



## ORDINARY COUNCIL MEETING

Wednesday 15 March, 2023

at 9:15am

Council Chambers, 56 Chanter Street, Berrigan



# Late Items Agenda



## Ordinary Council Meeting

Wednesday 15 March, 2023

### LATE ITEMS BUSINESS PAPER

The Ordinary Council Meeting of the Shire of Berrigan will be held in the Council Chambers, 56 Chanter Street, Berrigan, on Wednesday 15 March, 2023 when the following business will be considered:-

#### ITEMS OF BUSINESS

<b>8</b>	<b>REPORTS TO COUNCIL .....</b>	<b>3</b>
8.10	Human Resource Scan January 2023 .....	3
8.11	Development Application - 48-23-DA-D1 - 277 Lower River Road, Tocumwal .....	11
8.3	Proposed Wind Farm - Council position.....	16

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

KARINA EWER  
CHIEF EXECUTIVE OFFICER

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## 8 REPORTS TO COUNCIL

### 8.10 Human Resource Scan January 2023

Author:	HR Coordinator, Samala Armer
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:	2.1.1. Council operations, partnerships and coordination of resources contribute toward the implementation of Berrigan Shire 2032
Council's Role:	<b>Service Provider:</b> The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council
Appendices:	1. Employee and GM Remuneration 2021-22 All Councils - Berrigan Shire Council (2021-2022) (under separate cover)

*This report is for information only.*

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### Report

As at 31 January 2023, the Berrigan Shire Council workforce consists of:

Total FTEs*	90
Male Employees	58.6
Female Employees	31.4
Total Actual Employees	99
Full Time Employees	82
Part Time Employees	10
Casual Employees	7

\*FTE – Full Time-Equivalent

Council does not currently collect other diversity indicators other than binary sex models. A broader range of Equal Opportunity Employment statistics will be included in future, such as ethnicity, disability etc. to ensure those measures are also being considered in recruitment in a considered and consistent way. Changes to these statistics will be included as part of the work being undertaken in the Workforce Planning Review project.

## **Staff Changes between November 2022 and January 2023**

### **Resignations**

There were 9 staff resignations between 1 November 2022 & 31 January 2023

### **Appointments**

There were 6 staff appointments between November 2022 and January 2023.

### **Recruitment**

Current positions being or to be advertised include:

- General Labourer (on-going)
- Concreter
- Operations Manager – Sustainability
- Operations Manager – Transport
- Assets Coordinator
- Grader Operator
- Town Maintenance – Tocumwal
- Gardener
- Workshop Assistant
- Water and Sewer Operator
- Plant and Machinery Operator – Landfill
- Maintenance Officer – Water

Discussions regarding current vacancies and changes to the Organisation's Structure will be considered at the April Strategic and Policy Workshop.

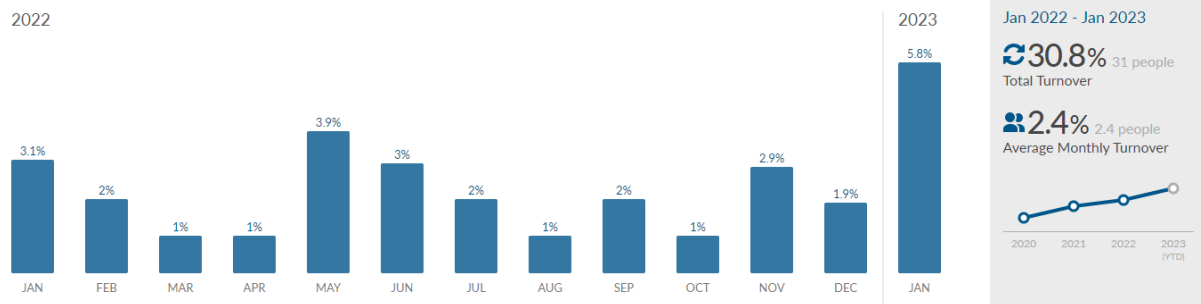
### **Current Staff Turnover Rate**

The turnover rate is expressed as percentage. It is worked out by dividing the total number of leavers in a year by the average number of employees in a year, then multiplied by 100.

At a strategic level, employee retention rates of 90% or higher are considered good and what Council is aiming for. Currently, we are not achieving this goal - turnover is sitting at 30.8% - hence a 69.2% retention rate from Jan 2022 to Jan 2023.



2022



Reasons for leaving Council's in the past 3 months include the following:

Total Leavers		9
Other Employment	7	78%
Retirement	0	0%
Termination	1	11%
Redundancy	0	0%
Family – Travel	1	11%
No Longer Required	0	0%
Performance	0	0%

Information regarding the reasons for leaving Council are taken from exit interviews where they are undertaken and resignation letters where that information is provided.

Those who have accepted other employment have primarily indicated the move was for wage reasons. One was not satisfied with their role requirements.

#### Current Leave Balances (all Staff)

Type	Total Hours July 22	Total Hours Oct 22	Total Hours Jan 2023
Annual Leave	16,383	20,605	18,733
Long Service Leave	28,551	28,877	27,561

#### Excess Leave

23 employees currently hold excess leave with all employees having completed plans to reduce those leave balances. Seven employees each currently hold over 1,000 hours in leave entitlements. One employee will soon take one year's leave, several others have planned leave for 2 or more months already approved. The excess leave project has been quite successful in reducing leave balances.

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## Absenteeism

Staff absenteeism is calculated by assessing sick leave taken (including any leave without pay where applicable) against the hours available. The calculation indicates year to date.

A healthy absenteeism rate is 1.5%. Absence in the workplace is an occasion or period of being away from work due to physical illness, stress-related illness, mental health days or the occasional sickie (false sick day), or absence due to other reasons that are not planned leave related (such as career's leave).

High absenteeism is an indicator of negative job behaviour and should be monitored, certainly reasons for high absenteeism should be investigated.

Council's absenteeism rate is currently sitting at 4.8%.

When considering the absenteeism rate it is important to note the doubling of overtime during the last period. With significant numbers of vacancies and the floods included in the last period, the doubling of overtime show up as commensurate with the amount of sick leave taken. The last period has been very stressful and taxing on staff and the absenteeism rate shows the result.

I believe work recently undertaken to formalise the On Call Policy and significant work completed regarding pay rates for all staff will also assist in the absenteeism rates as our Pulse (culture) surveys and exit interviews do indicate wages and the cost of living increases are the primary concerns for most staff. Dis-satisfaction with wages will lead to increased absenteeism where staff feel they are under valued through low pay for the works they are doing.

## Indicators

Council considered a set of Human Resource indicators shown in the table below.

Measure	Definition	January 23	October 22	April 22	Trend
<b>Full Time Equivalent (FTE) employed<sup>1</sup></b>	As written. FTE based on standard 70-hour fortnight indoor and 76-hour fortnight outdoor	90	88	88	
Men		66%	70%	69%	
Women		34%	30%	31%	
<b>Average salary<sup>2</sup></b>	Average <u>annualised</u> salary, excluding overtime and allowances				
Men		\$67,355	\$69,941	\$70,067	
Women		\$72,965	\$74,739	\$74,678	
<b>Outstanding leave balance (\$000)<sup>3</sup></b>	Balance of leave outstanding				
Annual		\$801,290	\$895,556	\$952,418	
Long Service Leave		\$1,114,130	\$1,167,240	\$1,218,164	
<b>Absenteeism (hours)<sup>4</sup></b>	Absence from work (sick, career, compassionate etc.) over past 12 months	8,283	7,529	4,876.	
<b>Overtime rate<sup>5</sup></b>	Overtime hours worked in the previous 12 months	8,006	4,829	7,132	
<b>Percentage of cost of the workforce<sup>6</sup></b>	Salaries as a percentage of Operating Expense	N/A	N/A	N/A	
<b>Turnover rate<sup>7</sup></b>	Turnover of staff over previous 12 months	30.8%	30.3%	19.6%	
<b>Average tenure<sup>8</sup></b>	Average length of employment for current staff	7.9 years	8.2 years	8.9 years	
<b>Employee satisfaction<sup>9</sup></b>	As measured by regular staff surveys on a scale of 1 to 5, with 5 being the highest	4.2	3.9	3.7	

Measure	Definition	January 23	October 22	April 22	Trend
Time to fill vacancies <sup>10</sup>	Time between creation of a vacancy and commencement of a replacement (workdays)	N/A	N/A	N/A	

1. The percentages of male to female employees continues to show a gendered bias in Council. The statistics however do not show the fact that most female staff tend to work in the office environment where the male employees primarily tend to work in the construction and delivery environment. The construction and delivery services of Council hold the largest staff numbers and this will continue to skew the figures for the foreseeable future. It does not mean Council are not considering staff for “non-traditional” roles, rather those applying for positions with Council tend to apply along gendered lines due to the types of work offered in each environment.
2. The reduction in the pay rates for male staff is due to the loss of three middle managers during the period. Those staff will be replaced during this period and that should see the pay rates normalise.
3. Annual and Long Service Leave balances continue their downward trend at what I believe is an affordable and acceptable rate.
4. Please see the comments above with regards to the absentee rate. I will continue to monitor this rate to ensure it is related to the overtime rate and is not a symptom of something else.
5. Overtime increases are a symptom of the flooding event initially and the number of vacancies currently being experienced. I expect the changes that will be presented to the Council at the April SPW regarding the Organisation’s Structure and its employee wages will greatly improve the overtime rates. Overtime rates are having a significant impact on current wage costs for Council. Our finance team are working on providing information that will show how much of our overall employee costs are attributable to Overtime however, at the time of writing this report that information was not available.

6. The report into Employee Costs to Council for the 2021-2022 as compared to all Councils in NSW is provided at **Appendix 1**.
7. Employee turn over remains very high and our work with staff to develop an open and transparent wage system and Salary Policy is expected to go a long way to addressing much of the leakage. In the current economic climate however it will remain difficult to attract and retain staff. The project to review our Workforce Management Plan and accompanying policies and procedures are expected to start to assist many of the issues being experienced.

According to the [2022 Local Government Workforce Skills and Capability Survey](#) provided by the Australian Local Government Association, all local governments were experiencing a higher proportion of 'unplanned' turnover of up to 26%. Our turn over remains higher than that benchmark however and will be monitored as a result.

8. In 2022 Local Government Workforce Skills and Capability Survey also indicates Local Government median tenure is 6.9 years. Whilst Council staff remain above that figure, I do expect the average tenure to continue to drop as we have a number of long term employees who will retire throughout 2023.
  9. Measures are taken from our employee Pulse Survey which is conducted quarterly. The Pulse Survey is a cultural survey which measures employee satisfaction with their work and conditions and allows continuous improvement suggestions to be provided. It has proved a valuable feedback platform for staff and managers.
  10. Council's current software makes calculation of this metric difficult. When Council moves to new HR management software, staff should be able to provide to provide an accurate measure.
-

## 8.11 Development Application - 48-23-DA-D1 - 277 Lower River Road, Tocumwal

Author:	Director Strategic Planning & Development, Joanne Ruffin
Strategic Outcome:	1. Sustainable natural and built landscapes
Strategic Objective:	1.1. Support sustainable use of our natural resources and built landscapes
Delivery Program:	1.1.1. Coordinate strategic land-use planning
Council's Role:	<b>Regulator:</b> 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:	<ol style="list-style-type: none"><li>1. Assessment Report - PAN 253925 (under separate cover)</li><li>2. Letter to Council - Kell Moore (under separate cover)</li><li>3. F&amp;S Gunther - Statutory Declaration</li></ol>

### Summary

Applicant:	Frank Gunther
Owner:	Frank Gunther
Proposal:	Construction of a single dwelling (replacement dwelling)
Location:	277 Lower River Road, Tocumwal

### Division:

In Favour:

Against:

### Recommendation

That Council support the Council Officers recommendation for DA 48-23-DA-D1 to approve the construction of a single dwelling (replacement dwelling) with deferred commencement conditions at 277 Lower River Road Tocumwal.

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### Purpose

The purpose of this report is to assist Council's decision of DA 48-23-DA-D1 for the construction of a dwelling (replacement dwelling).

### Background

Council had previously been briefed about this application and that a refusal was the likely officer recommendation.



Initial legal advice stated there was probably no dwelling entitlement for this site. Additional information was provided to our solicitors at Kell Moore including the Title and Plan of Subdivision and a Statutory Declaration signed by the past owner of the site which indicated an approximate date of when the house was built on the site.

The timeline and approval process of the original dwelling can be explained as follows:

- The Interim Development Order (IDO) came into effect on 4 July 1975.
- At least three out of the five lots that are now owned by the Gunthers were subdivided in 1977, including Lot 4 (21ha) which is the site of the house.
- The statutory declaration provided to Council which indicates approval for a house, was dated 1982, so the house was probably constructed in 1982-83.
- Paragraph 12 (2) of the IDO allowed subdivision of land less than 40ha and greater than 2ha where Council is satisfied that such allotment:
  - o is intended to be used for the purpose of agriculture;
  - o the ratio of depth to frontage is satisfactory; and
  - o has a frontage to main road.
- It should be assumed the subdivision was allowed because of the IDO.
- Paragraph 13 (1) of the IDO states a dwelling house shall not be erected on a parcel unless the parcel: (b) comprises an allotment created by subdivision in accordance with subclause (2) or (4) of paragraph 12.
- Paragraph 13 (2) of the IDO allowed no more than one dwelling house to be erected on a parcel of land referred in paragraph 13 (b).

Solicitors at Kell Moore subsequently altered their advice and said whilst there may be a dwelling entitlement, it will be up to Council whether or not to press the applicant for a presumption of evidence.

Council officers and elected officials attended the site 2 February 2023.

## **Assessment**

### **Environmental Planning and Assessment Act, 1979**

Supportive

### **Berrigan Local Environmental Plan 2013**

Supportive with deferred commencement conditions.

The purpose of Clause 4.2A (5) of the Berrigan Local Environment Plan (LEP) is to give legitimately built dwellings the opportunity to be replaced when modern controls applying to the site, have changed significantly enough to prohibit the dwelling. There are significant constraints that apply to this site including bushfire and flooding, however it does not appear to be the intention of Clause 4.2A (5) to allow a replacement dwelling on one hand, to then prevent the replacement on the other hand because of existing site constraints. The thought process must be that the constraints would have been considered during the original approval and they should not prevent the replacement

dwelling even if the constraints are better understood. Only a mandatory policy direction within the LEP or State Environmental Planning Policies (SEPPs) could force some changes to the application or prevent it.

### **Clause 5.21 Flood Planning**

The house will need to have a finished floor level 0.83m above the 2016 flood level which is one of the highest known floods in recent memory. In terms of access, a flood emergency management plan will be requested as a condition of the consent.

### **Clause 6.7 Development on River Front Areas**

Clause 6.7 of the LEP applies to river front areas, being land in the RU1 or E3 zones which are within 100 metres of the top of the bank of the river. Consequently, the provisions of this clause apply in this instance

6.7(2) states that “despite any other provision of this Plan, development consent may be granted to development on land in a river front area only for the following purposes:

- (a) boat building and repair facilities, boat launching ramps, boat sheds, charter and tourism boating facilities or marinas;
- (b) the extension or alteration of an existing building that is wholly or partly in the river front area if the extension or alteration will be located no closer to the river bank than the existing building;
- (c) environmental protection works;
- (d) extensive agriculture and intensive plant agriculture;
- (e) environmental facilities, recreation areas and recreation facilities (outdoor); and
- (f) water recreation structures.”

In this instance, the applicant is seeking approval for a replacement dwelling rather than an extension or alteration to an existing building. Clause 6.7 is explicit that despite Clause 4.2A (5) for the replacement of the dwelling, Council cannot grant development closer than 100m from the top of bank of the river.

The Statement of Environmental Effects attempts to state that the development consent is an extension of (d) *extensive agriculture* and the dwelling is merely ancillary to this. This is not the case. The development consent is being issued for a dwelling and in addition the site is used for sheep grazing rather than extensive agriculture or intensive plant agriculture. The dwelling must therefore be setback 100m from the top of bank.

### **Clause 6.10 Essential Services**

Clause 6.10 states that “development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development

are available or that adequate arrangements have been made to make them available when required—

- (c) the disposal and management of sewage,”

The development is proposed to be managed by an on-site effluent management system. The applicant was requested to provide a Land Capability Assessment to demonstrate the proposed dwelling effluent could be managed appropriately onsite without impact on water quality, waterways or other natural features. The applicant has chosen not to provide this information. Therefore, as a deferred commencement, a Land Capability Assessment must be provided which recommends the preferred location and type of septic system, considering the high risk of flooding and potential for the system to be inundated with riverine flooding.

Bushfire- The New South Wales Rural Fire Service have provided conditional consent to the proposal.

### Options

1. Support the recommendation for approval with deferred commencement conditions.
2. Support the recommendation for approval with changed conditions.
3. Set aside the recommendation for approval and refuse the application.

### Conclusion

That Council support the Council Officers decision to approve DA 48-23-DA-D1 for the construction of a dwelling (replacement dwelling). Deferred commencement conditions apply including:

- the need to relocate the dwelling 100m from the top of bank
  - to prepare a Land Capability Assessment
  - to prepare a Flood Emergency Management Plan
-

## STATUTORY DECLARATION

I DENIS GEORGE ROBERTSHAW

(Full name)

of 63 RESEARCH WARRANDYTE RD NTH WARRANDYTE

(address)

3113

SALES MANAGER

(Occupation)

do solemnly and sincerely declare that:

Berrigan shire Council

Town Planning Dept.

Reference 3 bedroom Dwelling situated 277 Lower river Rd. Tocumwal

Robertshaw Nominees P/I wrote to CEO at Berrigan Shire in May 1982 for permission to construct a 3 b/r. residence on the property and I recd. a reply asking for property details. a further phone call to Building Dept. advised that because I was outside the Township Boundary I did not have to submit a formal application and as I was using a recognised local builder, Mr. Harry Wass I could legally proceed, advice was recd on set back from River being 1 Chain {66ft} and Septic Run off to the rear of the dwelling well away from River bank. We commenced building in late 1982 and completed in 1983. advice was also recd to raise my floor level to min. of 3 ft after obtaining water ht. levels from marker at Toc. Bridge for last recorded flood level. subsequent visits from council Mr. Greg Cooper in 1990/91/92 when the property was used by Down To Earth Society for thier Easter Festival questions were never raised about our dwelling I believe that we acted in accordance with Local building regulations for Rural farmland at this time frame..

I have found a letter regarding the Registration of the Septic System on the property which I duly replied On 12/3/1999 i recd no correspondence re the status of the dwelling nor at any other time during our ownership of the property. Denis Robertshaw

Warrandyte Police Station  
Police Street  
Warrandyte 3113

Warrandyte Police Station  
Police Street  
Warrandyte 3113

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Declared at WARRANDYTE  
in the State of Victoria  
this 10 day of February 20 23

(Signature of person making declaration)

Before me:

(Signature of authorised witness)

Warrandyte Police Station  
Police Street  
Warrandyte 3113

LSC 32335.

(The witness must print their name, address and their authority under section 107A of the Evidence (Miscellaneous Provisions) Act 1958 to witness a statutory declaration

### 8.3 Proposed Wind Farm - Council position

Author:	Deputy Chief Executive Officer, Matthew Hansen
Strategic Outcome:	1. Sustainable natural and built landscapes
Strategic Objective:	1.1. Support sustainable use of our natural resources and built landscapes
Delivery Program:	1.1.3. Enhance the visual amenity, heritage and liveability of our communities
Council's Role:	<b>Advocate:</b> The Council may advocate to another government or other organisation for certain things to happen, this could range from a single event (such as writing to a Minister) through to an ongoing campaign
Appendices:	1. 15.03.2021 Yanco Delta Wind Farm - request for comment.pdf (under separate cover)

#### Recommendation

The direction of the Council is sought

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#### Report

In 2022, Council was approached by Virya Energy for comment regarding the Yanco Delta Wind Farm, a proposed wind farm in the Murrumbidgee Local Government Area (LGA), 10km north-west of Jerilderie. The proposal is for up to 208 turbines at a height of up to 270m at the blade tip.

Council was asked to provide comment on two matters:

1. the movement of oversize and overmass vehicles on the Newell Highway through Tocumwal and Finley – noting that Transport for NSW is the authority responsible for granting approval; and
2. the impact of the proposal on the operation of Tocumwal Aerodrome.

Copies of the requests for comment are attached as Appendix 1.

