



EXTRAORDINARY COUNCIL MEETING

Wednesday 4 October, 2023

at 9:15am

Council Chambers, 56 Chanter Street, Berrigan



Agenda

Our Vision

In 2032 we will be recognised as a Shire that builds on and promotes our natural assets and advantages to create employment and economic activity to attract residents, families and tourists.

COMMUNITY STRATEGIC PLAN

Berrigan Shire Council's Community Strategic Plan Berrigan Shire 2032 is a common framework for measuring the achievement of Berrigan Shire 2032 strategic outcomes of:

1. Sustainable natural and built landscapes
2. Good government
3. Supported and engaged communities
4. Diverse and resilient business

The Community Strategic Plan can be found here:

<https://www.berriganshire.nsw.gov.au/council-governance/management-plans-codes-reports>

RISK MANAGEMENT POLICY & FRAMEWORK

Berrigan Shire Council is committed to managing its risks strategically and systematically in order to benefit the community and manage the adverse effects to Council.

Risk Management is everyone's responsibility. It is an activity that begins at the highest level and is applied consistently through all levels of Council. All workers are required to integrate risk management procedures and practices into their daily activities and must be competent and accountable for adequately managing risk within their area of responsibility.

The Risk Management Policy & Framework can be found here:

[Risk Management Policy and Framework](#)



Extraordinary Council Meeting

Wednesday 4 October, 2023

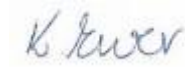
BUSINESS PAPER

The Extraordinary Council Meeting of the Shire of Berrigan will be held in the Council Chambers, 56 Chanter Street, Berrigan, on Wednesday 4 October, 2023 when the following business will be considered:-

ITEMS OF BUSINESS

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| 6 | CONCLUSION OF MEETING..... | 83 |

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

A handwritten signature in blue ink, appearing to read 'K. Ewer'.

KARINA EWER
CHIEF EXECUTIVE OFFICER



1 OPENING OF MEETING

In the spirit of open, accessible and transparent government, Berrigan Shire's Council meetings are audio recorded. By speaking at a Council Meeting, members of the public agree to being recorded. Berrigan Shire Council accepts no liability for any defamatory, discriminatory or offensive remarks or gestures that are made during the course of the Council. Opinions expressed or statements made by individuals are the opinions or statements of those individuals and do not imply any form of endorsement by Berrigan Shire Council.

Confidential matters of Council will not be audio recorded.

Recordings are protected by copyright and owner by Berrigan Shire Council. No part may be copied, recorded, reproduced or transmitted without the prior written consent of the Chief Executive Officer. Any recording is not, and shall not, be taken to be an official record of Berrigan Shire Council or discussion depicted therein. Only the official minutes may be relied upon as an official record of the meeting.

An audio recording of the Council Meeting will be taken for administrative and minute preparation purposes only and is provided to the public for listening purposes to support Council's statutory obligations.

2 ACKNOWLEDGEMENT OF COUNTRY

"We acknowledge the original inhabitants whose country we are gathered on, and we pay respect to the elders, past, present, and future and extend respect to all first nations people."

STATEMENT OF ETHICAL OBLIGATIONS

In accordance with section 233A of the *Local Government Act 1993*, the Mayor and Councillors are bound by Oath or Affirmation of Office made at the start of the Council term, to undertake their civic duties in the best interests of the people of the Berrigan Shire Council. They must faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* or any other Act, to the best of their ability and judgement.

DISCLOSURES OF INTEREST

Pursuant to the provisions of the *Local Government Act 1993*, the Berrigan Shire Council Code of Meeting Practice and the Berrigan Shire Council Code of Conduct, Councillors are required to disclose and manage both pecuniary and non-pecuniary interests in any matter on the agenda for this meeting.

In both cases, the nature of the interest must be disclosed.

This includes receipt of reportable political donations over the previous four years.



**3 APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE OR ATTENDANCE
VIA AUDIO-VISUAL LINK BY COUNCILLORS**

3.1 Apologies/Leave of Absence

Nil

3.2 Attendance Via Audio-Visual Link

Nil

4 DISCLOSURES OF INTERESTS

5 REPORTS TO COUNCIL

5.1 Cultural Review and Compliance Audit

Author: Chief Executive Officer, Karina Ewer

Strategic Outcome: 2. Good government

Strategic Objective: 2.1. Berrigan Shire 2032 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting

Delivery Program: 2.1.2. Meet legislative requirements for Council elections, local government and integrated planning and reporting
2.1.3. Council operations and financial management support ethical, transparent and accountable corporate governance

Council's Role: **Service Provider:** The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council
Regulator: The Council has legislated roles in a range of areas which it is required to fund from its own funds (apart from fees for cost recovery, government grants etc)

Appendices: 1. Continuous Improvement Strategy - Prioritised
2. Cultural Review and Compliance Audit - 07 September 2023 - FINAL.pdf (under separate cover)

Recommendation

That Council:

1. refer the management of the agreed strategy to address the recommendations of the Cultural Audit to staff,
2. direct the CEO to report monthly to Council Ordinary meetings to ensure timely finalisation of all matters.



Purpose

This report provides further insight into the recent Cultural Review and Compliance Audit commissioned by the Council and recommends further action.

Summary

Council requested a strategy to address the recommendations be presented to this meeting for its consideration. The strategy is included at Appendix 1.

Findings

In effect, Morrison Low were commissioned to undertake two linked but distinct audits.

- Workplace culture – an assessment of the workplace culture, including internal and external relationships.
- Governance framework – an assessment of Council's compliance with its legislative and regulatory obligations.

Overall, the report found that:

- Council's workplace culture is generally in good health.
- Council lacks a robust or genuine customer focus culture.
- Council's Planning and Development Assessment team is a source of frustration for internal and external stakeholders.
- Employees are confident that the organisation is complying with its legislative obligations.
- Various Open Access registers that ought to be made publicly available from Council's website are either not published as required, or alternatively, published but not maintained.
- Council's Privacy Management Plan has not been updated or reviewed since 2013.
- The Code of Conduct displayed on the Council website was not the current version.

It is important to put these findings into context. The report does **not** indicate that Council has a poor workplace culture or that Council is not satisfying community needs.

Some key extracts from the report are below:

- *Notwithstanding [a lack of defined service levels], we observed that both employees and customers alike believe that Council's service levels are appropriate. Indeed, attendees at the Customer Focus Groups at both Barooga and Berrigan suggested **they were pleased with the levels of service currently provided by Council**, particularly in relation to core services (e.g., road maintenance, parks and gardens maintenance, library services, etc.).*
- *Overall perceptions of Council's organisational culture were positive, with employees indicating that they believed the organisation's **workplace culture to be in good health**. There was widespread recognition and acceptance that Council is on a cultural improvement journey and that, as a result, the **organisation's workplace culture was improving**. The significance of these changes was acknowledged. Feedback suggested that the suite of organisational cultural improvements instigated in recent years – such as the introduction*



of quarterly pulse surveys, corporate brand refresh, and Administration Centre office refurbishment – have been positively received by employees.

Recommendations

The report makes 39 recommendations. A draft plan listing these recommendations is attached as an appendix to this report.

For the purposes of developing a continuous improvement plan, management have split Recommendation 13 into two independent recommendations.

- 13a – Service review of customer experience
- 13b – Service review of planning and development assessment

The authors of the report state:

*it is important to note that **the number of recommendations provided does not necessarily indicate systemic challenges or poor practice**. Rather, by nature of this review, we have focused our efforts on identifying where Council can improve practices even further.*

Most of the recommendations do not identify non-compliance by Council.

- Some recommend Council review policies and documents following the next election.
- Some recommend Council continue with existing compliant practice.
- Some recommend developing new policies that while not legislatively required would improve practice.

The major areas of focus to address non-compliance in the recommendations are:

- Developing a robust customer experience framework and culture. This is across the organisation while specifically addressing building and planning.
- Ensuring all staff are trained in their statutory obligations relating to the Code of Conduct, protected disclosures and privacy management.
- Ensuring the Council website contains all information that is legislatively required to be there.

Personal Commentary

Given the initial reactions to the Cultural and Compliance Audit, I felt it necessary for Council to understand the way in which I personally manage cultural change. I base the work I do in this area very heavily on Patrick Lencioni's 5 (Dis)functions of a Team. I have had significant success in undertaking change using this framework and it may help Council to understand where I believe we are up to.



LENCIONI: 5 (DIS)FUNCTIONS OF A TEAM



When I first arrived I certainly scanned the environment and, as is usual, discovered there was a distinct lack of trust inbuilt in the organisation. Staff did not trust management had their best interests at heart, they did not trust the decisions of Council in many instances and I do not believe there was much trust across teams. In my first rounds of CEO Listening Posts I also heard a lot of distrust from the community in some key areas.

My focus therefore was to start at the beginning. Building trust. That needs me to be vulnerable. Trust needs me to go first. It means people have to see I don't have all the answers and I will look to their expertise to assist me in decision making. They also needed to know that I would be fair and apply the same rules and expectations to everyone. I believe the audit shows I have largely achieved that level with the group. There will always be small instances where I don't quite meet staff expectations, but they trust me enough now I believe, to know that I intend always to be a competent and pragmatic leader.

I believe that since about January 2023 we have actively been engaging with conflict. Conflict is not bad in this sense. It is essential to solidifying trust. This is where people are willing to be truly honest with each other, to call out the behaviours they do not want and are willing to sit with discomfort whilst the work through the issues we are facing. It is the first test of trust. We should be able to vehemently disagree with each other but trust the relationships enough to work. I think I have some significant evidence that we are starting to really get the hang of this and we are starting to work on the Commitment stage.

Certainly the Executive Leadership Team are committed to decision making. I make sure as many people as possible are engaged in the decision-making process and this is filtering to the broader team. I have had one staff member refuse to accept contractor work as it was not to an acceptable standard. I applaud that initiative. That is commitment to the organisation and the community.

We still have a way to go before I can say we have the commitment stage under our belts and are starting on accountability. That is clear with the lack of commitment to customer service, but I



strongly believe we are getting there. I am starting to see glimmers of where we do hold each other to account, and I will continue to support that as we grow and become comfortable with it.

We are so close to real change. I am asking for Council's continued support whilst we work towards the end goal of Results. I think this audit sets out the blue print to get there. We are not far off.

Relevance to Community Strategic Plan and Other Strategies /Masterplans / Studies

Nil. This project will inform the development of the Governance Framework for Council

Issues and Implications

Council is on a cultural improvement journey. Much work has been done already to address unacceptable behaviours and to develop trust across the organisation. The Audit acknowledges the work already done and provides a way forward for us to ensure relevant matters are addressed as we mature through this process.

Policy

Nil

Financial

The implementation of some of these recommendations may have financial impacts for Council. Council will be notified as those arise.

Legal / Statutory

There are legal and statutory requirements that are listed in the document. Those matters are of high priority and will be addressed most urgently.

Community Engagement / Communication

The outcomes of community engagement focus on our Customer Request Management failures. A system capable of more actively managing that matter is being investigated as priority. A report will be made to Council once costs of that system are known.

Human Resources / Industrial Relations (If applicable)

Some matters will require negotiations with relevant unions. These matters will be considered through the normal meeting process that occur with the USU.

Risks

The following risks have been assessed as per the Council's [Risk Management Framework](#):

1. Legal / Statutory

| | Consequence | | | | |
|------------|-------------|--------|------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |



| | | | | | |
|---|-----|-----|--------|--------|------|
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

Some areas of the audit suggest there are a few matters Council are required to have on their website as part of continuous disclosure requirements that are not there. If we do not complete the work there is then a High Risk of being breached by the Office of Local Government, particularly given the recent Auditor General report into OLG and its lack of action regarding Council non-compliance in a number of areas. Once these matters are address, the residual risk will be Low.

2. Financial

| | Consequence | | | | |
|------------|---------------|--------|--------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

It is more than likely implementation of some of the recommendations will have a financial impact on Council (such as the implementation of a functioning CRM system). Council will be made aware of any financial costs as and when those are known.

3. Reputation

| | Consequence | | | | |
|------------|-------------|--------|-------------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

Although there are a number of recommendations, many are low hanging fruit, or things we are already working on. If we were to ignore all recommendations then the risk to Council's reputation is High as failures of governance and culture generally lead to significant outcomes. Given many of the matters are already underway, I believe the residual risk at this time is more in the Medium area and, by the time we finalise all recommendations, will be reduced to Low.

Options

1. Approve the strategy as presented
2. Approve an altered strategy
3. Request staff to develop a new document to deliver the outcomes required



Conclusions

The Cultural Audit is an important document for Council and staff. I see this as an important and positive document that shows we have things that need to be improved but that we are on the right track in this area.



Cultural Review and Compliance Audit Continuous Improvement Plan



Priority 1

| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|--|-----------------|----------|--|
| 2 | Include details in the Annual Report of any and all actions undertaken to educate, inform and remind Council's employees of their obligations and protections under PID legislation. | High | Inclusion in Annual Report Roll out e-Learning training | DCEO | Oct 2023 | Updates currently being undertaken |
| 10 | Review Council's obligations under the GIPA Act and GIPA Regulation and ensure that all Open Access Information listed in Schedule of the GIPA Regulation is updated and published to Council's website. | High | Review of Open Access Information with EA and IRO Provide information to CO to upload to website. | DCEO | Oct 2023 | |
| 25 | Ensure Council's audited Financial Statements are publicly available and published to its website. | High | Standard practice | DCS | Oct 2023 | These are done with the Annual Report. |
| 28 | Review and confirm that all Written Returns of Interest for | High | DCEO/IRO to review and redact returns from 30 September 2023. | DCEO | Oct 2023 | New Returns of Interest must be |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|---|----------|---|-----------------|----------|---|
| | designated persons have been published to Council's website. | | CO to upload redacted returns to the website. | | | submitted by 30 September |
| 29 | Ensure that the full nature of conflicts of interest disclosed at Council meetings are being correctly recorded in meeting minutes, as required under the Code of Meeting Practice. | High | Additional training for Councillors on how to disclose a conflict is required. DCEO and EA to work on procedure for recording disclosures. | DCEO | Oct 2023 | Noted by management. Council to be provided with formal advice prior to next Council meeting |
| 4 | Review Council's Employee Induction Program to incorporate training on the Customer Requests Policy and Customer Experience Charter, ensuring that all employees familiarise themselves with the documents upon commencement of employment. | High | Inclusion in Induction Program Requires review of policy and charter | DCEO | Nov 2023 | |
| 16 | Publish the Mayor's delegations to Council's website. | High | Investigate with Pulse publication as a frame | DCEO | Nov 2023 | Investigations under way |
| 17 | Publish the CEO's delegations to Council's website. | High | Investigate with Pulse publication as a frame | DCEO | Nov 2023 | |
| 18 | Publish the Delegations Register to Council's website. | High | Investigate with Pulse publication as a frame | DCEO | Nov 2023 | |
| 26 | Ensure Council's Annual Reports are publicly available and published to its website. | High | DCEO to coordinate with CO to upload to website | DCEO | Nov 2023 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|--|-----------------|----------|---|
| 3 | Review all outstanding employee complaints and ensure that they have been appropriately closed out, with complainants formally notified of the outcome of how their complaints have been managed and resolved. | High | DCEO and HRM to review staff investigations | DCEO | Dec 2023 | |
| 5 | Review the service standards set out in the Customer Experience Charter to ensure they are realistic and achievable and avoid creating a situation whereby Council is setting itself up for failure. | High | DCS and CAC to review charter in partnership with other directorates. | DCS | Dec 2023 | |
| 27 | Confirm that Council has formally identified the “designated persons” within its organisation structure. | High | DCEO to prepare report for Council | DCEO | Dec 2023 | Report drafted for consideration at October ordinary meeting |
| 32 | Review and update the Privacy Management Plan. | High | DCEO/IRO to undertake review. | DCEO | Dec 2023 | |
| 36 | Update the Community Engagement Plan and Community Participation Policy to become a Community Engagement Strategy that addresses the requirements detailed in the IP&R Guidelines. | High | To be undertaken as part of the development of the new Community Strategic Plan. | DCEO | Dec 2023 | To be done as part of the development of the new Community Strategic Plan |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|--|-----------------|------------|---|
| 14 | Review Council's Community Engagement Plan and Community Participation Policy to comply with the IP&R Guidelines and clearly identify the relevant stakeholder groups within the Berrigan Shire community and outline the methods that will be used to engage each group, incorporating an appropriate range of <i>Involve</i> and <i>Collaborate</i> methods in addition to <i>Inform</i> and <i>Consult</i> methods. | High | To be undertaken as part of the development of the new Community Strategic Plan. | DCEO | Mar 2024 | To be done as part of the development of the new Community Strategic Plan |
| 8 | Investigate the purchase and implementation of a fit-for-purpose CRM solution that will enable Council to record, monitor and report against customer enquiries, complaints and requests in a timely manner and evaluate its performance against agreed service levels set out in the Customer Experience Charter. | High | DCS to review alternative CRM models in parallel with the review of Council's general business management software suite | DCS | March 2024 | Staff will have a demonstration of a market-leading CRM system on the week beginning 25 September |
| 9 | Following purchase and implementation of a fit-for-purpose CRM solution, introduce regular reporting to Management on the status of customer enquiries, complaints and requests, as well as key | High | DCS to review existing AssetFinda system to improve its use by staff. DCS and CAC to generate suitable reports | DCS | Jun 2024 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|-----------------------|-----------------|----------|----------|
| | performance and satisfaction metrics. | | | | | |
| 22 | Publish the Audit, Risk and Improvement Committee Terms of Reference to Council's website. | High | CO to post to website | DCEO | Dec 2024 | Underway |

