrictions	(21,353)
Less Internal Restrictions	(5,786)
Less Unexpended Grants	(322)
Less Carried Forward Works	(1,207)
Less FAG paid in advance	<u>(2,478)</u>
Unrestricted working capital	<u>4,232</u>

While this figure is now 11 months old, it is still a reasonable proxy for the Council's unrestricted working capital as of June 2020 and likely the best estimate until the preparation of the Council's annual financial statements. At 31 May 2020, the Council holds around \$38m in total cash - an increase from 30 June 2019 - a significant portion of this increase is due to an unexpended loan of \$1m for works at Railway Park and much of the rest relates to an increase in unexpended grants.

The Council has made a significant amount of unfunded spending commitments in 2019/20 that aren't included in this unrestricted cash calculation however the reason for the report is to determine if these commitments can be met from this working capital.

How much working capital does the Council need?

The Council needs sufficient working capital to fund its day-to-day operations. The Council needs sufficient cash on hand to pay its creditors and employees on a regular basis and make its scheduled loan repayments.

The risks of not having sufficient working capital include reputational loss, i.e. a creditor who does not pay their bills, failure to meet statutory obligations such as payment of superannuation contributions, loss of credit terms from suppliers and perhaps a need for an overdraft. An entity with a small or negative amount of working capital, even if it is profitable, will have difficulty in meeting its short term obligations to pay amounts as they fall due

The Council makes weekly payments to creditors, fortnightly payments to staff and monthly repayments of loans. Over the past 12 months, these various payments average around \$2.6m per month. On that basis, the Council should have at least \$2.6m on hand at any one time to meet its monthly commitments. This figure of \$2.6m is somewhat larger than it has been historically due the number of large-scale grant funded projects the Council is delivering

Over the past four years, prudent management of the Council's finances has seen the Council's uncommitted cash increase to a level where it more than meets this basic cash holding requirement. The Council has sufficient uncommitted funds to meet the Council's obligations as and when they fall due.

Previous uses of working capital?

The Council has used its excess working capital (i.e. over and above what is needed to meet its current commitments) on several occasions previously

- \$800,000 to fund the construction of Berrigan Library in 2007
- \$600,000 to part-fund the construction of new buildings at Barooga and Finley Recreation Reserves in 2013
- \$827,000 to fund its commitment to the Tocumwal Foreshore Development in 2018.

On each of these occasions, the use of excess working capital had no impact on the Council's ability to meet its obligations.

Feasibility

The analysis above demonstrates that it is feasible for the Council to use up to \$1m from its working capital to meet its unfunded spending commitments without impacting on its ability to meet its debts as and when they fall due.

The Council should be aware that this comes at some risk. Careful cost projection and management of projects funded using working capital is essential to ensure that the draw down on working capital is capped at an acceptable amount. Further, the Council should look to avoid further unbudgeted and unfunded expenditure going forward - again to avoid drawing down on working capital more than planned.

If, despite careful monitoring of expenditure, the Council again finds itself with a large amount of unfunded spending commitments, it may need to consider either cancelling or deferring other committed projects or look to borrow further. Note that the Council is already in the middle of a significant borrowing program across its General and Water funds.

Borrowing

The Council may wish to consider further loans. Interest rates are at record lows making borrowing attractive. On the other hand, the Council is already borrowing \$8.6 to fund its current capital works program.

The Council will also need to seek permission from the Office of Local Government and demonstrate that any new loan program has been included in its suite of Integrated Planning and Reporting documents - which are being adopted later this month after already being on public display. Realistically, the next opportunity to borrow won't be until July 2021.

Strategy

There are a range of options available to the Council to fund these exposures.