Unfortunately, the Council official responsible for responding to these requests did not respond and did not inform his superiors that these requests were received. He has since ceased employment with Council.

The proponents contacted Council again earlier this month to follow up, and these requests are now being dealt with by the Infrastructure team.

The response from Council will be based on the technical issues raised in the letter however, to assist in preparing this response, the direction of Council regarding in principle support or otherwise for the proposal is sought.

The proposal is a State Significant Development and further information on the proposal can be found on the Planning Portal at <https://pp.planningportal.nsw.gov.au/major-projects/projects/yanco-delta-wind-farm>.





## ORDINARY COUNCIL MEETING

Wednesday 15 March, 2023

at 9:15am

Council Chambers, 56 Chanter Street, Berrigan



# Late Items Under Separate Cover Appendices



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## GM Remuneration 2021-22 All Councils

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Berrigan Shire Council  
2021/2022

Published on 9 Mar 2023

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## Executive Summary

This report provides the representative information on General Manager Remuneration in NSW Local Government, based on data from 100% of all general-purpose councils and 4 special purpose councils in NSW. The report covers the financial year 1 July 2021 to 30 June 2022.

As the data is sourced from councils' annual reports, the figures reported are the "Cost to Council" as distinct from "Total Remuneration Package". The "Cost to Council" includes "the total amount of any bonus payments, performance payments or other payments made to the General Manager that do not form part of the cash salary component of the General Manager and fringe benefits tax".

Across these councils, the average cost to council of employing a General Manager was **\$245,602**, with a median cost of **\$329,930**.

The KPI Results table gives an overview of median results for the comparison group.

To enable comparisons, profile data is included in this report. This includes the local government land area, estimated resident population, operational and expenditure budgets and full-time equivalent staff number.

### Data sources and description

The report contains remuneration data (cost to council) and profile data.

Remuneration data is collated from councils' 2021-2022 Annual Reports.

Operational and expenditure data is collected from council's annual General Purpose Financial Statements, "Total income from continuing operations and Total expenses from continuing operations" 2021-2022.

Profile data reported includes:

- full-time equivalent staff
- population and land area covered by the local government area (from the most-recent ABS release)

### Report comparison groups

All Councils: All councils in NSW where comparative data is available from all sources listed.

OLG Urban / Rural Councils: Sourced from *Australian Classification of Local Governments*.

LGMS comparison group: Created by LGMS on review of council demographics and budgets.

LGRT comparison group: [Local Government Remuneration Tribunal](#) Section 4: 2021 Determinations – Determination No. 1 – Allocation of councils into each of the categories as per section 239 of the LG Act effective from 1 July 2021.

NSW Region: NSW Government Our Regions website.

### Data quality in Annual Reports

While most councils' report in line with the requirements of the relevant regulations, there are some exceptions.

Examples and how they are dealt with in the report are:

- Instead of reporting the actual amount of "cost to council" a range is provided. In this case the average of the endpoints is reported.
- Where Council has an Acting General Manager (e.g. 25 Aug to 30 June) on higher duties - the TRP provided by Council is reported.
- Total Senior Staff costs rather than a break up of by General Manager and Senior Staff. In this instance, the "cost to council" for the General Manager is requested of Council. The TRP provided by Council is reported.
- Where there was a change in General Manager during the year:
  - o data is added together to provide a total figure; or
  - o Council is requested to supply "cost to council" data for the General Manager, and this data is used in the report.

### Interpreting statistics

Some notes on interpreting the various measures that are provided:

- **Average:** This provides a very simple description of the data set however it is heavily influenced by extreme or outlying values;
- **Median:** Is the mid-point of a particular distribution, this is considered the more reliable measure to describe the data set; and
- **Percentiles:** These provide insight into the range and how the data is spread across that range. Depending on the KPI a higher or lower result can be favourable.

Remuneration cost to council or profile data may not always be evenly distributed. There may be a few data points which are significantly higher or lower than others. This will be evident where the percentiles are not evenly spaced and where there is a significant gap from one percentile to another.

If the average is higher than the median, this indicates that there are some very high outlying results at the top end of the remuneration scale. The inverse applies if the average is less than the median.

Another factor to consider is how the sample relates to the population of all councils in the comparison group.

### Determining the appropriate level of remuneration

This report is intended to provide comparative information about what is happening in the marketplace. As such, the following is provided as additional guidance on setting remuneration levels.

When reviewing data and deciding whether a certain amount of remuneration is adequate, some considerations might include:

- How do the demographics of council compare with that of the other councils in the comparison group? Is the area covered larger or smaller than most? Is the population around the middle of the comparison group, or at the higher or lower end? and
- How does the organisation and its capabilities and complexities compare? Does it have more or less financial resources than other councils in the group? Is it a larger or smaller council in terms of staff numbers?

Answers to these questions will be apparent from the profile data of other councils in the comparison group, and the percentile result for a particular council against all councils in the comparison group.

Determining whether a certain level of remuneration is adequate depends on a range of factors. Whilst a council's environment and organisational capabilities and limitations play a role, council policies may also have an impact. For example, Council A is one of the smallest councils in the comparison group. Its land area, population, expenditure budget (financial resources) and staffing level are between the 10th and 20th percentile, meaning that between 80% and 90% of councils in the comparison group are larger. On these factors alone, one might expect council to be paying its staff between the 10th and 20th percentile in the comparison group. However, council may have decided to pay in the 75th or 90th percentile to attract or retain the "best" staff. Its remuneration level would therefore be significantly above where it would be expected based on profile data alone.

The relationship between the sample and population will also need to be considered.

Furthermore, in interpreting the data and deciding on appropriate levels of remuneration it is also important to note that the figures in this report only present an external market comparison based on data published by councils in their annual reports. Internal variables such as council complexity, organisation structure, allocation of responsibilities, budget, staff numbers or the numbers of Directors and Managers, length of service and superannuation scheme membership all impact on the level of remuneration.

## KPIs Explained

### ✗ Employee Cost - Total Investment in Staff \$9,013,000

Employee costs as reported in Council's financial statements for the reporting period (Total employee costs expended).

Median	Rank	Percentile	
\$20,691,000	27 / 127	79%	

### ✗ Employees Costs % of Operating Expenses 35.7%

Employee costs as a percentage of Total Operating Expenses

Employees Costs % of Operating Expenses = (Employee Cost ÷ Total Investment in Staff ÷ Total Operating Expenditure) x 100

Median	Rank	Percentile	
34.67%	75 / 127	41%	

### ✓ Establishment 98.00

Number of approved full-time, part-time, limited tenure & vacant positions on the last day of the reporting period (or as close to that date as practicably possible). Include trainees/apprentices, fixed term / temporary staff and cadets (paid) if they are an employee.

Median	Rank	Percentile	
298.14	95 / 106	10%	

### ✓ Full time Equivalent staff 104.00

Total number of full time equivalent staff as at 30 June.

Median	Rank	Percentile	
224.60	95 / 117	18%	

### ✓ General Manager Remuneration \$243,056

The total remuneration package for the full financial year for designated Senior Staff (General Manager) under Section 332 of the Local Government Act 1993.

Median	Rank	Percentile	
\$329,930	124 / 132	6%	

### ✗ GM TRP % of TOR 0.89%

Total cost of GM as a percentage of Council's total operating revenue (TOR)

GM TRP % of TOR = (General Manager Remuneration ÷ Total Operating Revenue) x 100

Median	Rank	Percentile	
0.39%	111 / 127	11%	

### ✗ GM TRP % of All Staff 4%

GM TRP percentage of All Staff Salaries at Council

GM TRP % of All Staff = (General Manager Remuneration ÷ Salaries and Wages) x 100

Median	Rank	Percentile	
2%	98 / 126	22%	

#### NA GM TRP % of SS

The percentage of the GM's TRP, of total payments made to Senior Staff

GM TRP % of SS = (General Manager Remuneration ÷ Total Senior Staff remuneration) x 100

#### ✗ GM TRP % of TOE 0.96%

Total cost of GM as a percentage of Council's total operating expenses (TOE)

GM TRP % of TOE = (General Manager Remuneration ÷ Total Operating Expenditure) x 100



#### ✓ Headcount 92.00

Total Number of full-time staff plus Number of part-time staff plus Fixed Term / Temporary Staff



#### ✗ Labor Cost Percentage 32.92%

Total Investment in Staff (Employee Costs) / Total Operating Revenue

Labor Cost Percentage = (Employee Cost ÷ Total Investment in Staff ÷ Total Operating Revenue) x 100



#### ✓ LGA Land Area 2,065.9

Total of Council's land area, as indicated in the latest ABS release



#### ✓ LGA Population 8,612

Total of Council's local government area population.



#### ✗ Number of casual & labour hire staff 4

Total number of casual and/or labour hire staff



#### ✓ Number of Senior Staff Positions excluding GM 0

Number of Senior Staff Positions excluding GM



✓ **Number of Senior Staff positions including GM** 1

Total number of designated Senior Staff under Section 332 of the Local Government Act 1993, including the General Manager.



✗ **Salaries % of Operating Expenses** 26.34%

Salaries as a % of Total Expenses for Continuing Operations

Salaries % of Operating Expenses = (Salaries and Wages + Total Operating Expenditure) x 100



✗ **Salaries and Wages** \$6,652,000

Total of salaries and wages for the financial year.



NA **Senior Staff Remuneration excluding GM**

The total remuneration package for the full financial year for designated Senior Staff under Section 332 of the Local Government Act 1993, not including the General Manager.

NA **Senior Staff TRP average excluding GM**

Senior Staff TRP average excluding GM

Senior Staff TRP average excluding GM = Senior Staff Remuneration excluding GM ÷ Number of Senior Staff Positions excluding GM

NA **Senior Staff TRP average including GM**

Senior Staff TRP average including GM

Senior Staff TRP average including GM = Total Senior Staff remuneration ÷ Number of Senior Staff positions including GM

NA **SS TRP % of TOE**

Total cost of SS as a percentage of Council's total operating expenses (TOE)

SS TRP % of TOE = (Total Senior Staff remuneration ÷ Total Operating Expenditure) x 100

NA **SS TRP % of TOR**

Total cost of GM as a percentage of Council's total operating revenue (TOR)

SS TRP % of TOR = (Total Senior Staff remuneration ÷ Total Operating Revenue) x 100

✓ **Total Operating Expenditure** \$25,250,000

Total Expenses from continuing operations for the financial year.





✓ **Total Operating Revenue** \$27,375,000

Total income from continuing operations for the financial year.



NA **Total Senior Staff remuneration**

Total remuneration for all designated Senior Staff for the financial year.

Total Senior Staff remuneration = General Manager Remuneration + Senior Staff Remuneration excluding GM



## Key Numbers

### GM REMUNERATION

**\$243,056**

▲ 0.9% from last year (YTD)



The total remuneration package for the full financial year for designated Senior Staff (General Manager) under Section 332 of the Local Government Act 1993.

### GM TRP % OF SS

-

GM TRP as a % of all designated Senior Staff TRP.

### GM TRP % OF ALL STAFF

**4%**

▼ 0% from last year (YTD)



GM TRP as a % of all staff salaries and wages.

### GM TRP % OF TOR

**0.89%**

▲ 0.08% from last year (YTD)



Total cost of GM as a percentage of Council's total operating revenue (TOR)

### GM TRP % OF TOE

**0.96%**

▼ -0.06% from last year (YTD)



Total cost of GM as a percentage of Council's total operating expenses (TOE)

### TOTAL SENIOR STAFF REMUNERA...

-

The total remuneration package for the full financial year for all designated Senior Staff under Section 332 of the Local Government Act 1993.

### NO. SENIOR STAFF

**1**

▲ 0% from last year (YTD)



Total number of designated Senior Staff under Section 332 of the Local Government Act 1993, including the General Manager.

### SENIOR STAFF REMUNERATION E...

-

The total remuneration package for the full financial year for all designated Senior Staff excluding the General Manager.

### SENIOR STAFF TRP AVERAGE EXC...

-

Average TRP of all designated Senior Staff excluding the General Manager.

### SS TRP % OF TOE

-

Total cost of SS as a percentage of Council's total operating expenses (TOE)

### SS TRP % OF TOR

-

Total cost of GM as a percentage of Council's total operating revenue (TOR)

### FULL TIME EQUIVALENT STAFF

**104.00**

▲ 19.5% from last year (YTD)



Full-time staff plus Full-time equivalent number of part-time staff.

#### HEADCOUNT

**92.00**

▲ 0% from last year (YTD)



Total Number of full-time staff plus  
Number of part-time staff plus Fixed  
Term / Temporary Staff

#### EMPLOYEE COST - TOTAL INVES. ...

**\$9,013,000**

▲ 10.7% from last year (YTD)



Employee costs as reported in  
Council's financial statements for the  
reporting period (Total employee  
costs expensed).

#### LABOR COST PERCENTAGE

**32.92%**

▲ 5.46% from last year (YTD)



Total Investment in Staff (Employee  
Costs) / Total Operating Revenue.

#### SALARIES AND WAGES

**\$6,652,000**

▲ 8.6% from last year (YTD)



Total of salaries and wages for the  
financial year.

#### SALARIES % OF OPERATING EXPE...

**26.34%**

▲ 0.34% from last year (YTD)



Salaries as a % of Total Expenses for  
Continuing Operations

#### TOTAL OPERATING REVENUE

**\$27,375,000**

▼ -7.7% from last year



Total income from continuing  
operations for the financial year.

#### TOTAL OPERATING EXPENDITURE

**\$25,250,000**

▲ 7.2% from last year

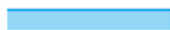


Total expenses from continuing  
operations for the financial year.

#### LGA LAND AREA

**2,065.9**

▲ 0.0 from last year (YTD)

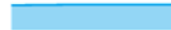


Total of Council's land area, from the  
recent ABS data

#### LGA POPULATION

**8,612**

▲ 0% from last year



Total (estimated) resident population  
within the LGA.

## KPI Results Table

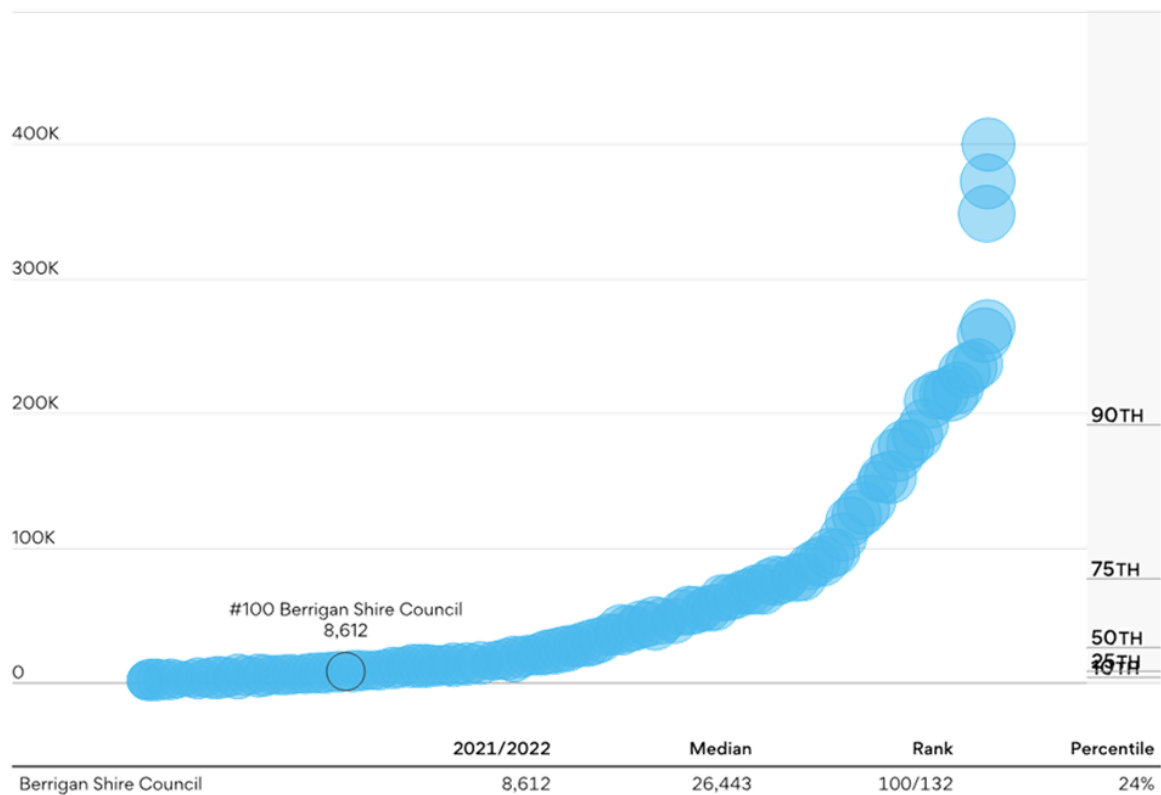
	RESULT		TREND		vs All Councils	
A	DEMOGRAPHICS	2021/2022	2020/2021	vs 2020/2021	MEDIAN	PERCENTILE
	LGA Population	8,612	8,612	0	26,443	1 2 3 4 5
	LGA Land Area	2,065.9	2,065.9	0.0	3,223.3	1 2 3 4 5
	Establishment	98.00	104.00	▼ -6.00	298.14	1 2 3 4 5
	Headcount	92.00	92.00	0.00	274.50	1 2 3 4 5
	Full time Equivalent staff	104.00	87.00	▲ 17.00	224.60	1 2 3 4 5
	Number of casual & labour hire staff *	4	4	0	35	1 2 3 4 5
B	BUDGET					
	Total Operating Revenue	\$27,375,000	\$29,656,000	▼ -7.7%	\$79,827,000	1 2 3 4 5
	Total Operating Expenditure	\$25,250,000	\$23,563,000	▲ 7.2%	\$67,955,000	1 2 3 4 5
C	GM DATA					
	General Manager Remuneration	\$243,056	\$240,929	▲ 0.9%	\$329,930	1 2 3 4 5
	GM TRP % of SS	-	-	-	29%	-
	GM TRP % of All Staff *	4%	4%	▼ 0%	2%	1 2 3 4 5
	GM TRP % of TOR *	0.89%	0.81%	▲ 0.08%	0.39%	1 2 3 4 5
	GM TRP % of TOE *	0.96%	1.02%	▼ -0.06%	0.49%	1 2 3 4 5
D	SENIOR STAFF					
	Total Senior Staff remuneration *	-	-	-	\$1,241,143	-
	Number of Senior Staff positions including ...	1	1	0	4	1 2 3 4 5
	Number of Senior Staff Positions excluding...	0	0	0	3	1 2 3 4 5
	Senior Staff TRP average including GM	-	-	-	\$290,901	-
	Senior Staff Remuneration excluding GM	-	-	-	\$896,241	-
	Senior Staff TRP average excluding GM	-	-	-	\$263,967	-
	SS TRP % of TOR	-	-	-	1.05%	-
	SS TRP % of TOE *	-	-	-	1.32%	-
E	STAFF COSTS					
	Employee Cost - Total Investment in Staff *	\$9,013,000	\$8,144,000	▲ 10.7%	\$20,691,000	1 2 3 4 5
	Salaries and Wages *	\$6,652,000	\$6,127,000	▲ 8.6%	\$15,446,500	1 2 3 4 5
	Labor Cost Percentage *	32.92%	27.46%	▲ 5.46%	26.73%	1 2 3 4 5
	Employees Costs % of Operating Expens... *	35.7%	34.56%	▲ 1.13%	34.67%	1 2 3 4 5
	Salaries % of Operating Expenses *	26.34%	26%	▲ 0.34%	27.69%	1 2 3 4 5

\* For this metric, a result below target is favourable

## Council demographics (profile data)

Demographic KPIs (This year vs previous years)	2021/2022	This year vs last year (%)	This year vs last year	2020/2021	2019/2020
LGA Population	8,612	0.00%	0	8,612	8,636
LGA Land Area	2,065.9	0.00%	0.0	2,065.9	2,065.8
Establishment	98.00	-5.77%	-6.00	104.00	97.00
Headcount	92.00	0.00%	0.00	92.00	103.00
Full time Equivalent staff	104.00	19.54%	17.00	87.00	99.00
Number of casual & labour hire staff	4	0.00%	0	4	19