Priority 2

| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|---|-----------------|----------|--------|
| 31 | Following review of the Contracts Register, update the version of the document on Council's website. | Med | CO/IRO to update the Contracts Register on the website. Investigate software to maintain register and automatically post to website. | DCEO | Nov 2023 | |
| 30 | Review the Contracts Register for currency, to ensure that any and all Class 1, Class 2 and Class 3 entered into by Council since 30 June 2021 are appropriately recorded and disclosed. | Med | DCS and AO-DP to review and update the register | DCS | Dec 2023 | |
| 21 | Update Council's website to feature content on its Audit, Risk and Improvement Committee, including its role, responsibilities and membership arrangements. | Med | DCEO and CO to prepare information on ARIC CO to post to website | DCEO | Mar 2024 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|---|-----------------|-----------|--------|
| 24 | Develop and adopt a Councillor Access to Information Policy and publish to Council's website following adoption. | Med | DCEO to prepare a policy for adoption. | DCEO | Mar 2024 | |
| 7 | Convene regular Customer Experience Coordination Meetings with all Directors and key personnel to review customer performance including outcomes data, identify and action priority initiatives, and provide input on how to continuously improve customer service operations. | Med | DCS and CAC to arrange meetings. | DCS | Jan 2024 | |
| 1 | Ensure all employees who interact with Council, or are able to access customer information and records, receive information, training and/or education in GIPA and privacy management. | Med | Inclusion in Induction Program. E-Learning via https://www.ipc.nsw.gov.au/about-us/ipc-e-learning | DCEO | June 2024 | |
| 12 | Explore the feasibility of implementing reward, recognition and training initiatives that could support employee retention in Council's Customer Experience team and enhance the appeal of pursuing a career in Customer Experience at Council. | Med | Customer Experience to be specifically included as a priority item in the new Workforce Development Plan. | DCS/DCEO | Jun 2024 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|---|----------|---|-----------------|----------|---|
| 13 | Consider including services reviews of (a) Customer Experience and (b) Planning and Development Assessment in Council's Service Review Program. | Med | Reassess the priority of these reviews in Council's Service Delivery Plan and undertake reviews as appropriate | DCS/DSPD | Jun 2024 | |
| 15 | Develop and adopt an EEO Management Plan and publish to Council's website following adoption. | Med | EEO developed but not on website | DCEO | Jun 2024 | Existing version published on website. Complete |
| 19 | Develop and implement procedure to ensure Council's Delegations Register is being regularly reviewed and currency is maintained. | Med | DCEO and AO-G to develop review process | DCEO | Jun 2024 | |
| 23 | Develop and adopt a Gifts and Benefits Policy and publish to Council's website following adoption. | Med | DCEO to prepare a policy for adoption. | DCEO | Jun 2024 | |
| 37 | Develop and adopt a Complaint Handling Policy, utilising the Model Policy produced by the NSW Ombudsman as a template. | Med | DCS and CAC to prepare the policy with DCEO advice as needed. | DCEO/DCS | Jun 2024 | |
| 6 | Following procurement of a fit-for-purpose CRM software solution (refer Recommendation 8 below), consider introduction of performance reporting to Council's Audit, Risk and Improvement Committee. | Med | DCS to review existing AssetFinda system to improve its use by staff. DCS ask Council and ARIC if they wish a report of this nature presented to ARIC. | DCS | Dec 2024 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|---|-----------------|----------|--------|
| 11 | Develop a knowledge base to support FAQ and common enquiries to support Council's Customer Experience team and publish FAQ on Council's website. | Med | DCS and CAC to prepare document in consultation with other directorates and teams | DCS | Dec 2024 | |

Priority 3

| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|--|----------|--|-----------------|----------|---------------------------|
| 35 | Ensure the location and venue of each scheduled Council meeting is clearly listed on Council's website. | Low | EA/CO to ensure Council meeting location is clearly marked on the website | DCEO | Dec 2023 | Website updated Complete. |
| 34 | Develop and adopt an Internal Audit Charter and publish to Council's website following adoption. | Low | DCEO to work with ARIC and Council on charter. CO to post to website following adoption | ERM | Jun 2024 | |
| 38 | Following development and implementation of Complaint Handling Framework, instigate regular reporting of complaints to Management. | Low | DCS and CAC to design and issue a report | DCS | Oct 2024 | |
| 39 | Publish content to Council's website clearly outlining how Council receives, manages and resolves complaints, including | Low | DCS and CAC to prepare content DCEO and CO to update website. | DCS/DCEO | Oct 2024 | |



| No. | Improvement opportunity | Priority | Requirement | Responsible ELT | When | Status |
|-----|---|----------|--|-----------------|-----------|--------|
| | avenues to appeal or seek review of complaint outcomes. | | | | | |
| 20 | Schedule a comprehensive review of all delegations within 12 months of the next Local Government ordinary election. | Low | CEO and DCEO to coordinate review | DCEO | Sept 2025 | |
| 33 | Review the Councillor Expenses and Facilities Policy by September 2025. | Low | DCEO to review with incoming Council based on OLG template | DCEO | Sep 2025 | |



5.2 Review of customer payment options

| | |
|-----------------------------|--|
| Author: | Acting Director Corporate Services, Tahlia Fry |
| Strategic Outcome: | 2. Good government |
| Strategic Objective: | 2.1. Berrigan Shire 2032 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting |
| Delivery Program: | 2.1.3. Council operations and financial management support ethical, transparent and accountable corporate governance |
| Council's Role: | Service Provider: The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council |
| Appendices: | 1. Payble Uptake Data.pdf |

Recommendation

That the Council note this report on customer payment options, including the removal of the BPay service.

Purpose

This report provides Council with an opportunity to review the options currently available to ratepayers and other customers, as per the Council's resolution at its ordinary meeting held on 20 September 2023.

In particular, the Council asked for a report on the merits of reintroducing BPay as a payment service.

Summary

Council introduced a new payment service – Payble – when issuing the 2023/24 rate notices. At the same time, it removed the expensive BPay service, to encourage migration to Payble.

While the introduction of Payble has been a success, some community members have not been happy with the removal of BPay.

Council staff have extensively consulted with the community following the introduction of Payble, there was no community consultation about the decision to remove BPay.

While Council has the option to restore BPay, this would undermine staff attempts to establish the superior and cheaper Payble service.

Background

Berrigan Shire Council has always provided a range of options for ratepayers and customers to pay their accounts. These have included:

- cash and cheque deposits over the counter or via mail,



- credit card payments on line, over the counter or via telephone,
- deposits at third party institutions such as banks or post offices and
- BPay.

Over time, ratepayers and customers have moved from cash, cheques and deposits to electronic payment systems – especially BPay. Council has had frequent requests regarding an option for direct debit payment of which Payble provides Council with a streamlined process for this.

BPay is a convenient service. However, it is also a very expensive service with high transaction costs. Council processes around 40,000 payment transactions annually so these fees are not trivial.

Annually BPay costs Council \$32,000 with no additional service provided other than processing payments. BPay also causes some frustrations with its back-end operations (such as matching payments where incorrect reference numbers have been provided or not included) and has seen Council staff over time exploring other options for a more flexible, transparent and, most importantly, cheaper payment processing option for some time.

Payble

The “Payble” system has been the first payment processing system that has met all Council’s objectives. It is efficient, holistic, cost effective and easy to use. Introducing Payble has already made a measurable difference to Council’s collection function. There is a commercial in confidence fee charged for Payble however based on Councils estimated savings the fee for Payble has already been absorbed in the efficiencies that Council has gained. Council predicted a 40% take uptake for Payble in the first year, which would provide Council with an annual saving of \$39K. Council currently has a take up of just shy of 14%.

The benefits of the Payble system are outlined below:

- **Flexible Payment Options:** Payble offers flexibility in payment frequencies, allowing payers to pay their accounts weekly, fortnightly, monthly, quarterly, or annually. This flexibility has resulted in several payers in arrears for an extended period signing up for these payment options. The availability of these payment options should mitigate the need for further intervention from Council’s external debt collection agency – a cost saving to the ratepayer and a customer experience improvement.
- **Direct Debit Options:** Despite initial challenges during implementation with the Commonwealth Bank, a Direct Debit option from bank accounts, credit cards, or debit cards will soon be fully functional within Payble. Payble assisted Council greatly in getting this setup with National Australia Bank. This option will provide Ratepayers with more convenience and streamline the payment process. The direct debit service has been highly requested by Ratepayers for a number of years and is a resource intensive setup process that will now be streamlined by Payble and require minimal time from Council staff.
- **Payble Webapp Access:** The Payble webapp portal offers Ratepayers access to real-time updates on their rate payments, allowing them to stay informed about the status of their rates including their current outstanding balance.
 - Council currently takes approx. 2,500 caller per annum regarding rates and charges. A Substantial amount of these calls are in regard to current rates balances and asking



for a copy of rates notice. Payble has both requests live on their webapp at all times. Council predicted a 25% reduction in these calls in its cost saving calculations.

- **Customer generated payment plans:** Council sets up approximately 185 payment plans per annum. However, this does not include checking if payments have been made and renegotiating payment plans after default. Payble allows payers to set up their own payment plans and ensures the plan they setup has their rates paid in full by the end of the Financial Year. It automatically notifies Council staff when a payment has defaulted so the payer can quickly get back on track. During our calculations we estimated this would save the Revenue Team around 2 hours per week just for payment plan setup.

Overall, the transition to Payble has been successful. It has improved the payment experience offering more options for payment and enhancing transparency.

As the Direct Debit option becomes fully operational and more payers adopt Payble, the payment process will be even smoother and more efficient. Council staff will continue providing support and guidance to payers as they navigate these changes, addressing potential issues promptly.

Adoption of Payable is already yielding significant benefits, both in terms of cost savings and operational efficiency.

Some key benefits:

- **Elimination of Reminder Notices:** With more customers signing up for Payble and the flexible payment options it offers, there is a reduced need to send out reminder notices. In the past, sending out approximately 4,000 reminder notices for Rates and 3,000 for water incurred substantial costs, including Australia Post fees and staff hours (staff currently fold and send each notice), totaling around \$14,260. The introduction of Payble has seen a 16% reduction in the first quarter just via implementing Payble.
- **Efficient Payment Process:** The Finance Department processes about 40,000 transactions annually for Rates and Water Payments. In the past, these transactions were primarily conducted through BPay.
- **Cost effectiveness:** Use of BPay incurs a cost to Council ranging from \$0.49 to \$4.00 per transaction. By switching to the direct debit option provided by Payble, the cost per transaction is reduced to a flat \$0.10. Payable therefore represents a significant reduction in transaction costs and streamlines the payment process.
- **Consolidation of Payment Methods:** Adoption of direct debit through Payble has enabled centralisation and standardisation of Council's payment methods. The reduction of payment options and simplification of the payment process for both Council staff and payers has been considerable. Payble automatically matches all payments to ratepayer accounts and ensures there are no data match up issues. Council has previously had numerous issues where a payer entered their reference number incorrectly – this could lead to payment demands being sent to payers who had already paid as Council staff were unable to match their payments.
- **Enhanced Operational Efficiency:** The transition to Payble not only leads to cost savings but also improves operational efficiency by reducing manual processes associated with reminder notices and handling different payment methods. Operational efficiencies allow staff to focus on more value-added tasks.



- **Increased Transparency:** The Payble portal's real-time status updates provide payers with more visibility as to their payments, reducing inquiries and providing a more positive customer experience.
- **Payment Plans:** Setting up payment plans took up a considerable amount of time for our Revenue Team which didn't offer the flexibility that Payble can. Council now gets notifications from Payble when someone hasn't made their planned payment, which allows Council staff to get Ratepayers back in track in a timely manner. Previously Council employees did not get notified and would have to maintain a manual list and individually check if and when payments had been made.
- **Flexibility:** Payble gives ratepayers the flexibility to choose their payment dates, frequency and amounts whilst ensuring the amount will cover their rates by the end of the Financial Year.

Overall, implementation of Payble has brought about tangible benefits by reducing costs, improving efficiency, and enhancing the payment experience. As adoption of Payble grows and more payers shift to direct debit payments, Council staff expect even greater savings and efficiency gains in the long run.

Implementation

Overall, implementation of Payble at Berrigan Shire has been successful and well-received by the community.

Consultation with the community about the transition to Payble has included:

- Social media posts
- Bulletin board articles in the Southern Riverina News. (Note: The Cobram Courier unilaterally stopped publishing the Council's Bulletin Board page at the end of June. The communications team are attempting to sort the matter out now)
- Inserts into rate notices.
- Information sessions at library branches
- Over-the-counter and over-the-phone assistance.

Data from the Payable system shows a significant proportion of payers have embraced the system within a short period of time. The uptake speaks to the system's user-friendliness and the benefits it offers. This high engagement rate is a positive outcome and reflects well on both the implementation process and the quality of the Payble service itself.

To maintain and build on this success, Council staff will continue monitoring engagement rates and user feedback, as well as addressing any potential concerns or challenges that might arise as more payers adopt the Payble system.

Removal of BPay

Council staff, including the Director Corporate Services and the finance, revenue, and customer experience teams, gave considered thought to how to manage the transition from BPay to Payble – including working on a staged transition – before deciding on a clean break.

The main driver for the decision was based on an understanding of payer behaviour. Bill payers tend to be conservative when paying bills, sticking to systems they know and understand. While this is



understandable, it also means Council will not achieve the cost savings and efficiencies available using Payble.

Staff also considered that a phased transition would still require the eventual removal of BPay at some stage, with the associated inconvenience to remaining users. Rather than delay this process, staff thought it best to address the matter up front.

In making this decision, staff were acutely aware that this change would generate some concern from payers. To mitigate this, staff have actively provided information on the new system in a range of formats and taken the time to run payers through the new system over the telephone and the counter.

While there has been feedback from some payers to staff requesting the return of BPay, discussions with these payers regarding the new system have been largely positive. Staff have been surprised at how well Payble has been adopted, even by those with initial objections.

Payment enquiries have not been noticeably greater than in previous years and most enquiries have not required escalation.

Restoring BPAY

If Councillors choose to restore BPAY as a payment option on notices going forward, Council staff will need to redesign annual and quarterly instalment notices for both Water and Rates and submit for approval to our print house IVE. This process takes a considerable amount of time and IVE needs 4 weeks' notice to implement any change as there is a considerable amount of back-and-forth communication to ensure the print of the notices are accurate.

If Council choose to restore BPAY it would not appear on the rates notice until the third quarterly instalment in February 2024 and it would appear on the water notice around December 2023 when they are sent out.

Council staff usually design the notices internally and this process would require three new notices to be designed and implemented before being sent out. Payble redesigned our annual notices as part of our project implementation for the 2024 Financial Year, so this was at no additional cost to Council.

However, due to spatial limitations on our current notices it is highly likely that Council would need to outsource the design of another updated annual notice. Council staff would then use the annual notice template to design the instalment template. We currently have no costings available for this as we have not done it in the past and we did not have time available to source quotes before presenting this report.

If Council choose to restore BPAY payment options this will have a number of negative effects on Council such as:

- allowing Ratepayers to revert to paying minimal amounts off their notices via BPay that see them continuously being sent to debt collection, potentially leading to an additional levy on their notices of approximately \$640 for legal action to recover outstanding debt. Legal fees put ratepayers even further behind and lands them in a never-ending debt collection cycle,
- increasing the number of payers sent to debt collection due to payers no longer having to pay an amount that covers their levies by the end of the Financial Year. Since implementing Payble Council staff have been able to remove ten (10) customers from the debt collection process due to signing up to Payble. It is important to note these customers are from last financial



year's rates notices and Council staff are unable to quantify the difference from the first quarter of implementing Payble as this payment cycle has not yet been completed,

- undermining the work completed by Council staff to implement Payble. This could lead to staff no longer exploring innovative options as when they do their decisions get overruled by Council due to a small number of payers expressing their anger with change. Most payers who have called disgruntled about Payble have in the end, said how easy the process was once they signed up,
- Council monitored and investigated a number of comments made on social media by disgruntled rate payers claiming they could not use Payable, or where unable to pay their rates by the due date due to not being able to use Payable and upon investigation uncovered that the majority of these ratepayers had signed up and paid via Payble already, indicating their statements on social media may have been more related to underlining the fact we did not engage with the community prior to making this change, rather than the system being undesirable, and
- increasing the workload of our Revenue department who, due to the efficiency gains this change has provided, altered the role of our Revenue Officer to include management of the Customer Experience Team (a further efficiency gain and cost reduction to Council).

Relevance to Community Strategic Plan and Other Strategies /Masterplans / Studies

- Delivery Program
- Financial Strategy

Issues and Implications

Policy

Council does not have a policy position on the payment options it will offer payers. However, the following policies relate to the collection of rates and other Council charges.

- [Statement of Revenue Policy](#)
- [Debt Management and Hardship Policy](#)

Financial

The introduction of Payble and the closure of BPay is expected to generate significant cost savings. The cost per transaction in Payble is considerably cheaper. Payble will also replace the Council's online and telephone payment service – the Commonwealth Bank's BPOINT, with a fee of 0.55% per transaction.

There is already evidence of improved collection rates. If this continues, there will a subsequent reduction in the cost of sending reminder notices and use of debt collection services.

Legal / Statutory

There is no legal or statutory obligation for Council to offer specific payment options.



Community Engagement / Communication

Staff acknowledge that genuine community engagement before the decision was made to remove BPay should have occurred.

Further, while payment options are largely an operational matter, requesting advice from Council in its role as representatives of the community may have addressed some of the concerns that Councillors have heard on this matter.

Nonetheless, the introduction of Payble has been successful and staff will continue to promote its use and support payers moving to the system.