One available strategy is:

- Use LRCIP to fund:
 - the non-funded part of the LED Lights - \$300,000
 - Open space in Murray St, Finley - \$400,000
- Use Working Capital to fund :
 - Finley Saleyard - Cattle Yards - \$494,000
 - Contribution to funded LED lights - \$230,000
 - Additional contribution to Tocumwal Foreshore building - \$200,000
- Re-allocate inside the 2020/21 budget
 - Finley Netball Courts - \$70,000
 - Unfunded contribution to the Finley Saleyard Ramps - \$70,000
 - Contribution to Tocumwal Air Museum - \$180,000

Other combinations may be available. A decision does not need to be made until the final budget review in July/August but direction from the Council is sought.

Conclusion

Through wise use of government grants, the Council has been able to fast-track the delivery of a range of projects that work to improve community amenity and make Berrigan Shire an even better place to live, work, invest and visit. The Council has used some of these grant funds to minimise (but not eliminate) its exposure to

economic risk on projects designed to generate investment from the private sector - such as the Tocumwal and Foreshore and Tocumwal Air Museum

These grant funded projects by their nature have seen Council commitments to these funding programs increase as well - placing pressure on the Council's finances. It is important that the Council maintain a close eye on these projects and ensure that costs are controlled and exposure to additional expenditure minimised.

The Council's current exposure (and potential exposure) relating to community infrastructure projects is manageable through a mix of using funds the LRCIP funding package, the Council's working capital and through re-allocation of the Council's 2020/21 budget.

The Council is in this position as a result of the spending discipline it has maintained over the past 15-20 years. It is important that this spending discipline is maintained and that the Council does not over-commit itself in areas outside its core responsibilities.

RECOMMENDATION that Items for Noting numbered 8.1 to 8.2 inclusive be received and noted.

8.1 LOCAL EMERGENCY MANAGEMENT COMMITTEE MEETING

AUTHOR: Director Technical Services

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: 09.106.2

REPORT:

Minutes of the last meeting held Friday 5th June 2020 are attached as **Appendix “R”** for Councillors’ information.

8.2 DEVELOPMENT DETERMINATIONS FOR MONTH OF MAY

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 MAY 2020

Application	Description	Property Location	Applicant	Owner	Status	Value	Days Taken	
103/20/DA/DM	HANGAR	16 LIBERATOR PLACE, TOCUMWAL NSW 2714 (Lot30//DP1190777)	George Law	MR G LAW	Approved 12-05-2020	\$ 100000.00	Active 12	Total 82
139/20/DA/D5	RESIDENTIAL STORAGE SHED	26 AMAROO AVENUE, BAROOGA NSW 3644 (Lot11//DP536517)	Mandy Woodhead	MRS M J WOODHEAD	Approved 01-05-2020	\$ 9500.00	Active 2	Total 26
143/20/DA/D5-M	CARPORT	11 TOWN BEACH ROAD, TOCUMWAL NSW 2714 (Lot41//DP616085)	Geoff Terry	MR GK TERRY	Approved 25-05-2020	\$ 9000.00	Active 18	Total 36
146/20/DA/D5	RESIDENTIAL STORAGE SHED	2 BROWNE STREET, TOCUMWAL NSW 2714 (Lot2//DP778785)	Timothy & Jacinta Brunskill	MR TJ BRUNSKILL AND MRS JM BRUNSKILL	Approved 01-05-2020	\$ 9800.00	Active 18	Total 18
147/20/DA/D2	DEMOLITION OF EXISTING & CONSTRUCTION NEW ABLUTION BLOCK	1-19 MURRAY STREET, FINLEY NSW 2713 (Lot248//DP1062257)	Finley Lakeside Trust	FINLEY CARAVAN PARK	Approved 01-05-2020	\$ 200000.00	Active 18	Total 18
150/20/DA/D1	BV DWELLING & ATTACHED GARAGE	6 RUSSELL COURT, BAROOGA NSW 3644 (Lot19//DP1102913)	SIMONDS HOMES	MR J P POULTON	Approved 07-05-2020	\$ 220001.00	Active 14	Total 14
151/20/DA/DO	RURAL SHED	68 HONNIBALL DRIVE, TOCUMWAL NSW 2714 (Lot2//DP1250417)	Darren & Lisa Lee	MR DG LEE AND MRS LM LEE	Approved 21-05-2020	\$ 30300.00	Active 6	Total 22
152/20/DA/D1	BV DWELLING & ATTACHED GARAGE	68 HONNIBALL DRIVE, TOCUMWAL NSW 2714 (Lot2//DP1250417)	Cavalier Homes	MR DG LEE AND MRS LM LEE	Approved 21-05-2020	\$ 399885.00	Active 22	Total 22
153/20/DA/DM	PORTABLE OFFICE/RELOCATE CARPORT	32 HILL STREET, TOCUMWAL NSW 2714 (Lot23//DP618811)	Bradley Walters	MR B J WALTERS	Approved 07-05-2020	\$ 3000.00	Active 12	Total 12
154/20/DA/D5	EXTENSION TO SHED	30 HADLEY STREET, TOCUMWAL NSW 2714 (Lot23//DP1250358)	O'Halloran Property Service	MR GM HANNS AND MRS SA HANNS	Approved 07-05-2020	\$ 6498.00	Active 9	Total 9
155/20/DA/D1-M	DWELLING	Lot 9 The Riverfront, Bushlands Road TOCUMWAL NSW (Lot9//DP286078)	CAF Enterprises Pty Ltd	CAF ENTERPRISES PTY LTD	Approved 08-05-2020	\$ 400000.00	Active 7	Total 7
156/20/DA/D5	RESIDENTIAL STORAGE SHED	2 MURRAY GROVE, BAROOGA NSW 3644 (Lot20//DP1092267)	Steel Corp	MR R O STEPHENS	Approved 12-05-2020	\$ 73185.00	Active 8	Total 8