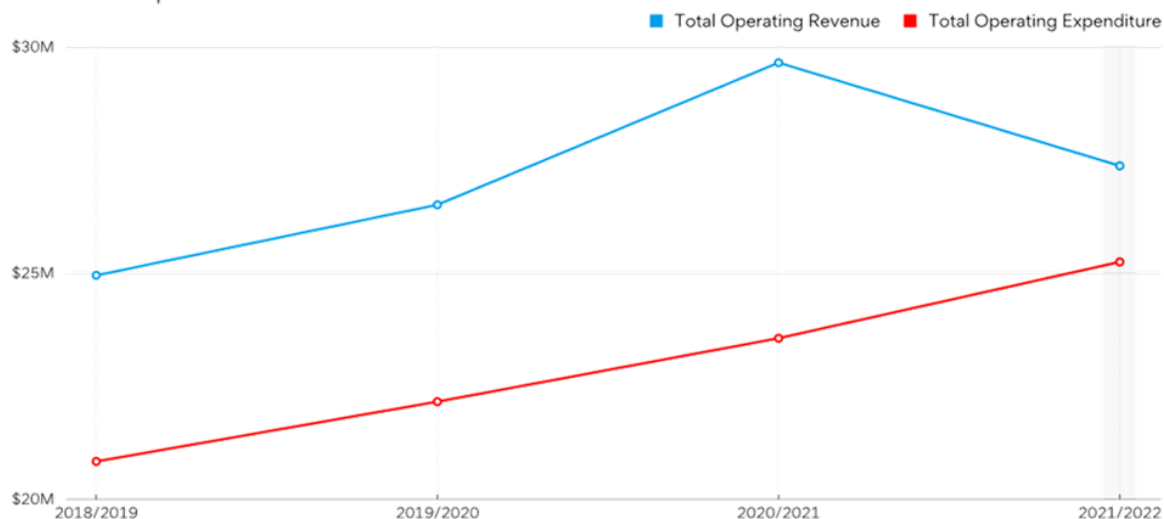
### LGA Population All Councils



## Council Budget

Budget (This Year vs last year)	2021/2022	This year vs last year	2020/2021	This year vs last year (%)
Total Operating Revenue	\$27,375,000	-\$2,281,000	\$29,656,000	-7.69%
Total Operating Expenditure	\$25,250,000	\$1,687,000	\$23,563,000	7.16%

Revenue v Expenses



#### TOTAL OPERATING REVENUE

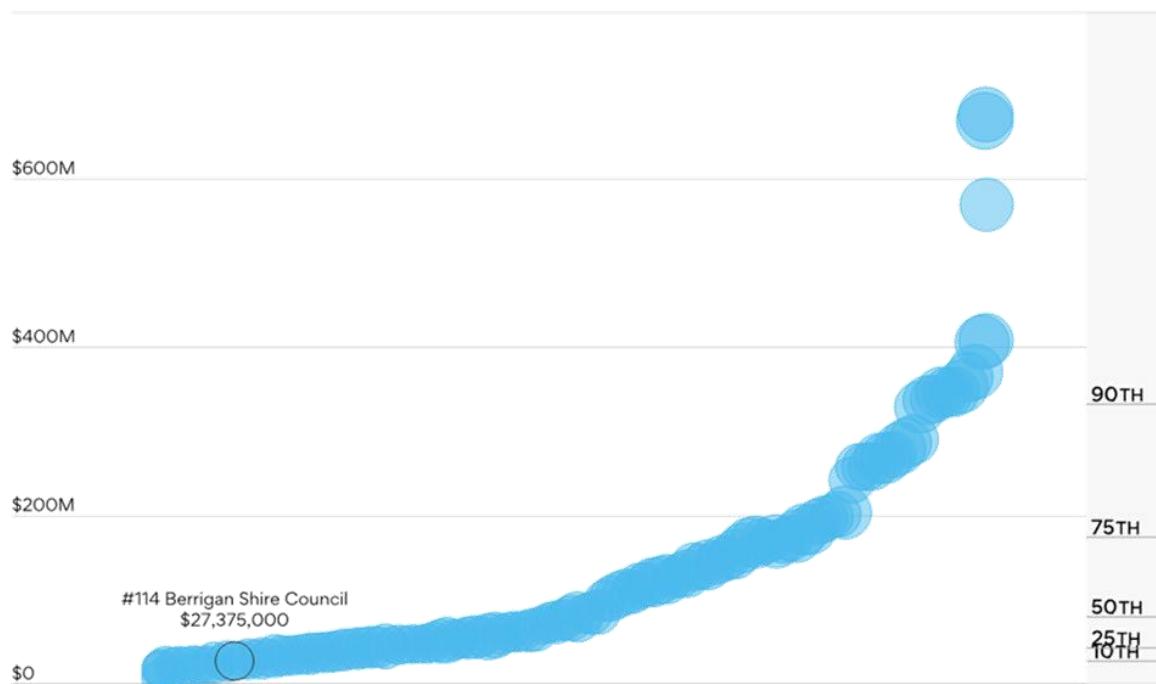
**\$27,375,000**

▼ -7.7% from last year



Total income from continuing operations for the financial year.

#### Total Operating Revenue All Councils



	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	\$27,375,000	\$79,827,000	114/127	10%

TOE

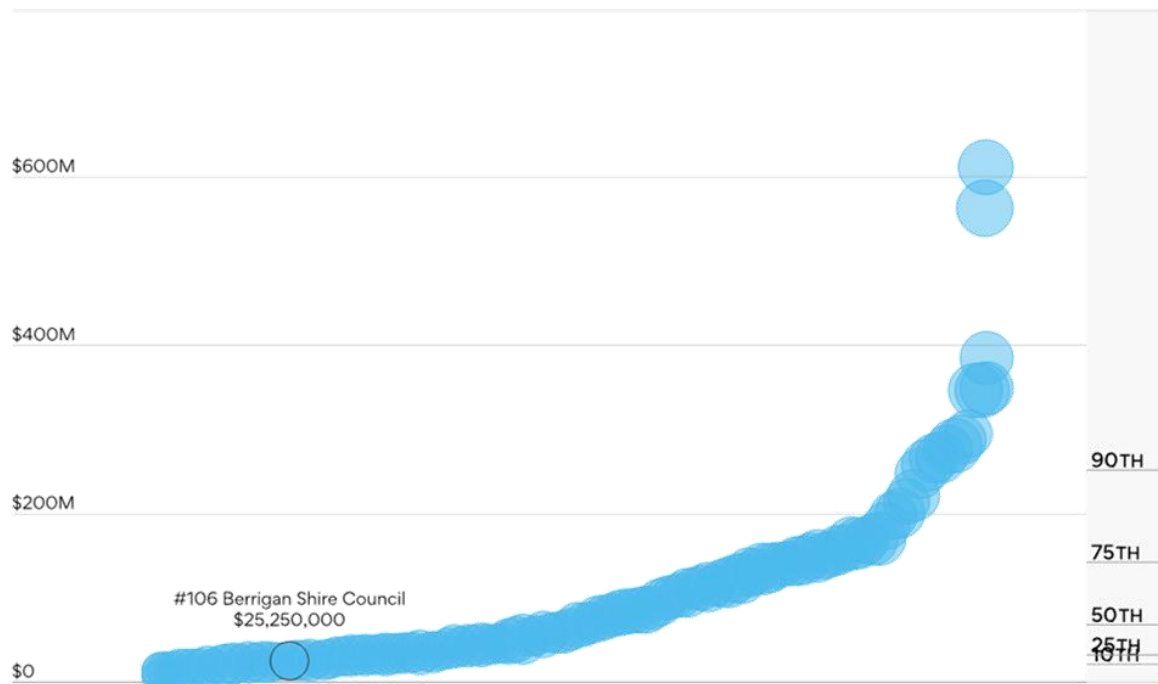
**\$25,250,000**

▲ 7.2% from last year (YTD)



Total Expenses from continuing operations for the financial year.

Total Operating Expenditure All Councils



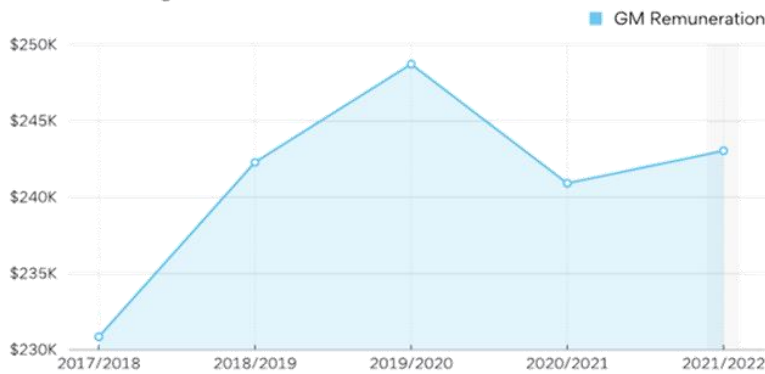
	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	\$25,250,000	\$67,955,000	106/127	16%

## Cost to Council remuneration data

KPIs (This year vs previous years)	2021/2022	This year vs last year (%)	This year vs last year	2020/2021	2019/2020
General Manager Remuneration	\$243,056	0.88%	\$2,127	\$240,929	\$248,742
GM TRP % of All Staff	4%	-7.08%	0%	4%	4%
GM TRP % of TOR	0.89%	9.29%	0.08%	0.81%	0.94%
GM TRP % of TOE	0.96%	-5.86%	-0.06%	1.02%	1.12%
No. Senior Staff	1	0.00%	0	1	1



### General Manager Remuneration



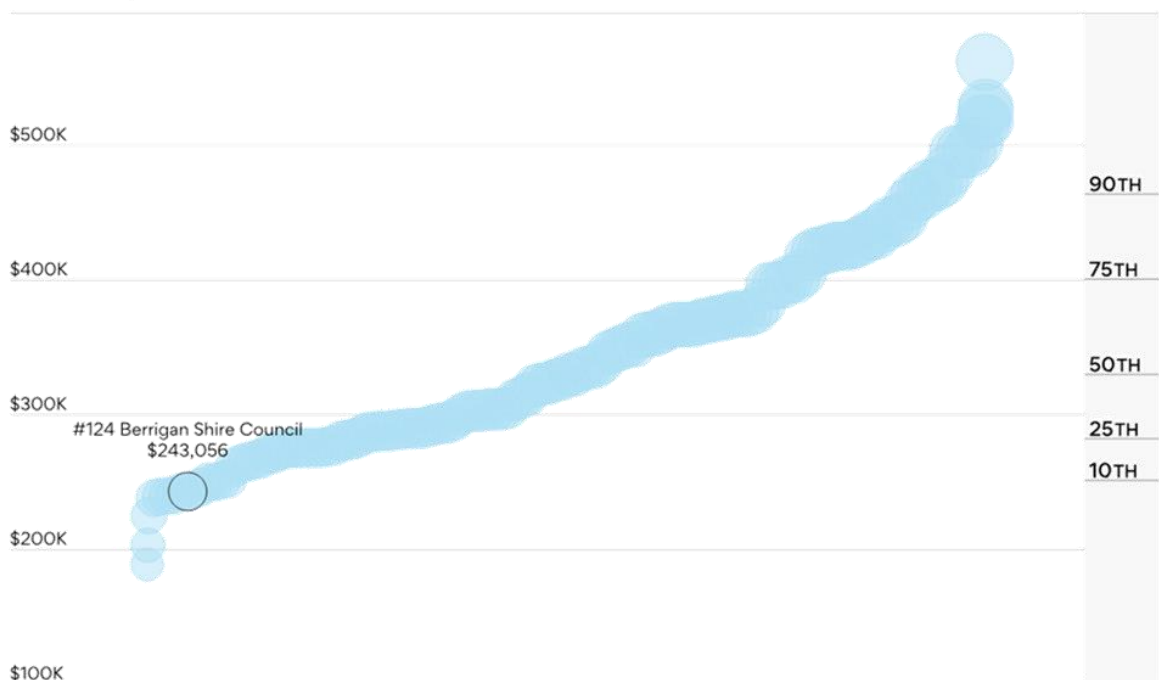
### GM REMUNERATION

**\$243,056**

▲ 0.9% from last year (YTD)

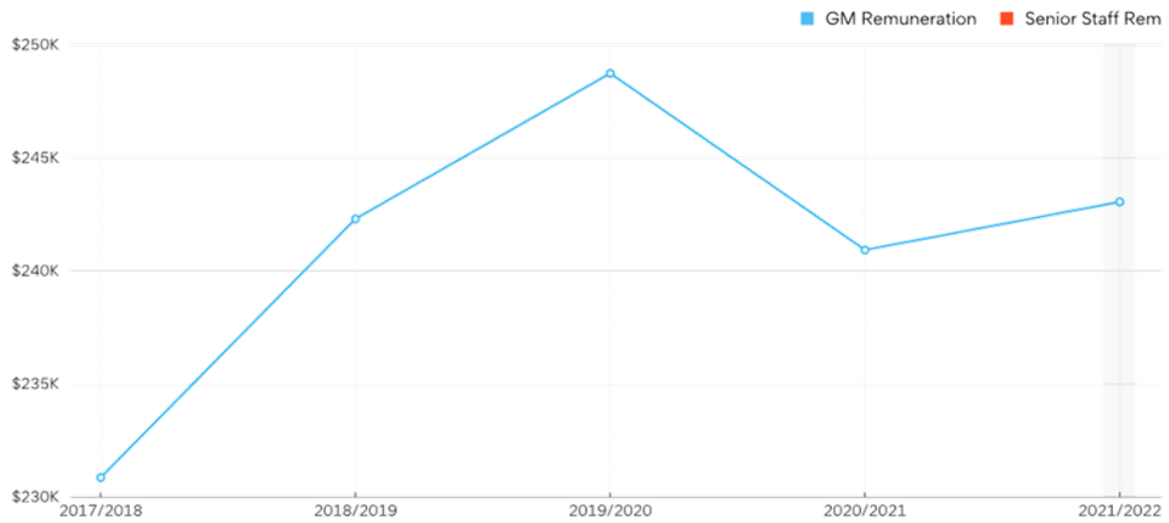
The total remuneration package for the full financial year for designated Senior Staff (General Manager) under Section 332 of the Local Government Act 1993.

### General Manager Remuneration All Councils

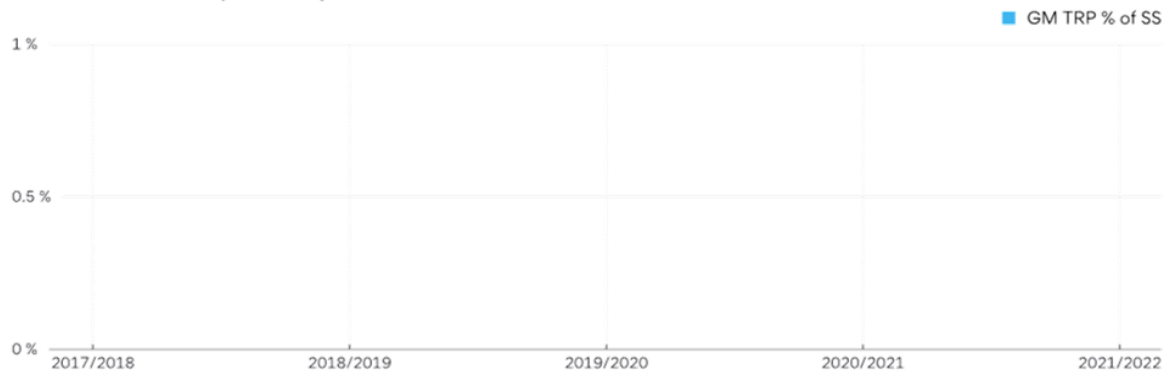


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	\$243,056	\$329,930	124/132	6%

GM vs Senior Staff remuneration



GM TRP % of SS vs previous years



#### GM TRP % OF SS

-

GM TRP as a % of all designated Senior Staff TRP.

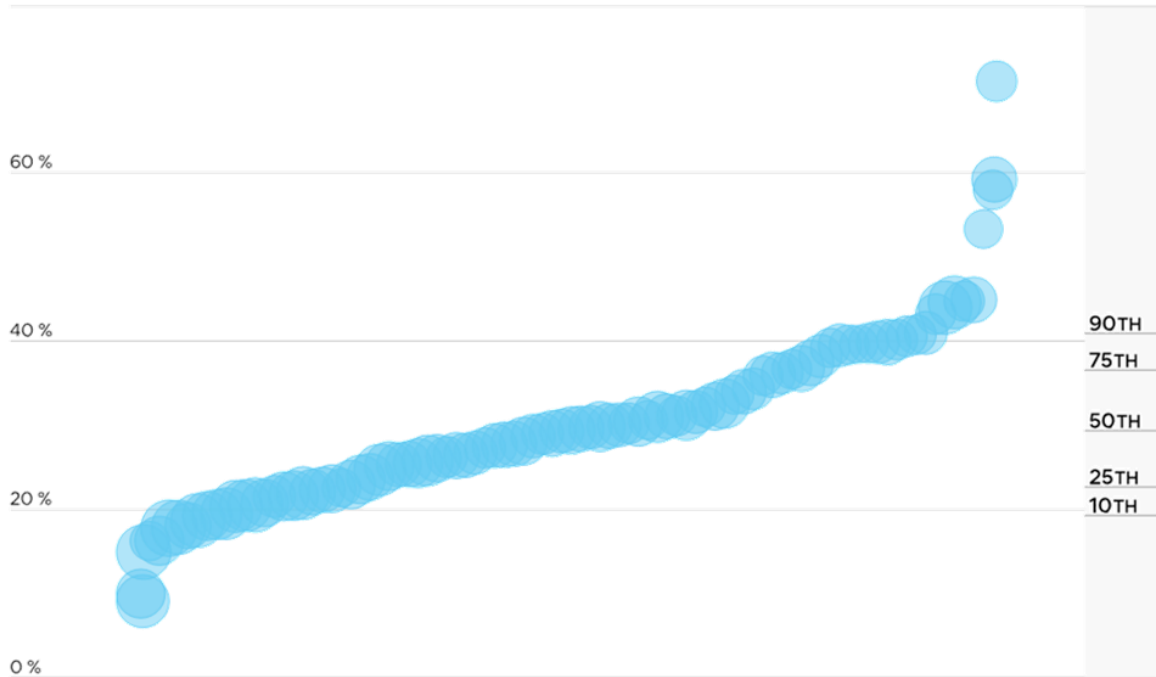
#### NUMBER SENIOR STAFF EXCL. GM

0

▲ 0 from last year (YTD)

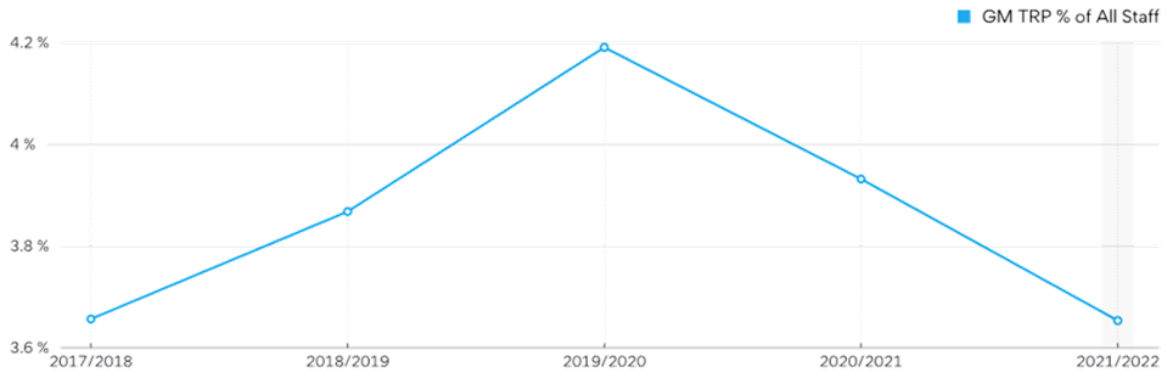
Number of Senior Staff Positions excluding GM