Human Resources / Industrial Relations

Council's revenue team have consistently been an industry leader in the region and across rural NSW. The team actively looks to innovate and find efficiencies. Their collection rates are among the best in NSW and this has been achieved without generating complaints about heavy-handed collection methods.

From a management perspective, it is important to recognise and reward innovation, not to stifle it. It is also important to support successful teams going out of their way to deliver excellent service and meeting Council's objectives.

Risks

The following risks have been assessed as per the Council's [Risk Management Framework](#):

1. Financial

| | Consequence | | | | |
|------------|-------------|--------|--------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

While the costs of payment services are significant inside the revenue function, the overall cost to Council is not significant in and of itself. However, Council should be looking for cost savings in all services wherever they can be found.

2. Reputational

| | Consequence | | | | |
|------------|-------------|--------|--------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |



| | | | | | |
|---|-----|-----|--------|--------|------|
| E | Low | Low | Medium | Medium | High |
|---|-----|-----|--------|--------|------|

Councillors have informed management that the removal of BPay has created significant inconvenience for payers and impacted Council's reputation. Certainly, staff acknowledge that consultation about the removal of BPay should have taken place before its removal.

On the other hand, the experience of the revenue team has been different. While the revenue team has taken calls from payers upset about the removal of BPay, most of these calls have been able to be resolved quickly and to the satisfaction of both parties.

Options

1. Maintain Payble and do not reinstall BPay – recommended

The introduction of Payble has already been a success. Part of that success is due to the simultaneous removal of BPay, which required payers to move to the cheaper, more efficient option.

2. Remove Payble and restore BPay

Payble is more efficient and delivers superior cost savings compared to BPay. Council is also in a three-year contract with Payble so removing the option will waste of resources. Currently \$1.5M (1,306 contracts) of levied rates and charges have been collected via Payble.

3. Maintain both Payble and BPay

This option is available to the Council. The return of BPay would address the concerns Councillors have heard from the community.

It would however undermine the great work undertaken by the revenue team to date in rolling out Payble and make the job of continuing the rollout more difficult. It also will add to Council costs. Unless Council proposes to maintain BPay as a payment system indefinitely, it only defers an eventual decision to remove the service and potential community pushback.

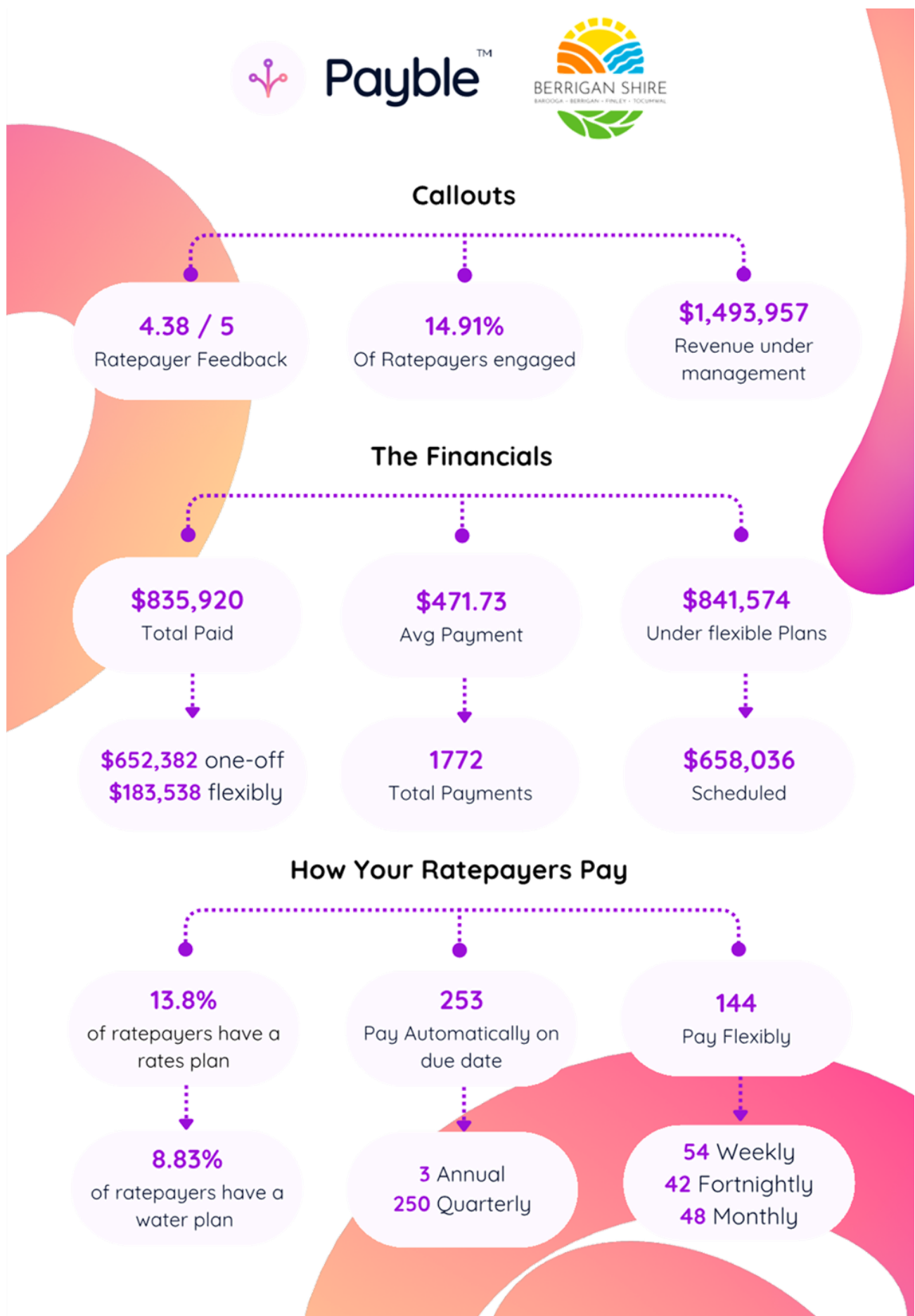
Conclusions

I recommend that Council stay the course with the introduction of Payble and the removal of BPay. The transition is already achieving results and while there has been some community push back, most complaints have been effectively dealt with by the revenue team. A return to BPay undermines this work and makes it more difficult for them to effectively migrate payers to the better and cheaper service.

A return to BPay will also send the message to Council staff that attempts to innovate will not be supported by the Council if even a very small number of complaints are received.

However, if Council does wish to restore BPay, the following resolution could be made:

That the Council direct the Chief Executive Officer to restore the BPay service for payment of Council rates, charges and fees at the earliest opportunity, and report back to Council once the service has been restored.





5.3 2023 Financial Year Results Report

| | |
|----------------------|--|
| Author: | Acting Director Corporate Services, Tahlia Fry |
| Strategic Outcome: | 2. Good government |
| Strategic Objective: | 2.1. Berrigan Shire 2032 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting |
| Delivery Program: | 2.1.3. Council operations and financial management support ethical, transparent and accountable corporate governance |
| Council's Role: | Service Provider: The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council |
| Appendices: | 1. June 2023 Budget V Actuals (under separate cover) |

Recommendation

That Council:

1. Note the 2022/2023 Financial Year Operational and Capital Cash Budget results attached as Appendix 1
2. Note the carried forward balance for the 2023/2024 Financial Year
3. Vote for the revotes below to be re-allocated a budget in the 2023/2024 Financial Year

Purpose

The following report provides a comprehensive overview of the financial performance and key financial figures for Berrigan Shire Council during the 2022-2023 Financial Year (FY). Please note the figures in this report are preliminary and subject to change pending the outcome of the audit process.

Summary

- 1. Cash Surplus:** The Council produced a cash surplus of \$1,991,000 for the 2022-2023 FY.
- 2. Carried Forward Surplus:** As of 30 June 2023, the Council has a current balance of carried forward surpluses amounting to \$8.07M. This surplus can be used in future budgets to fund various projects or cover expenses if the Council chooses to do so.
- 3. Unrestricted Funds:** As of 30 June 2023, the Council has a current balance of unrestricted funds of \$12,029,000. This is the amount of Council's cash available for use in the General Fund. Restricted cash includes unexpended grant funding, internal council allocated reserves, external legislated restrictions such as monies held for Developer Contributions and the Water, Sewer and Domestic Waste funds. Confirmation of this amount will be provided within the annual financial statements.
- 4. Carried Forwards to 23/24FY:** The Council plans to carry forward a total amount of **(\$471,508)** which includes revenue (\$10,406,042) and expenditure (\$10,877,550) from the 22/23FY to the



23/24FY budget. This figure includes funds for works that have already commenced, procurement has started, or projects have been grant-funded.

A detailed list of carry forwards is provided below.

| DESCRIPTION – CARRY FORWARDS | JUNE 2023 |
|--|-------------|
| BGA - EXPANSION WTP | (3,485,000) |
| FIN - UPGRADE WTP (DAFF) | (1,759,643) |
| BGA SWING BRIDGE REPAIR LGRF | (830,000) |
| CHANTER ST BGN POWERLINE SCCF5 | (494,000) |
| NEW DRYING BED | (440,000) |
| REPLACE AC WATER MAINS | (359,509) |
| METER CYBAL REPLACEMENT | (348,416) |
| BUSHFILEDS RD 00-5KM | (276,550) |
| BGA REC RES CRICKET NETS SCCF5 | (265,778) |
| BARNES RD-MAXWELL TO STH COREE | (217,205) |
| BGA REC RESERVE REDEVELOPMENT LRCIP3 | (214,886) |
| SOLAR LIGHT BAROOGA SCCF5 | (185,000) |
| LRCIP3 INFRASTRUCTURE GRANT | (173,690) |
| UPGRADE SEWER TELEMENTRY | (150,554) |
| FLOODPLAIN MANAGEMENT PROGRAM | (135,954) |
| LOCAL ENVIRONMENTAL PLAN REVIEW | (131,175) |
| NSW ELECTRIC VEHICLE CHARGERS | (104,733) |
| WATER FUND HOUSING RELOCATION | (70,000) |
| SNELL RD - KAMAROOKA TO CHOMLE | (68,180) |
| SEPPELTS LEVEE | (64,784) |
| TOWN BEACH SEWER UPGRADE | (59,199) |
| TRADE WASTE MANAGMENT | (59,000) |
| RESEAL LOWER RIVER RD - 150M STH OF LEVEE TO SOUTH | (58,476) |
| BURKINSHAW ST BGA TOWNSCAPING LRCIP3 | (57,910) |
| FINLEY WAR MEMORIAL REFURB LRCIP3 | (57,550) |
| RESEAL PEPPERTREE RD - MR363 TO VICKERS | (57,209) |
| RESEAL CARRAMAR RD - BACK BAROOGA TO 6802 EAST | (47,086) |
| RESEAL COREE ST - TUPPAL TO ULUPNA | (45,443) |
| STORMWATER CATCHMENT PLAN | (41,100) |
| REHAB EXHAUSTED LANDFILLS | (35,000) |
| ASSET REVALUATION EXPENSE | (33,885) |
| FIN - UPGRADE PUMP STATION | (32,371) |
| TOC OFFICE RENEWAL | (31,546) |
| STREET & GUTTER CLEANING | (31,330) |
| CONSTRUCT LABORATORY ROOM | (31,144) |
| FIN SHOWGROUNDS ELECTRICAL | (30,000) |
| TOC SPORTSGROUND LED UPGRADE LRCIP | (30,000) |
| TOCUMWAL CCTV | (29,079) |
| SEWER TREATMENT COMPONENT RENE | (25,453) |
| CROWN LANDS PLANS OF MANAGEMENT | (24,361) |
| RESEAL HONNIBALL DRIVE - MURRAY TO END | (23,522) |



| | |
|--|------------------|
| TELEMENTRY UPGRADE - WATER | (21,923) |
| WATER NETWORK MODELLING | (21,013) |
| COMMUNITY STRATEGIC PLAN REVIEW | (20,000) |
| PEPPERTREE RD - 3660 TO 4660 | (17,542) |
| UPGRADE AMENITIES AT ALL STP | (16,810) |
| BGN - WTP FENCE REPLACEMENT | (15,584) |
| TOCUMWAL CRICKET CLUB NEW ROOF | (15,268) |
| FIN - FILTERED & UNFILTERED MAIN TONGS/HOWE STS | (15,037) |
| RESHEET AUBURN MOMALONG ROAD | (14,810) |
| ADMIN JC TAX FBT ACCOUNT | (14,000) |
| MR550 TOCUMWAL - MULWALA RD | (13,707) |
| BGN - NEW LANDFILL HOLE | (13,672) |
| LIBRARY SPEC. PROJ. OPERATING | (12,337) |
| LED LIGHTING UPGRADE SCCF3 GRANT | (12,000) |
| HERITAGE OFFICER - LOCAL HERITAGE INCENTIVE FUND | (10,000) |
| RESEAL TONGS ST - MURRAY TO 630M WEST | (8,555) |
| BGA LIONS PARK IMPROVEMENT LRCIP | (5,000) |
| RESEAL CASEYS RD | (4,567) |
| SHOULDER RESHEETING | (3,852) |
| MAINS RETIC - TOC | (3,837) |
| RESEAL TUPPAL RD | (2,315) |
| TOC GOLF CLUB PATH LRCIP | 8,000 |
| BGA LAWSON DRIVE PATH LRCIP | 8,000 |
| RFS HAZARD REDUCTION GRANT | 11,000 |
| BAROOGA TO COBRAM PATH LRCIP | 14,000 |
| DWM TRANSFER TO RESERVE | 48,672 |
| DRIVE ELECTRIC NSW EV GRANT | 54,000 |
| TOC AERODROME RUNWAYS GRANT RAPII | 90,000 |
| KERB & GUTTER UPLIFT LRCIP2 | 123,000 |
| RMS REHABILITATION WORKS FUNDING | 132,252 |
| FINLEY NETBALL COURTS LRCIP2 | 140,000 |
| APEX PARK CARPARK LRCIP2 | 145,000 |
| JERSEY STREET PRECINCT BBRF3 | 148,000 |
| SHARED PATH GRANT GFR | 600,000 |
| SEWER TRANSFER FROM RESERVE | 812,466 |
| SCCF - 0231 GRANT | 909,000 |
| LOCAL GOVERNMENT RECOVERY FUND LGRF | 1,000,000 |
| GRANT - SAFE & SECURE WATER | 1,171,365 |
| WATER TRANSFER FROM RESERVE | 4,991,287 |
| TOTAL CARRY FORWARDS | (471,508) |

5. Unstarted Projects (Revotes): There is a budget of **(\$1,998,423)** for works that were not yet started as of June 2023. However, the effect on the budget surplus is **(\$832,510)** due to a large portion of projects being in the Water and Sewer Fund which is self-funding. The Council may choose to reallocate a budget to these projects in the 23/24FY. Council will need to resolve to allocate a budget



for these projects. It is important to note there will be further budget increase requests for a number of the below jobs in the September 2023 Quarter.

The below table provides details of all proposed expenditure revotes for the 23/24FY. Council needs to resolve to allocate a budget to the below projects.

| DESCRIPTION | REVOTES JUNE 2023 | REASON FOR DELAY | RESOURCE |
|--|----------------------|--|------------|
| AC MAIN RENEWALS | (297,913) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| BGA 1ML FILTER WATER RESERVOIR | (200,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| SEWER RTU UPGRADES | (104,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| REPLACE INTAKE PUMP FINLEY DAM | (100,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| TOC BACKWASH BYPASS LINE | (90,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| FIN - DESILTING PONDS | (80,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| RESHEET MIECHELS RD SH17 - 3.1 | (69,000) | NO CONTRACTOR AVAILABILITY | IN HOUSE |
| OTHER MINOR WORKS | (63,510) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| SNELL RD - KAMAROOKA TO CHOMLE | (63,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| HORSEFALL ST - JERILDERIE/DENISON | (60,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| LANE 961 - BRUTON ST BAROOGA | (60,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| RESEAL TOCUMWAL ST - MCNAMARA TO PINNUCK | (55,000) | WAITING ON HOSPITAL WORKS HOWEVER WORK NOW NEEDS TO BE COMPLETED TO RESEAL | CONTRACTOR |
| AUTOMATION QUALITY CONTROL | (50,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| FIN-ODOR INVESTIGATE/ MITIGATE | (50,000) | INVESTIGATION COMPLETED BUDGET NEEDED FOR MINOR WORKS | CONTRACTOR |
| LEVEE 1 10850-11412 | (50,000) | FURTHER WORK NEEDS TO BE DONE TO INSPECT LEVEES | CONTRACTOR |
| RACECOURSE RD BGN WALKING TRAC | (50,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| RESHEET LAFFAYS RD | (41,000) | NO CONTRACTOR AVAILABILITY | IN HOUSE |
| MAJOR PUMP REPLACEMENT | (40,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| LAWSON DR BGA | (40,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |



| DESCRIPTION | REVOTES JUNE 2023 | REASON FOR DELAY | RESOURCE |
|--|----------------------|---|------------|
| RESEAL DAVIS ST | (38,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| DENISON ST - HORSFALL/NANGUNIA | (35,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| BGN TOWN DAM EMBANKMENT STABILISATION | (35,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| BGN TRICKLE FILTER ARM UPGRADE | (30,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| BAROOGA STREET - HORSFALL TO NANGUNIA | (25,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| INSTALL VSD AT PUMP STATIONS | (25,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| MURRAY ST WARMATTA TO WOLAMAI | (22,000) | WAITING TO BE ALIGNED WITH TNSW WORKS | CONTRACTOR |
| COMPRESSOR REPLACEMENT | (20,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| REFURBISH CONCRETE WORK FINLEY | (20,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| RESEAL MCMURRAYS RD - BROUGHANS TO END | (20,000) | WAITING ON FLOOD CLAIM | CONTRACTOR |
| RESEAL DRAYTONS RD - YARRAWONGA TO WEST | (20,000) | WAITING ON FLOOD CLAIM | CONTRACTOR |
| TONGS ST WALKING TRACK | (20,000) | FLOOD WORKS TOOK PRIORITY | CONTRACTOR |
| BRUTON ST - KERB CONNECTION | (15,000) | DUE TO STAFF SHORTAGES | CONTRACTOR |
| RESEAL DENISON ST BGN ALL | (13,000) | INSUFFICIENT BUDGET – ADDITIONAL BUDGET REQUEST TO BE MADE IN SEPTEMBER 2023 | CONTRACTOR |
| SNELL RD - ARRAMOGONG TO MCKIN | (12,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| EMILY ST - LANE 960 TO FALKINER | (10,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| BGN AIR SEPERATOR CONNECTION | (10,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| FIN AIR SEPERATOR CONNECTION | (10,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| MINOR WATER MAIN RENEWALS | (10,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| FIN - GRAVEL POND BANKS | (10,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| SNELL ROAD KAMAROOKA-CHOMLEY | (6,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| RESEAL HOYLE ST TOC | (6,000) | WAITING ON KERB & GUTTER REPAIRS | CONTRACTOR |
| SNELL RD - ARRAMAGONG TO MCKIN | (5,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |



| DESCRIPTION | REVOTES JUNE 2023 | REASON FOR DELAY | RESOURCE |
|-------------------------------------|----------------------|--|------------|
| BAROOGA ST TOC - MURRAY TO MOR | (5,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| REPLACEMENT OF MINOR PLANT | (4,000) | NO MANAGER SUSTAINABILITY | CONTRACTOR |
| RESEAL LANE#840 - PINNUCK TO ULUPNA | (4,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| RESEAL DENILQUIN ST TOC | (4,000) | NO CONTRACTOR AVAILABILITY | CONTRACTOR |
| SNELL ROAD ARRAMAGONG-MCKINLEY | (1,000) | NEED TO REFINE SCOPE AND GO TO TENDER | CONTRACTOR |
| TOTAL REVOTES (\$1,998,423) | | | |

6. Adjusted Budget Surplus 23/24FY: Council currently has a budgeted surplus for the 23/24FY of \$27,000. If Council choose to accept all of the proposed revotes listed within this report the revised budgeted surplus for 23/24FY will be \$63,982.

