

ASSETS, PREMISES AND FUNDING OF THE NSW RURAL FIRE SERVICE

Organisation: Mid-Western Regional Council

Date Received: 9 May 2024

9/05/2024

The Chair
Public Accounts Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam

Submission to the inquiry into the assets, premises and funding of the NSW Rural Fire Service

I refer to the "Inquiry into the assets, premises and funding of the NSW Rural Fire Service" terms of reference, referred to the Public Accounts Committee 31 January 2024. We thank you for the opportunity to make this submission on behalf of Mid-Western Regional Council.

Submission

1. C. Accounting for the ownership of Rural Fire Service assets and premises

The Mid-Western Regional Council (MWRC) reiterates our position that we do not control NSW Rural Fire Service (NSWRFS) firefighting equipment assets and therefore we should not recognise them as assets in our financial statements in accordance with the Australian Accounting Standards.

Our position paper (appendix 1) prepared in 2021 detailed Council's assessment that we recognise Building and Land assets utilised by NSWRFS, and why we do not recognise the firefighting equipment assets. In August 2022 Council reiterated to our auditors the position taken for 2021 and in addition provided a response (appendix 2) to the NSW Treasury paper titled "Rural Fire Service – Considerations of ownership of the red fleet assets".

Our position is also supported by two independent expert opinions on the matter.

- The first opinion Mid-Western Regional Council contributed to the Leeton Shire Council's initiative to get independent technical accounting advice from BDO on accounting for rural fire service assets. This advice assisted us to conclude that we should not recognise the RFS fleet assets.
- The second opinion was provided as a draft to the NSWOLG. We have reviewed the report prepared by GAAP Consulting, April 2018, 'Review of accounting for 'red truck' assets and other fire-fighting equipment in NSW'. This independent report concluded that Council's do not control RFS assets and should not recognise them on their balance sheets.

In summary our main points in response to the NSW Audit Office are noted below:

- MWRC have no substantive rights for the control of fire-fighting equipment – vesting by itself does not confer control, and nothing in AASB 116 supports the argument that legal ownership reflects control.
- The NSW RFS has decision-making authority over fire-fighting equipment under the Rural Fires Act and rural fire service agreements.
- Whilst both the NSW RFS and councils do obtain economic benefits from the rural fire-fighting equipment it is clearly evident that the RFS has the substantive responsibilities within the Rural Fires Act and therefore the substantive benefit.
- Furthermore, control of fire-fighting equipment by the RFS is evident by procurement (and replacement and retirement) decisions, service standards for the care and maintenance, access, and deployment within the district and elsewhere. These are substantive rights of the RFS. The RFS also has a protective right that prevents councils from selling or disposing of the assets without the written consent from the RFS commissioner.

It would be remiss at this point to not also point out that the **true cost of the NSW RFS functions and asset management responsibilities are not clear and accountable to the greater community**, as the current endorsed NSWAO method for reporting on RFS services and assets means that that costs are split across some hundred Local Governments and the NSW RFS, instead of being reported wholly in the NSW RFS Financial Statements.

1. D. Operational management, including control of assets and premises, risks, and impacts to local government, and the ability to effect a response to emergencies.

Our current Service Agreement requires that Council provide financial services such as purchasing, accounts payable and management reporting to the Cudgegong District. Council provides these services at no cost to NSW RFS. Council does not have input into the budgeting or purpose of this expenditure which is then reimbursed by NSW RFS.

Council's submission is that we should not be required to provide these financial services. The reasoning as to why Councils are required to administer the NSW RFS local branch accounts is unclear, when the NSW RFS head office has the ability, and appropriate controls, in place to do this. Additional practical difficulties in managing the NSW RFS accounts include:

- it is difficult to ensure that appropriate spending authority and approvals are in place for proposed amendments to budgets.
- budgets for the NSW RFS are not authorised and delivered in a timely manner, which means that Councils and local RFS branches are often spending outside of appropriate approved budgets.
- it is difficult to ensure procurement practices are adhered to in line with Councils requirements, as NSW RFS have their own procurement requirements and often argue against Councils requirements.
- it is difficult to allow access to NSW RFS employees to Council's systems and networks in order to appropriately administer their accounts without opening Council up to risk, as we do not manage their computers and systems.
- Council therefore has to duplicate work that has been completed by NSW RFS staff in their spending, to manage contracts and expenditure within Council systems.