#### GM TRP % of SS All Councils

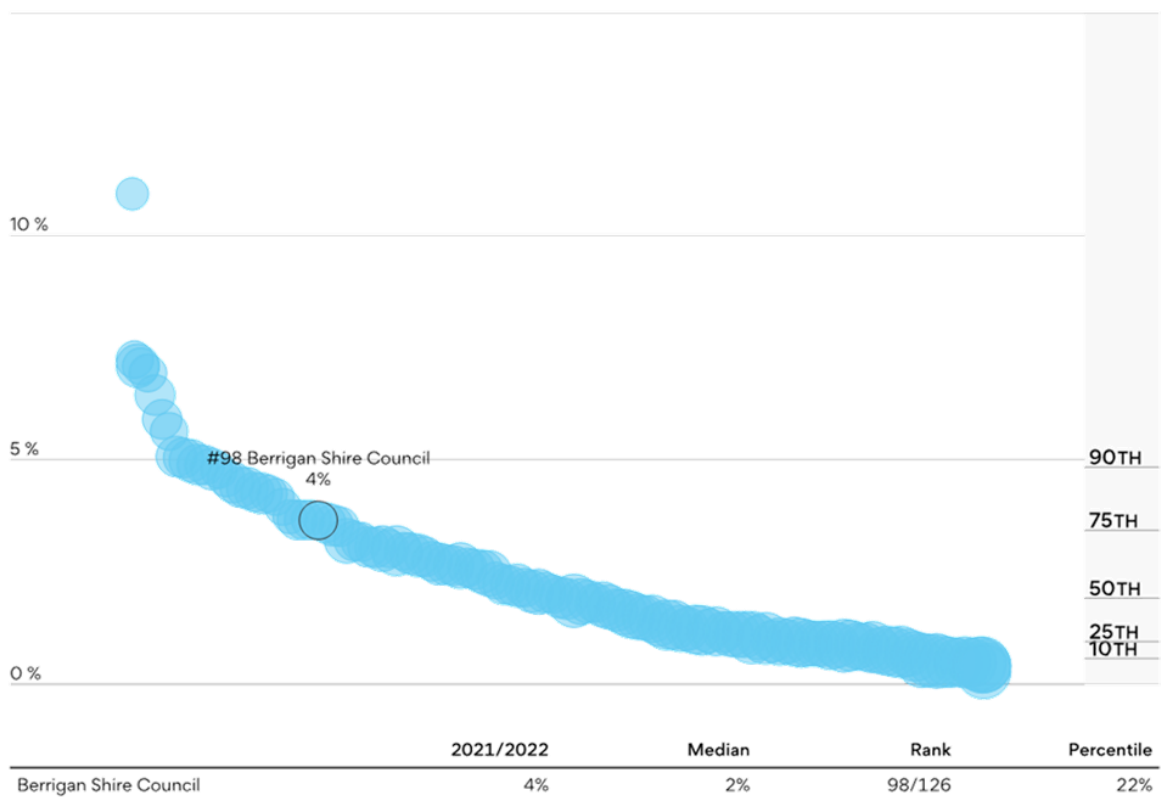


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	-	-	-	-

GM TRP % of All Staff vs previous years

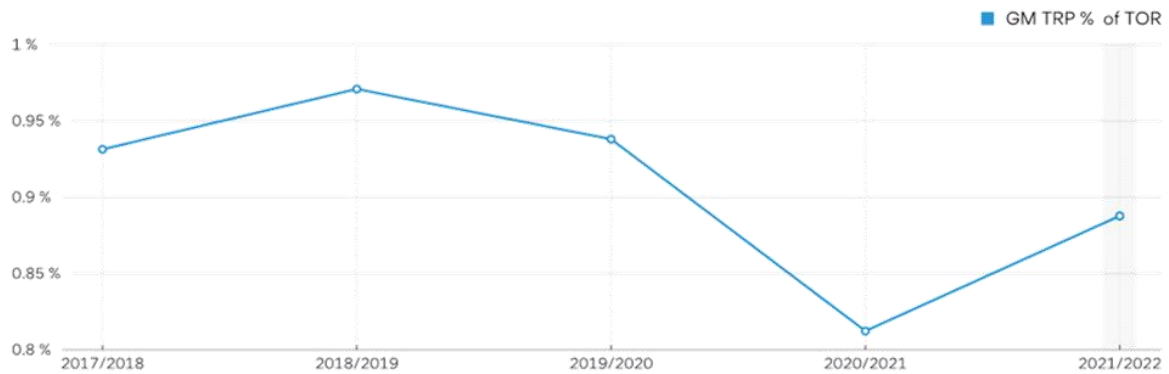


GM TRP % of All Staff All Councils

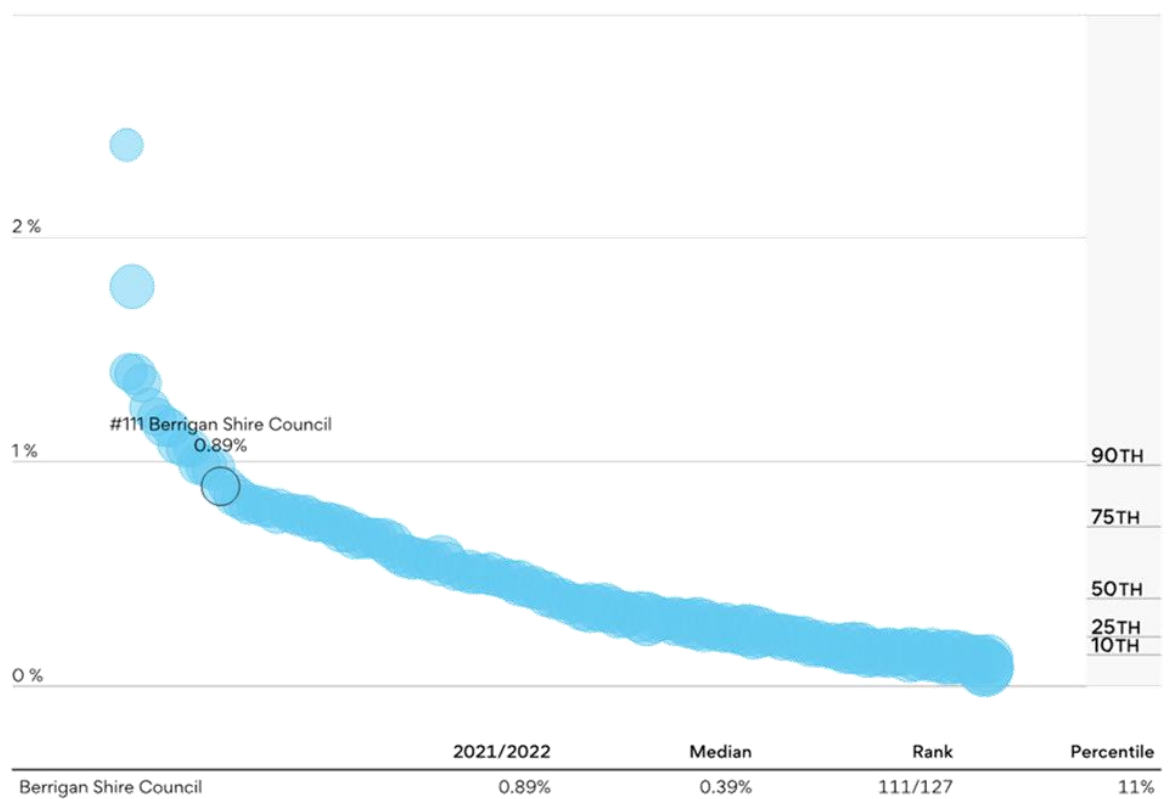


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	4%	2%	98/126	22%

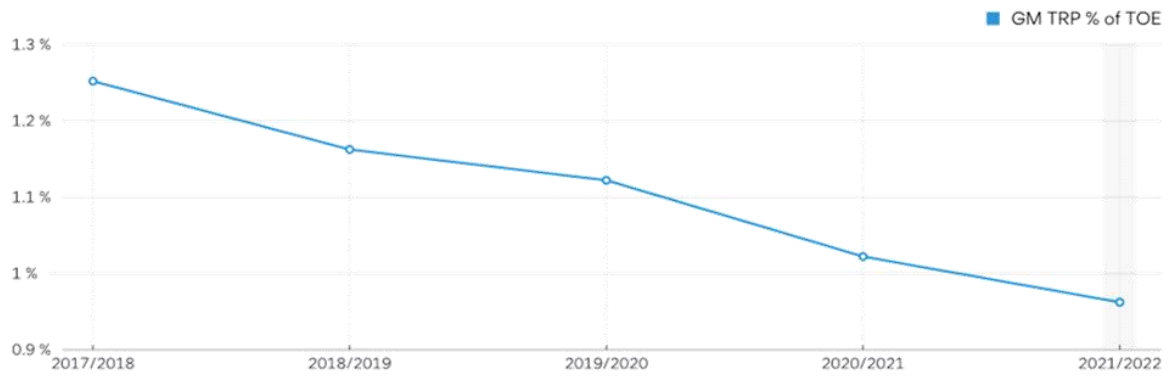
GM TRP % of TOR



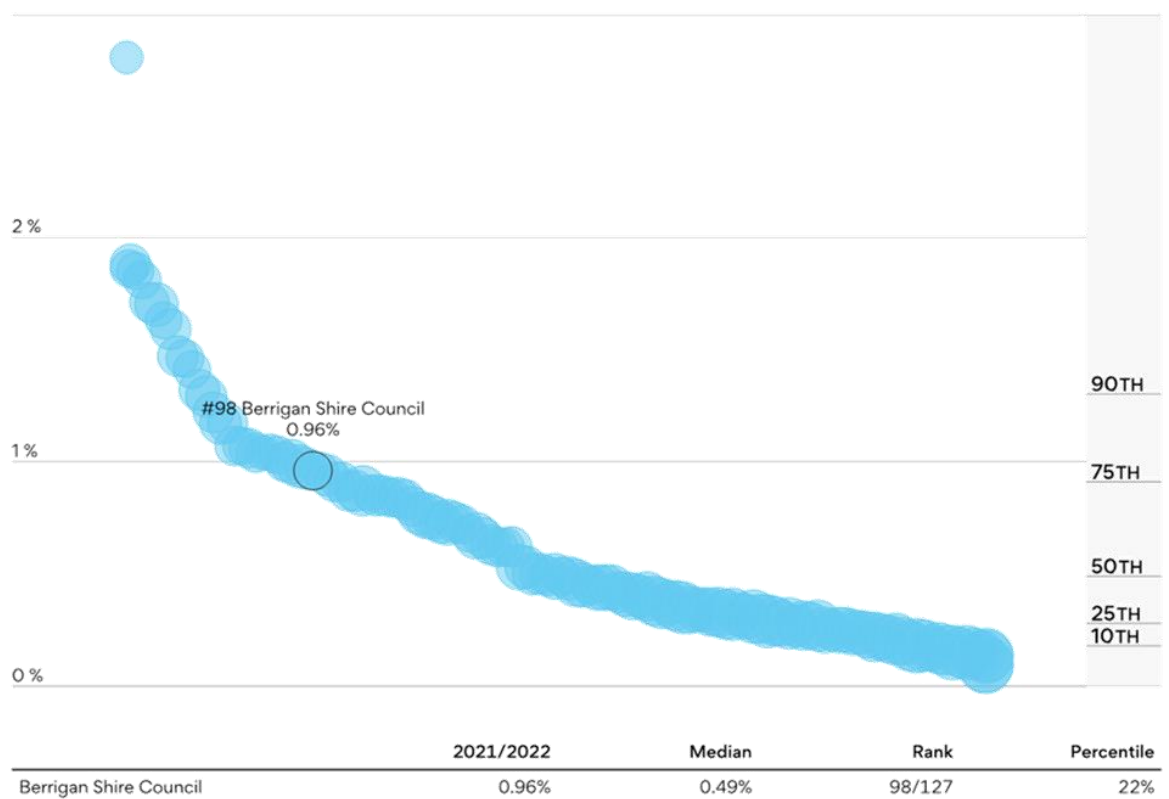
GM TRP % of TOR All Councils



GM TRP % of TOE

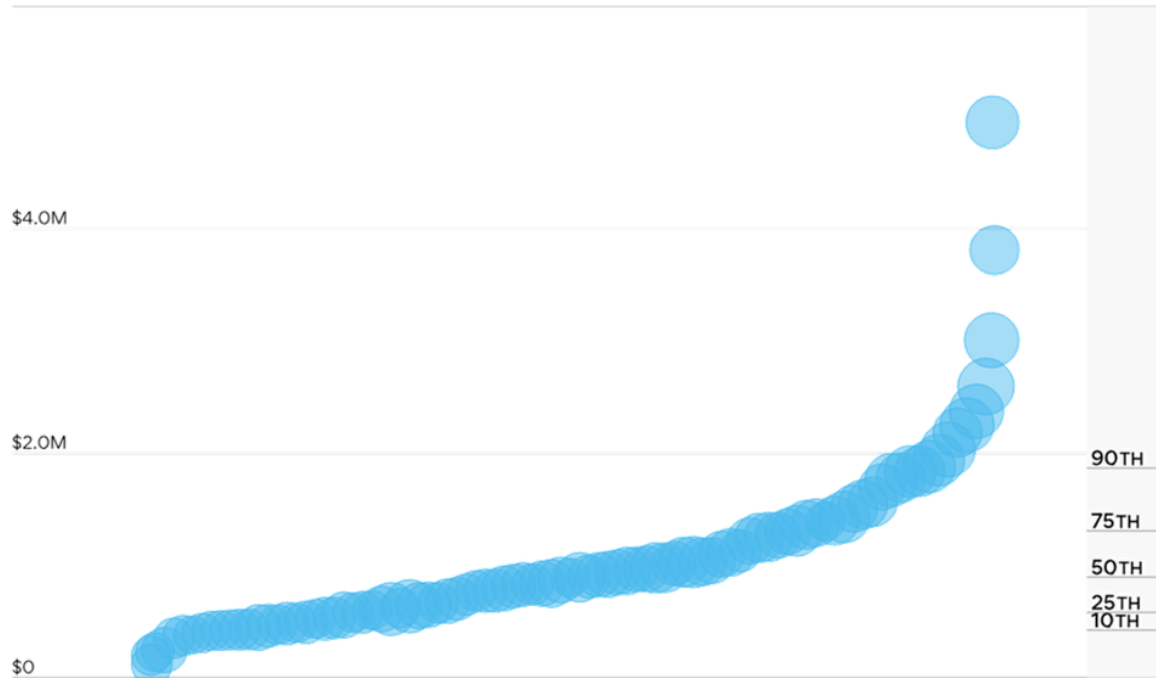


GM TRP % of TOE All Councils



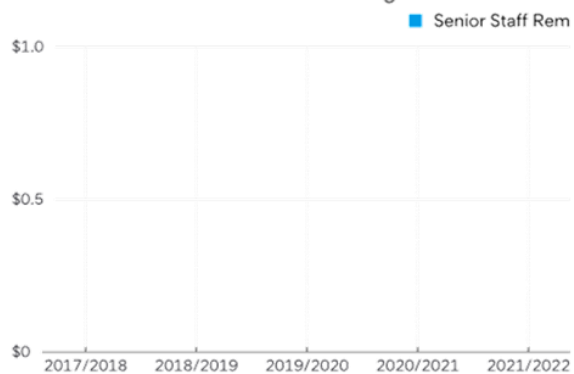
## Senior Staff remuneration (excluding GM)

Senior Staff Remuneration excluding GM All Councils

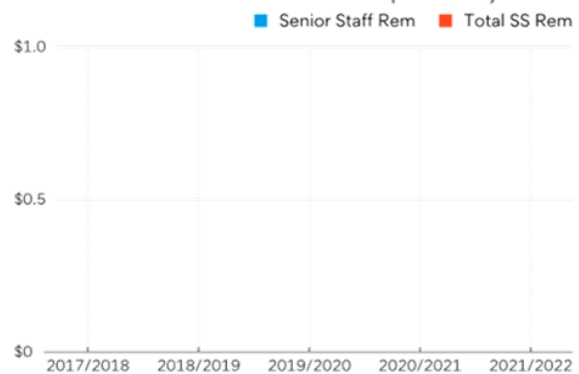


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	-	-	-	-

Senior Staff remuneration excluding GM



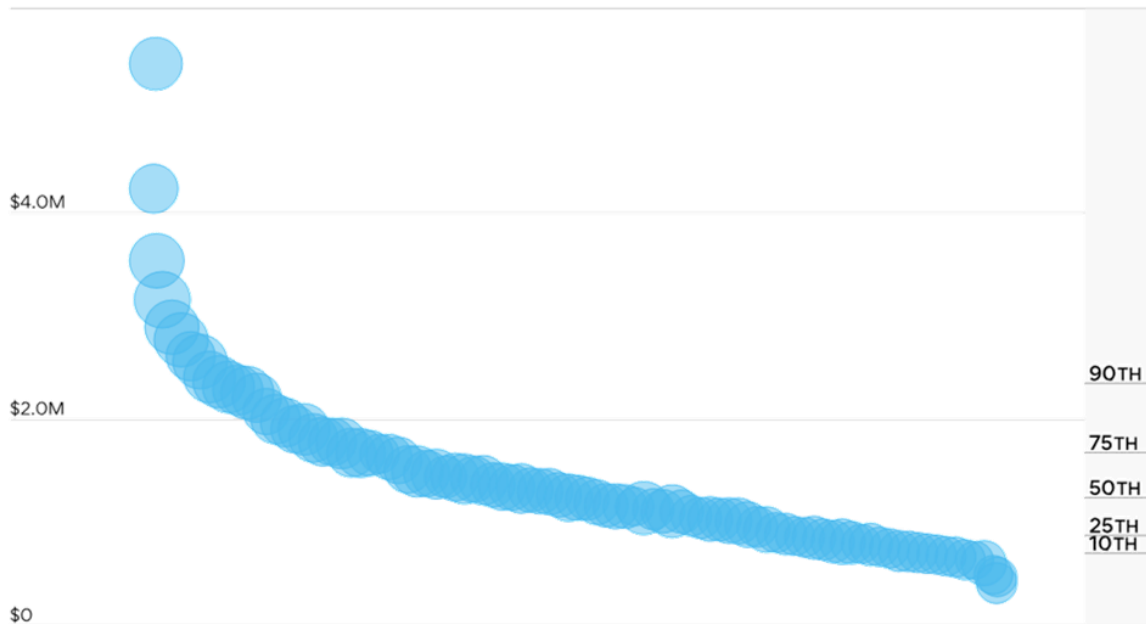
Total Senior Staff Remuneration vs previous years





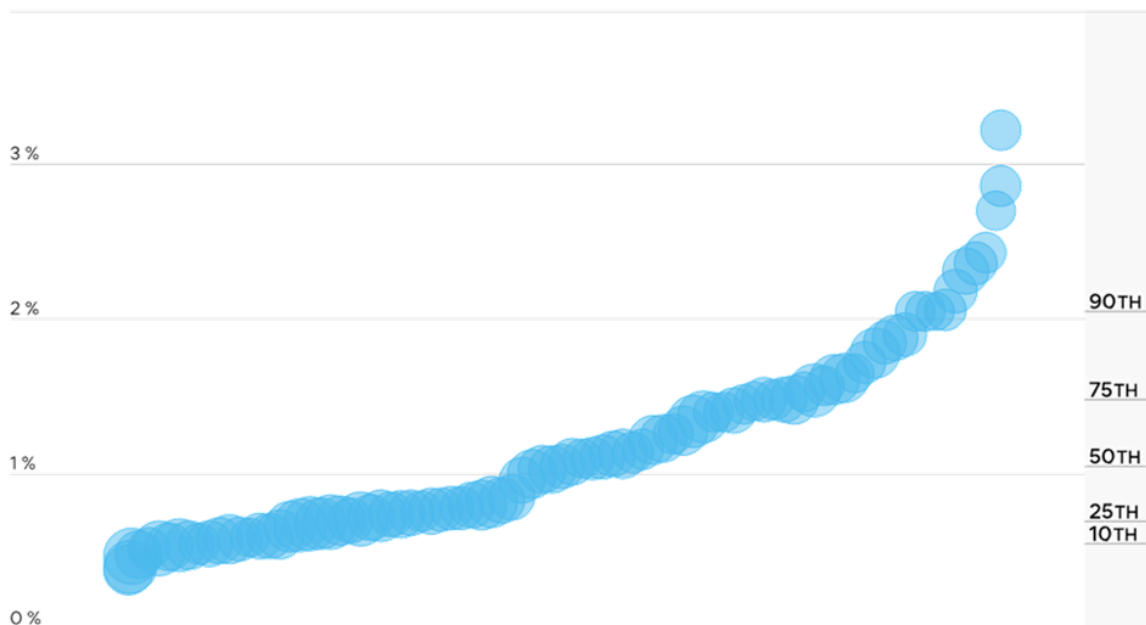
## Senior Staff total remuneration including GM