However, it is important to note Council would be making a budget deficit of (\$1,277,018) if surpluses attributable to prior years were not used. The total balance brought forward amount is attributable to the 22/23FY and this surplus is largely attributable to the 23/24FY Financial Assistance Grant being paid in full in the 22/23FY.

A Summary is provided below:

| | |
|---------------------------------|-------------|
| Current 2024 Budgeted Surplus | \$27,000 |
| Surplus Balance Brought Forward | \$1,341,000 |
| 2023 FY Carried Forwards | (\$471,508) |
| 2023 FY Revotes | (\$832,510) |
| Adjusted 2024 Budgeted Surplus | \$63,982 |

7. Outstanding Borrowings: The Council has outstanding borrowings of \$7,030,639.17 as of 30 June 2023. This includes both external borrowings (\$4,108,960.97) and internal borrowings from Council's Sewer Fund (\$2,921,678.20). \$1,021,859.94 is payable within the next 12 months. Council did not draw down on any new borrowings in the 22/23FY.

Please see below Council's current borrowings:



| Institution | Fund Borrowing | Purpose | Loan Amount | Interest Rate | Opening Balance @ 01.07.2022 | Principal | Interest | Closing Balance @ 30.06.2023 |
|-------------|----------------|-----------------------------|--------------|---------------|------------------------------|-------------|-----------|------------------------------|
| NAB | General | LIRS Drainage Loan | \$1,630,000 | 4.26% | \$489,555 | \$183,163 | \$17,324 | \$306,392 |
| ANZ | General | LCLI Lewis Cr/Fin Park Loan | \$1,000,000 | 2.32% | \$810,092 | \$94,336 | \$17,795 | \$715,756 |
| NAB | Water | LCLI Barooga WTP | \$4,000,000 | 1.48% | \$3,468,646 | \$381,833 | \$48,752 | \$3,086,813 |
| Sewer Fund | General | General Fund | \$1,000,000 | 1.48% | \$906,480 | \$94,903 | \$13,415 | \$811,577 |
| Sewer Fund | Water | Finley WTP | \$2,600,000 | 1.48% | \$2,356,849 | \$246,748 | \$34,881 | \$2,110,101 |
| | | TOTALS | \$10,230,000 | | \$8,031,622 | \$1,000,983 | \$132,167 | \$7,030,639 |

Legal / Statutory

No Quarterly Budget Review Statement has been prepared for this quarter. This is consistent with the Council's obligations under the *Local Government Act 1993* and associated regulations.

Options

1. Vote for all revotes to be allocated a budget in the 23/24FY.
2. Vote for some revotes to be allocated a budget in the 23/24FY.
3. Vote for no revotes to be allocated a budget in the 23/24FY.



5.4 Lease - Finley Saleyards

| | |
|----------------------|--|
| Author: | Deputy Chief Executive Officer, Matthew Hansen |
| Strategic Outcome: | 4. Diverse and resilient business |
| Strategic Objective: | 4.1. Strengthen and diversify the local economy and invest in local job creation and innovation |
| Delivery Program: | 4.1.2. Support local enterprise through local economic and industry development initiatives and projects |
| Council's Role: | Asset Owner: As the owner (or custodian, such as through a Trust Deed) of an asset (road, footpath, building, playground etc) the Council has a responsibility for capital, operating and maintenance costs |
| Appendices: | <ol style="list-style-type: none">1. Draft lease - Finley saleyards2. Finley Saleyard Options Report - At the cross roads (under separate cover)3. Proway Report - Finley Saleyards (under separate cover) |

Recommendation

That Council, in the matter of the lease of the whole of the land comprised in Folio Identifiers 1/402452, 159/1087013, 160/752299 and 161/752299, known as the Finley Saleyard, delegate the Mayor and Chief Executive Officer to:

1. Finalise negotiations with Finley Livestock Exchange Pty Ltd on the terms of the lease based on the draft version attached to this report, and
2. Execute and sign under seal the agreed lease.

Purpose

This report seeks Council's endorsement for the placement of the Common Seal of Council to the following documentation:

- A lease of the whole of the land comprised in Folio Identifiers 1/402452, 159/1087013, 160/752299 and 161/752299, known as the Finley Saleyards.

A draft version of this lease is attached as Appendix 1. Council staff are still negotiating with the proposed lessee on the final terms of the lease.

Summary

After an extensive process, Council has determined the long-term future of the Finley Saleyards.

Council proposes to enter into a 30-year lease for the facility with Finley Livestock Exchange Pty Ltd (a company created by the Finley Associated Stock Agents (FASA)). FASA will then operate the facility.



While not a perfect solution, the proposed lease balances Council's risk exposure and allows the facility to continue servicing local stock agents and livestock producers.

Background

Berrigan Shire Council (BSC or Council) is the owner of the Finley Saleyards. Finley Saleyards are quite unique as a multi species selling centre where both sheep and cattle are sold. Sheep and cattle are sold on alternate weeks allowing for a sale on almost all weeks of the year.

History

The Finley Saleyards has had an uncertain future since the early 2000s. The main drivers of this are:

- structural changes in the livestock industry, including a move to direct selling and online auctions, and
- a general trend away from livestock production in the local area.

In 2008, the Council divested itself from day-to-day operations of the saleyards, leasing the facility to Scanclear Pty Ltd to operate. As the owner of the facility however, the Council still has a responsibility to ensure the facility is a safe worksite.

In late 2018 Council commissioned an independent report into Work Health and Safety (WHS) issues at the Finley Saleyards. This report (the "Proway" report, attached as Appendix 2 identified existing and potential safety and compliance risks relating to infrastructure and to prioritise options and recommendations to eliminate or mitigate those risks.

Proway also provided estimated costs of the capital expenditure required to address identified work, health and safety issues as well as improved animal welfare opportunities at the Finley Saleyards.

The Proway Report identified 11 items for capital expenditure totalling approximately \$1.585M.

In early 2020, a user of the saleyards made a report to Safe Work NSW asking Safe Work NSW to take steps to ensure the Council addressed the WHS concerns as a matter of urgency. SafeWork NSW provided notice to Council of the need to address the safety issues at the yards immediately and reminded Council of its duty of care.

Following the report to Safe Work NSW, in May 2020 the then General Manager prepared a report for the Council titled, "Finley Saleyards" outlining the significant structural changes in the livestock industry and the substantial costs in addressing identified WHS issues. The General Manager argued that the capital expenditure required would not receive anywhere near a commercial return in an asset that had little prospect of long-term viability.

Importantly this report highlighted the potential for both civil and criminal liability in the event of a WHS incident if Council was seen to have both a Duty of Care and was negligent in that Duty of Care. The legal risk to both Council as an organisation and senior officers was referenced in this report.

The recommendation was to close the Finley Saleyards and terminate the lease with Scanclear. The Council asked the General Manager to provide a report with a plan to address the WHS concerns in a prioritised manner. This report was presented to the Council in June 2020.

The June 2020 report broke down the prioritised works into 3 phases, with Phase 1 and 2 to address identified WHS issues and Phase 3 designed address issues relating to improved amenity of users and improved animal welfare.



It was acknowledged in this report that the 3 Phases of works would prolong the operational life of the saleyards by addressing existing WHS concerns but that a much larger investment would be required to secure the future of the operations indefinitely.

The estimated costs (excl GST) of the three phases were:

- Phase 1: \$565,000
- Phase 2: \$535,000
- Phase 3 \$575,000

The June 2020 report recommended doing Phases 1 and 2 as soon as possible subject to obtaining funding. Council then called for tenders for these works.

The tender results for Phase 1 and 2 works were received in October 2021 and came in substantially higher than budget and the Proway plan. Berrigan Shire Council opted for an item-by-item approach, until funding was available to accommodate the full scope of planned Phase 1 and 2 works.

In late 2020, Council was successful in obtaining funding for some of the Phase 1 and 2 works through the Heavy Vehicle Safety and Productivity Program. This funding has allowed for overhead powerlines to be relocated underground and for three (3) sheep ramps to be replaced. The funding agreement also commits Council to install a double-deck cattle loading ramp. This work has not yet been completed.

In April 2022 Council officers provided a report to the newly elected Council highlighting the risks of investing at least \$1M of Council funds in an asset that had no guarantee of operating in the short term, let alone the longer term.

Council then commissioned RegionallQ to provide a Viability and Options Report, attached as Appendix 3. The report, completed in September 2022, concluded that the preferred option is for Council to run an EOI process to sell the Finley Saleyards while concurrently running an EOI seeking an alternative Lessee/Operator in the event a credible new owner cannot be secured.

Call for proposals

Council accepted this recommendation in a modified form, running a “Call for Proposals” which was released in March 2023. Nine (9) copies of the Call for Proposals document were downloaded from the portal. From those nine, Council received three submissions by the due date.

The panel assessed all three submissions – including an interview with each proponent.

The majority recommendation from the panel was:

The assessment panel by a majority recommend the Finley Associated Stock Agents Inc (FASA) as the preferred proponent.

It is recommended that the DCEO be delegated to further negotiate with the preferred proponent to sell the FSF with final negotiated terms and conditions of the sale to be brought back to Council for decision by July 2023.

A dissenting panel member provided an alternate recommendation that the Council should lease the yards to FASA.

Further investigation by staff relating to the practicalities of a sale of the Finley Saleyards saw the Council move towards offering FASA a 30-year lease rather than a sale.



Between July and the present, Council has sought legal and probity advice regarding the lease and negotiated with both Scanclear (the previous lessee) and FASA. The lease is now ready for signing.

Lease

The draft lease attached as Appendix 1 includes the following key terms.

- A 30-year term
- Rent of \$5,000 per annum
- Tenant to pay all outgoings.
- \$10,000 security deposit.

Council's aim with the lease is to transfer, as far as possible, the risk of operating the Finley Saleyards to the lessee. FASA acknowledge this is Council's objective and are willing to assume this risk, subject to the Council committing to the completion of the cattle ramps funded under HVSP and undertaking some of the outstanding works identified in a work health and safety audit held in June.

The lease also requires the lessee to undertake annual work health and safety audits and promptly address matters that arise.

The lease will terminate should the facility cease to operate as a livestock selling centre.

Relevance to Community Strategic Plan and Other Strategies /Masterplans / Studies

Delivery Plan Action Item 4.1.2.3 states:

Implement strategy to mitigate risk exposure at Finley sale yards

The lease directly addresses this action item.

Issues and Implications

Policy

Council's Risk Management Policy and Framework has been the main driver for Council's actions relating to the Finley Saleyards. Council has looked to mitigate its exposure to risk related to its ownership of the facility.

Financial

The lease binds Council to its remaining obligations under the Heavy Vehicle Safety and Productivity Program (HVSP) – the installation of a new double-deck cattle ramp. In 2019, this was estimated to cost approximately \$130,000. Council is required to fund at least 50% of the cost of this work. This has been factored into the Council's existing budget.

The Council has also budgeted to spend \$500,000 to completely replace the cattle yards as identified in the Proway report, to be funded by borrowings. This work will not now go forward, and the Council will not need to borrow these funds.

Legal / Statutory

Council has extensively explored its legal obligations and requirements in this process.

Legal advice is that the Council is unable to transfer all risk related to its ownership of the facility.



Community Engagement / Communication

While Council has consulted with direct stakeholders, it has not consulted or engaged with the broader community about the issues at Finley Saleyards or the actions required to address them.

Risks

The following risks have been assessed as per the Council's [Risk Management Framework](#):

1. Financial

| | Consequence | | | | |
|------------|-------------|--------|--------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

The proposed sale of the Finley Saleyards had the potential to expose Council to the risk of losing a key parcel of land and receiving a below-market price.

The lease, while not achieving a market return, does allow the saleyards to continue operating while minimising Council's exposure to future financial loss.

A complete redevelopment of the facility to meet modern standards would cost up to \$10m and is difficult to justify on economic grounds.

2. Work Health and Safety

| | Consequence | | | | |
|------------|-------------|--------|--------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

The lease makes it clear that Council is not the operator of the facility and Work Health and Safety risk sits with the lessee. The Council is not able to divest itself completely from public liability risk while it owns the facility.

3. Reputational

| | Consequence | | | | |
|------------|-------------|--------|------|-----------|-----------|
| Likelihood | 1 | 2 | 3 | 4 | 5 |
| A | Medium | High | High | Very High | Very High |
| B | Medium | Medium | High | High | Very High |



| | | | | | |
|---|-----|--------|--------|--------|------|
| C | Low | Medium | High | High | High |
| D | Low | Low | Medium | Medium | High |
| E | Low | Low | Medium | Medium | High |

A decision by Council to close the saleyards would create significant public concern. Sale of the facility would also generate concern about the transfer of a public asset into private hands.

Retention and continued operating of the facility has the potential to expose Council to reputational risk if a serious incident occurred on the site – such as a death or serious and permanent injury.

Options

1. **Council enter into the proposed lease with FASA.** This is the recommended outcome. It balances the Council's exposure to reputational risk and operating risk.
2. **Council close the saleyards permanently.** This would eliminate the operational risks. It would however generate a significant reputational risk. It also has the potential to impact local business and the local economy.
3. **Council return to operating the facility directly.** This is not a viable option. Council does not have the expertise to operate a livestock selling centre effectively and efficiently. It would also expose Council to unacceptable risk.

Conclusions

Managing the risks associated with the Finley Saleyards has been a long and drawn-out process. Council has thoroughly explored all the options open to it – including the permanent closure of the facility.

The end result is not a perfect outcome. It is, however, an acceptable compromise solution where the Council has been able to mitigate much of its risk exposure while still allowing the facility to continue to service local stock agents and livestock producers.



Lease

THIS IS THE ANNEXURE MARKED "A" REFERRED TO IN THE ATTACHED LEASE
BETWEEN BERRIGAN SHIRE COUNCIL ABN 53 900 833 102 (Landlord) AND

[TBC] (Tenant)

AND [TBC] (Guarantor)

Parties

BERRIGAN SHIRE COUNCIL ABN 53 900 833 102
of 56 Chanter Street, Berrigan NSW 2712

("Landlord")

[TBC]
of [TBC]

("Tenant")

[TBC]
of [TBC]

("Guarantor")



Lease

Items

| | |
|----------------|---|
| Item 1 | Land The whole of the land comprised in Folio Identifiers 1/402452, 159/1087013, 158/1087013, 160/752299 and 161/752299. |
| Item 2 | Premises The Land and all improvements located on the Land. |
| Item 3 | Term 30 years |
| Item 4 | Commencement Date [TBC] |
| Item 5 | Expiry Date [TBC] |
| Item 6 | Rent \$5,000.00 (plus GST) per annum |
| Item 7 | Rent payable Payable annually in advance of the Commencement Date and each anniversary of the Commencement Date. |
| Item 8 | Rent Review (a) CPI Review Dates Every 5 th anniversary of the Commencement Date (b) Market Review Dates Not applicable |
| Item 9 | Tenant's Proportion of Outgoings 100% |
| Item 10 | Guarantor [TBC] |
| Item 11 | Permitted Use Use of the Premises as Saleyards for the public sale of sheep and cattle. |
| Item 12 | Further Term Not applicable |



Lease

| | |
|----------------|---|
| Item 13 | Insurances (a) Public Risk Insurance: \$20 million (b) Workers' Compensation for common law liability: \$20 million |
| Item 14 | Address for Notices: Landlord Address: 56 Chanter Street, Berrigan NSW 2712 Email: KarinaE@berriganshire.nsw.gov.au Tenant Address: Email: Attention: Guarantor Address: Email: |
| Item 15 | Bank Guarantee \$10,000.00 [Please advise if the Lessee would prefer to pay a Security Deposit instead of a Bank Guarantee.] |



Lease

Agreed terms

1 Demise and Term

Subject to the terms and conditions of this Lease, the Landlord leases the Premises to the Tenant for the Term at the Rent.