In summary, over time, this solution has become exceedingly impractical to deliver and manage risk, and is also clearly inefficient.

2. A. Service agreements

Service agreements need to be updated and managed appropriately. All requests to have these reviewed have been declined by the RFS or not enacted to date.

Council's Service Agreement was entered into in June 2011. Numerous requests to update the agreement have been declined by NSWRFSS. The service agreement does not reflect what is actually occurring at operational levels and is not adhered to by either party.

3. The appropriate role for local authorities in the provision of emergency services

Ideally, Local Government should be removed from the joint responsibility of administering RFS – much like other Emergency Services models.

- Practically, the LEMO role is not required to be filled by a Council representative and is only enacted because of the requirement in the Act. A stakeholder role would be sufficient.
- The LEMO role would sit better with Police who have similar roles in any other emergency response scenario.
- If it was to sit with Local Government, it should be a jointly funded role like the Road Safety Officer.
- We acknowledge Council has a key role to play with Evacuation Centres and in community leadership.

4. The sustainability of local government contributions to emergency service provision

IPARTs rate peg methodology now captures the annual change in the Emergency Service levy contribution of individual councils. This means that any increase to Council's 11.7% contribution to NSWRFSS can now be fully recovered in the annual rates. However, the committee should consider the impact of levy increases on the ratepayers. We note that the Emergency Service Levy also includes contributions to the State Emergency Service and Fire and Rescue NSW for which Council has no control or management of the service.

It is Councils very strong opinion that the Rural Fire Services Act requires material and expedited reform to manage risk to State Government service delivery, monitoring and oversight; to ensure that the true cost of the NSWRFSS is reported to the community in a clear and transparent way; and to ensure accountability to the Department that is responsible for providing Rural Fire Services.

Thank you for the opportunity to provide this submission and contribution to this inquiry.

Yours Faithfully



Digitally signed by Brad
Cam
Date: 2024.05.09 10:14:33
+10'00'

BRAD CAM
GENERAL MANAGER



MEMORANDUM

TO: Auditors
cc: Leonie Johnson, Chief Financial Officer
Neil Bungate, Finance Manager
Trish Elsegood, Financial Operations Coordinator
FROM: Fiona Handicott
SUBJECT: Rural Fire Service Assets Accounting Policy
FILE NO.: FIN300291
DATE: 9 July 2021

Purpose

This paper has been prepared to document Mid-Western Regional Council's (Council's) approach to the accounting treatment of assets utilised by the NSW Rural Fire Service (RFS).

Background Information

Council currently recognises the land and buildings used by the RFS situated within the Council boundary as Infrastructure, Property, Plant and Equipment.

Council does not recognise the RFS plant and equipment as assets.

Section 413(3) of the **Local Government Act (1993)** states "The general purpose financial report must be prepared in accordance with this Act and the regulations and the requirements of (a) the publications issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations".

Page 53 of the **Local Government Code of Accounting Practice and Financial Reporting 2020/21** provides the below commentary on Note C1-8 Infrastructure, property, plant and equipment:

Rural Fire Service assets

Under Section 119 of the Rural Fire Services Act 1997 (NSW), 'all firefighting equipment purchased or constructed wholly or 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 firefighting equipment has been purchased or constructed'.

Councils need to assess whether they control any Rural Fire Services assets and recognise in their financial statements any material assets under their control and state the relevant accounting policy in relation to the treatment.

AASB 116 Property Plant and Equipment paragraph 7 states:

7 The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

- (a) it is probable that future economic benefits associated with the item will flow to the entity;*
- and*
- (b) the cost of the item can be measured reliably.*

As future economic benefits is not clearly defined in AASB 116 we have referred to sections of the Framework for the Preparation and Presentation of Financial Statements (the Framework) presented in Appendix B.