Total Senior Staff remuneration All Councils



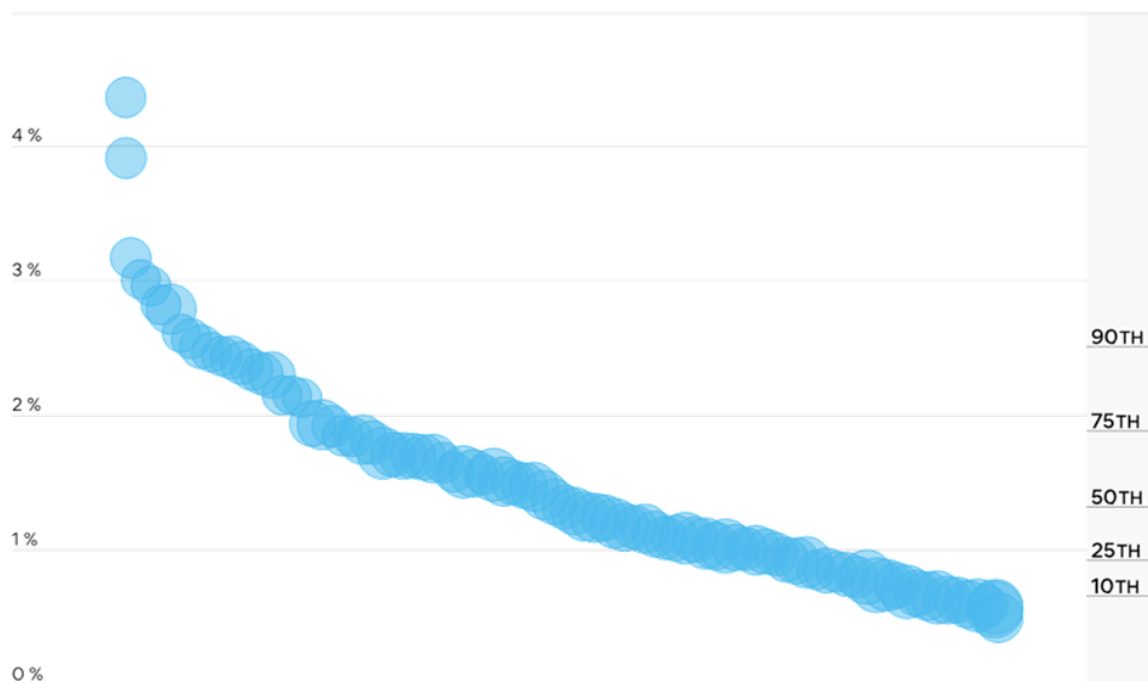
	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	-	-	-	-

SS TRP % of TOR All Councils



	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	-	-	-	-

SS TRP % of TOE All Councils

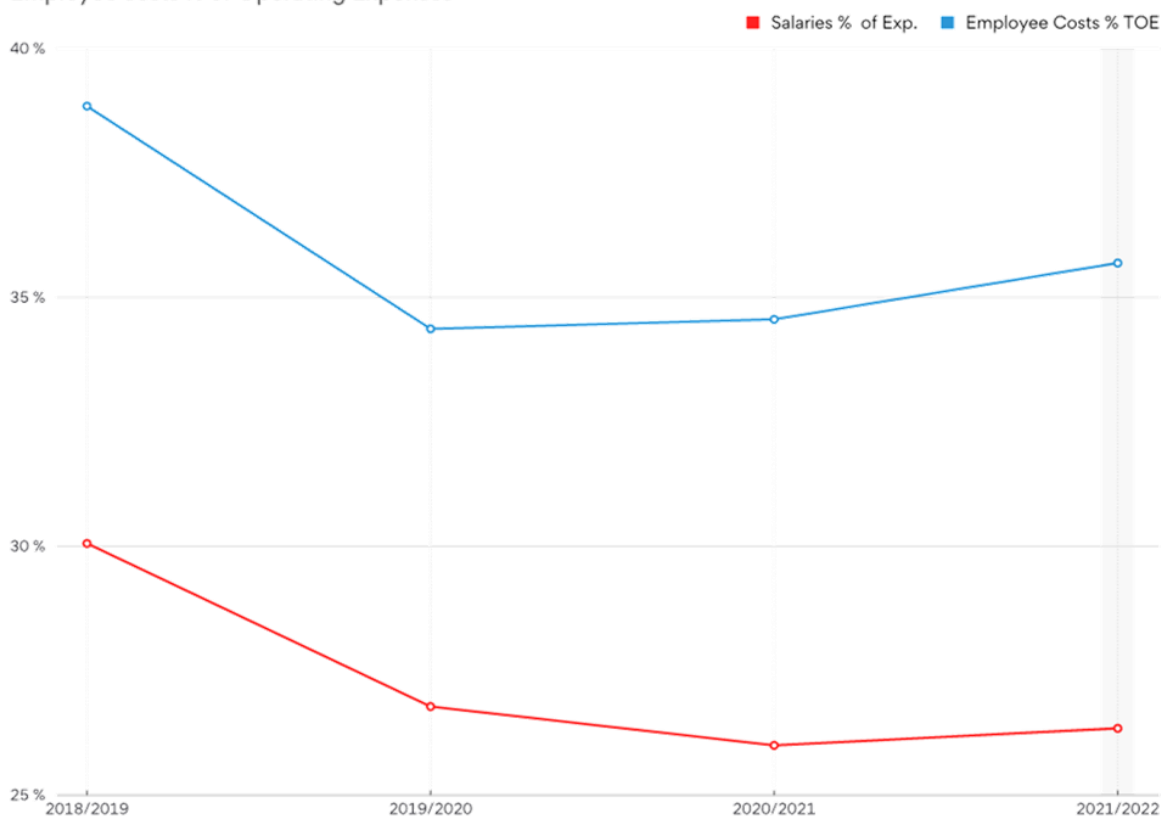


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	-	-	-	-

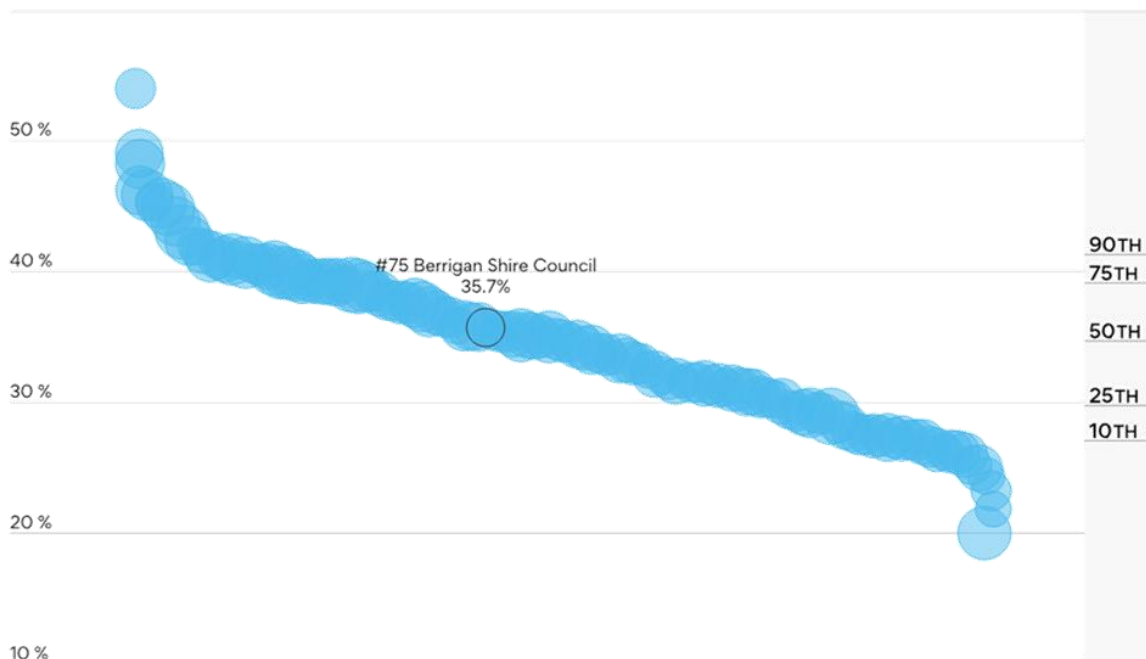
## Staff costs

KPIs (This year vs previous years)	2021/2022	This year vs last year	2020/2021	2019/2020
Employee Cost - Total Investment in Staff	\$9,013,000	\$869,000	\$8,144,000	\$7,617,000
Labor Cost Percentage	32.92%	5.46%	27.46%	28.73%
Employee Costs % TOE	35.70%	1.13%	34.56%	34.37%
Salaries and Wages	\$6,652,000	\$525,000	\$6,127,000	\$5,935,000
Salaries % of Operating Expenses	26.34%	0.34%	26.00%	26.78%

Employee costs % of Operating Expenses

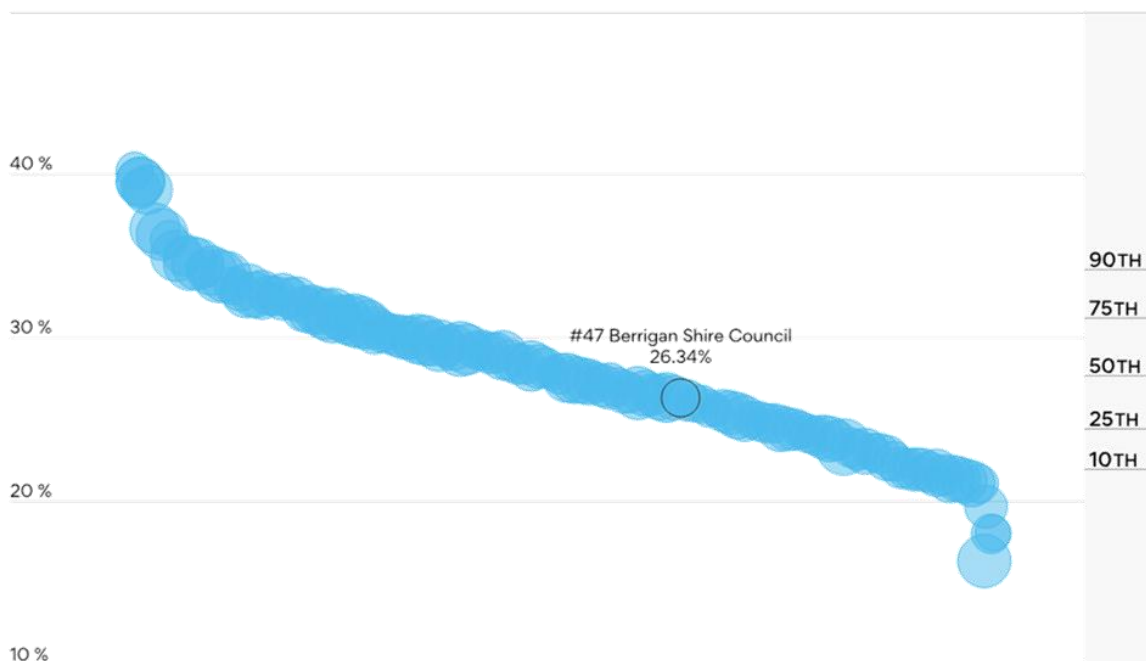


Employees Costs % of Operating Expenses All Councils



	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	35.7%	34.67%	75/127	41%

Salaries % of Operating Expenses All Councils

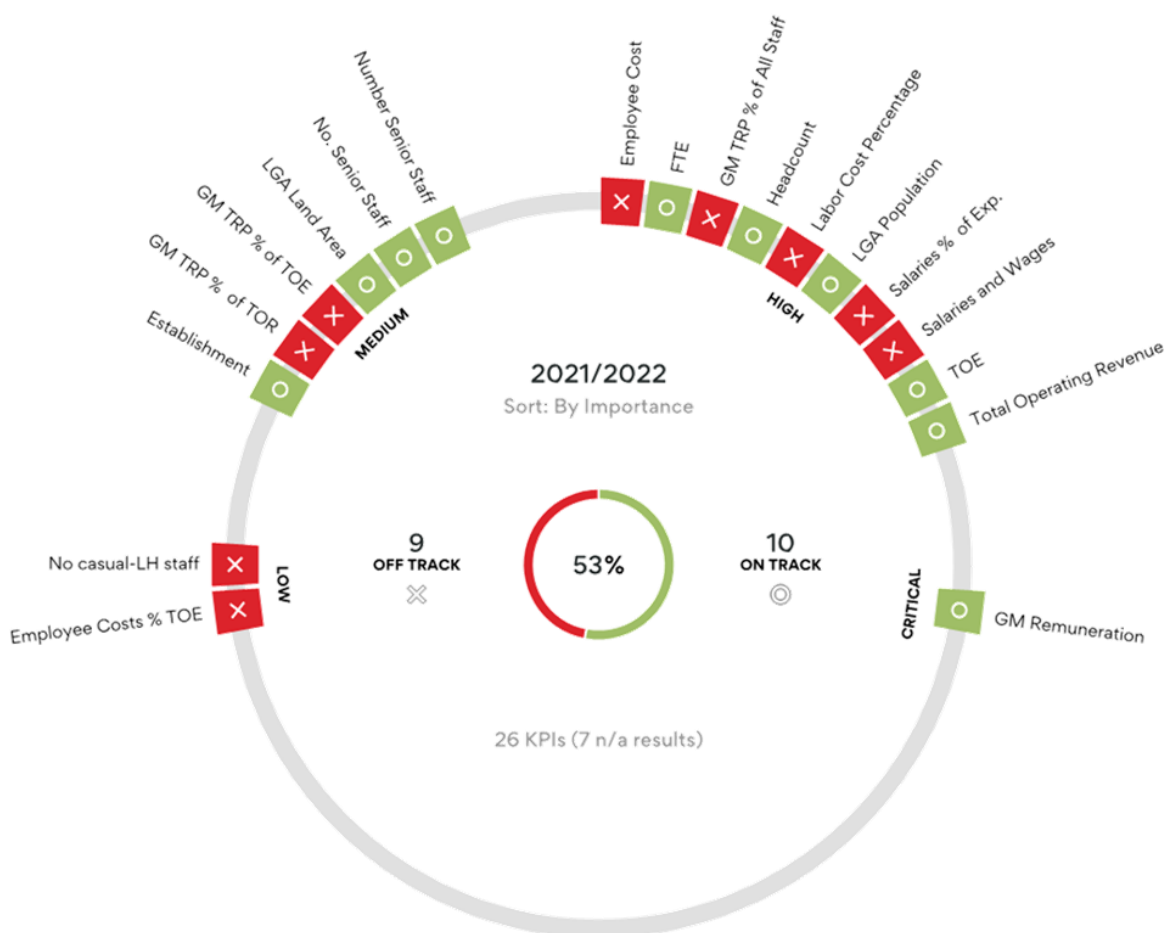


	2021/2022	Median	Rank	Percentile
Berrigan Shire Council	26.34%	27.69%	47/126	63%

## KPI Results

This chart shows KPIs sorted by degree of importance. KPIs are classified as either low, medium, high or critical importance.

**Please note** that the system has only two default options - On Track or Off Track. These defaults may not necessarily indicate Council's circumstances as LGMS has not set targets for KPIs, but this chart is included in the report as a snapshot of KPIs reported.



## Councils in the Comparison Group

---

- AlburyCity Council
- Armidale Regional Council
- Ballina Shire Council
- Balranald Shire Council
- Bathurst Regional Council
- Bayside Council
- Bega Valley Shire Council
- Bellingen Shire Council
- Berrigan Shire Council
- Blacktown City Council
- Bland Shire Council
- Blayney Shire Council
- Blue Mountains City Council
- Bogan Shire Council
- Bourke Shire Council
- Brewarrina Shire Council
- Broken Hill City Council
- Burwood Council
- Byron Shire Council
- Cabonne Council
- Camden Council
- Campbelltown City Council
- City of Canada Bay Council
- City of Canterbury-Bankstown Council
- Carrathool Shire Council
- Central Coast Council
- Central Darling Shire Council
- Central Tablelands Water
- Cessnock City Council
- Clarence Valley Council
- Cobar Shire Council
- Coffs Harbour City Council
- Coolamon Shire Council
- Coonamble Shire Council
- Cootamundra-Gundagai Regional Council
- Lachlan Shire Council
- Lake Macquarie City Council
- Lane Cove Council
- Leeton Shire Council
- Lismore City Council
- City of Lithgow Council
- Liverpool City Council
- Liverpool Plains Shire Council
- Lockhart Shire Council
- Maitland City Council
- MidCoast Council
- Mid-Western Regional Council
- Moree Plains Shire Council
- Mosman Council
- Murray River Council
- Murrumbidgee Council
- Muswellbrook Shire Council
- Nambucca Valley Council
- Narrabri Shire Council
- Narrandera Shire Council
- Narromine Shire Council
- The City of Newcastle Council
- North Sydney Council
- Northern Beaches Council
- Oberon Council
- Orange City Council
- Parkes Shire Council
- City of Parramatta Council
- Penrith City Council
- Port Macquarie-Hastings Council
- Port Stephens Council
- Queanbeyan-Palerang Regional Council
- Randwick City Council
- Richmond Valley Council
- Riverina Water County Council

- Cowra Shire Council
- Cumberland City Council
- Dubbo Regional Council
- Dungog Shire Council
- Edward River Council
- Eurobodalla Shire Council
- Fairfield City Council
- Federation Council
- Forbes Shire Council
- Georges River Council
- Gilgandra Shire Council
- Glen Innes Severn Council
- Goldenfields Water
- Goulburn Mulwaree Council
- Greater Hume Shire Council
- Griffith City Council
- Gunnedah Shire Council
- Gwydir Shire Council
- Hawkesbury City Council
- Hay Shire Council
- The Hills Shire Council
- Hilltops Council
- Hornsby Shire Council
- Hunters Hill Council
- Inner West Council
- Inverell Shire Council
- Junee Shire Council
- Kempsey Shire Council
- Kiama Municipal Council
- Ku-ring-gai Council
- Kyogle Council
- Rous County Council
- City of Ryde Council
- Shellharbour City Council
- Shoalhaven City Council
- Singleton Council
- Snowy Monaro Regional Council
- Snowy Valleys Council
- Strathfield Municipal Council
- Sutherland Shire Council
- City of Sydney Council
- Tamworth Regional Council
- Temora Shire Council
- Tenterfield Shire Council
- Tweed Shire Council
- Upper Hunter Shire Council
- Upper Lachlan Shire Council
- Uralla Shire Council
- Wagga Wagga City Council
- Walcha Council
- Walgett Shire Council
- Warren Shire Council
- Warrumbungle Shire Council
- Waverley Council
- Weddin Shire Council
- Wentworth Shire Council
- Willoughby City Council
- Wingecarribee Shire Council
- Wollondilly Shire Council
- Wollongong City Council
- Woollahra Municipal Council
- Yass Valley Council





## Berrigan Shire Council Development Assessment Report

### 1 Application Details

Development Application Number	Reference number: PAN-253925 Council ID: 48-23-DA-D1												
Property Address	277 Lower River Road, Tocumwal												
Lot and DP	<table border="1"> <thead> <tr> <th>Lot/Section Number/Plan</th><th>Primary address?</th></tr> </thead> <tbody> <tr> <td>4 f DP594655</td><td><input checked="" type="checkbox"/></td></tr> <tr> <td>10 f DP752304</td><td><input type="checkbox"/></td></tr> <tr> <td>1 f DP390719</td><td><input type="checkbox"/></td></tr> <tr> <td>6 f DP594654</td><td><input type="checkbox"/></td></tr> <tr> <td>2 f DP594234</td><td><input type="checkbox"/></td></tr> </tbody> </table>	Lot/Section Number/Plan	Primary address?	4 f DP594655	<input checked="" type="checkbox"/>	10 f DP752304	<input type="checkbox"/>	1 f DP390719	<input type="checkbox"/>	6 f DP594654	<input type="checkbox"/>	2 f DP594234	<input type="checkbox"/>
Lot/Section Number/Plan	Primary address?												
4 f DP594655	<input checked="" type="checkbox"/>												
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1 f DP390719	<input type="checkbox"/>												
6 f DP594654	<input type="checkbox"/>												
2 f DP594234	<input type="checkbox"/>												
Description	Replacement Dwelling												
Applicant	Frank Gunther												
Applicant Address	124 Martins Road, Yarrawalla												
Zoning	RU1 – Primary Production												
Minimum Lot Size	120 hectares												
Owners Consent	Yes												
Date	6 March 2023												

### 2 Detailed Description of Proposal

The subject application has been lodged seeking consent for a replacement dwelling on Lot 4 DP594655 and addressed as 277 Lower River Road, Tocumwal.