2 Definitions and Interpretation

2.1 Definitions

In this Lease the following words and phrases have the following meanings unless the context requires otherwise.

Authority means any federal, state or local government, semi-government, municipal, statutory or other authority or body charged with the administration of the Law or provider of public utility services, whether statutory or otherwise.

Bank Guarantee means a bank guarantee for the amount specified in Item 17.

Building means any building and all other improvements erected on the Land.

Business Day means a day other than a Saturday, Sunday or public holiday in Albury, New South Wales.

Chair means the chair of the Institute or his or her nominee.

Claim includes any action, claim, demand, proceeding, order, judgment, loss, damage, liability, cost or expense (including legal expense).

Commencement Date means the date specified in 4.

Construction Project has the meaning given to that term in regulation 292 of the WHS Regulations.

Contaminant means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Premises or the surrounding Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) not comply with Environmental Law; or
- (c) not satisfy the contamination criteria or standards published, or adopted, by the relevant environmental authority; and

Contaminate and **Contamination** have corresponding meanings.

Corporation has the meaning given to it by the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means:

- (a) the Consumer Price Index (All Groups) for Sydney published from time to time by the Australian Bureau of Statistics; or
- (b) if the Consumer Price Index is suspended or discontinued, the price index substituted by the Australian Bureau of Statistics or if no price index is substituted, the index which the President decides most closely reflects changes in the cost of living.

CPI Review Date means each date, anniversary date or times specified in Item 8(a).

Current WHS Report means the WHS Summary Report prepared by Read Consulting



Lease

Group for Berrigan Shire Council and dated 5 June 2023 (a copy of which has been provided to the Tenant).

Encumbrance means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; and
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Environment means the physical factors of the surroundings of human beings including the Land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.

Environmental Law means a law relating to the Environment, including any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or water, soil or groundwater contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades, or any other aspect of protection of the Environment or person or Property and includes the Environment Protection Regulations.

Expiry Date means the date specified in Item 5.

Further Term means each further term (if any) specified in Item 12.

Guarantor means the person identified in Item 10 (if any).

Holding company has the meaning given to it by the Corporations Act.

Initial Works means all works detailed in the Current WHS Report required to make the Premises compliant with the WHS Act and WHS Regulations.

Institute means the Australian Property Institute Inc. (New South Wales Division).

Insolvency Event means the happening of any of the following events:

- (a) where the Tenant or Guarantor is a corporation:
 - (i) the Tenant or any Guarantor is insolvent within the meaning of *the Corporations Act 2001* (Cth);
 - (ii) a manager, receiver, receiver and manager, administrator, liquidator, provisional liquidator or agent for a mortgagee is appointed to the Tenant or Guarantor or to any or all of its assets or undertakings;
 - (iii) the Tenant or any Guarantor makes an assignment for the benefit of or enters into any arrangement or composition with the party's creditors;
 - (iv) an application is made to a court for an order that is not set aside, or an order is made, that the Tenant be wound up or dissolved; or
 - (v) execution is levied against the Tenant or Guarantor and is not satisfied within 30 days;
- (b) where the Tenant or any Guarantor, being an individual, becomes bankrupt, commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankruptcy;
- (c) a person is entitled to enforce any security over, including being entitled to the possession or control of, any of the assets of the Tenant or any Guarantor;
- (d) the holder of an Encumbrance or any agent on its behalf, appointing a



Lease

controller or taking possession of any of the person's property; or

- (e) anything which is analogous to or has a substantially similar effect to any of the events specified above occurs.

Land means the land specified in Item 1.

Landlord includes the person from time to time entitled to the reversion.

Landlord's Agents means the employees, agents, contractors and invitees of the Landlord and other persons authorised by the Landlord.

Landlord's Fixtures and Fittings means the fixtures, fittings, furnishings, plant, machinery, equipment and other property in the Premises provided by the Landlord.

Landlord's Works means the installation of a cattle ramp in accordance with Item 3 in the Proway Report (or as otherwise mutually agreed between the Landlord and Tenant).

Law includes any statute, rule, regulation, proclamation, ordinance or by-law (whether present or future).

Lease means this lease and includes the recitals and any schedules, annexures and plans attached to this lease.

Lease Year means the 12 month period used by the Landlord and any proportionate part of that year or period occurring during the Term.

Market Review Date means each date, anniversary date or times specified in Item 8(b).

Market Review Notice means a notice by the Landlord setting out the Landlord's written determination of the current market rent for the Premises from the relevant Market Review Date.

Original Commencement Date means the date the Tenant (or its assignor) first occupied the Premises.

Outgoings means all rates, taxes, charges, impositions, costs, expenses, amounts, fees, insurance premiums incurred or payable by the Landlord in connection with the Premises and/or the Land.

PCBU means a person conducting a business or undertaking as defined in section 5 of the WHS Act.

Permitted Use means the use specified in 11.

Premises means the premises described in Item 2 and includes the Landlord's Fixtures.

PPS Security Interest means a security interest that is subject to the *Personal Property Securities Act 2009* (Cth).

Principal Contractor has the meaning given to that term in regulation 293 of the WHS Regulations.

Proway Report means the "Finley Saleyard Investigation and Report January 2019", a copy of which has been provided to the Tenant.

Pump means the pump between the cattle and sheep yards on Hamilton Street.

Rent means the annual rent specified in Item 6 as reviewed under this Lease.

Review Date means each of the Market Review Date and CPI Review Date (as the case may be).



Lease

Services means the services supplied to the Premises by an authority or the Landlord, including electricity, gas, water, sewerage, security, fire protection, lighting, plumbing and drainage, together with all plant and equipment relating to those services.

Specified Rate means interest at a rate of 3 percent per annum higher than the percentage imposed under rule 36.7 of the *Uniform Civil Procedure Rules 2005*.

Tenant's Agents means the employees, agents, customers, contractors, licensees and invitees of the Tenant and other persons on the Premises with the consent (express or implied) of the Tenant.

Tenant's Contractor means any contractor engaged by the Tenant to perform the Landlord's Works.

Tenant's Property means all plant, equipment, fixtures, fittings, furniture, furnishings and other property (including the Tenant's Works) in, on or fixed to the Premises which is not Landlord's Fixtures and Fittings or Services.

Tenant's Proportion means the proportion specified Item 9.

Tenant's Works means any work in relation to the Premises carried out by or on behalf of the Tenant (including by or on behalf of any sub-tenant or licensee) including without limitation:

- (a) any alteration or addition to the Premises;
- (b) any construction, earthworks, engineering works, electrical works, hydraulic works or demolition works to the Premises;
- (c) the erection of any sign upon the Premises so as to be visible from outside the Premises.

Term means the term specified in Item 4 commencing on the Commencement Date and expiring on the Expiry Date.

Valuer means a valuer having not less than 5 years' experience in valuing premises similar to the Premises and who is a member of the Institute of not less than 5 years standing.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Regulations means the *Work Health and Safety Regulations 2017* (NSW).

Workplace has the meaning given to that term in section 8 of the WHS Act.

2.2 Interpretation

The following rules apply in the interpretation of this Lease, unless the context requires otherwise.

- (a) The headings are inserted only as a matter of convenience and do not affect the interpretation of this Lease.
- (b) The singular includes the plural and vice versa and words of one gender include the other genders.
- (c) Where two or more persons are named as a party to this Lease, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally.
- (d) A reference to any party to this Lease or any other document or arrangement includes that party's successors, substitutes, permitted assigns, executors and administrators.



Lease

- (e) Where a word or phrase is defined, its other grammatical forms have corresponding meanings.
- (f) A reference to a person includes a natural person, corporation, body corporate, unincorporated association, firm or an authority or body (whether it be any government, semi-government, municipal, statutory or other authority or body).
- (g) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, the legislation or legislative provision.
- (h) A reference to any agreement or document is to that agreement or document (and where applicable, any of its provisions) as varied, amended, novated, supplemented or replaced from time to time.
- (i) A reference to include or including means includes, without limitation or including, without limitation, respectively.
- (j) Any reference to time in this Lease is a reference to time in the State of New South Wales.
- (k) If the day on or by which a person must do something under this Lease is not a Business Day, the person must do it on or by the next Business Day.
- (l) A reference to an Item is an Item in the schedule to this Lease.
- (m) Anything includes each part of it.
- (n) The obligations of the Tenant, whether positive or negative, are to be construed as if each obligation is a separate and independent obligation in favour of the Landlord.
- (o) Any obligation of the Tenant under this Lease to do or not to do any act, matter or thing includes a further obligation that it will not permit or allow a breach of such obligation by any other person.
- (p) A reference to a professional body, association or institute includes any succeeding body, association or institute serving the same or similar objects. Any reference to the President of that body, association or institute, includes any person acting in that capacity and, in the absence of a President, the senior officer for the time being or any other person fulfilling the duties of the President.
- (q) The covenants and powers implied by Law are modified (where so permitted) as provided in this Lease.
- (r) All payments made under this Lease must be paid in Australian dollars.

3 Payments of Rent, Operating Expenses and other money

3.1 Rent

From the Commencement Date, the Tenant must pay the Rent by electronic funds transfer or, if required by the Landlord, by direct debit on the days and in the manner specified in Item 7 or such other method as directed by the Landlord, acting reasonably.

3.2 Outgoings



Lease

The Tenant must pay or reimburse the Landlord the Tenant's Proportion of the Outgoings within 30 days of notice from the Landlord by electronic funds transfer to the same account in which Rent is paid to under this Lease.

3.3 Services and removal of waste

- (a) In addition to the Outgoings, the Tenant must pay (or reimburse the Landlord on demand) (without limitation):
 - (i) all charges for the supply of Services consumed in or on the Premises; and
 - (ii) all costs for the removal, collection or disposal of sewerage, waste and other garbage from the Premises; and
 - (iii) all rates, taxes, assessments and other charges that are or may be assessed, charged, levied or imposed on the Premises or that relate to the Premises or arise out of the Tenant's use of the Premises.
- (b) The Tenant acknowledges that the Landlord is the supplier for some Services. If the Lessee does not pay a particular service charge when due, the Landlord may disconnect the supply of that Service from the Premises.
- (c) The Tenant will if required by the Landlord or by an Authority supplying the Service or utility, permit the installation of meters required to measure the quantity of the Service supplied to the Premises.

3.4 Stamp duty and Registration Fees

The Tenant must pay all:

- (a) stamp duty (if any) assessed on this Lease;
- (b) registration fees in connection with the registration of this Lease (if applicable); and
- (c) the Landlord's mortgagee fees for consenting to the registration of this Lease (if applicable).

3.5 Other Costs and expenses

- (a) Each party will be liable for their own legal costs for the negotiation, preparation and execution of this Lease.
- (b) The Tenant must pay or reimburse the Landlord on demand all costs and expenses incurred in connection with:
 - (i) the stamping and registration of this Lease and all documents ancillary to it;
 - (ii) the preparation of any survey plan required to register this Lease (if applicable);
 - (iii) any variation or any surrender or other termination of this Lease except through its expiry including any stamp duty, registration fees or mortgagee's consent fees;
 - (iv) any consent required to or under this Lease (including all mortgagee's costs);
 - (v) any proposed assignment, sublease or other dealing by the Tenant with this Lease, regardless of whether the dealing proceeds;
 - (vi) any breach (whether actual or threatened) by the Tenant of this Lease;



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- (vii) any enforcement or attempted enforcement of this Lease by the Landlord,

3.6 Interest

- (a) The Tenant must pay to the Landlord on demand interest at the Specified Rate on any Rent or other money payable but unpaid after the due date for payment. Interest is calculated from the due date and accrues on a daily basis until paid.
- (b) The Landlord may at its option, capitalise interest (if not paid) calculated up to the end of each calendar month while any money is still outstanding.

3.7 Adjustments, errors

- (a) Where any money the Landlord charges the Tenant is calculated using a time period, and this Lease starts or ends during that time period, the Landlord must make any necessary proportional adjustment.
- (b) Expiry or termination of this Lease does not affect:
- (i) the Tenant's obligations:
 - (ii) to make payments under this Lease for periods before or after then; or
 - (iii) to give information to the Landlord to enable it to calculate those payments; or
 - (iv) the Landlord's obligations to account to the Tenant for any overpayment made in advance.

3.8 Payment without deduction

- (a) The Tenant must make payments under this lease without set-off, counterclaim, withholding or deduction.
- (b) The Landlord need not make demand for any amount payable by the Tenant unless this lease says that the demand must be made.

4 Use of Premises

4.1 Tenant's obligations

The Tenant must:

- (a) only use the Premises for the Permitted Use;
- (b) hold at least one (1) public sale of sheep or cattle per calendar month;
- (c) conduct its activities and business skilfully, diligently and competently;
- (d) obtain, keep current and comply with all consents, permits or approvals required from any Authority to carry on the Permitted Use in the Premises and provide copies to the Landlord upon request;
- (e) at all permitted times, actively carry on business at the Premises in accordance with the Permitted Use;
- (f) carry on the Tenant's business and use of the Premises in a professional and competent way having regard to the best practice of the industry of the Permitted Use;
- (g) comply with all requirements, orders and notices of Authorities and all Laws concerning the Premises, the Permitted Use, the health and safety of the people using the Premises and this Lease;



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- (h) observe any rules made by any Authority;
- (i) comply with all reservations, restrictions and easements affecting the title to the Premises or the Land;
- (j) keep the Premises secure at all times, and comply with any security requirements of the Landlord in relation to the Premises;
- (k) put in place procedures and measures to prevent unauthorised access to the Premises;
- (l) immediately give the Landlord a copy of any notice that it receives from any Authority (other than an account for services provided to the Premises);
- (m) promptly notify the Landlord of any infection, illness or disease occurring in the Premises;
- (n) if it changes any keys to the Premises, immediately provide a copy of the new key to the Landlord; and
- (o) comply with all reasonable directions given by the Landlord and give all assistance reasonably required by the Landlord.

4.2 Prohibitions on Tenant

The Tenant must not:

- (a) allow the Premises to be used for any illegal, immoral, noxious, dangerous or offensive purpose, activity or occupation;
- (b) use or permit the Premises to be used as sleeping quarters or for residence unless the Landlord has first provided prior written consent;
- (c) do anything that might damage the Services or the Landlord's Improvements;
- (d) cause any nuisance, damage, obstruction, annoyance or inconvenience to the Landlord or occupiers of adjoining land;
- (e) bring onto the Premises any firearms or any inflammable, volatile, explosive or dangerous substance, unless the Landlord has first provided prior written consent;
- (f) use the Landlord's Fixtures and Fittings or the Services for anything other than their intended use;
- (g) interfere with, or overload, the Services;
- (h) without the Landlord's prior written consent, affix any radio, antennae, mast or satellite dish to any part of the Premises;
- (i) use any radio, television, amplifier, audio-visual sound or image reproduction equipment in the Premises, which may be heard outside the Premises; or
- (j) cause any environmental damage to the Premises or do anything on the Premises or bring anything onto the Premises which will or may Contaminate the Land.

4.3 Overloading and heavy equipment

- (a) The Tenant must ensure any heavy equipment, forklifts or heavy vehicles bought into the Premises do not damage the road or other surfaces.
- (b) The Tenant must not install any electrical equipment which will overload the cables, switchboards and other equipment that supplies electricity to the Premises.



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4.4 Signs and Advertising

- (a) The Tenant may not install a sign on or near the exterior of the Premises, without the prior written consent of the Landlord, such consent may be withheld by the Landlord in its absolute discretion.
- (b) Any signs or notices installed by the Tenant will be maintained by the Tenant in good repair and condition throughout the term of the Lease.
- (c) The Tenant will comply with any signage policy or standardisation issued by the Landlord from time to time.
- (d) This clause will apply to all signs the Tenant wishes to erect, including any "For Sale", "For Lease" or similar signs.
- (e) If the Tenant fails to comply with paragraph 4.4(b), the Landlord may cause such notices or material to be removed at the Tenant's expense.

4.5 Locks and keys

- (a) The Landlord will provide the Tenant with keys for locks in the Premises. All keys will remain the property of the Landlord.
- (b) Upon expiration or earlier termination of this Lease, the Tenant will surrender to the Landlord all keys to locks within the Premises.

5 Repair, maintenance, alterations and additions

5.1 Tenant's acknowledgment

The Tenant accepts the Premises and Services on an "as is" basis at the Original Commencement Date and shall not be entitled to make any Claim against the Landlord for any repairs, which may result from the state and condition of the Premises.

5.2 Maintenance of Premises

- (a) Subject to clause 5.13, the Tenant must keep and maintain the Premises in good repair and condition (having regard to its condition at the Original Commencement Date).
- (b) Nothing in this clause 5.2 requires the Tenant to repair damage resulting from fair wear and tear unless required because of the Tenant's or the Tenant's Agents repeated use of forklifts or heavy vehicles.

5.3 Initial Works

The Tenant must, within 12 months of the Commencement Date undertake the Initial Works at its sole cost and expense. Clause 5.10 will also apply in relation to the Initial Works.