Relevant sections of the Rural Fire Services Act 1997 (NSW) (RFS Act) are provided in Appendix A. These will be referred to in order to compare the functions of the NSW Rural Fire Service to Council's objectives. This must be considered when reviewing the use and purpose of the assets in question and the benefits they provide.

Council and the Commissioner of the NSW Rural Fire Service have a Rural Fire District Service Agreement (the Agreement) in place.

Assessment

Council has made the below assessment in relation to RFS assets:

Buildings and Land Utilised by RFS

The buildings and land meet the recognition criteria of an asset as Council believes it is probable that future economic benefits associated with these items will flow to the Council. The reason for this decision is, that Council:

- owns the land or manages crown land on which the buildings are located
- administers the funds and budgets allocated to the construction of assets
- will receive the future economic benefits of these assets when RFS no longer require the use. Council will then have control of the asset to direct use and obtain benefits
- maintain the RFS buildings, pay utilities and insurance for the buildings
- in accordance with section 37 of the Rural Fire Services Act 1997 (NSW) (RFS Act) Council must provide these facilities

RFS Plant & Equipment

RFS Plant & Equipment does not meet the definition to be recognised as an asset of Council in accordance with AASB 116 as it is not probable that future economic benefits associated with these items will flow to Council. The reason for this decision is discussed below.

Functions and benefits of RFS Plant and Equipment – RFS receive all the benefits of this equipment in order to achieve their objectives.

- In accordance with the Framework Aus 49.1 Assets provide a means for entities to achieve their objectives. Future economic benefits can be described as the scarce capacity to provide benefits to the entities that use them

- Also section 54.1 of the Framework describes that in respect of not-for-profit entities, the future economic benefits are also used to provide goods and services in accordance with the entities' objectives.
- These types of assets in question consist of fire fighting apparatus. As defined in the agreement this means all vehicles, equipment and other things used for or in connection with, the prevention or suppression of fire or the protection of life or property in case of fire, by Members of the Rural Fire Service operating in the District. Accordingly these assets provide the benefit of performing the functions as required of the NSW Rural Fire Service in s9 (1)
- These assets do not provide any other function or any benefit to Council
- Councils service objectives do not include providing rural fire services

Financial benefits and control – RFS have full control over financial management of these assets

- Whilst the the equipment purchased is to be vested in the Council this does not mean it is therefore an asset of Council
- In accordance with the Framework s51 in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form

The economic reality is that:

- Council does not make decisions about purchases
- Council does not provide the funds for purchases
- All purchases are transacted through RFS accounts
- Council does not make decisions about disposals/sales. In fact s119 of the RFS Act states (3) A council must not sell or otherwise dispose of any fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Commissioner.
- Council does not receive fund from disposals/sales
- All sales transactions are made through RFS accounts
- RFS decide all equipment requirements, specifications, design and procurement

These decisions are all made by RFS personnel to meet RFS objectives. Therefore the economic reality is different to the legal form.

Operational Control – RFS have full control over asset use

- The Functions of RFS have been described above. In accordance with the RFS Act s12 (1) The Commissioner is responsible for managing and controlling the activities of the Service and has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.
- RFS must take care of and maintain the equipment per the SLA
- Council does not have the ability to access, direct the use of or use RFS plant & equipment
- RFS organises the maintenance schedule as well as deciding the types of services required
- RFS uses Council as well as other local maintenance service providers

A paragraph will be included in the note to the financial statements summarising Council's RFS assets accounting policy.

Appendix A – Selected provisions for the Rural Fire Services Act 1997 (NSW)