The site currently contains a dwelling, however its legality as an approved dwelling forms part of the contentions put forward and are discussed in this assessment report. Legal advice by Kell Moore makes up part of this discussion

The application was received by Council on 15 August 2022. Council undertook a preliminary review of the application and requested further information on 1 September 2022. A response was received by the applicant on 13 October 2022.

The further information request of 1 September 2022 outlined a range of issues with the submitted documentation and requested further supporting documentation as part of this request. The request included the following:

1. Provide further justification for the dwelling entitlement.
2. A survey plan (feature and level survey).
3. A flood risk assessment report
4. An amended bushfire report to address several errors and update assessment to reflect the issues identified within the report.
5. Biodiversity – consideration of relevant environmental constraints associated with the site. A test of significance was requested under section 7.3 of the *Biodiversity Conservation Act 2016*.
6. A land capability assessment (LCA) – due to the environmental constraints including proximity to the Murray River a LCA was requested to confirm that effluent could be appropriately managed and disposed of on-site.
7. Aboriginal Cultural Heritage - A due diligence assessment prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales' was requested to be prepared by a suitably qualified heritage consultant.
8. Earthworks – the applicant was requested to provide further detail on the earthworks required to facilitate the development. Relevant supporting documentation was requested including

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engineers plans that demonstrated that the proposed cut and fill would not have an adverse impact on the function and flow in the event of a flood.

The response provided by the applicant on the 13 October 2022 is summarised as follows:

Evidence of dwelling entitlement and further justification was provided. Advice was provided that Lot 4 was subdivided in 1977 and the house was built in the 1983.

1. Survey Plan – Survey levels around the house and along the accessway were provided.
2. No flood risk assessment, however a level of the highest known flood from 2016 was provided.
3. Applicant provided an amended bushfire report and justification against other changes requested.
4. No test of significance was provided however there are no obvious biodiversity impacts as a result of this proposal.
5. No land capability assessment was provided. A deferred commencement requiring an LCA would be required.
6. No Aboriginal cultural heritage due diligence was provided. Publicly available documentation do not show the site as having any Aboriginal Heritage Significance.
7. No additional information was provided in relation to the proposed earthworks.

The application was lodged on 14 October 2022 and a CNR request was submitted on 25 October 2022 to relevant State Government authorities for comment and concurrence (as required). Relevant referral comments and responses are provided in Section 7 of this report.

Council also sought legal advice as to whether the property contained a valid dwelling entitlement. Revised advice was received on 13 February 2023 from Kell Moore Solicitors indicating that the property was likely to contain a legal dwelling entitlement. Kell Moore do caveat the advice stating that the applicant is relying on the 'presumption of regularity'. Kell Moore confirm that *whilst the onus is on the applicant to prove the presumption exists, Council does not need to press this requirement if you are satisfied from your records that the dwelling was originally approved. This will be a matter for Council to press or not press the presumption.*

### **The proposal**

The development proposes a replacement dwelling. The site currently contains an existing dwelling which is proposed to be demolished and replaced with a new 4 bedroom dwelling. The description of the proposed development is provided in the following extracts from the submitted Statement of Environmental Effects.

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This application seeks approval for the demolition of an existing dwelling house and erection of a new replacement dwelling.

The proposed new replacement dwelling incorporates, 4 x bedrooms, main bedroom with ensuite and walk in robe, main bathroom, formal living, dining / lounge room, kitchen, walk in pantry, store, laundry, garage and incorporates the following dimensions:

- 18.8 metres long x 16.6 metres wide x 2.7 metres high to the underside of the eaves; and
- A portico/veranda will surround the entire dwelling at a variable width from 2.0 metres to 3.1 metres.

The replacement dwelling will incorporate the following areas:

- Dwelling = 329.7 m<sup>2</sup>
- Garage = 73.7 m<sup>2</sup>
- Verandah = 226.8 m<sup>2</sup>

**Total** = 630.2 m<sup>2</sup>

The proposed dwelling is of a slab on-ground and steel framed construction type, clad in composite materials, comprising of brick and standing seam walls, with customised galvanised roof sheeting (24 degree roof pitch).

The proposed dwelling will be sited in generally the same location as the existing dwelling house to be demolished which is approximately 45 metres from the river bank.

The colours selected and identified on the architectural plans that accompany this development application, have been selected to blend in and be sympathetic to the natural environment and colour

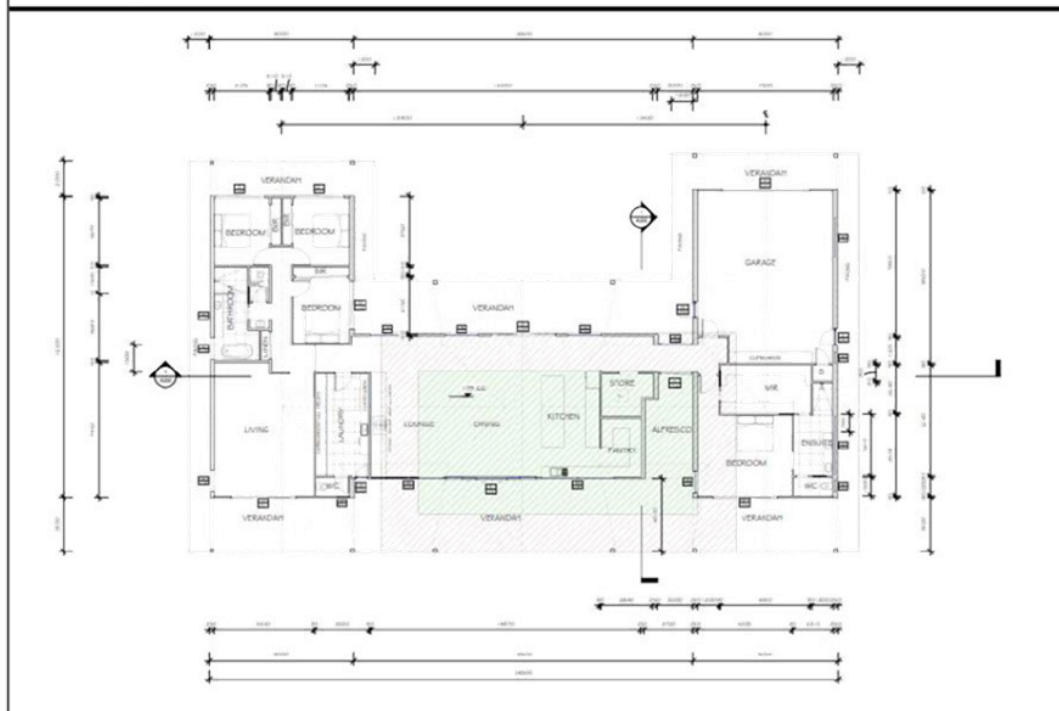
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tones.

The application proposes the installation of a new onsite system of sewerage management – conventional septic tank and trenches which will be located 100 metres from the river bank, and 2 new water tanks (minimum of 100,000 litres for domestic and 25,000 litres dedicated to firefighting purposes) that will service the development.

The development will be located in the south-west corner of the allotment, generally in the same location as the existing dwelling that will be demolished.

See figure 3 below of proposed floor plan.



### 3 Political Donations

Political Donations	None Disclosed
---------------------	----------------

### 4 Notification

Public Notification	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Advertised Development	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Date From:   N/A	Date To:		N/A	
Newspaper:	N/A			
Submissions Received:	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

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## 5 Key Dates

Reference number	Milestone	Date
1	Application submitted	15/08/2022
2	Additional Information was requested	01/09/2022
3	Additional Information was requested	12/10/2022
4	Additional Information was provided	13/10/2022
5	Application lodged	14/10/2022
6	Concurrence and Referral requested	25/10/2022

## 6 Matters for Consideration under Section 4.15 of the EP&A Act

In determining a development application, a consent authority is required to take into consideration the following matters when considering a development application:

### (a) (i) Any environmental planning instrument,

Satisfactory ☒ Unsatisfactory ☐

### Berrigan Local Environmental Plan 2013

#### Part 2 – Permitted or prohibited development

The subject site is zoned RU1 – Primary Production. Dwelling houses are permitted with consent.

#### Part 3 – Exempt and complying development

N/A

#### Part 4 – Principal Development Standards

#### Clause 4.2A – Erection of dwelling houses on land in certain rural and environment protection zones

The objective of this clause is to minimise unplanned rural residential development and enable the replacement of **lawfully** erected dwelling houses in rural and environmental protection zones. The subject clause applies as the land is zoned RU1 and seeks consent for a replacement dwelling.

Clause 4.2A(3) states that development consent **must not** be granted for the erection of a dwelling house on land to which this clause applies unless it meets one of the standards provided at (a) – (e) as assessed below:

- (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or



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Comment: The proposed development does not meet the minimum lot size of 120ha which applies to the land.

- (b) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*

Comment: The applicant is not relying on this subclause to justify the satisfaction of this clause.

- (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or*

Comment: The applicant is not relying on this subclause to justify the satisfaction of this clause.

- (d) is an existing holding, or*

Comment: The land is not an existing holding as defined by clause 4.2A(6) and (7)

- (e) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) had it not been affected by—*

- (i) a minor realignment of its boundaries that did not create an additional lot, or*
- (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or*
- (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.*

Comment: As above

### Discussion

The applicant seeks to rely on clause 4.2A(5) which states:

*"(5) Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house."*

The applicant contended that the dwelling was lawfully erected under the provisions of the Berrigan Interim Development Order (IDO) No. 1. Under the IDO, dwellings on non-urban land were permitted as development without consent. The IDO was repealed and replaced with the Berrigan LEP 1992 on 27th July 1992.

The applicant contends that the dwelling was 'lawfully erected' in 1983 under the IDO. The following is a timeline of the IDO, subdivision and construction of the dwelling which was provided to Kell Moore in preparation of their legal advice.

- The IDO came into effect on 4 July 1975.
- At least three out of the five lots that are now owned by the Gunthers were subdivided in 1977. This includes Lot 4 (21ha) which is the site of the house.
- The letter provided to Council which indicates approval for a house, was dated 1982, so the house was probably constructed in 1982-83.
- Paragraph 12 (2) of the IDO allowed subdivision of land less than 40ha and greater than 2ha where Council is satisfied that such allotment:
  - is intended to be used for the purpose of agriculture,
  - the ratio of depth to frontage was satisfactory and
  - had a frontage to main road.

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It should be assumed that the subdivision was allowed because of the IDO.

- Paragraph 13 (1) of the IDO states a dwelling house shall not be erected on a parcel unless the parcel: (b) comprises an allotment created by subdivision in accordance with subclause (2) or (4) of paragraph 12.
- Paragraph 13 (2) of the IDO allowed no more than one dwelling house to be erected on a parcel of land referred in paragraph 13 (b).

The timeline and facts uncovered about the site, plus the legal advice by Kell Moore indicate that this site probably has a dwelling entitlement. Therefore, in accordance with Clause 4.2A(5) of the Berrigan LEP 2013 development consent could be given for a replacement dwelling.

The purpose of Clause 4.2A (5) is to give legitimately built dwellings the opportunity to be replaced when modern controls applying to the site, have changed significantly enough to prohibit the dwelling. There are significant constraints that apply to this site including bushfire and flooding, however it does not appear to be the intention of Clause 4.2A (5) to allow a replacement dwelling on one hand, to then prevent the replacement on the other hand because of existing site constraints. The thought process must be that, the constraints would have been considered during the original approval and they should not prevent the replacement dwelling even if the constraints are better understood. Only a mandatory policy direction within the LEP or SEPP's could force some changes to the application or prevent it.

## **Part 5 – Miscellaneous provisions**

### **Clause 5.21 – Flood Planning**

The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

Clause 5.21(2) states that development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied that the development is:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The 2016 flood level was marked on a nearby tree. This level was 108.83 RL compared with the existing floor level of the house at 109.65 which is 0.82m above the 2016 flood level. The 2016 flood was one of the highest known floods in recent memory. The 2016 flood was approximately 500mm below the Tocumwal levy bank.



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The existing accessway from the existing house to Lower River Road varies in height from 107-109RL. This means a flood of 2016 magnitude would overtop the causeway and prevent exit to the site. Raising the causeway is not the preferred outcome as this may have upstream or downstream impacts. Instead an emergency management plan will be requested as a deferred commencement.



#### **Part 6 – Additional local provisions**

##### **Clause 6.1 – Earthworks**

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

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- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The applicant would not provide further details regarding the quantities or extent of the proposed earthworks other than the dwelling will be constructed 1m above the existing ground level. This earth mound will increase the finished floor level of the proposed dwelling for better flood protection. Given the size of the Murray-Darling River catchment, the increase in this earth mound plus the lack of houses in the immediate vicinity will have a negligible impact on the upstream and downstream flooding. The mound must be excavated from upstream of the proposed house to ensure flood volumes are not decreased.

#### **Clause 6.3 – Terrestrial biodiversity**

The subject clause applies as the subject land is identified as 'biodiversity' on the Terrestrial Biodiversity Map.

- (a) whether the development is likely to have—*
  - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
  - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
  - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
  - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Under clause 6.3(4) development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

It is contended that the proposed development does consider some of the matters above, as no tree removal is proposed. The biodiversity impact of increasing the footprint of the dwelling would have limited additional impact on the overall biodiversity of the site.

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#### **Clause 6.4 – Riparian lands & watercourses**

The subject clause applies as the subject land is identified as 'Riparian land and waterways' on the Riparian Land and Waterways Map.

Clause 6.4(3) states that before determining a development application for development on land to which this clause applies, the consent authority must consider—

- (a) whether or not the development is likely to have any adverse impact on the following—*
  - (i) the water quality and flows within the watercourse,*
  - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,*
  - (iii) the stability of the bed and banks of the watercourse,*
  - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,*
  - (v) any future rehabilitation of the watercourse and riparian areas, and*
- (b) whether or not the development is likely to increase water extraction from the watercourse, and*
- (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Under clause 6.4(4) development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The replacement dwelling is shown to have no setback from the property boundary as it fronts the Murray River. This is not a great outcome. Increased setbacks would be preferred for riparian and waterway improvements in the future. Clause 6.7 (below) discusses the setback in more detail.

#### **Clause 6.5 – Wetlands**

The subject clause applies as the subject land is identified as 'Wetland' on the Wetlands Map.

Clause 6.5(3) states that before determining a development application for development on land to which this clause applies, the consent authority must consider—

- (a) whether or not the development is likely to have any significant adverse impact on the following—*
  - (i) the condition and significance of the existing native fauna and flora on the land,*
  - (ii) the provision and quality of habitats on the land for indigenous and migratory species,*
  - (iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*



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Clause 6.5(4) states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The location of the proposed dwelling is unlikely to have any impacts on the wetland area.

#### **Clause 6.7 – Development on River Front Areas**

Clause 6.7 of the LEP applies to river front areas, being land in the RU1 or E3 zones that is within 100 metres of the top of the bank of the river. Consequently, the provisions of this clause apply in this instance.

Clause 6.7(2) states that despite any other provision of this Plan, development consent may be granted to development on land in a river front area only for the following purposes—

- (a) boat building and repair facilities, boat launching ramps, boat sheds, charter and tourism boating facilities or marinas,*
- (b) the extension or alteration of an existing building that is wholly or partly in the river front area if the extension or alteration will be located no closer to the river bank than the existing building,*
- (c) environmental protection works,*
- (d) extensive agriculture and intensive plant agriculture,*
- (e) environmental facilities, recreation areas and recreation facilities (outdoor),*
- (f) water recreation structures.*

In this instance, the applicant is seeking approval for a replacement dwelling rather than an extension or alteration to an existing building. Clause 6.7 is explicit that despite Clause 4.2A (5) for the replacement of the dwelling, Council can not grant development closer than 100m from the top of bank of the river. The Statement of Environmental Effects attempts to state that the development consent is an extension of (d) extensive agriculture and the dwelling is merely ancillary to this. This is not the case. The development consent is being issued for a dwelling and in addition the site is used for sheep grazing rather than extensive agriculture or intensive plant agriculture. The dwelling must be setback 100m from the top of bank.

#### **Clause 6.10 – Essential Services**

Clause 6.10 states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,*

The proposed dwelling is proposing a 100,000 litre rain water tank for water supply.

- (b) the supply of electricity,*

The site contains electricity infrastructure.

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*(c) the disposal and management of sewage,*

The development is proposed to be managed by an on-site effluent management system. The applicant was requested to provide a Land Capability Assessment to demonstrate the proposed dwelling effluent could be managed appropriately onsite without impact on water quality, waterways or other natural features. The applicant has chosen not to provide this information. Therefore, as a deferred commencement, a Land Capability Assessment must be provided which recommends the preferred location and type of septic system, considering the high risk of flooding and potential for the system to be inundated with riverine flooding.

*(e) stormwater drainage or on-site conservation,*

The development proposes rainwater tanks to retain and reuse.

*(f) suitable vehicular access.*

The subject site contains vehicle access from Lower River Road.

### **State Environmental Planning Policies**

The following State Environmental Planning Policies apply to the subject development.

#### **State Environmental Planning Policy (Resilience & Hazards) 2021**

##### **Chapter 4 – Remediation of land**

Chapter 4 of State Environmental Planning Policy Resilience & Hazards 2021 sets out considerations relating to land contamination across the state. The intention of the SEPP is to establish 'best practice' guidelines for managing land contamination through the planning and development control process.

In the context of this application, clause 4.6 of the SEPP generally requires that consideration be given to whether or not the land proposed for development is contaminated and fit for use for its intended purpose.

The subject land has not been developed and consists of rural land adjoining the Murray River and displays no signs of land contamination. The land is not known to be contaminated, nor is it expected to be at risk of contamination given its historical use and surrounding context and the site is considered fit for purpose for the proposed development.

#### **State Environmental Planning Policy (Biodiversity & Conservation) 2021**

##### **Chapter 5 – Murray River Lands**

Chapter 5 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies to the subject development. The aims of the SEPP are to conserve and enhance the riverine environment of the River Murray for the benefit of all users.

The objectives of the Chapter are:

- (a) to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray;*
- (b) to establish a consistent and coordinated approach to environmental planning and assessment along the River Murray; and*
- (c) to conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray.*

Clause 5.8 & 5.9 requires Council to take into account a number of general and specific principles when considering development proposals to which the plan applies. These controls generally relate

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to the protection of the Murray River. The following clauses are relevant for consideration – it is noted that the application does **not** provide any assessment against Chapter 5 of the subject SEPP.

#### **Clause 5.8 – General Principles**

This clause requires consideration of:

- (a) the aims, objectives and planning principles of this Chapter,*
- (b) any relevant River Management Plan,*
- (c) any likely effect of the proposed plan or development on adjacent and downstream local government areas,*
- (d) the cumulative impact of the proposed development on the River Murray.*

The replacement dwelling can be supported, however where there can be improvements to the proposed dwelling i.e. the setback from the top of bank to facilitate the Murray River environment, then this will be required.

#### **Clause 5.9 – Specific Principles**

This clause considers matters relating to access, bank disturbance, flooding, land degradation, landscape, river related uses, settlement, water quality and wetlands.

The setback of 100m from the top of bank will help mitigate the issues of bank disturbance, flooding, land degradation and landscape.

#### **Clause 5.13 – Building setbacks – special provisions**

Clause 5.13 relates to matters which are to be taken into consideration when a consent authority determines a development application. Relevant subclauses of clause 5.13 are addressed below.

##### **1. Building setback**

Clause 5.13(2) states that all buildings outside land zoned for urban purposes under a local environmental plan should be set well back from the bank of the River Murray. The only exceptions are buildings dependent on a location adjacent to the River Murray.

There is no definition for 'well back' however 6.7 of the LEP identifies 100m as an appropriate setback in the RU1.

##### **2. Objectives of building setback**

Clause 5.13(3) outlines the objectives of siting buildings away from the River Murray are to—

- maintain and improve water quality,*
- minimise hazard risk and the redistributive effect on floodwater associated with the erection of buildings on the floodplain,*
- protect the scenic landscape of the riverine corridor,*
- improve bank stability, and*
- conserve wildlife habitat.*

The proposed development has not considered these objectives as part of the design and siting of the proposed replacement dwelling. It is therefore considered that the minimum of 100m setback from top of bank is appropriate.