5.4 Clean, service, repair and replace

- (a) The Tenant must promptly:
 - (i) clean, service, and repair any damage to the Premises, the Land or the Services caused or contributed by the Tenant or Tenant's Agents;
 - (ii) keep the waste pipes, drains and conduits within or servicing the Premises in a clean, clear and free flowing condition meeting any criteria specified by the Landlord, to clear any blockages or undertake repairs;
 - (iii) repair or replace all broken plate glass in the Premises with glass of the same or similar quality; and



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- (iv) remove any graffiti from the Premises and where required by the Landlord repaint the surface in the same manner as originally painted.
- (b) When carrying out repairs in accordance with this clause 5.3, the Tenant must ensure:
 - (i) the work is carried out by appropriately licensed and qualified tradespersons;
 - (ii) the work is completed in high class workmanship and with good quality materials;
 - (iii) fittings and materials of similar style and quality are used to the items being repaired or replaced;
 - (iv) the required consent or approval of the Landlord or any Authority is obtained, and the work is carried out under conditions imposed;
 - (v) in compliance with the requirements under clause 5.8; and
 - (vi) the work is carried out without creating undue noise, nuisance or interference with the use and enjoyment of adjoining or nearby occupiers.
- (c) If the Tenant fails to perform any of its obligations in clauses 5.1 to 5.4 (inclusive) and clause 5.8, the Landlord may enter the Premises to perform those obligations and the Tenant must reimburse the Landlord the costs and expenses of doing so immediately on demand by the Landlord which costs and expenses if unpaid, shall be recoverable from the Tenant as if they were rent in arrears.

5.5 Maintenance of Services

- (a) If there are any Services exclusively servicing the Premises, the Tenant must keep and maintain the Services in good repair and working order; and
- (b) The Tenant and the Tenant's Agents must comply with the Landlord's reasonable instructions regarding the use of the Services and must not interfere with or allow anything to be done which might impair the efficient operation of the Services.

5.6 Cleaning of Premises

The Tenant must:

- (a) keep the Premises in a clean and tidy condition;
- (b) take all proper precautions to keep the Premises free of pests, and, if reasonably required by the Landlord, employ (at the Tenant's cost) pest exterminators; and
- (c) remove all refuse from the Premises regularly and comply with the Landlord's directions regarding refuse disposal.

5.7 Landlord election

If the Tenant fails to undertake and complete any of the repairs or maintenance work required in accordance with clauses 5.2 to 5.4 the Landlord may give notice in writing to require the Tenant to carry out the repairs or maintenance work. If the Tenant fails to comply with the notice given under this clause 5.6 the Landlord may carry out the repairs or maintenance work and recover the cost of carrying out the work from the Tenant on demand.



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5.8 Notice of damage

The Tenant must give the Landlord prompt notice in writing of any damage to, defect or disrepair of the Premises or the Services or of any circumstances likely to endanger or cause any risk or hazard occurring within or adjacent to the Premises or any person or property in or adjacent to the Premises.

5.9 Works, alterations and additions to the Premises

- (a) The Tenant must not carry out any Tenant's Works without the Landlord's prior written consent (which may be withheld in its absolute discretion).
- (b) In seeking the Landlord's consent, the Tenant must submit plans and specifications of the proposed Tenant's Works.

5.10 Carrying out the Tenant's Works

- (a) Where the Landlord consents to the Tenant's Works, the Tenant must comply with:
 - (i) clause 6;
 - (ii) applicable Law and the requirements of any Authority; and
 - (iii) any other conditions imposed by the Landlord.
- (b) Where the Tenant's Works require alterations to the Services the Landlord may elect to carry out those works at the Tenant's Cost.
- (c) In carrying out the Tenant's Works, the Tenant must:
 - (i) carry out the Tenant's Works at its own cost and expense in accordance with the plans and specifications approved by the Landlord;
 - (ii) pay the Landlord on demand for any costs incurred in considering the proposed Tenant's Works, including the fees of building consultants engaged by or on behalf of the Landlord and any costs incurred by the Landlord as a result of the Tenant's Works (including any resulting modification or variation to the Building);
 - (iii) obtain and comply with all approvals and permits required by any Authority for the Tenant's Works, and, on request, provide the Landlord with copies;
 - (iv) carry out the Tenant's Works in a proper and workmanlike manner in accordance with all Laws and the reasonable requirements of the Landlord (including any insurance requirements);
 - (v) allow the Landlord and its employees or agents, at all reasonable times, to enter and inspect the Premises to ascertain if any Tenant's Works undertaken by the Tenant have been carried out in accordance with the plans and specification approved by the Landlord and otherwise in accordance with clause 5.8;
 - (vi) indemnify and keep the Landlord indemnified against any demands, actions, proceedings, judgements, costs losses, claims, expenses, liabilities or loss of rent related to any failure by the Tenant to comply with the provisions of this clause 5.8 or otherwise related to the performance of any Tenant's Works for or on behalf of the Tenant;
 - (vii) ensure that all insurances required by Law or that the Landlord reasonably requires are in place, prior to commencement of the



Lease

Tenant's Works; and

- (viii) immediately remove any works carried out without approval and to restore the Premises to their condition prior to the unauthorised works.
- (d) On the completion of any Tenant's Works, the Tenant must promptly notify the Landlord in writing that the Tenant's Works have been completed to enable the Landlord or the Landlord's Agent to inspect the Tenant's Works to satisfy itself that the conditions of approval have been met. If the Landlord is not satisfied that the Tenant's Works meet the requirements in clauses 5.10(a) and 5.10(b), then the Tenant must comply with any direction of the Landlord to rectify the Tenant's Works.

5.11 Compliance with fire safety regulations

- (a) The Tenant must comply with the fire and safety requirements imposed by:
 - (i) the Landlord; or
 - (ii) the Landlord's insurer; or
 - (iii) as required by any Authority or Law,in relation to the Premises, including by installing further equipment, and upgrading the fire safety facilities in the Premises. The Tenant will also be responsible for the periodic and annual fire safety testing of fire equipment at the Premises at its own cost and must provide the Landlord with a copy of the Annual Fire Safety Statement each year during the Term.
- (b) The Tenant will be liable to the Landlord for the reasonable cost of installations and equipment, which the Landlord may install in the Premises if the Tenant fails to comply with clause 5.10.
- (c) The Tenant must, if a certificate or permit in relation to the fire safety of the Premises is required by an Authority whether on a periodic basis or otherwise as a result of the Tenant's Works, assist the Landlord in providing or obtaining the certificate or permit and pay on demand any costs associated with the obtaining the certificate or permit.

5.12 Landlord's Works

- (a) Subject to subclause (b), the Landlord must undertake the Landlord's Works within *** months of the Commencement Date.
- (b) The Tenant acknowledges and agrees that the Landlord's Works are being completed with the funding provided to Council under the Heavy Vehicle Safety and Productivity Program (HVSPP). If the HVSPP funding is withdrawn (for any reason), Council is not required to undertake the Landlord's Works.

5.13 Pump

Notwithstanding any other provision of this Lease, the Landlord will be responsible for the maintenance and repair of the Pump.

6 Work health and safety

6.1 Appointment of a principal contractor

To the extent any Tenant's Works or any part of the Tenant's Works are a Construction Project, the Tenant must:

- (a) engage one of the Tenant's Contractors as the Principal Contractor for the



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Construction Project under regulation 293 of the WHS Regulations; and

- (b) authorise the Tenant's Contractor appointed as the Principal Contractor for the Construction Project to have management or control of the workplace and to discharge the duties of a Principal Contractor under chapter 6 of the WHS Regulations.

6.2 Obligations of the Tenant

The Tenant must, in respect of the Tenant's Works:

- (c) where clause 6.1 applies, ensure that the Tenant's Contractor appointed as the Principal Contractor for the Construction Project discharges the responsibilities imposed on a Principal Contractor under the WHS Regulations;
- (d) ensure that all of the other Tenant's Contractors comply with their respective obligations under the WHS Regulations;
- (e) at all reasonable times procure that the Landlord be provided with access to such records of the Tenant's Contractor appointed as the Principal Contractor for the Construction Project as may be necessary to establish that contractor's compliance with its obligations under this clause 6;
- (f) ensure that the Tenant's Works are carried out in a manner which ensures that the Landlord satisfies its obligations under the WHS Act and the WHS Regulations; and
- (g) immediately inform the Landlord in writing of all incidents involving injury to any employee or agent of and of the Landlord's Contractors arising during the execution and performance of the Tenant's Works.

6.3 Indemnity

To the extent not prohibited by law, the Tenant indemnifies the Landlord against any damage, expense, loss or liability suffered or incurred by the Landlord arising out of or in connection with the failure by the Tenant to comply with this clause 6.

6.4 PCBU

- (a) The Tenant acknowledges that, during the Term and any period of holding over, it will be the PCBU in relation to the Premises.
- (b) The Tenant must, at all times, ensure that it complies with the WHS Act and WHS Regulations.
- (c) Council may, but is not obligated to, undertake inspections of the Premises (in accordance with clause 11.2) to ascertain if the Tenant has complying with the WHS Act and WHS Regulations.
- (d) For the avoidance of doubt, if the Tenant fails to comply with the WHS Act or WHS Regulations, this will be a breach pursuant to clause 12.

7 Ongoing Audits

7.1 Annual audit

- (a) The Tenant must instruct Read Consulting Group (or such other consultant as agreed with the Landlord) each year to undertake an inspection of the Premises and produce a WHS Summary Report detailing any item, matter or thing at the Premises which is not compliant with the WHS Act or WHS Regulation (**Annual Report**).



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- (b) The Tenant must:
 - (i) within 14 days of each anniversary of the Commencement Date, produce to the Landlord a copy of the Annual Report which (at the date of production to the Landlord) must not be more than one (1) calendar month old; and
 - (ii) within three (3) months of providing the Annual Report to the Landlord, undertake all work detailed in the Annual Report required to make the Premises compliant with the WHS Act and WHS Premises.
 - (c) In relation to any work carried out by the Tenant pursuant to this clause, the work must be completed in accordance with clause 5.10.

8 Tenant's Environmental obligations

8.1 Environmental Law and contamination

- (a) The Landlord will not be required to carry out any environmental remediation within or beneath the Premises or undertake any environmental investigations.
- (b) The Tenant and the Tenant's Agents must:
 - (i) not Contaminate the Premises, or:
 - (A) do anything on the Premises; or
 - (B) bring anything onto the Premises,that may or will Contaminate the Premises, the Land or the Environment;
 - (ii) comply with:
 - (A) the Environmental Law; and
 - (B) the Environmental Strategy; and
 - (iii) obtain all authorisations and approvals required under Environmental Law.
- (c) The Tenant's obligations in this clause 8.1 include, but are not limited to:
 - (i) taking all reasonable and practicable measures to prevent, or if prevention is not reasonable or practicable, to minimise, the generation of pollution, offensive noise and adverse environmental consequences of the Tenant's activities.
 - (ii) acting diligently and in good faith, establishing and monitoring its own appropriate system or systems of monitoring the environmental consequences of its activities and regularly reporting the results to the Landlord, or as frequently as the Landlord may require;
 - (iii) giving the Landlord, at any reasonable time, and after a request in writing, any access reasonably required to the Premises or a document under the control of the Tenant;
 - (iv) complying with such policies, recommendations, directions, notices or orders as may be issued by the Landlord; and
 - (v) co-operating with the Landlord in respect of environmental awareness and training programmes and the implementation of best practice procedures.



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8.2 Remediation

- (a) Where there is a breach of clause 8.1 or under any law then the Tenant must at the Tenant's cost and expense:
 - (i) immediately carry out any work required to remedy the breach;
 - (ii) immediately take steps to contain the Contaminant and minimise the Contamination of the Premises, the Land and the Environment;
 - (iii) remediate the Premises, the Land and the Environment to the extent required to remove any danger posed by the Contaminant; and
 - (iv) following any remediation, restore the Premises, the Land and the Environment to their condition prior to the Contamination.
- (b) If the Tenant fails to:
 - (i) carry out the work within the time required by the Landlord; or
 - (ii) undertake the work to a standard acceptable to the Landlord,the Landlord may immediately enter the Premises to carry out the works and the Tenant must reimburse the Landlord on demand for all costs incurred, on a full indemnity basis.

9 Insurance

9.1 Tenant's insurance

- (a) The Tenant must take out and maintain during the Term (and any holding over period) in the name of the Tenant and noting the interest of the Landlord, any mortgagee of the Land and any other person reasonably nominated by the Landlord:
 - (i) public liability insurance in respect of the Premises, for not less than the amount stated in Item 13(a) for each claim (or such other reasonable amount notified by the Landlord to the Tenant from time to time), extended to include claims, risk and events covered under indemnities provided by the Tenant to the Landlord under this Lease;
 - (ii) any other insurance reasonably required by Law including insurance required under the WHS Act and WHS Regulations; and
 - (iii) other insurances which the Landlord requires for at least the amounts the Landlord reasonably requires.
- (b) In relation to the insurances required under clause 9.1(a), the Tenant must ensure:
 - (i) the insurance is taken out with an independent and reputable insurer, approved by the Landlord, such approval not to be unreasonably withheld;
 - (ii) the insurance is for an amount and contains conditions acceptable to the Landlord or its insurer; and
 - (iii) any policy contains a requirement that the insurer will not cancel or change the insurance without first giving the Landlord 14 days' prior written notice.

9.2 Requirements for payment and notification

- (a) The Tenant must in relation to each of the insurance policies it is required to



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maintain under this Lease:

- (i) pay each premium when due and payable and produce receipts for payment to the Landlord on request;
 - (ii) give the Landlord a copy of the insurance policy and a certificate of currency:
 - (A) on or before the Commencement Date;
 - (B) within 1 month of any policy being renewed; and/or
 - (C) when reasonably requested by the Landlord; and
 - (iii) immediately notify the Landlord if a policy is varied or cancelled or becomes void or voidable.
- (b) If the Tenant fails to pay an insurance premium when due, the Landlord may make the payment and to recover this amount from the Tenant.

9.3 Insurances affected

- (a) The Tenant must not do anything which:
 - (i) would allow any insurance to lapse or vary or cancel it without the Landlord's consent;
 - (ii) could prejudice any insurance of the Premises or property in them; or
 - (iii) could increase the premium for that insurance, without the Landlord's consent.
- (b) If the Tenant does anything that increases the premium of any insurance the Landlord has in connection with the Premises, the Tenant must pay the amount of that increase to the Landlord on demand.
- (c) The Tenant must notify the Landlord immediately if a policy is cancelled or varied or if an event occurs which would prejudice or give rise to a claim under a policy.

9.4 Application of insurance money

If any loss or damage occurs which is covered by any insurance the Tenant is required to maintain under this Lease, the Tenant must:

- (a) promptly apply for the insurance proceeds; and
- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage, and must supplement the proceeds with the Tenant's own money to the extent the proceeds are insufficient.

10 Assignment

10.1 Restriction on dealings with Lease

The Tenant must not assign, transfer, sublet, licence, mortgage, charge, grant any franchise or concession over any part of the business conducted by the Tenant in the Premises, or otherwise deal with, or part with possession of, the Premises (or any part) or this Lease without the Landlord's prior written consent (which may be withheld in its absolute discretion).

10.2 Corporate ownership

- (a) If:



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- (i) the Tenant is a corporation; and
 - (ii) there is any proposed:
 - (A) transfer in the legal or beneficial interest in shares of the Tenant company;
 - (B) allotment of shares in the Tenant company; or
 - (C) changes in the company's articles of association,which would have the consequence of altering the effective control of the Tenant company, it will be considered to be an assignment of this Lease which will require the Landlord's consent in accordance with clause 10.1, as if the parties which would acquire control over the company were assignees of the Lease.
 - (b) For the purpose of considering an application for consent in accordance with clause 10.1:
 - (i) the Tenant must prove to the reasonable satisfaction of the Landlord the persons gaining control over the Tenant company would be respectable, responsible and solvent assignees;
 - (ii) those persons should provide to the Landlord personal guarantees for the performance of lease covenants for the balance of the term of this Lease and during holding over as periodical tenant, on terms similar to the guarantee contained in clause 20.
 - (c) Clause 10.2 does not apply where the Tenant or its holding company (as the case may be) is listed on the Australian Securities Exchange before the proposal and will remain so listed after the proposal is affected.

11 Landlord's rights and obligations

11.1 Quiet enjoyment

Subject to the Tenant complying with this Lease, the Tenant may peacefully enjoy the Premises.

11.2 Right of entry

The Landlord may enter the Premises (with any necessary equipment and people as the Landlord considers appropriate) upon reasonable notice to the Tenant (except in the case of an emergency or where it considers there to be a safety or a security issue, when no notice is required) to:

- (a) inspect or to view the state of repair of the Premises and the Land;
- (b) ascertain that the Tenant is complying with its obligations under this Lease;
- (c) comply with its obligations under this Lease;
- (d) exercise its rights under this Lease;
- (e) carry out maintenance or repairs to the Premises or the Land;
- (f) carry out environmental testing, sampling and monitoring;
- (g) replace, install, maintain, repair or remove any Services; and
- (h) comply with any Law or to satisfy the requirements of any Authority,

but in doing so, the Landlord must take reasonable steps to minimise any disruption to the Tenant.



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11.3 Change in ownership

If a person other than the Landlord becomes landlord under this Lease:

- (a) that person may exercise all the Landlord's rights and will have the benefit of all the covenants by the Tenant under this Lease;
- (b) if required by the Landlord and at the expense of the Landlord, the Tenant will enter into any deed reasonably required by the Landlord with that person; and
- (c) the Landlord will be released from all obligations under this Lease arising after the other person becomes landlord.

11.4 Consent provided by the Landlord

If the Landlord provides consent under this Lease, that consent may be withdrawn by the Landlord at any time the Tenant fails to comply with a condition of the consent.

12 Breach by Tenant

12.1 Breach

The Tenant is in default under this Lease if:

- (a) the Rent or other amount payable under this Lease is unpaid for 14 days after its due date (whether or not demanded by the Landlord);
- (b) the Tenant does not comply with any express or implied obligation under this Lease;
- (c) an Insolvency Event occurs in relation to the Tenant; or
- (d) without the Landlord's prior written consent, the Tenant discontinues its business on the Premises or leaves the Premises unoccupied for 30 days.