Section Number	Requirements
3 Objects of Act	<p><i>The objects of this Act are to provide</i></p> <p><i>a) for the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts, and</i></p> <p><i>(b) for the co-ordination of bush fire fighting and bush fire prevention throughout the State, and</i></p> <p><i>(c) for the protection of persons from injury or death, and property from damage, arising from fires, and</i></p> <p><i>(c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and</i></p> <p><i>(d) for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c1) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the Protection of the Environment Administration Act 1991.</i></p>
7 Responsible local authorities in rural fire districts	<p><i>(1) A function conferred or imposed by or under this Act on a local authority for and in respect of a rural fire district is to be exercised—</i></p> <p><i>(a) by the local authority for the area for which the district is constituted under section 6, or</i></p> <p><i>(b) if, under subsection (2), two or more local authorities agree to combine responsibility for and in respect of their rural fire districts—by the local authorities jointly or, if a local authority is nominated in the agreement, by the local authority or local authorities nominated in the agreement, or</i></p> <p><i>(c) if, under subsection (3), two local authorities agree that one of the local authorities is to have responsibility for and in respect of the whole or part of the rural fire district of the other local authority—by the local authority nominated in the agreement as the local authority to be responsible for the whole or part of that rural fire district.</i></p> <p><i>(2) Two or more local authorities may agree in writing to combine responsibility for and in respect of their rural fire districts. Responsibility for those rural fire districts is to be exercised jointly by the local authorities or, if the authorities nominate one of them in the agreement as the responsible authority, by that authority.</i></p>

	<p>(3) A local authority may agree in writing with another local authority that the other local authority have responsibility for or in respect of the whole or part of the rural fire district for the area of the local authority.</p>
9 (1) Functions of Service	<p>(1) The NSW Rural Fire Service has the following functions—</p> <p>(a) to provide rural fire services for New South Wales,</p> <p>(b) to issue public warnings about bush fires and bush fire threats in the State for the purpose of protecting life and property,</p> <p>(c) to provide advisory services (whether within or outside the State) relating to fire fighting and other matters with respect to which it has expertise,</p> <p>(d) as directed by the State Emergency Operations Controller, to deal with an emergency where no other agency has lawful authority to assume command of the emergency operation,</p> <p>(e) to carry out, by accredited brigades, rescue operations allocated by the State Rescue Board,</p> <p>(f) to assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of, preparation for and response to, and to assist the State Emergency Recovery Controller to carry out emergency management functions relating to the recovery from, emergencies in accordance with the State Emergency and Rescue Management Act 1989,</p> <p>(g) to assist, at their request, members of the NSW Police Force, Fire and Rescue NSW, the State Emergency Service or the Ambulance Service of NSW in dealing with any incident or emergency,</p> <p>(h) to maintain effective liaison with all emergency services organisations,</p> <p>(i) to carry out such other functions as may be assigned to it by or under this or any other Act, or by the State Emergency Operations Controller or the Minister,</p> <p>(j) to do anything necessary for, or incidental to, the exercise of its functions.</p>
9 (4) Functions of Service	<p>(4) In this section—</p> <p>rural fire services includes the following—</p> <p>(a) services for the prevention, mitigation and suppression of fires in rural fire districts,</p>

	<p><i>(b) the protection of persons from dangers to their safety and health, and property from destruction or damage, arising from fires in rural fire districts,</i></p> <p><i>(b1) the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts,</i></p> <p><i>(c) the provision of services referred to in paragraphs (a)–(b1) throughout the State in accordance with Part 3,</i></p> <p><i>(d) any other service prescribed by the regulations.</i></p>
12. Functions of Commissioner	<p><i>(1) The Commissioner is responsible for managing and controlling the activities of the Service and has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.</i></p> <p><i>(2) The Commissioner may determine the various duties that members of the staff of the Service are required to perform and allocate the duties to be carried out by each member of the staff.</i></p> <p><i>(3) The Commissioner may, when the Commissioner considers it appropriate to do so, conduct an audit of all or any activities of members of the Service to determine whether the members are carrying out the activities effectively and doing so efficiently and in compliance with the Service Standards.</i></p> <p><i>(4) The ranks of members of the Service are to be determined by the Commissioner.</i></p> <p><i>(5) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the Service.</i></p> <p><i>(6) This section is subject to the other provisions of this Act and the regulations.</i></p>
12A Entry into rural fire district service agreements	<p><i>1) Without limiting section 12, the Commissioner may enter into a rural fire district service agreement (a service agreement) with any local authority or authorities responsible for a rural fire district or districts.</i></p> <p><i>(2) Without limitation, a service agreement—</i> <i>(a) may specify functions imposed on the local authority by or under this Act that are to be exercised by the Commissioner during a period (if any) specified in the agreement, and</i></p>