##### **3. Matters to be considered**

Clause 5.13(4) sets out additional matters to be considered when determining the location of a building in relation to the River Murray, in addition to the planning principles the following specific matters should also be considered—

- (a) Effluent disposal*



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(i) *it is generally unsuitable to locate septic tanks—*

- *on flood liable land,*
- *where the watertable is within 2 metres of the surface,*
- *in close proximity to a sensitive natural environment,*
- *if seasonably low evapotranspiration is common, or*
- *on soils of low permeability,*

(ii) *septic tanks should only be installed on suitable (ie permeable) soils with absorption areas located as far as possible from the River Murray or other drainage lines,*

(iii) *in circumstances where septic tanks are unsuitable, package sewage treatment plants or humus closet (dry toilet) systems should be preferred,*

(iv) *excess stormwater should, where possible, be disposed of on-site away from any septic absorption area.*

(b) *Landscaping*

*The visual impact of buildings in the riverine landscape can be lessened by the planting of a variety of appropriate vegetation species. This practice has other advantages in stabilising unstable or eroding banks and providing both habitat for wildlife and a trap for silt, nutrients and other substances which may otherwise enter the river and lead to a deterioration of water quality.*

There is a dwelling entitlement and a replacement dwelling is acceptable. Protecting the effluent disposal from possible flooding will be difficult on this site. The deferred commencement requires a Land Capability Assessment that recommends a best practice design and siting for an effluent disposal system in this location.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The subject development is BASIX affected development for which the regulations under the Act require a BASIX certificate to accompany a development application or an application for a complying development certificate or construction certificate.

The applicant provided a BASIX certificate with the subject application.

**(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority,**

Satisfactory ☐ Not relevant ☒

Reasons (if applicable)

**(iii) any development control plan,**

Satisfactory ☐ Unsatisfactory ☒

Is a variation proposed?

Yes ☐ No ☒

Berrigan Development Control Plan 2014	
<b>Part 2: Residential Development</b>	Applies? - Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Part 2.1: Neighbourhood character	N/A

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Part 2.2: Streetscape	N/A
Part 2.3: Landscaping	N/A
Part 2.4: Private Open Space	N/A
Part 2.5: Building Setbacks	A minimum 10m setback from boundaries for residential and farm buildings. The development proposes a setback of less than 10m and therefore does not comply with this standard. Conditional consent will be for the dwelling to be setback 100m from top of bank which is greater than 10m from the boundary.
Part 2.6: Car parking & access	Complies
Part 2.7: Site Facilities	N/A
Part 2.8: Security	N/A
Part 2.9: Privacy	N/A
Part 2.10: Energy Efficiency	BASIX certificate provided.
Part 2.11: Outbuildings	N/A
<b>Part 11: Flood Prone Land</b>	<b>Applies? - Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></b>
Part 11.1: Objectives	The proposed development does not comply with all the listed objectives of Flood Prone Land. Setting the dwelling back from the top of bank, having a best practice effluent disposal system, raising the finished floor level above the 2016 flood level and providing a flood emergency response plan are helping improve the existing situation.
Part 11.2: Decision Guidelines	The proposed development does not comply with all the listed objectives of Flood Prone Land. Setting the dwelling back from the top of bank, having a best practice effluent disposal system, raising the finished floor level above the 2016 flood level and providing a flood emergency response plan are helping improve the existing situation.
Part 11.3: Consultation	Noted
Part 11.4: Flood Planning Area	Noted
Part 11.5: Definitions	Noted

**(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,**

Satisfactory ☐ Not relevant ☒

Reasons (if applicable)

**(iv) any matters prescribed by the regulations,**

Satisfactory ☒ Unsatisfactory ☐

Reasons (if applicable)      Clauses 61 – 66

**that apply to the land to which the development application relates,**

**(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**



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Consideration	Satisfactory	Unsatisfactory	Not Relevant	Comment
Context & Setting	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed dwelling is a replacement of an established dwelling. The siting of the existing dwelling is not appropriate in the context and the new dwelling must be setback further into the lot.
Traffic, Access and Parking	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Satisfactory
Public Domain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Utilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Conditional consent will be required for a best practice effluent disposal system. 100,000 litres of rain water tank is being provided for drinking water. Electricity is supplied to the site.
Heritage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	There is no evidence that the development would impact on Aboriginal Heritage.
Water Quality and Stormwater	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rainwater will be captured into the water tanks for drinking and fire fighting purposes.
Soils, soil erosion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A 100m buffer from the edge of bank is required and this will help with soil and bank erosion.
Flora & Fauna	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	This consent does not authorise tree removal.
Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Noise & Vibration	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Hours of Operation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Other land resources	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Flooding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The site is significantly flooded during large flood events. The finished floor level of the proposed dwelling will be 1m above current ground level which is 0.83m above the 2016 flood level.
Bushfire	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The NSWRFs provided a response dated February 2023 with conditions relating to Asset Protection Zones, construction standards, property access, water supply and landscaping.
Contamination	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	There is no evidence to suggest the land is contaminated.
Safety, security and crime preventions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Social Impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Economic Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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Consideration	Satisfactory	Unsatisfactory	Not Relevant	Comment
Site design and internal design	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The original siting and location of the proposed dwelling has not incorporated the relevant design considerations and setbacks required by the relevant SEPP's and DCP. The 100m setback from top of bank is a condition which satisfies this requirement.
Overlooking	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Overshadowing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Landscaping	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Private Open Space	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Cumulative Impacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The cumulative impacts of flooding are considered appropriate given the extent of the catchment.
Disabled Access	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Signage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Setbacks/Building Envelopes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Only appropriate with conditions.

**(c) the suitability of the site for the development,**

Satisfactory ☒ Unsatisfactory ☐

Reasons (if applicable) This development would not be supported without the use of 4.2A(5). There must be some degree of flexibility in considering the constraints of the site with the knowledge that this is a replacement dwelling and not a new dwelling.

**(d) any submissions made in accordance with this Act or the regulations,**

Yes ☐ No ☐ N/A ☒

**(e) the public interest.**

Satisfactory ☒ Unsatisfactory ☐

Reasons (if applicable)

**7 Development Contributions**

Does the Berrigan Development Contributions Plan apply to the subject site?	No
Is a Section 7.12 Contribution required to be paid for this development proposal and has the applicable condition been applied to the consent?	N/A
Is a Section 7.11 Contribution required to be paid for this development proposal and has the	N/A

Assessment Report: Development Application - Reference number: PAN-253925 Council ID: 48-23-DA-D1

applicable condition been applied to the consent?	
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## 8 Referrals

DEPARTMENT	Yes	No	Referral	Concurrence	COMMENTS CONDITIONS REFERRAL CLAUSE(s)
Director Technical Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Development Manager	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Building Surveyor	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Engineering Services Manager	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Design Engineer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental Engineer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Town Planner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Assets & Operations Manager	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
NSW RFS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Section 4.14 – EP&A Act 1979
Department of Planning	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPP (Biodiversity & Conservation) cl.5.12(30)
Transport for NSW (Maritime)/RMS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPP (Biodiversity and Conservation) 2021, s5.11, 5.12
DPE – Biodiversity & Conservation Division	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPP (Biodiversity and Conservation) 2021, s5.11, 5.12
DPE - Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Management Act 2000 s91 controlled activity
DPI - Fisheries	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SEPP (Biodiversity & Conservation) cl.5.11
Essential Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPP (Transport and Infrastructure) 2021, s2.48

Agency	Comment/Response
NSW RFS	Conditional consent
Department of Planning	Returned – no comment provided
Transport for NSW (Maritime)/RMS	Response received, no conditions provided
DPE – Biodiversity & Conservation Division	Outstanding
DPE - Water	Exempt from the need to obtain a CAA.  <u>Exemption</u> Water Management Act (General) Regulation Schedule 4, 29 - Activities with respect to dwellings
DPI - Fisheries	Returned, no conditions provided.
Essential Energy	Standard conditions provided

## 9 Conclusion

The Development Application has been assessed against the heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, Berrigan Local Environmental Plan 2013 and Berrigan Development Control Plan 2014 and is considered satisfactory for the development of a single dwelling in accordance with the following conditions:

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## RECOMMENDED CONDITIONS

### GENERAL

#### 1. Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Description	Sheet	Prepared by	Revision	Date
Proposed floor plan	A103	GB Arch Designs		April 22
Roof plan	A105	GB Arch Designs		April 22
Elevations	A200	GB Arch Designs		April 22

Document Title	Version No.	Prepared by	Dated
Statement of Environmental Effects	-	CAF	14/08/2022
NANTHERS	-	Mustafa Guler	April 2022
BASIX	-	GB Arch Designs	15/08/2022
Updated Bushfire Assessment Report	-	CAF	14/0/2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

#### 2. Deferred commencement

In accordance with the Environmental Planning and Assessment Act 1979, this development consent is a deferred commencement until the following conditions are approved to the satisfaction of the consent authority. The conditions must be satisfied prior to the issue of a construction certificate for the dwelling:

- A Land Capability Assessment is provided by a suitably qualified consultant. The LCA must recommend a preferred location and type of effluent disposal system, noting that the land is significantly inundated by riverine flooding during flood events.
- A revised site plan showing the proposed replacement dwelling being setback 100m from the Murray River top of bank.
- An Emergency Management Plan which details the monitoring of flood events, and the actions taken by residents prior to, during and after a flood emergency.

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### **3. Removal of existing house**

Prior to the occupation certificate being issued, the existing house must be removed from the site.

### **4. Finished Floor Level**

The finished floor level of the proposed house must be no less than datum 109.660RL.

### **5. Compliance with Essential Energy Conditions**

Compliance with the conditions issued by Essential Energy on 11 November 2022. A copy of the conditions is provided as an **Appendix 1** to this development consent.

### **6. Compliance with Rural Fire Service Conditions**

Compliance with the conditions issued by Rural Fire Services on 7 February 2023. A copy of the conditions is provided as an **Appendix 2** to this development consent.

### **7. Earthworks**

All excavation of earthworks in relation to this development consent to increase the finished floor level of the proposed dwelling, must be taken from an area on site, and upstream of the proposed dwelling location.

### **8. Vegetation Removal**

The development must not remove any additional tree(s) or native vegetation (unless approved by this consent) or unless prior approval has been granted by Berrigan Shire Council.

### **9. Water Supply**

The dwelling must be connected to a rainwater tank supply for potable water of 100,000 litres.

### **10. Effluent Disposal**

Prior to the occupation certificate being issued, the dwelling must be connected to the effluent disposal system outlined in the recommendations of the LCA requested at Condition 2A of this consent.

### **11. Uncovering relics or Aboriginal objects**

While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object.

Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.



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In this condition:

- "relic" means any deposit, artefact, object or material evidence that:

(a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and

(b) is of State or local heritage significance; and

- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

## 12. Stormwater - Drainage

All runoff from the proposed dwelling must be directed to the rainwater tanks and/or fire tanks.

## Appendix 1

### General Conditions

1. The recommendations are based on the documents/plans supplied via Councils referral to the NSW RFS.

- The Site plan prepared by "GB Arch Designs, Project No: 22209; Dated April 2022. SoEE prepared by CAF Building & Town Planning Consultants, dated 14/08/2022".

Council is advised that where a minor amendment to the above-noted documents is proposed, Council may use its discretion to determine whether the minor amendment warrants further assessment by the NSW RFS.

### Asset Protection Zones

*The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.*

2. From the commencement of building works and in perpetuity, the property around the dwelling must be maintained as an inner protection area to the following distances and aspects in accordance with the following requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*:

- north for a distance of 20 metres;
- west for a distance of 22 metres;
- east for a distance of 22 metres; and,
- south for a distance of 22 metres.

When establishing and maintaining an inner protection area, the following requirements apply:

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- A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2 m above the ground;
- tree canopies should be separated by 2 to 5 m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in the shrubs layer should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mown (as a guide, grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed regularly.

Note: Council shall be satisfied that the APZs will be located entirely within the subject site.

#### **Construction Standards**

***The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.***

3. New construction must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

#### **Access - Property Access**

***The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.***



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3. New construction must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

**Access – Property Access**

***The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.***

4. Property access roads must comply with the following requirements of Table 7.4a of *Planning for Bush Fire Protection 2019*:

- property access roads are two-wheel drive, all-weather roads;
- the capacity of road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges and causeways clearly, indicate load rating.
- there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available;
- minimum 4m carriageway width;
- in a forest, woodland and heath situations, rural property roads have passing bays every 200m that are 20m long by 2m wide, making a minimum trafficable width of 6m, at the passing bay;
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches;
- property access must provide a suitable turning area in accordance with Appendix 3;
- curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress;
- the minimum distance between inner and outer curves is 6m;
- the cross fall is not more than 10 degrees;
- maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads; and
- a development comprising more than three dwellings has formalised access by the dedication of a road and not by right of way.

Note: Council shall be satisfied that access to the development is practical and legal.

**Water and Utility Services**

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***The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.***

5. The provision of water must comply with the following in accordance with Table 7.4a of *Planning for Bush Fire Protection 2019*:

- a 20,000 litre static water supply, tank, pool, dam or the like, must be provided on-site,
- an outlet for firefighting purposes is located within the IPA or non-hazard side and away from the structure
- 65mm Storz connection with a ball valve is fitted to the outlet,
- the ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material,
- underground tanks have an access hole of 200mm to allow tankers to refill, direct from the tank,
- a hardened ground surface for truck access is supplied within 4m of the water outlet or access hole,
- above-ground tanks are manufactured from concrete or metal,
- raised tanks have their stands constructed from non-combustible material or bush fire-resisting timber. The bush fire-resisting timbers are Silvertop Ash, Blackbutt, Red or River Gum, Spotted Gum, Red Ironbark, Kwila (Merbau) or Turpentine,
- unobstructed access can be provided at all times,
- underground tanks are clearly marked,
- tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters,
- all exposed water pipes external to the building are metal, including any fittings,
- where pumps are provided, they are a minimum 5hp or 3kW petrol or diesel-powered pump, and are shielded against bush fire attack,
- any hose and reel for firefighting connected to the pump must be 19mm internal diameter,
- fire hose reels are constructed in accordance with AS/NZS 1221:1997, and installed in accordance with the relevant clauses of AS 2441:2005,
- A Static Water Supply (SWS) sign must be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - Markers must be fixed in a suitable location to be highly visible, and
  - Markers should be positioned adjacent to the most appropriate access for the water supply.
- where practicable, electrical transmission lines are underground,
- where overhead, electrical transmission lines are proposed as follows:
  - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas, and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used,
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side,
- connections to and from gas cylinders are metal,
- polymer-sheathed flexible gas supply lines are not used, and
- above-ground gas service pipes are metal, including and up to any outlets.

#### **Landscaping Assessment**

***The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.***

6. Landscaping within the required asset protection zone must comply with Appendix 4 of *Planning for Bush Fire Protection 2019*. In this regard, the following principles are to be incorporated:

- A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);

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- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

**General Advice - Consent Authority to Note**

*The proposal has been approved based on a performance solution that increases the BAL one level, to the APZs provided. This is in recognition of the constrained access and potential for the access to be cut off/impacted in a bush fire.*

**Appendix 2**

Strictly based on the documents submitted, Essential Energy makes the following comments as to potential safety risks arising from the proposed development:

1. Essential Energy's records indicate existing 22kV overhead powerlines are located on the property:
  - a. The plans provided do not show these powerlines, nor distances to the proposal.
  - b. The new dwelling (closest part, eaves and guttering) must maintain a minimum clearance of 10.0 metres either side of the centreline of the powerline/pole.
  - c. Any excavation works in this area must comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
  - d. Any landscaping, tree planting, gardens in this area must comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
2. Prior to any demolition works commencing, any service line/s to the existing dwelling must be disconnected.
3. The Applicant will need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to the new dwelling in accordance with *NSW Service and Installation Rules*. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.

Essential Energy also makes the following general comments:

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
3. In addition, Essential Energy's records indicate there is overhead electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.

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4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW).
5. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW ([www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Lines/Underground Assets*.





Kell Moore

LAWYERS &amp; CONVEYANCERS

Our Ref: TKJ:221584  
Your Ref:  
Reply to: ALBURY OFFICE

13 February 2023

Mr B Oloan  
Berrigan Shire Council  
Email: Brendan.Oloan@berriganshire.nsw.gov.au

**Email Transmission**

Dear Brendan

**Replacement Dwelling - Lower River Road, Tocumwal**

We refer to our letter dated 19 December 2022 and your email correspondence dated 9 February 2023.

We have considered the additional material provided by both your office and Habitat Planning and have reviewed our advice in light of this.

**1. Background**

- 1.1 Council has received a development application for a property situated at 277 Lower River Road, Tocumwal being the land contained in Certificate of Title Folio Identifier 4/594655 (**Property**).
- 1.2 The Property is approximately 22.94 hectares in area.
- 1.3 The Property is part of a larger holding owned by the applicant consisting of another four (4) lots. The total area of all lots is approximately 86.31 hectares.
- 1.4 The application that has been lodged for the Property is for the demolition of the existing dwelling and erection of a replacement dwelling (**Development Application**).
- 1.5 Council has questioned the applicant as to whether the Property has a dwelling entitlement. The applicant submits that it does and relies upon the provisions of the Interim Development Order No. 1 – Shire of Berrigan (**IDO**).
- 1.6 Under the former IDO, the erection of dwelling houses on rural land was development that could be undertaken without consent if certain conditions were met.

**2. Instructions**

- 2.1 Council has sought our advice as to whether the Property has a dwelling entitlement.

ALBURY 575 Olive St (PO Box 487) Albury NSW 2640  
COROWA 73 Sanger St (PO Box 74) Corowa NSW 2646  
WANGARATTA 15-17 Ely St Wangaratta VIC 3677

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TKJ:221584 010.docx

Mr B Oloan  
Berrigan Shire Council

13 February, 2023

**3. Does the Property have a dwelling entitlement?**

- 3.1 Council has engaged Habitat Planning to act on its behalf in connection with this matter. A number of documents have been lodged on the planning portal by the applicant in support of the Development Application.
- 3.2 The first thing we note is that the Property is zoned RU1 Primary Production land under the Berrigan Local Environmental Plan 2013 (**LEP**). Dwelling houses are permissible in this zone with consent. There is however a minimum lot size of 120 hectares to enable a dwelling to be erected.
- 3.3 The Property does not meet the minimum lot size to erect a dwelling house in the RU1 zone. The applicant is seeking to rely upon clause 4.2A(5) of the LEP to enable the erection of the dwelling house. This clause reads as follows:-

*Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.*

- 3.4 The question for consideration is whether there is a *lawfully erected dwelling house* on the land which enables the applicant to rely on clause 4.2A(5) to replace the existing dwelling.
- 3.5 We confirm your advice that the house was constructed in 1982 and the land it is situated on was subdivided in 1977.
- 3.6 At the time the dwelling was erected the IDO applied. The IDO came into effect in 1975. According to clause 3 of the IDO, land in the non-urban "A" zone allowed the erection of dwelling houses referred to in clause 13(1)(a) to be erected without the consent of Council. In all other instances approval was required.
- 3.7 It is unclear from the material provided whether the Property was situated in the non-urban "A" zone when the dwelling was erected. We note your highlighting in the IDO and assume for the purposes of this advice that the Property was in the non-urban "A" zone.
- 3.8 As the Property is less than 40 hectares in size the applicant at the time of the erection of the dwelling would have needed to obtain approval. We will discuss below whether the applicant had the ability to subdivide the land and erect the dwelling house at the Property.
- 3.9 As the Property was created by way of subdivision in 1977 we assume the applicant at the time sought to rely upon clause 12(2) of the IDO which read as follows:-

*Subject to subclause (5) an allotment of land having an area of less than 40 hectares but not less than 2 hectares may be created in a subdivision of land within Zone No. 1 (a) or 1 (b) where:-*

- (a) The Council is satisfied that the such allotment is intended to be used for the purpose of agriculture;*

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Berrigan Shire Council

13 February, 2023

- (b) The ratio of depth to frontage of such allotment is satisfactory, having regard to the purpose for which it is to be used; and*
- (c) The frontage of such allotment to a main road or an arterial road is not less than 200 metres.*

3.10 We assume that as the subdivision was registered in 1977 that Council was satisfied with the applicant relying upon clause 12(2) of the IDO. Assuming this assumption is correct we need to consider the legal basis for a dwelling house being erected on a lot less than 40 hectares in area. We refer to clause 13(1) which allowed for the erection of dwelling houses:-

*A dwelling-house shall not be erected on a parcel of land within Zone No. 1 (a) or 1 (b) unless the parcel –*

- (a) has an area of not less than 40 hectares.*
- (b) comprises an allotment created by subdivision in accordance with subclause (2) or (4) of clause 12 ...*

3.9 As the Property is less than 40 hectares in size the applicant at the time would have been unable to rely upon clause 13(1)(a). The applicant would have had to rely upon clause 13(1)(b) to erect the dwelling house once it had satisfied the requirements of clause 12(2). Consent would have been required.