12.2 Landlord's right to end Lease

- (a) If the Tenant breaches this Lease as described in clause 10.1, the Landlord may at any time, subject to any prior demand or notice required by Law:
 - (i) re-enter and take possession of the Premises (by force if necessary) and eject the Tenant and all other persons, in which case this Lease will be at an end; or
 - (ii) terminate this Lease by serving written notice of termination, and from the date of the giving of that notice, this Lease will be at an end.
- (b) For the purposes of clause 10.2, the Tenant agrees that 14 days is fixed as the period within which the Tenant must remedy a breach capable of remedy and make reasonable compensation in money.

12.3 Essential Terms

The Tenant agrees that the following obligations under this Lease are essential terms:

- (a) the obligation to pay Rent (clause 3.1) and any other money under this Lease;
- (b) the obligation to pay the Tenant's Proportion of Outgoings (clause 3.2);
- (c) the obligation to use the Premises for the Permitted Use (clause 4.1(a));
- (d) the obligation to conduct at least one (1) sale per month (clauses 4.1(b));
- (e) the obligation to maintain the Premises (clause 5.3);
- (f) the obligation to comply with Environmental Law (clause 8);



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- (g) the obligation to undertake the Initial Works (clause 5.3);
- (h) the obligation to comply with the WHS Act (clause 6);
- (i) the obligation to insure (clause 9);
- (j) the restriction against assignment, subletting and dealings (clause 10);
- (k) the obligation to pay GST (clause 19);
- (l) the obligation to provide security (clause 20); and
- (m) the Tenant's obligations under clause 23.

Any other obligation of the Tenant under this Lease may also be an essential term.

12.4 Repudiation

The Landlord may treat the Tenant's breach of an essential term as a repudiation of this Lease and may terminate this Lease for repudiation.

12.5 Landlord's loss of bargain

Where the Landlord terminates this Lease under clauses 12.2 or 12.4, the Tenant must pay the Landlord for all amounts in connection with the breach or repudiation and the termination of this Lease, including:

- (a) legal costs on a full indemnity basis; and
- (b) the Landlord's loss of the benefit of the Tenant performing its obligations under this Lease from the date of termination until the Expiry Date.

12.6 Damages

The Landlord's entitlement to recover damages from the Tenant or any other person is not limited or affected by any of the following:

- (a) the abandonment or vacation of the Premises by the Tenant;
- (b) the Landlord's election to re-enter the Premises or determine this Lease;
- (c) the Landlord's acceptance of the Tenant's repudiation; or
- (d) the parties' conduct constituting a surrender by operation of law.

12.7 Landlord may remedy breaches

If the Tenant does not pay any money or perform any obligation required under this Lease after 14 days' written notice by the Landlord to the Tenant (or any lesser period if required by Law or in the case of an emergency), then the Landlord may (but is not obliged to) remedy that breach. The Tenant must pay or reimburse the Landlord on demand for its costs and expenses incurred in connection with remedying the breach.

12.8 Landlord's rights

The exercise by the Landlord of any right under this clause 12 does not prejudice any other right or Claim the Landlord has or may have, whether under this Lease, at law or otherwise.

13 Destruction or damage

13.1 Destruction or damage

- (a) If the Premises is damaged or destroyed so that the Premises are unfit or substantially unfit for the Tenant to occupy and use or are inaccessible or substantially inaccessible, then within 6 months after the destruction or damage occurs, the Landlord must give the Tenant a notice either:



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- (i) terminating the Lease on a date that is at least 1 month after the date the Landlord gives the notice; or
 - (ii) stating that the Landlord intends to repair the Premises so that the Premises are accessible, and the Tenant can occupy and use them.
- (b) If the Landlord gives a notice under clause 13(a)(ii) but does not carry out the intention stated in it within a reasonable time in all the circumstances, the Tenant can give the Landlord a notice that the Tenant intends to terminate this Lease if the Landlord does not do whatever is necessary to make the Premises accessible and fit for the Tenant to occupy and use within a reasonable time after the Tenant gives its notice.
- (c) If the Landlord does not comply with clause 13.1(a) or with the Tenant's notice under clause 13.1(b), the Tenant can terminate this Lease with not less than 1 months' notice to the Landlord.
- (d) Clauses 13.1(b) and 13.1(c) do not apply if the destruction or damage has been caused (in whole or in part) by the act, omission, negligence or default of the Tenant or the Tenant's Agents.

13.2 Reduction or abatement of Rent

- (a) The Tenant is not required to pay instalments of Rent, or Outgoings for the period during which the Premises are wholly unfit for the Tenant to occupy and use or are inaccessible.
- (b) Where the Premises are unfit or substantially unfit for use and occupation by the Tenant, the Rent and Outgoings will abate in proportion to the nature and extent of the damage and destruction for the period during which the Premises are substantially unfit for the Tenant to occupy and use.

13.3 Damage caused by Tenant

Despite the provisions of clause 13.2, the Tenant must not stop paying or reduce instalments of Rent or Outgoings and other payments due under this Lease or terminate this Lease if:

- (a) an insurer refuses to pay a claim on any insurance in connection with the Land due to the act, omission, negligence or default of the Tenant or the Tenant's Agents, or
- (b) the destruction or damage is caused or contributed to by, the act, omission, negligence or default of the Tenant or the Tenant's Agents.

13.4 No claim on termination

Subject to clause 24.11, neither party can take action against or claim damages or compensation from the other because this Lease is terminated under this clause 13.

13.5 No obligation to rebuild or repair

The Landlord is not obliged by this clause 13 to rebuild or repair the Premises.

13.6 Dispute

- (a) If any dispute arises under clause 13, that dispute is to be referred to a Valuer appointed by the President on request of either the Landlord or the Tenant.
- (b) The Valuer must act as an expert and not an arbitrator, and the determination of the Valuer will be final and binding on the parties.
- (c) The parties will equally share the costs of the Valuer's determination.

14 Holding over



Lease

If the Tenant continues in occupation of the Premises after the Expiry Date with the Landlord's consent, it does so as a monthly tenant:

- (a) at a rent which is one twelfth of the Rent applying at the Expiry Date increased by 10% over the monthly instalments of Rent payable in the year immediately preceding the Expiry Date;
- (b) with all other payments as provided in this Lease proportionate to the period of overholding;
- (c) under a tenancy which may be ended upon 1 month's written notice by either party expiring on any day; and
- (d) otherwise on the same terms and conditions as this Lease, with any changes necessary to make this Lease appropriate to a monthly tenancy.

15 Indemnities

15.1 Tenant's risk

The Tenant occupies the Premises at its own risk.

15.2 Release of Landlord

To the extent permitted by law, the Tenant releases the Landlord from any Claim arising (directly or indirectly) from, or incurred in connection with:

- (a) any damage, loss, injury or death to or of any person or property on or near the Premises or the Land;
- (b) the Landlord doing anything the Landlord is permitted or obliged to do under this Lease;
- (c) any damage or loss to the Tenant in connection with the Premises or its use or occupancy of the Premises; and
- (d) any Service not being available or not working properly, except to the extent caused by the negligence of the Landlord.

15.3 Indemnity by Tenant

The Tenant is liable for and must indemnify the Landlord against any Claim for which the Landlord is, or may be, or becomes liable in respect of or arising (directly or indirectly) from:

- (a) any damage, loss, injury or death to or of any person or property caused or contributed to by the Tenant or the Tenant's Agents;
- (b) anything occurring on, originating in, or coming from the Premises, the Building or the Land, however it is caused;
- (c) the Tenant's default under this Lease;
- (d) the Tenant's use or occupation of the Premises;
- (e) the negligent use or misuse of the Services or the Landlord's Fixtures and Fittings by the Tenant or the Tenant's Agents;
- (f) the termination of this Lease (including the Landlord's loss of the benefit of the Tenant complying with the Tenant's obligations under this Lease from the date this Lease is terminated until the Expiry Date), if the Landlord terminates this Lease:



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- (i) because of the Tenant's default;
- (ii) because of the Tenant's repudiation of this Lease; or
- (iii) under clause 13 in circumstances where clause 13.1 applies, including the Landlord's loss of the benefit of the Tenant complying with the Tenant's obligations under this Lease from the date this Lease is terminated or repudiated until the Expiry Date; and
- (g) the failure of the Tenant to notify the Landlord of any defect in the Premises or the Services.

16 Rent review

16.1 Market Review of Rent

- (a) The Landlord may give the Tenant a Market Review Notice at any time before or after the Market Review Date. The Landlord is not obliged to give a notice under this clause.
- (b) The amount stated in the Market Review Notice is the Rent applicable from the Market Review Date unless the Tenant gives the Landlord written notice within 30 days that it does not agree with the amount together with its rationale and comparable rents to substantiate its disagreement. Time is of the essence under this clause 16.1(b).
- (c) If the Tenant gives a written notice under clause 16.1(b) and the Landlord and the Tenant do not agree on the Rent applicable from the relevant Market Review Date within 30 days of service of the Tenant's notice (or longer if mutually agreed), then;
 - (i) the Landlord and Tenant must jointly appoint a Valuer to determine the current market rent; or
 - (ii) if the Landlord and Tenant cannot agree on the Valuer to be jointly appointed, either party may within a further seven days, request the Chair to appoint a Valuer to determine the current market rent within 30 days.
- (d) If neither party makes the request within that time, then the Rent is as stated in the Landlord's Market Review Notice.
- (e) If the nominated Valuer fails, refuses or is unable to determine the current market rent within the time required, then either or both parties may request the Chair to appoint another Valuer.

16.2 Criteria for Valuer's determination

A Valuer appointed under clause 16.1 must determine the current market rent of the Premises as at the relevant Market Review Date, and in making the determination must:

- (a) act as an expert and not as an arbitrator;
- (b) to the extent the Valuer considers relevant, consider any written submissions by the Landlord or the Tenant (without being bound by them);
- (c) have regard to current market rents for comparable premises, or for premises with comparable Permitted Uses;
- (d) take into account:
 - (i) the terms and conditions of this Lease;



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- (ii) the permitted use of the Premises;
- (iii) on the basis that:
 - (A) the Premises are vacant and available and fit for immediate occupation and use by the Tenant; and
 - (B) the Tenant's Lease covenants and obligations have been fully performed at the Market Review Date;
- (iv) the value of the Landlord's Fixtures and Fittings and any improvements made by the Tenant to the Premises which the Tenant is not entitled to remove at the end of the Lease; and
- (v) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and having regard to the provisions of any Further Term;
- (e) make the Valuer's determination on the basis that the Premises are offered with vacant possession by a willing sub-landlord to a willing sub-tenant and assume that the Landlord and the Tenant have performed all their obligations under this Lease; and
- (f) not take into account:
 - (i) the value of any goodwill attributable to the Tenant's business;
 - (ii) any improvements or fixtures erected or installed at the Tenant's expense which the Tenant is permitted or required to remove at the termination of this Lease, except for permanent structural improvements to the Premises installed at the Tenant's expense which the Tenant is not permitted to remove at the termination of this Lease, which shall be taken into account;
 - (iii) that the Tenant has been in occupation of the Premises;
 - (iv) any condition of the Premises resulting from the Tenant's breach of this Lease; and
 - (v) any rent incentive or reduction, rent-free period or other incentive or benefit applicable to the Tenant's occupation of the Premises under this Lease, or to any other tenants of any comparable premises, or customarily or likely to be offered to tenants.

16.3 Conduct of Market Rent Review

- (a) The Valuer must act as an expert and not as an arbitrator.
- (b) Each party may submit to the Valuer written valuations and submissions within 21 days after the Valuer has accepted the nomination to act. Each party must deliver to the other party a copy of their submission to the Valuer.
- (c) The Valuer will take into consideration any written submissions received within those periods, but is not fettered by them and may determine the current market rent in accordance with his or her own judgment.
- (d) The Valuer's determination is final and is binding on the parties.
- (e) The Valuer must conclude the determination and shall inform the parties of it within 30 days after accepting the nomination to act and must provide detailed written reasons for the determination.

16.4 Costs of Valuer's determination

The costs of the Valuer's determination of the current market rent under clauses 16.2



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and 16.3 must be borne equally by the Landlord and the Tenant.

16.5 CPI Review of Rent

Where Item 8(a) specifies any CPI Review Date, the Rent must be reviewed on the CPI Review Date in accordance with the following formula:

$$R = \frac{A \times B}{C}$$

where:

- R = the Rent applicable from the relevant CPI Review Date;
- A = the Rent payable immediately before the relevant CPI Review Date;
- B = the CPI last published before the relevant CPI Review Date; and
- C = the CPI last published 12 months before the relevant CPI Review Date.

16.6 Rent Review – general provisions

- (a) Despite any provision to the contrary, if the Rent determined under this clause 16 is less than the Rent payable immediately before the relevant Review Date, then the Rent payable from the Review Date does not change.
- (b) Any review of Rent under this clause 16 will be effective from the relevant Review Date. Until the Rent to apply from a Review Date is agreed or determined, the Tenant must continue to pay the Rent payable immediately before the relevant Review Date, and any necessary adjustment must be made not later than 14 days after the Rent is agreed or determined.

17 Further term

17.1 Tenant's right to further Term

Subject to clause 17.2, if a Further Term is specified in Item 12 and the Tenant notifies the Landlord not more than 6 months nor less than 3 months before the Expiry Date that it requires a further lease, the Landlord will renew this Lease for the Further Term.

17.2 Landlord may refuse renewal

The Landlord may refuse to renew this Lease if:

- (a) the Tenant has not remedied any breach of this Lease at the date of the notice or on the Expiry Date;
- (b) the Tenant has persistently breached this Lease; or
- (c) the Tenant does not comply with clause 17.4 (if applicable).

17.3 Renewed Lease

The new lease will be on the same terms and conditions as this Lease except that:

- (a) it will commence on the day after this Lease expires;
- (b) Item 9 must be changed to show the initial rent for the Further Term as calculated in accordance clauses 16.1 to 16.4 as if the commencement date of the Further Term was a Market Review Date.
- (c) the Landlord may make any changes to:
 - (i) reflect any variations made to this Lease during the Term;
 - (ii) include any term which the Landlord reasonably requires due to any



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- change in the Law; and
 - (iii) otherwise make the renewed lease applicable to the Further Term, including making any necessary changes to the Schedule (including amending Item 4, Item 5, Item 6, Item 7 and Item 10 to reflect the new terms of the renewed lease); and
 - (d) amend Item 14 to remove the Further Term that is the subject to the renewed lease and omit any provision for renewal in the case of the last Further Term.

17.4 Guarantee

If this Lease is guaranteed by a guarantor, then, renewal of this Lease is conditional on the Tenant must procuring the guarantor (or any alternative guarantor approved by the Landlord) to enter into a new guarantee and indemnity in a form required by the Landlord (acting reasonably) for the performance of the Tenant's obligations under the renewed lease.

18 Tenant's obligations at end of Lease

18.1 Removal and reinstatement

- (a) The Tenant must on the date being the earlier of:
 - (i) the Expiry Date; or
 - (ii) the earlier determination of this Lease, remove:
 - (iii) (subject to clause 18.2) the Tenant's Property and make good any damage caused by the removal of Tenant's Property or other property from the Premises;
 - (iv) any structural works made or installed by the Tenant in the Premises during this Lease, unless the Landlord notifies the Tenant to the contrary; and
 - (v) all signs and notices erected or affixed by the Tenant to the Premises.
- (b) The Tenant must thoroughly clean the Premises, including removing all rubbish and other waste material brought onto the Premises or the Land by the Tenant or the Tenant's Agents.

18.2 Further conditions in relation to removal and reinstatement

The Tenant must not remove Tenant's Property which:

- (a) as a condition for giving consent to works the Landlord has said cannot be removed;
- (b) is part of structural works the Tenant has done to the Premises and the Landlord gives the Tenant a notice to remove it; or
- (c) the Landlord and the Tenant have agreed that the Tenant shall not remove.

18.3 Consequences of failure to remove and reinstate

- (a) If the Tenant does not remove the Tenant's Property and undertake the other works required in accordance with this clause 18 the Landlord can (without limitation):
 - (i) treat the Tenant's Property as abandoned, in which case it becomes the property of the Landlord and the Landlord can deal with it in any way it sees fit at the Tenant's expense; or



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- (ii) undertake the works on behalf of the Tenant at the Tenant's expense.
- (b) The Tenant must continue to pay the Landlord the Rent and Outgoings until:
 - (i) the works required under this clause 18 have been completed; or
 - (ii) all other works have been completed with the exception of the removal of the Tenant's Property and the Landlord has elected to treat the Tenant's Property as abandoned,whichever happens last.

19 GST

19.1 Interpretation

Words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) have the same meaning in this clause 19.1 unless the context makes it clear that a different meaning is intended.

19.2 Amounts exclusive of GST

Unless indicated otherwise, all amounts payable under this Lease are exclusive of GST.

19.3 Increase of consideration

If a party under this Lease makes a taxable supply, then the recipient of the taxable supply must also pay to the supplier, at the same time as the consideration is paid or payable to the supplier, an additional amount equal to any GST payable in respect of that taxable supply, subject to the supplier first issuing a tax invoice to the recipient in respect of the taxable supply.

19.4 Reimbursement

A party's obligation to reimburse another party for an amount paid or payable to a third party includes the GST paid or payable to the third party, except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

20 Bank Guarantee

20.1 Provision of bank guarantee

- (a) The Tenant must give the Landlord a Bank Guarantee on or before the Commencement Date.
- (b) The Bank Guarantee must:
 - (i) be issued by a bank approved by the Landlord;
 - (ii) contain an unconditional undertaking to pay the Landlord on demand and any other terms reasonably required by the Landlord; and
 - (iii) not contain an expiry date.