158/20/DA/DM	SHADE SAIL OVER MACHINERY DISPLAY AREA	1894 NEWELL HIGHWAY, FINLEY NSW 2713 (Lot129//DP752283)	Sean McAuliffe	MCSELAN HOLDINGS PTY LTD	Approved 12-05-2020	\$ 0.00	Active 8	Total 8
161/20/DA/D3	WORKSHOP EXTENSION	6-10 JAMES COURT, FINLEY NSW 2713 (Lot8//DP713895)	Peter L Brunt	MR PL BRUNT	Approved 28-05-2020	\$ 0.00	Active 17	Total 17
162/20/DA/D1	BV DWELLING & ATTACHED GARAGE	31 TAKARI STREET, BAROOGA NSW 3644 (Lot62//DP1123204)	Southern Vale Homes	MR MA ROBINSON AND MRS NR ROBINSON	Approved 27-05-2020	\$ 349850.00	Active 1	Total 13
163/20/DA/D1	BV DWELLING & ATTACHED GARAGE	2 MAVIS STEWARD DRIVE, BAROOGA NSW 3644 (Lot1//DP1102913)	Hadar Homes	MR SL ADNAMS AND MRS CJ ADNAMS	Approved 27-05-2020	\$ 330000.00	Active 13	Total 13
164/20/DA/D5	REPLACE EXISTING CARPORT & OUTDOOR AREA	3 NORMAN LEE COURT, FINLEY NSW 2713 (Lot8//DP262608)	Reuben & Julie Sibraa	MR R R SIBRAA AND MRS J A SIBRAA	Approved 28-05-2020	\$ 9458.00	Active 9	Total 9
169/20/DA/DM	DEMOLITION OF DWELLING	137 CHANTER STREET, BERRIGAN NSW 2712 (Lot56/B//DP2425)	Bruce Rendell	MR B RENDELL	Approved 28-05-2020	\$ 0.00	Active 5	Total 5