	<p>(b) may specify any obligations to be imposed on the local authority as a consequence of the Commissioner agreeing to exercise those functions, and</p> <p>(c) may set performance targets for the exercise of those functions, and</p> <p>(d) may provide for the evaluation and review of results in relation to those targets.</p> <p>(3) The Commissioner and the local authorities must, as far as practicable, exercise the functions and carry out the obligations in accordance with the service agreement.</p> <p>(4) The Commissioner is to report the results of the performance under a service agreement during a financial year to the local authority or authorities concerned within 3 months after the end of that year.</p>
37 Responsibilities of fire control officers and local authorities	<p>(3) The local authority for the rural fire district for which a fire control officer is appointed must provide facilities and accommodation to enable the fire control officer to exercise his or her functions</p>
63 Duties of public authorities and owners and occupiers of land to prevent bush fires	<p>(1) It is the duty of a public authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from—</p> <p>(a) any land vested in or under its control or management, or</p> <p>(b) any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority.</p> <p>(2) It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.</p> <p>(3) A public authority or owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section.</p>
119 Maintenance and disposal of fire fighting equipment purchased from Fund	<p>(1) In this section— fire fighting equipment means fire fighting apparatus, buildings, water storage towers or lookout towers.</p> <p>(2) 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.</p> <p>(3) A council must not sell or otherwise dispose of any fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Commissioner.</p> <p>(4) There is to be paid to the credit of the Fund—</p>

	<p>(a) if the whole of the cost of the purchase or construction of any fire fighting equipment was met by money to the credit of the Fund—</p> <p>(i) an amount equal to the proceeds of sale of any such equipment, and</p> <p>(ii) any amount recovered (whether under a policy of insurance, from the Bush Fire Fighters Compensation Fund under the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987, or otherwise) in respect of the damage to, or destruction or loss of, any such equipment, and</p> <p>(b) if a part only of the cost of the purchase or construction of any such equipment was met by money to the credit of the Fund—an amount which bears to the amount that would be required by this subsection to be paid if the whole of that cost had been met by money to the credit of the Fund the same proportion as that part of the cost bears to the whole of that cost.</p> <p>(5) A council must take care of and maintain in the condition required by the Service Standards any fire fighting equipment vested in it under this section.</p> <p>(6) The Commissioner may, with the concurrence of the council in which fire fighting equipment is vested under this section, use any of the equipment not reasonably required by the council to deal with incidents in the area of the council to deal with incidents outside the area.</p>
--	--

Appendix B – Selected sections from the AASB Conceptual Framework - Framework for the Preparation and Presentation of Financial Statements

Financial Position	
49	<p>The elements directly related to the measurement of financial position are assets, liabilities and equity. These are defined as follows:</p> <p>(a) An asset is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity.</p> <p>(b) A liability is a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits.</p> <p>(c) Equity is the residual interest in the assets of the entity after deducting all its liabilities.</p>
Aus 49.1	<p>In respect of not-for-profit entities in the public or private sector, in pursuing their objectives, goods and services are provided that have the capacity to satisfy human wants and needs. Assets provide a means for entities to achieve their objectives. Future economic benefits or service potential is the essence of assets. Future economic benefits is synonymous with the notion of service potential, and is used in this</p>