20.2 Drawing on bank guarantee

- (a) The Landlord may (without notice to the Tenant, even in the event of a dispute) call on the Bank Guarantee, if in the sole opinion of the Landlord, acting in good faith, the Tenant is in default of this Lease.
- (b) If the Landlord draws on the bank guarantee or the Rent is increased, then the Tenant must immediately, on demand, deliver to the Landlord a replacement



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or additional bank guarantee so that the amount guaranteed is the amount specified in Item 15.

20.3 Return of Bank Guarantee

Within a reasonable time of the Landlord receiving a written request from the Tenant after the expiration or sooner determination of this Lease, the Landlord must refund to the Tenant that part of the Bank Guarantee not required to remedy any breach by the Tenant under this Lease.

20.4 Transfer of bank guarantee

- (a) If the Landlord transfers its interest in the Premises and hands over the bank guarantee to the transferee, the Landlord is released from all obligations to the Tenant in relation to the bank guarantee.
- (b) If requested by the Landlord, the Tenant must promptly give the transferee a replacement bank guarantee in favour of the transferee. If the Tenant does not provide the replacement bank guarantee within 7 days of the Landlord's request, the Landlord may draw on the bank guarantee and hand over the proceeds to the transferee to hold as a security deposit instead of the bank guarantee, until the Tenant provides the replacement bank guarantee to the transferee.

21 Guarantee

- (a) In consideration of the Landlord agreeing to enter into this Lease at the Guarantor's request, the Guarantor gives the guarantee and indemnity in this clause 21 (**guarantee and indemnity**). The Guarantor acknowledges receipt of valuable consideration from the Landlord for the Guarantor incurring obligations and giving rights under this clause 21.
- (b) The Guarantor acknowledges that if more than one person is identified as the Guarantor in Item 10 that expression refers to them, and the obligations of the Guarantor under this guarantee and indemnity bind them, jointly and severally.
- (c) The Guarantor unconditionally and irrevocably guarantees to the Landlord that the Tenant will comply on time with the Tenant's obligations:
 - (i) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
 - (ii) in connection with the Tenant's occupation of the Premises, including the Tenant's obligations to pay money. The Guarantor must comply with all obligations or pay all money on demand.
- (d) As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Landlord against and agrees as principal debtor to pay to the Landlord on demand a sum equal to any liability, loss, claim, damages, costs and expenses arising from or incurred in connection with any one or more of the following:
 - (i) the Tenant's breach of this Lease;
 - (ii) the Tenant's occupation of the Premises;
 - (iii) a representation or warranty by the Tenant in this Lease being incorrect or misleading when made or at any time before this Lease expires or is terminated (whichever is the earlier);
 - (iv) a liquidator or trustee in bankruptcy disclaiming this Lease; or



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- (v) this Lease not binding the Tenant.

It is not necessary for the Landlord to incur expense or make any payment before enforcing its right of indemnity.

- (e) The Guarantor must pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is calculated on daily balances at the Specified Rate.
- (f) The Guarantor cannot insist that the Landlord commences proceedings or enforces any other right against the Tenant or any other person before claiming under this guarantee and indemnity.
- (g) This guarantee and indemnity is a continuing security and is not discharged by any one payment and cannot be terminated by the Guarantor. It continues until all of the Guarantor's obligations under it are complied with or the Landlord releases the Guarantor in writing.
- (h) The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Landlord under this guarantee and indemnity are not affected by anything which might otherwise affect them including any one or more of the following:
- (i) the Landlord granting time or other indulgence to, compounding or compromising with or releasing the Tenant or any other Guarantor;
 - (ii) acquiescence, delay, acts, omissions or mistakes on the part of the Landlord;
 - (iii) any transfer of a right of the Landlord;
 - (iv) the termination, surrender, expiry, variation or assignment of this Lease or any subletting or licensing of the Premises or extension, renewal, reduction or conversion of the Term;
 - (v) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
 - (vi) any change in the Tenant's occupation of the Premises;
 - (vii) this Lease not being registered;
 - (viii) this Lease not being effective as a lease;
 - (ix) this Lease not being effective as a lease for the Term;
 - (x) this Lease not binding the Tenant;
 - (xi) any person named as Guarantor not executing or not executing effectively this Lease as Guarantor; or
 - (xii) a liquidator or a trustee in bankruptcy disclaiming this Lease.
- (i) The Guarantor cannot:
- (i) raise a set-off or counterclaim available to it or the Tenant against the Landlord in reduction of its liability under this guarantee and indemnity;
 - (ii) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Landlord in connection with this Lease;
 - (iii) make a claim or enforce a right against the Tenant or its property; or



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- (iv) prove in competition with the Landlord if a liquidator, provisional liquidator, receiver, manager, receiver and manager, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer or trustee in bankruptcy is appointed in respect of the Tenant or any of its assets or the Tenant is otherwise unable to pay its debts when they fall due,

until all money payable to the Landlord in connection with this Lease or the Tenant's occupation of the Premises is paid and all of the Guarantor's obligations are satisfied or discharged.
- (j) If a claim that a payment to the Landlord in connection with this Lease or this guarantee and indemnity is void or voidable (including a claim under Laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Landlord is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.
- (k) The Guarantor must pay or reimburse the Landlord on demand for:
 - (i) all expenses or costs reasonably incurred or charged (including legal fees or an equivalent administration fee, costs and disbursements) in connection with negotiating and preparing this guarantee and indemnity, and any subsequent consent, agreement, approval, waiver or amendment relating to this guarantee and indemnity;
 - (ii) all expenses incurred (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this guarantee and indemnity; and
 - (iii) all stamp duties, fees, taxes and charges and any related fines and penalties in connection with this guarantee and indemnity, the performance of this guarantee and indemnity and each transaction effected by or made under this guarantee and indemnity.
- (l) Money paid to the Landlord by the Guarantor must be applied first against payments due under clause 21(k) then against other obligations under this guarantee and indemnity.
- (m) The Landlord can assign its rights under this guarantee and indemnity.

22 Appointment of attorney

- (a) The Tenant irrevocably appoints the Landlord and each officer of the Landlord jointly and severally as its attorney to:
 - (i) complete this Lease;
 - (ii) at the cost of the Tenant, do anything that the Tenant must or may do under this Lease if the Landlord considers that the Tenant has not done it or has not done it properly;
 - (iii) do anything that the attorney considers is necessary or desirable to remedy any breach of this Lease by the Tenant; and
 - (iv) execute a transfer or surrender of this lease or a withdrawal of any caveat, after the Tenant has breached this Lease.
- (b) The attorneys may appoint and remove substitutes and may delegate their



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powers (including this power of delegation) and revoke any delegation.

23 Personal Property Securities Act

23.1 Definitions

In this clause 23:

- (a) **Landlord PPS Items** means any item of personal property which
 - (i) is owned or leased by the Landlord; and
 - (ii) is situated on the Premises at any time during the term of this Lease;
- (b) **PPS Act** means the *Personal Property Securities Act 2009* (Cth) and includes any regulations under that Act.
- (c) **Tenant PPS Items** means any item of personal property which:
 - (i) is owned or leased by the Tenant;
 - (ii) is situated on the Premises at any time during the term of this Lease; and
 - (iii) the Landlord can require the Tenant to transfer ownership in to the Landlord, or the Tenant is required to transfer ownership in to the Landlord, before or after the end of the term of this Lease,but does not include any Landlord PPS Items; and
- (d) words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

23.2 Tenant obligations

The Tenant:

- (a) charges its interest in all Tenant PPS Items situated on the Premises from time to time in favour of the Landlord, as security for the performance of the Tenant's obligations under this Lease, including the Tenant's obligations to transfer ownership in the whole or any part of the Tenant PPS Items to the Landlord; and
- (b) acknowledges and agrees that the charge granted by the Tenant under clause 23.2(a) constitutes the grant of a PPS Security Interest which the Landlord is entitled to register under the PPS Act.

23.3 Landlord's rights

The Landlord may, by notice to the Tenant at any time, require the Tenant to take all steps, provide information (including serial numbers) or do any other thing that the Landlord considers necessary or desirable to:

- (a) ensure that this Lease (or any related document or any PPS Security Interest arising under it), is enforceable against the Tenant or any third party;
- (b) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Landlord under this Lease (or any related document); or
- (c) overcome any defect or adverse effect arising from the PPS Act on the Landlord's security position or the rights or obligations of the Landlord under or in connection with this Lease or any encumbrance or document contemplated by this Lease.

23.4 Tenant warranty



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The Tenant:

- (a) warrants that it has not created a PPS Security Interest in respect of any Landlord PPS Items on or prior to execution of this Lease; and
- (b) must not create a PPS Security Interest in respect of any Landlord PPS Items or Tenant PPS Items in favour of any person other than the Landlord without the Landlord's prior written consent.

23.5 Tenant acknowledgement

The Tenant acknowledges and agrees that on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered PPS Security Interest to sign) any document that the Landlord considers necessary or desirable under or as a result of the PPS Act to discharge any registered PPS Security Interests under the PPS Act in relation to the Tenant PPS Items and the Landlord PPS Items.

24 Miscellaneous

24.1 Landlord's consent

Where any provision in this Lease requires the Landlord's consent or approval, then unless the provision expressly provides otherwise, the Landlord's consent:

- (a) must be in writing; and
- (b) may be withheld in the Landlord's absolute discretion or given conditionally or unconditionally.

24.2 Tenant's Agents

The Tenant must ensure that the Tenant's Agents comply with this Lease.

24.3 Landlord's Agents

The Landlord may exercise any of its rights and powers under this Lease using the Landlord's Agents.

24.4 Tenant's obligations

If the Tenant is obliged to do anything under this Lease, it must do so at its own cost and at its own risk.

24.5 Notices

- (a) Any notice given under this Lease:
 - (i) must be in writing signed by or on behalf of the party giving it;
 - (ii) will be effectively signed on behalf of a party if it is signed by that party or any of its officers (where the sender is a corporation), its solicitor or its duly constituted attorney, or in the case of the Landlord, by its managing agent;
 - (iii) must be written in English; and
 - (iv) may be served by being:
 - (A) delivered personally, or sent by pre-paid mail, to the address of the other party specified in Item 14, or the registered office or place of business or residence of the other party last known to the sender;
 - (B) emailing it to the email address of the other party specified in Item 14.



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- (b) A notice will be considered received:
- (i) if delivered, on delivery;
 - (ii) if sent by pre-paid post, 3 Business Days after posting (if posted within Australia to an address in Australia) or 7 Business Days after posting (if posted to or from a place outside Australia);
 - (iii) if sent by email, on the first to occur of:
 - (A) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address specified in Item 16;
 - (B) the time that the notice enters an information system which is under the control of the recipient; and
 - (C) the time that the notice is first opened or read by the intended addressee,
 - (D) but, if the sender receives an out of office reply that states the recipient is out of the office until a later date, the notice will only be taken to be given on that later date.

If a notice is delivered or received by fax or email on a day that is not a Business Day or after 5pm on a Business Day, the notice will be considered delivered or received on the next Business Day.

24.6 Waiver

- (a) A right may only be waived in writing, signed by the party giving the waiver. A waiver by a party of any breach or a failure to enforce or to insist upon the observance of a provision of this Lease will not be a waiver of any other or of any subsequent breach.
- (b) The Landlord's demand or acceptance of any arrears or late payment of Rent, or other money under this Lease does not preclude the Landlord from exercising any rights or remedies under this Lease nor operates as a waiver of the essentiality of or the Tenant's continuing obligation to make those payments.

24.7 Applicable law

- (a) This Lease is governed by and construed in accordance with the laws of the State of New South Wales and the Commonwealth of Australia and the parties irrevocably submit to the jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.
- (b) Under this Lease:
 - (i) the covenants, powers and provisions implied in leases by sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* do not apply;
 - (ii) if any of the forms of words in the first column of Part 2 of Schedule 4 to the *Conveyancing Act 1919* are used, they do not imply a covenant under section 86 of that Act; and
 - (iii) Part 4 of the *Civil Liability Act 2002* does not apply to any Claims by the Landlord against the Tenant.
- (c) If the Landlord's rights under this lease are adversely affected by any present or future legislation that varies the Tenant's rights or obligations under this Lease, then so far as the law allows, that legislation is excluded.



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24.8 Severance

If any part of this Lease is invalid, unenforceable, illegal, void or voidable for any reason, this Lease will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this Lease or read down to the extent necessary to overcome the difficulty.

24.9 Co-operation

Each party must do anything (including execute any document) to give effect to this Lease and to the transactions contemplated by it and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this Lease.

24.10 Continuing obligations

The expiration or termination of this Lease does not operate to terminate any of the continuing obligations under this Lease and such obligations will remain in full force and effect and be binding on the party concerned.

24.11 Indemnities

- (a) If a party is required to indemnify another party under this Lease, that party must pay on demand the amount the other party is liable to pay by the time the other party is required to make payment.
- (b) Nothing in any indemnity in this Lease derogates from or limits the rights of the Landlord to seek recovery of damages or exercise any rights or remedies the Landlord has under this Lease, at Law or otherwise.

24.12 Entire agreement

This Lease contains the entire agreement between the parties and supersedes any other communications, negotiations, arrangements and agreements between the parties, whether oral or in writing, in connection with the subject matter of this Lease.

24.13 Counterparts

This Lease may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

24.14 Attorneys

Each person who executes this Lease on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

24.15 Exclusion of statutory provisions

Any legislation that reduces or limits an obligation of the Tenant or adversely affects the exercise by the Landlord of a right or remedy, under or relating to this lease is excluded to the extent permitted by law.

24.16 Suitability of the Premises

The Tenant acknowledges that it has entered into this Lease solely on the basis of the terms and conditions of this Lease, and that no other promises, representations, warranties or undertakings have been given by or on behalf of the Landlord, including in relation to the:

- (a) suitability of the Premise for any purpose;
- (b) use to which the Premises may be put; or
- (c) nature, adequacy and quality of any Services or the Landlord's Fixtures and



Lease

Fittings.

24.17 Expiry or termination

Expiry or termination of this Lease does not affect any party's rights in respect of a breach arising before the expiry or termination.

24.18 No caveat

The Tenant must not lodge a caveat on any title to the Land or allow a caveat lodged by a person claiming through the Tenant to be lodged against or remain on any title to the Land.

25 Electronic Execution

25.1 Counterparts

This Lease may be executed in one or more counterparts. The parties agree to accept the exchange of electronic counterparts of this Lease.

25.2 Electronic Execution

- (d) A party may sign electronically a soft copy of this Lease through DocuSign, and bind itself accordingly. This will satisfy any statutory or other requirements for this Lease to be signed by that party. The parties intend that:
 - (i) any soft copy so signed will constitute an executed original counterpart, and any print-out of the copy with the relevant signatures appearing will also constitute an executed original counterpart.
 - (ii) where a party prints out this Lease after all parties that are signing electronically have done so, the first print-out by that party after all signatories who are signing through DocuSign will also be an executed original counterpart of this Lease.
- (e) Each signatory confirms that their signature appearing in this Lease, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

26 Landlord Discretion

26.1 Council's discretion

- (a) Nothing in this Lease operates to restrict or otherwise affect the unfettered discretion of the Landlord in exercising its rights, powers, duties and obligations as a public authority under the law in relation to the subject matter of this contract or otherwise.
- (b) If there is any conflict between the unfettered discretion of the Landlord and the exercise of its rights, powers, duties and obligations as a public authority on the one hand, and the satisfaction or performance of the Landlord's obligations under this contract, on the other, the former will prevail.
- (c) Anything which the Landlord does, fails to do or purports to do under its discretion to exercise its powers as a public authority:
 - (i) will be deemed not to be an act or omission by the Landlord under this Lease; and
 - (ii) will not entitle the Tenant to make any claim against the Landlord



Lease

under this contract for any costs, losses, expenses or damages.

26.2 Proceedings

If the Landlord elects to exercise any of its statutory functions and:

- (a) proceedings are taken against the Landlord and/or the Tenant by any third party to restrain or remedy any breach of any law; and
- (b) the Court makes any orders, on a interim or final basis, remedying or restraining any such breach,

the Tenant will not be entitled to make any claim against the Landlord under this Lease for any costs, fees, losses, expenses or damages incurred, associated with or arising from the taking of the proceedings or the making of orders unless the proceedings were taken or orders made as a result of a negligent act or omission or other default of the vendor.

26.3 No assurances

- (a) The parties agree that the Landlord has not given any assurance or made any representation or statement to the Tenant as to how it will or may exercise any of its statutory discretions in relation to any application for an approval relating to the Land, Premises or otherwise.
- (b) The parties agree that they have not been induced by the other party to enter into this Lease on the basis of any such assurance, representation or statement under subclause (a).

26.4 No fiduciary relationship

Nothing in this Lease will be construed or interpreted as constituting a relationship between the Landlord and the Tenant as that of a partnership, joint venture, or any form of fiduciary relationship.



Lease

Execution page

THE SEAL of BERRIGAN SHIRE COUNCIL
ABN 53 900 833 102 was affixed in
accordance with Reg 400 of the *Local*
Government (General) Regulation 2021 and
witnessed by the following persons:

Signature of Mayor

Signature of General Manager

Name of Mayor

Name of General Manager

EXECUTED for and on behalf of

(ABN _____) in
accordance with Section 127(1) of the
Corporations Act 2001:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

SIGNED by the **GUARANTOR**

Signature of Witness

Signature of Guarantor

Name of Witness



6 CONCLUSION OF MEETING

There being no further business the Mayor, closed the meeting at [type time](#).