3.10 Whilst a dwelling house was allowed to be erected on the Property (subject to approval) we note that clause 13(2) of the IDO states that not more than one dwelling-house shall be erected on a parcel of land referred to in paragraph (b), (c) or (d) of subclause (1).

3.11 Although a dwelling was allowed to be erected on the Property pursuant to clause 12(2) (subject to approval) we do draw to your attention clause 13(3) which reads as follows:-

*(3) Notwithstanding subclause (1):-*

- (a) a dwelling-house may only be erected on an allotment referred to in subclause (1)(b) where the use of the dwelling-house is ancillary and subsidiary to the present or intended development of that allotment...*

3.12 Taking into consideration the above clause, we interpret the intention of the IDO was that the dwelling to be erected on a lot under the 40 hectare minimum was to be ancillary to use of the property for the *purposes of agriculture*.

3.13 We have considered whether the dwelling erected at the Property is a dwelling-house or a worker's dwelling-house. In the material originally provided by Council there was a reference to a worker's dwelling-house. This reference arose from clause 13(4) of the IDO.



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- 3.14 The term worker's dwelling-house arose in the context of dwellings that were erected under clause 13(1)(a) of the IDO. As it appears that the dwelling was erected pursuant to clause 13(1)(b) this definition is not applicable to the dwelling erected at the Property.
- 3.15 For the applicant to be able to rely upon clause 4.2A(5) of your LEP they would need to be able to establish that the dwelling house on the land was a *lawfully erected dwelling*. Whilst it appears that the erection of the dwelling was permissible under the IDO it is unclear whether approval was ever granted by Council.
- 3.16 In the absence of any material being located to establish the dwelling was approved, the applicant may argue that the presumption of regularity applies. The presumption of regularity is a legal principal that a person may seek to rely upon which presumes that approval has been previously given for a particular development or structure. The onus is on the person seeking to rely upon the presumption.
- 3.17 It will be a matter for Council as to whether they wish to press the applicant to establish that the presumption of regularity applies or whether Council is satisfied that the dwelling house currently erected on site was previously approved.
4. **Does the replacement dwelling have to be ancillary to agricultural purposes?**
- 4.1 Whilst it may be arguable that the dwelling house is a lawfully erected dwelling we have considered whether there is any requirement for the dwelling to be ancillary to the use of the land, that is, whether the dwelling is ancillary to agricultural purposes as was required under the IDO.
- 4.2 Given the wording of clause 4.2A(5) of your LEP we note that it merely states that the applicant needs to establish that a lawfully erected dwelling is erected on the land. If the dwelling was lawfully erected then we would consider that the dwelling could be replaced and that there would be no requirement for the use of the dwelling to be ancillary to agricultural purposes as clause 4.2A(5) of your LEP does not import or reference the requirements under clause 12(2) of the IDO.
5. **Summary of advice**
- 5.1 The applicant can only rely upon clause 4.2A(5) of the LEP if the dwelling to be replaced was a *lawfully erected dwelling house*.
- 5.2 A dwelling house required consent under the IDO unless it was erected under clause 13(1)(a). The owner of the Property would have been unable to rely upon this clause as it required a minimum lot size of 40 hectares.
- 5.3 Based upon the information provided, the Property was presumably subdivided by relying upon clause 12(2) of the IDO. A dwelling house could be erected on a lot created under this clause however consent was required. It is unclear from the material provided whether consent was granted. The subdivision was registered in 1977 and the dwelling was erected in 1982.
- 5.4 In accordance with clause 13(2) of the IDO only one dwelling house can be erected on a lot created under clause 12(2) of the IDO.

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Mr B Oloan  
Berrigan Shire Council

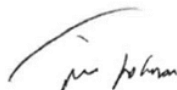
13 February, 2023

- 5.5 Any lot created under clause 12(2) of the IDO required the use of the dwelling to be ancillary to the use of the lot, that is, the primary use of the lot had to be for agricultural purposes.
- 5.6 The applicant could rely upon clause 4.2A(5) of the LEP if it could establish that the dwelling house was lawfully erected. Whilst the IDO allowed the erection of a dwelling house on a lot under 40 hectares in size we note that consent was required. It is unclear whether consent was ever granted.
- 5.7 The applicant would need to satisfy Council that consent had been previously given for the dwelling or seek to rely upon the presumption of regularity which is the legal principal that assumes consent has been previously granted.

If you have any questions please contact the writer or our Matthew Rogers.

Yours faithfully  
**KELL MOORE**

Per:

A handwritten signature in black ink, appearing to read "Travis Johnson".

**Travis Johnson**  
Senior Lawyer  
Email: [tjohnson@kellmoore.com.au](mailto:tjohnson@kellmoore.com.au)



26 September 2022

Mayor Matthew Hannan  
Berrigan Shire Council  
56 Chanter Street, Berrigan, NSW, 2712

Dear Matthew

**RE: State Significant Development (SSD-41743746) – Proposed Yanco Delta Wind Farm**

Virya Energy is proposing to develop the Yanco Delta Wind Farm. It would be located 10 kilometres north-west of the town of Jerilderie, New South Wales; within the South-West Renewable Energy Zone. The Project would involve the construction, operation and maintenance of a wind farm with up to 208 wind turbine generators (noting that this has been reduced since the Scoping Report in response to potential environmental impacts), a battery energy storage system and associated electrical infrastructure.

The Project is considered State Significant Development under Section 2.6(1) in conjunction with Section 20 of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021. An Environmental Impact Statement is currently being prepared by Jacobs for the Project in accordance with the consent requirements under the *Environment Planning and Assessment Act 1979* and in response to the Secretary's Environmental Assessment Requirements (SSD-41743746).

Tocumwal Airport is the closest certified aerodrome to the Project area, located about 59 kilometres south of the proposed wind farm boundary. The Aeronautical Impact Assessment for the Project identified that all the proposed Project WTGs would infringe two air routes' Lowest Safe Altitude (LSALT) (refer to **Table 1**). Due to the infringement of LSALT there is a need to seek a raising of the LSALT by 200 ft. The coordinates and heights for each of the proposed wind turbine generators is provided in **Table 2** attached.

Table 1 Air routes LSALT impact

Air route & segment / Grid LSALT considered	Height of LSALT (ft AHD)	Infringements of LSALT	Likely LSALT result
W264	3000/2000	No infringement	Pass
W419	2100/1100	All WTGs – maximum WTG Height 1244.3 ft AHD – Infringes by 144.3 ft	Fail
V255	3600 / 2600	No infringement	Pass
W310	2300 / 1300	No infringement	Pass
W612 to Griffith	2900 / 1900	No infringement	Pass
W612 to Mangalore	3700 / 2700	No infringement	Pass
Grid ISALT	2200/1200	All WTGs – maximum WTG Height 1244.3 ft AHD – Infringes by 44.3 ft	Fail

We would welcome further feedback from Tocumwal Airport to ensure any further concerns are considered within the EIS and Project development. It would be appreciated if you could provide any comments within 21 calendar days from the date of this letter. Any response within this period will be taken into consideration by Virya Energy.

Jacobs would be pleased to provide further information if required. In this regard Nikki Wallace may be contacted via email [nikki.wallace@jacobs.com](mailto:nikki.wallace@jacobs.com). Further information on the Project is also available in the submitted Scoping Report (<https://pp.planningportal.nsw.gov.au/major-projects/projects/yanco-delta-wind-farm>).

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Wallace".

Nikki Wallace  
Project Manager

Table 2 Coordinates and heights for each WTG

Label	Elevation	WTG AHD	WTG AHD(ft)	Label	Elevation	WTG AHD	WTG AHD(ft)
W-001	106.94	376.94	1236.67	W-105	108.90	378.90	1243.12
W-002	106.96	376.96	1236.74	W-106	107.58	377.58	1238.77
W-003	107.31	377.31	1237.90	W-107	106.39	376.39	1234.88
W-004	106.35	376.35	1234.74	W-108	108.04	378.04	1240.27
W-005	107.01	377.01	1236.90	W-109	107.21	377.21	1237.55
W-006	106.65	376.65	1235.72	W-110	107.06	377.06	1237.06
W-007	107.68	377.68	1239.11	W-111	107.53	377.53	1238.62
W-008	108.43	378.43	1241.57	W-112	108.00	378.00	1240.17
W-009	106.36	376.36	1234.76	W-113	108.30	378.30	1241.13
W-010	106.25	376.25	1234.43	W-114	107.25	377.25	1237.68
W-011	106.50	376.50	1235.25	W-115	107.91	377.91	1239.87
W-012	107.95	377.95	1240.00	W-116	107.99	377.99	1240.12
W-013	106.15	376.15	1234.08	W-117	108.06	378.06	1240.37
W-014	106.47	376.47	1235.15	W-118	108.43	378.43	1241.55
W-015	107.29	377.29	1237.83	W-119	106.82	376.82	1236.27
W-016	107.89	377.89	1239.78	W-120	108.33	378.33	1241.26
W-017	109.26	379.26	1244.30	W-121	108.32	378.32	1241.21
W-018	107.94	377.94	1239.96	W-122	108.81	378.81	1242.81
W-019	106.34	376.34	1234.71	W-123	107.67	377.67	1239.08
W-020	106.93	376.93	1236.65	W-124	108.16	378.16	1240.69
W-021	107.59	377.59	1238.83	W-126	106.74	376.74	1236.01
W-022	107.58	377.58	1238.79	W-127	107.47	377.47	1238.40
W-023	107.78	377.78	1239.44	W-128	107.79	377.79	1239.47
W-024	108.26	378.26	1241.03	W-129	105.68	375.68	1232.55
W-025	107.98	377.98	1240.09	W-130	106.96	376.96	1236.76
W-026	106.61	376.61	1235.59	W-131	107.85	377.85	1239.66
W-027	105.87	375.87	1233.16	W-132	106.44	376.44	1235.04
W-028	107.14	377.14	1237.33	W-133	107.59	377.59	1238.80
W-029	107.55	377.55	1238.67	W-134	104.62	374.62	1229.08
W-030	107.60	377.60	1238.84	W-135	104.49	374.49	1228.63
W-031	107.22	377.22	1237.59	W-136	104.81	374.81	1229.69
W-032	105.17	375.17	1230.88	W-137	104.94	374.94	1230.12
W-033	105.63	375.63	1232.37	W-138	105.16	375.16	1230.83
W-034	105.85	375.85	1233.09	W-139	104.88	374.88	1229.92
W-035	107.62	377.62	1238.90	W-140	104.13	374.13	1227.47
W-036	106.55	376.55	1235.39	W-141	104.93	374.93	1230.09
W-037	106.88	376.88	1236.49	W-142	104.66	374.66	1229.21
W-038	107.49	377.49	1238.48	W-143	104.91	374.91	1230.01
W-039	107.94	377.94	1239.96	W-144	104.68	374.68	1229.25
W-040	104.44	374.44	1228.49	W-145	105.55	375.55	1232.12



Label	Elevation	WTG AHD	WTG AHD(ft)	Label	Elevation	WTG AHD	WTG AHD(ft)
W-041	105.40	375.40	1231.62	W-146	105.32	375.32	1231.35
W-042	105.34	375.34	1231.43	W-147	105.65	375.65	1232.45
W-043	105.99	375.99	1233.56	W-148	105.54	375.54	1232.10
W-044	104.63	374.63	1229.11	W-149	105.60	375.60	1232.29
W-045	105.56	375.56	1232.14	W-150	108.37	378.37	1241.37
W-046	104.15	374.15	1227.52	W-151	107.79	377.79	1239.47
W-047	105.24	375.24	1231.09	W-152	107.97	377.97	1240.05
W-048	105.90	375.90	1233.27	W-153	108.06	378.06	1240.35
W-049	104.68	374.68	1229.26	W-154	107.81	377.81	1239.54
W-050	105.45	375.45	1231.78	W-155	107.04	377.04	1236.99
W-051	104.62	374.62	1229.07	W-156	107.56	377.56	1238.73
W-052	105.15	375.15	1230.81	W-157	106.91	376.91	1236.60
W-053	105.09	375.09	1230.62	W-158	107.10	377.10	1237.19
W-054	105.52	375.52	1232.04	W-159	106.97	376.97	1236.77
W-055	103.84	373.84	1226.49	W-160	106.89	376.89	1236.52
W-056	104.40	374.40	1228.33	W-161	106.56	376.56	1235.42
W-057	104.59	374.59	1228.98	W-162	106.60	376.60	1235.57
W-058	104.87	374.87	1229.90	W-163	106.35	376.35	1234.74
W-059	105.80	375.80	1232.93	W-164	106.24	376.24	1234.37
W-060	103.94	373.94	1226.82	W-165	106.12	376.12	1233.99
W-061	104.30	374.30	1228.01	W-166	105.71	375.71	1232.64
W-062	104.62	374.62	1229.08	W-167	105.73	375.73	1232.70
W-063	104.38	374.38	1228.28	W-168	105.62	375.62	1232.34
W-064	103.08	373.08	1224.01	W-169	105.54	375.54	1232.08
W-065	103.63	373.63	1225.81	W-170	105.44	375.44	1231.75
W-066	104.85	374.85	1229.81	W-171	105.01	375.01	1230.36
W-067	104.77	374.77	1229.55	W-172	105.27	375.27	1231.20
W-068	105.31	375.31	1231.34	W-173	104.77	374.77	1229.56
W-069	105.44	375.44	1231.76	W-174	105.43	375.43	1231.73
W-070	106.15	376.15	1234.10	W-175	107.00	377.00	1236.89
W-071	106.68	376.68	1235.84	W-176	105.60	375.60	1232.27
W-072	105.35	375.35	1231.48	W-177	108.39	378.39	1241.45
W-073	105.91	375.91	1233.29	W-178	108.19	378.19	1240.77
W-074	106.49	376.49	1235.19	W-179	108.51	378.51	1241.82
W-075	106.85	376.85	1236.37	W-180	108.31	378.31	1241.16
W-076	106.13	376.13	1234.03	W-181	107.90	377.90	1239.83
W-077	106.30	376.30	1234.57	W-182	107.85	377.85	1239.65
W-078	106.85	376.85	1236.37	W-183	107.29	377.29	1237.83
W-079	104.17	374.17	1227.60	W-184	106.82	376.82	1236.28
W-080	106.23	376.23	1234.36	W-185	107.00	377.00	1236.86
W-081	106.40	376.40	1234.91	W-186	106.99	376.99	1236.86

Label	Elevation	WTG AHD	WTG AHD(ft)	Label	Elevation	WTG AHD	WTG AHD(ft)
W-082	107.00	377.00	1236.87	W-187	107.52	377.52	1238.57
W-083	105.14	375.14	1230.76	W-188	107.29	377.29	1237.83
W-084	105.54	375.54	1232.08	W-189	107.83	377.83	1239.60
W-085	106.04	376.04	1233.72	W-190	108.80	378.80	1242.77
W-086	106.02	376.02	1233.66	W-191	108.09	378.09	1240.44
W-087	105.24	375.24	1231.11	W-192	107.19	377.19	1237.48
W-088	105.83	375.83	1233.05	W-193	106.48	376.48	1235.17
W-089	106.09	376.09	1233.89	W-194	107.59	377.59	1238.81
W-090	106.14	376.14	1234.04	W-195	106.66	376.66	1235.76
W-091	106.03	376.03	1233.70	W-196	107.90	377.90	1239.83
W-092	106.25	376.25	1234.43	W-197	107.71	377.71	1239.19
W-093	105.65	375.65	1232.45	W-198	107.70	377.70	1239.17
W-094	105.96	375.96	1233.46	W-199	107.87	377.87	1239.74
W-095	106.44	376.44	1235.03	W-200	107.67	377.67	1239.08
W-096	106.28	376.28	1234.51	W-201	107.14	377.14	1237.33
W-097	106.59	376.59	1235.54	W-202	107.53	377.53	1238.60
W-098	106.45	376.45	1235.09	W-203	106.85	376.85	1236.40
W-099	106.48	376.48	1235.16	W-204	107.24	377.24	1237.65
W-100	106.04	376.04	1233.72	W-205	106.79	376.79	1236.19
W-101	106.61	376.61	1235.59	W-206	106.91	376.91	1236.59
W-102	106.58	376.58	1235.49	W-207	107.04	377.04	1237.02
W-103	106.86	376.86	1236.42	W-208	106.78	376.78	1236.17
W-104	107.07	377.07	1237.12	W-209	107.03	377.03	1236.98







25 August 2022

Mayor Matthew Hannan  
Berrigan Shire Council  
56 Chanter Street, Berrigan, NSW, 2712

Dear Matthew,

**RE: Proposed road use associated with the proposed Yanco Delta Wind Farm**

Virya Energy is proposing to construct and operate Yanco Delta Wind Farm. It would be located 10 kilometres north-west of the town of Jerilderie, New South Wales; within the South-West Renewable Energy Zone. The Project would involve the construction, operation and maintenance of a wind farm with up to 210 wind turbine generators, a battery energy storage system and associated electrical infrastructure.

The Project is considered State Significant Development under Section 2.6(1) in conjunction with Section 20 of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021. An Environmental Impact Statement is currently being prepared by Jacobs for the Project in accordance with the consent requirements under the *Environment Planning and Assessment Act 1979* and in response to the Secretary's Environmental Assessment Requirements (SSD-41743746).

Oversize and overmass (OSOM) vehicles would be required to transport certain materials and equipment to the Project during construction. The Project is expected to generate the following OSOM vehicle movements:

- Up to 3,990 one-way oversized vehicle movements to transport wind turbine components to the Project
- Up to 10 one-way OSOM vehicle movements to transport prefabricated switchrooms structures / control buildings to the Project
- Up to 10 one-way OSOM vehicle movements to transport transformers to the Project.

All OSOM movements would occur overnight or outside of peak traffic periods to minimise impacts on the road network and would be accompanied by two or three light escort vehicles.

To accommodate the above, the following is the proposed OSOM vehicle route between the Port of Geelong and the Project (**Figure 1**):

- Exit Gate 1 or Gate 2 at the Port of Geelong onto The Esplanade
- North on Station Street
- Northeast along Princess Highway (A10)
- Northeast along Princes Freeway (M1) from Corio to Laverton North
- North along Metropolitan Ring Road (M80) from Laverton North to Thomastown
- North along Hume Freeway (M31) from Thomastown to Seymour
- North along Goulburn Valley Freeway (M39) from Seymour to Arcadia
- Continue onto Goulburn Valley Freeway (A39) at Arcadia
- Continue north along Goulburn Valley Freeway (A39) through Shepparton
- Continue onto Newell Highway (A39) at Tocumwal
- North along Kidman Way (B87)
- West along Jerrys Lane to the Project.

A second option that uses the Shepparton bypass (using River Road (C391), Doyles Road (C391), Grahamvale Road (C391) and Goulburn Valley Freeway (A39)) was also considered however this route

was not deemed feasible due to the level of modification required to accommodate the movements and OSOM vehicles including the removal of boom gates at level crossings, the use of opposing traffic lanes under traffic management, potential for grounding at various roundabouts and the removal of road and electrical infrastructure.

Based on the identified OSOM routes, it has been identified that the route would utilise the Newell Highway (A39), passing through Berrigan Shire Council. While we understand that Transport for NSW is the road authority for the Newell Highway, we wish to inform you of our intended OSOM route and proposed vehicle movement.

It would be appreciated if you could provide any comments regarding the proposed Project's use (and upgrade) of these roads within 21 calendar days from the date of this letter. Any response within this period will be taken into consideration by Virya Energy.

Jacobs would be pleased to provide further information if required. In this regard Nikki Wallace may be contacted via email [nikki.wallace@jacobs.com](mailto:nikki.wallace@jacobs.com). Further information on the Project is also available in the submitted Scoping Report (<https://pp.planningportal.nsw.gov.au/major-projects/projects/yanco-delta-wind-farm>).

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Wallace".

Nikki Wallace  
Project Manager