APPLICATIONS PENDING DETERMINATION AS AT 31/05/2020

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)
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	(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)
157/20/DA/D3	30-04-2020	INDUSTRIAL SHED	26 DENISON STREET, FINLEY NSW 2713 (Lot 15 // DP573822)
159/20/DA/D5	30-04-2020	RESIDENTIAL STORAGE SHED	233 HUGHES STREET, BAROOGA NSW 3644 (Lot 102 // DP1138899)
160/20/DA/DM	05-05-2020	SINGLE MOORING	1C RIVERVIEW COURT, BAROOGA NSW 3644 (Lot 1 // DP1172277)
166/20/DA/D9	15-05-2020	3 LOT SUBDIVISION	61-67 HENNESSY STREET, TOCUMWAL NSW 2714 (Lot 3 / 9 / DP758981)
168/20/DA/DM	19-05-2020	5MW SOLAR PV ARRAY	BROOCKMANNS ROAD, FINLEY NSW 2713 (Lot 61 // DP1053533)
170/20/DA/D2	21-05-2020	CARPORT EXTENSION	277-283 MURRAY STREET, FINLEY NSW 2713 (Lot 133 // DP752283)
171/20/DA/D5	26-05-2020	RESIDENTIAL STORAGE SHED	43 NUGGET FULLER DRIVE, TOCUMWAL NSW 2714 (Lot 69 // DP1070311)

36/20/CD/M6	27-05-2020	REPLACEMENT PATIO	66 WELLS STREET, FINLEY NSW 2713 (Lot 1 // DP39698)
172/20/DA/D1	28-05-2020	BV DWELLING & ATTACHED GARAGE	9 LA BELLE COURT, TOCUMWAL NSW 2714 (Lot 8 // DP1194758)

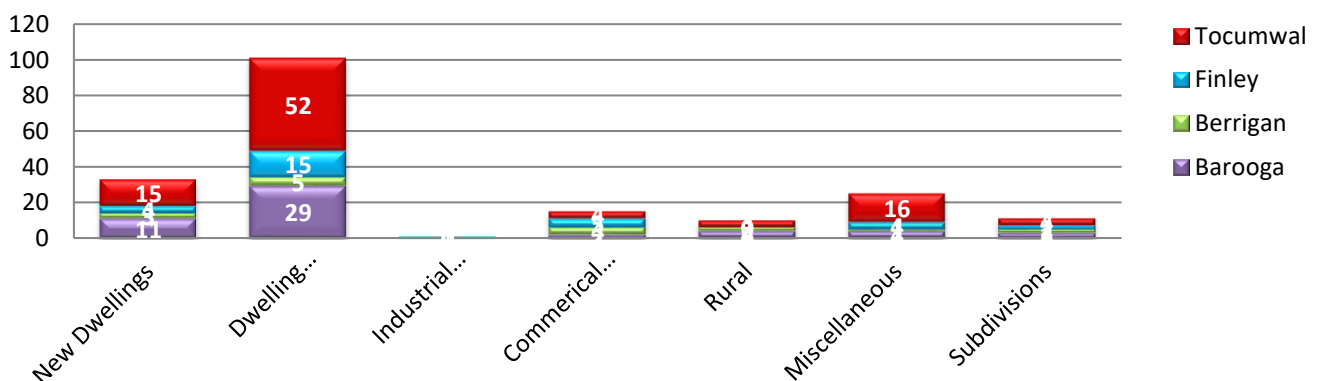
TOTAL APPLICATIONS DETERMINED / ISSUED (including modifications)

