

**Submission  
No 10**

## **ASSETS, PREMISES AND FUNDING OF THE NSW RURAL FIRE SERVICE**

**Organisation:** Lockhart Shire Council

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22 April 2024

Chair  
NSW Legislative Assembly Public Accounts Committee  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Sir

## **Inquiry into the assets, premises and funding of the NSW Rural Fire Service**

Lockhart Shire Council welcomes the Public Accounts Committee Inquiry and appreciates the opportunity to make a submission to the Inquiry. Council's submission focuses on the ownership, control and funding of fire-fighting assets.

### Ownership of the assets

The Terms of Reference, and as a consequence the submissions that will be generated by the Inquiry, will no doubt focus on the Rural Fires Act 1997 (RFS Act) which provides the legislative framework within which the Rural Fire Service (RFS) operates as well as establishing the Rural Fire Fighting Fund (RFFF) as the mechanism for funding the provision of fire-fighting equipment and other assets.

However, to illustrate the point Council wishes to make in relation to assets provided through the RFFF I would like to first make reference to the State Emergency and Rescue Management Act 1989 (SERM Act) which establishes the State Emergency Management Plan (EMPLAN) with the objective being, amongst other things:

*"...to ensure the co-ordinated response to emergencies by all agencies having responsibilities and functions in emergencies"<sup>1</sup>, and to*

*"identify, in relation to each different form of emergency, the combat agency primarily responsible for controlling the response to the emergency"<sup>2</sup>.*

One of the stated objectives of the EMPLAN is to:

*"...provide clarity as to command and control roles and coordination of functions in emergency management across all levels"<sup>3</sup>.*

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<sup>1</sup> Section 12 (2) State Emergency and Rescue Management Act 1989.

<sup>2</sup> Section 12 (3) (a) State Emergency and Rescue Management Act 1989

<sup>3</sup> State Emergency Management Plan (December 2023) – Part 1 paragraph 115 (a)

Annexure 4 of the EMPLAN lists the combat agencies and specific control responsibilities. Annexure 4 clearly states that the RFS is the responsible agency for fire emergencies within a Rural Fire District.

Section 119 (2) of the RFS Act on the other hand states that:

*“All fire-fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund is to be vested in the council of the area for or on behalf of which the fire-fighting equipment has been purchased or constructed.”*

As a result we have the unusual situation where Parliament has designated one entity, the RFS, to be the lead combat agency for responding to bush fire emergencies through the SERM Act while vesting the fire-fighting assets the RFS needs to fulfill this obligation to another entity, local councils, through the RFS Act.

This begs the question as to why an emergency organisation the size and scale of the RFS, with the legislative responsibilities mandated to it by Parliament, does not own or control the very assets it needs to fulfill its legislative obligations and instead has to enter into service level agreements with local councils to secure access and control of the fire-fighting assets.

This arrangement does anything but provide the clarity that the EMPLAN, and through it the SERM Act, seeks to achieve. As far as Council is aware no other combat agency identified in the EMPLAN has the assets it requires to fulfill its obligations vested in a third party. As the Member for Northern Tablelands, Adam Marshall MP, noted in Parliament on 14 March 2024:

*“The assets of the SES, the Volunteer Rescue Association, Fire and Rescue, NSW Police Force and NSW Ambulance—all of those first responder emergency services—are property of the State Government and maintained by the State Government, depreciated by the State Government, as it should be for Rural Fire Service equipment.”<sup>4</sup>*

The question of why the RFS does not own the assets it needs to fulfill its obligations is a rhetorical one as Council understands that the existing situation is the result of historical arrangements that were carried over from the now repealed Bush Fires Act 1949 to the RFS Act. They reflect the traditional role local councils played in the formation of bush fire brigades, the employment of fire control officers, the making of decisions regarding extending or revoking the statutory Bush Fire Danger Period and other bush fire prevention activities.

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<sup>4</sup> Rural Fires Amendment (Red Fleet) Bill 2024 - Second Reading Speech 14 March 2024

Council also acknowledges, as the Minister for Local Government, the Hon Ron Hoenig MP pointed out in Parliament on 12 October 2023, that because of this historical involvement in bush fire prevention the local government industry, at the time of transitioning from the Bush Fires Act, 1949 to the RFS Act 1997, argued for the assets to continue to be vested in local councils.

However, today's reality is that local councils do not possess the assets provided through the RFFF or even access them to meet any of their own obligations in relation to fire prevention. Local councils do not make the operational decisions that they once had the authority to make under previous legislation.

Referring again to the Minister for Local Government's speech to Parliament on 12 October 2023 it is noted that the extreme weather conditions of 1994 that resulted in over 800 bushfires breaking out along the coast of NSW with more than 800,000 hectares of land and 205 homes burnt; 120 people injured and four people killed were a forerunner to the change in legislation.

The coronial inquiry that followed recommended that the Government introduce a single entity responsible for the management of bushfires in NSW. On 1 September 1997 the Rural Fires Act was proclaimed.

The Minister for Local Government also made reference to a Parliamentary debate held on 17 November 2000 regarding the Rural Fires Amendment Bill 2000. The Bill provided for, amongst other things:

*"...the transfer of employment of fire control officers, deputy fire control officers and certain ancillary fire control officers (to be designated by the Commissioner and the local authorities) from local authorities to the Department of Rural Fire Service."*<sup>5</sup>

Council believes it is time to finish the job that was started with the shift from the Bush Fires Act 1949 to the RFS Act 1997 that sought to remove the dual line of accountability by giving more operational control to the RFS. Or to put it more pointedly, as Adam Marshall MP stated, *"It is about time this Parliament does its job and fixes an out-of-date provision in an out-of-date piece of legislation."*<sup>6</sup>

**Council submits that the fire-fighting assets provided through the RFFF should unambiguously be owned and controlled by the RFS and that section 119 of the RFS Act should be amended accordingly.**

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<sup>5</sup> Rural Fires Amendment Bill 2000 – Explanatory Note.

<sup>6</sup> Rural Fires Amendment (Red Fleet) Bill 2024 - Second Reading Speech 14 March 2024

### Control of the assets

Lockhart Shire Council is one of a number of NSW councils that has received a modified audit opinion from the Auditor-General because of its refusal to recognise the RFS mobile assets, the red fleet, in its financial statements. Council has adopted this policy position acknowledging that the assets are vested in local councils pursuant to section 119 (2) of the RFS Act but noting that the definition of an asset for accounting purposes is based on the element of control.

Subsequent to Council adopting this position, it obtained a copy of a draft independent expert opinion commissioned by the Office of Local Government (OLG) on the question of whether the assets should be recognised in the RFS's or councils' financial statements as a result of an application under the Government Information Public Access Act (GIPA Act).

The author of that draft report has had 40 years' experience in financial reporting, auditing and ethics policy and implementation including as director - accounting and auditing with CPA Australia, member of the Australian Accounting Standards Boards and chairman of the Audit Advisory Committee to the board of Chartered Accountants – Australia and New Zealand.

The independent expert opinion supports the view adopted by Council. The author noted in his report to the OLG that:<sup>7</sup>

- *“An asset cannot be controlled by two entities. The fire-fighting equipment in question benefits both the councils and the RFS in helping them comply with their legislative requirements.”*
- *“The RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in local government areas of New South Wales and controls fire-fighting equipment to meet its statutory objectives. It is the reason for its existence.”*
- *“The councils also have what I would consider as secondary or ancillary obligations under the Rural Fires Act 1997 to those of the RFS.”*
- *“Furthermore, control of fire-fighting equipment by the RFS is evident by procurement (and replacement and retirement) decisions, service standards for care and maintenance, access, and deployment within the district and elsewhere. These are substantive rights of RFS.”*

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<sup>7</sup> Independent opinion – Accounting for ‘red truck’ assets and other fire-fighting equipment – Colin Parker, principal GAAP Consulting (April 2018) – Executive Summary paragraphs 24-30.

- *“The RFS also has protective rights that prevents councils from selling or disposing of the assets without the written consent of the RFS Commissioner.”*
- *“The councils have no substantive rights for the control of fire-fighting equipment – vesting by itself does not confer control.”*

Much has also been made about the district service agreements entered into by councils and the RFS as an indication that the assets are controlled by councils. However, the independent expert has a contrary review noting that:

- *“Through its service standards and rural fire district service agreements, the RFS has decision making authority over fire-fighting equipment under the Act”<sup>8</sup> and*
- *“The recitals and details of these agreements tell us about the nature of the relationships between RFS and councils. In essence the councils’ responsibilities under the Act have been contracted to the RFS. The RFS has control of district equipment and premises. It is the RFS that enjoys the assets’ service potential.”<sup>9</sup>*

Notably the author of the independent expert opinion concluded that:

- *“In my opinion, fire fighting equipment is controlled by the RFS as determined by application of accounting standards and the framework according to the facts and circumstances described.”<sup>10</sup>*

It has been suggested to Council that because it “chooses” not to exercise its legal rights does not mean it does not have both legal ownership and control of the assets. It has also been suggested that Council should enforce its legal rights in this regard.