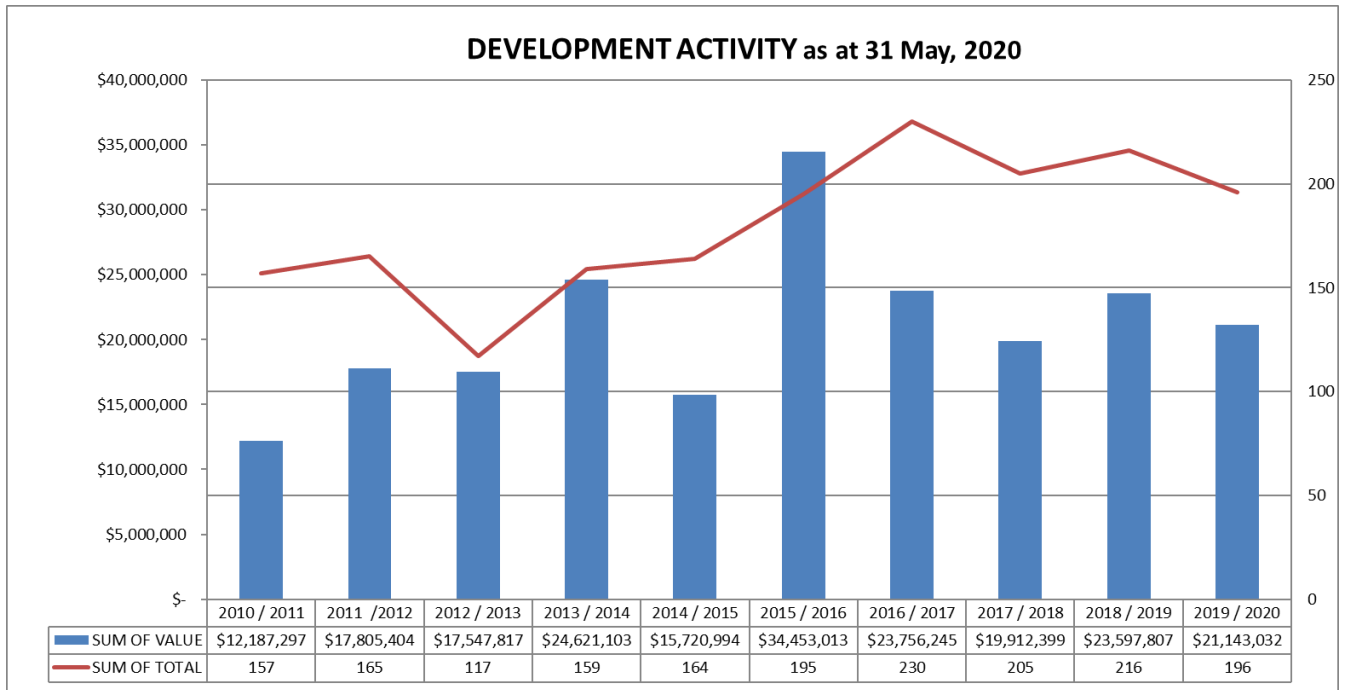
	This Month (May)	Year to Date	This Month's Value (May)	Year to Date Value
<i>Development Applications (DA)</i>	18	164	\$2,305,977	\$18,250,713
<i>Construction Certificates (CC)</i>	9	129	\$1,138,868	\$15,459,859
<i>Complying Development Certificates (CDC)</i>	0	32	\$0	\$2,892,319
<i>Local Activity (s.68)</i>	5	66		

OTHER CERTIFICATES ISSUED FOR MAY 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	
	May	Year Total	May	Year Total	May	Year Total	May	Year Total	May	Year Total	May	Year Total
BAROOGA	7	91	0	6	1	4	0	1	0	1	0	11
BERRIGAN	5	52	1	4	1	10	0	5	0	1	0	8
FINLEY	6	111	4	19	2	9	0	3	0	1	0	10
TOCUMWAL	4	127	0	7	0	2	0	0	0	5	3	11
TOTAL	22	381	5	36	4	25	0	9	0	8	3	40

DEVELOPMENT ACTIVITY 2019/2020 as at 31 May, 2020





9. COMMITTEES

Nil

10. MAYOR'S REPORT

RECOMMENDATION that the Mayor's Report be received.

11. DELEGATES REPORT

12. BUSINESS ARISING