However, it is respectfully submitted that a legal confrontation between councils and the RFS would not be viewed by the community as an appropriate response to emergency management in NSW and it would certainly not be consistent with the objective of the EMPLAN referred to earlier i.e. to “...provide clarity as to command and control, roles and coordination of functions in emergency management across all levels.” A more sensible solution would be to remove all ambiguity by amending the RFS Act to make it clear that the fire-fighting assets supplied through the RFFF are owned and controlled by the RFS.

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<sup>8</sup> Independent opinion – Accounting for ‘red truck’ assets and other fire-fighting equipment – Colin Parker, principal GAAP Consulting (April 2018) – Executive Summary paragraph 27

<sup>9</sup> Ibid, Service level agreements paragraph 72

<sup>10</sup> Ibid, Conclusion paragraph 98

### Funding of the assets

Local councils' contribution to the RFFF is 11.7% pursuant to section 110 (3) of the RFS Act, whilst insurance companies contribute 73.7%<sup>11</sup> and NSW Treasury the balance. Section 114 of the RFS Act requires that the “...*contribution payable by a relevant council is to be paid out of the council's consolidated fund.*”

The current arrangements result in property owners making contributions to the RFFF through multiple avenues. A typical homeowner for example makes a contribution to the RFFF as a NSW taxpayer through Treasury's contribution, as a ratepayer through the local council's contribution from consolidated revenue, and as a policy holder through the insurance industry's contribution.

And then of course there is the equity issue that arises when property owners do not take out insurance. This means that they receive the benefit of protection from the State's emergency services without making a contribution and, as fewer property owners take out insurance policies, the burden increases for those that do take out insurance cover.

This issue was highlighted by the NSW Treasurer when announcing consultations with stakeholders on reforming the Emergency Services Levy (ESL). The Treasurer noted that:

*“...the ESL has caused premiums in NSW to be around 18 per cent higher for residential properties and around 34 per cent higher for commercial properties. It's also contributed to NSW having the lowest rate of home and contents insurance in Australia. 35 per cent of NSW households are going without contents insurance and 5 per cent of homeowners do not have building insurance.”<sup>12</sup>*

Once again Council understands that there are historical reasons for the existing arrangements regarding the funding of emergency services however it is submitted that the arrangements are no longer fit for purpose.

This was reinforced by the Insurance Council of Australia which noted that:

*“Following Victoria's abolition of its Fire Services Levy on insurance in 2013, New South Wales became the only mainland state to tax insurance to fund fire and emergency services. All other states (bar Tasmania, which is currently in the process of reforming its Fire Services Levy) have moved to a property tax where all contribute. These changes have led to improved insurance affordability when compared to New South Wales.”<sup>13</sup>*

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<sup>11</sup> Rural Fire Service of NSW Annual Report 2022/23

<sup>12</sup> Media Release issued by the NSW Treasurer - 12 December 2023

<sup>13</sup> Insurance Council of Australia - “A Stronger NSW - Policy recommendations for the next NSW Government” (February 2023)

**Council submits that in the interests of equity and fairness the existing arrangements for funding emergency services in NSW should be replaced by a property levy as was proposed in 2017, or alternatively for the State's emergency services to be funded from the NSW Government's consolidated revenue.**

Council further submits that the property levy referred to above should be collected by Revenue NSW as having a single collection authority would be more efficient than having 128 council's collecting the levy across the State.

Council also believes that, in the interests of fairness and equity, the levy should be applied to all properties, including Crown land and government owned properties, as they all benefit from the provision of appropriately funded and resourced emergency service organisations.

#### Conclusion

The Public Accounts Committee's Inquiry is welcomed and the opportunity to make a submission is appreciated.

Council hopes that the opportunity is taken to make the legislative changes that are necessary to bring the arrangements relating to rural fire fighting assets in line with that of other emergency service organisations and, notwithstanding local government's historical role and fire prevention, reflect the reality of what is happening on the ground.

If it was important in 1989 to "...provide clarity as to command and control roles and coordination of functions in emergency management across all levels" when the SERM Act was passed, and it was important in 1997 to establish a single entity responsible for the management of bushfires when the Rural Fires Act was proclaimed following a coronial inquest, then it is even more important today to remove the ambiguity surrounding the ownership and control of RFS assets given the emerging pattern of more extreme weather events occurring more frequently.

Yours sincerely



 Cr Greg Verdon  
Mayor