	Framework as a reference also to service potential. Future economic benefits can be described as the scarce capacity to provide benefits to the entities that use them, and is common to all assets irrespective of their physical or other form.
51	In assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form. Thus, for example, in the case of finance leases, the substance and economic reality are that the lessee acquires the economic benefits of the use of the leased asset for the major part of its useful life in return for entering into an obligation to pay for that right an amount approximating to the fair value of the asset and the related finance charge. Hence, the finance lease gives rise to items that satisfy the definition of an asset and a liability and are recognised as such in the lessee's balance sheet
Assets	
54	An entity usually employs its assets to produce goods or services capable of satisfying the wants or needs of customers; because these goods or services can satisfy these wants or needs, customers are prepared to pay for them and hence contribute to the cash flow of the entity. Cash itself renders a service to the entity because of its command over other resources.
Aus54.1	In respect of not-for-profit entities, whether in the public or private sector, the future economic benefits are also used to provide goods and services in accordance with the entities' objectives. However, since the entities do not have the generation of profit as a principal objective, the provision of goods and services may not result in net cash inflows to the entities as the recipients of the goods and services may not transfer cash or other benefits to the entities in exchange.
57	Many assets, for example, receivables and property, are associated with legal rights, including the right of ownership. In determining the existence of an asset, the right of ownership is not essential; thus, for example, property held on a lease is an asset if the entity controls the benefits which are expected to flow from the property. Although the capacity of an entity to control benefits is usually the result of legal rights, an item may nonetheless satisfy the definition of an asset even when there is no legal control. For example, know-how obtained from a development activity may meet the definition of an asset when, by keeping that know-how secret, an entity controls the benefits that are expected to flow from it.
58	The assets of an entity result from past transactions or other past events. Entities normally obtain assets by purchasing or producing them, but other transactions or events may generate assets. Examples include property received by an entity from government as part of a program to encourage economic growth in an area, and the discovery of mineral deposits. Transactions or events expected to occur in the future do not, in themselves, give rise to assets. Hence, for example, an intention to purchase inventory does not, of itself, meet the definition of an asset.

59	<p>There is a close association between incurring expenditure and generating assets but the two do not necessarily coincide. Hence, when an entity incurs expenditure, this may provide evidence that future economic benefits were sought but is not conclusive proof that an item satisfying the definition of an asset has been obtained. Similarly the absence of a related expenditure does not preclude an item from satisfying the definition of an asset and thus becoming a candidate for recognition in the balance sheet. For example, items that have been donated to the entity may satisfy the definition of an asset.</p>
Applying the fundamental qualitative characteristics	
QC17	<p>Information must be both relevant and faithfully represented if it is to be useful. Neither a faithful representation of an irrelevant phenomenon nor an unfaithful representation of a relevant phenomenon helps users make good decisions.</p>

Neil Bungate

From: Neil Bungate
Sent: Wednesday, 24 August 2022 2:35 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RFS assets position
Attachments: 2021 RFS Assets Accounting Policy Memorandum Aug 21_reviewed by AO.docx; NSW treasury paper.pdf

[REDACTED]

Just to reiterate and confirm our position I provide the same position paper as last year with comments as it hasn't changed.

Also I reviewed the NSW treasury paper as new information and provide comments below on this.

Referring to the application of accounting standards section on pages 11 and 12 I'll provide their position below and a comment.

a) Ability to direct use of the RFA

On balance, it would appear the councils control the RFA, because:

(a) The councils are responsible for establishing brigades in their LC districts [section 15 of the RF Act];

A Council is not responsible to form brigades, a local authority **may** form brigades. The commissioner may also form a brigade in certain circumstances. I don't see the relevance relating to control of red fleet as the Division 3 is mostly about people in the brigade and the officers powers.

(b) The councils have legal responsibilities for bush fire prevention [Part 4 Bush Fire Prevention of the RF Act] and brigades are responsible for hazard reduction and local fire responses, in their normal course of business (i.e. outside a s44 event); and

The note to Part 4 is that:

Part 4 deals with the prevention and minimisation of the spread of bush fires throughout the State. It provides for bush fire hazard reduction work and vegetation clearing work to be done, for limitation of the lighting of fires without a permit during bush fire danger periods and the imposition of total fire bans. It imposes responsibilities on the owners and occupiers of land and public authorities in relation to these and other matters.

Section 63 under Part 4 is Duty to prevent bush fires.

S63 (1) Duties of public authorities and owners and occupiers of land to prevent bush fires is as follows:

(1) It is the duty of a public authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from—

(a) any land vested in or under its control or management, or

(b) any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority.

This section requires the same duties of a public authority as those of any other owner of land, that is to take steps as notified and other practicable steps to prevent bush fires on our land. Section 3 also specifies that we are liable for the costs to perform this duty. This does not appear to involve or require use of any RFS assets or brigades. Brigades are not responsible for hazard reduction on Council land.

(c) The RFA are legally vested in councils and councils are required to grant permission [section 119(6) of the RF Act] where RFS wants RFA to be used in another LC district.

The fact councils can choose to enter into service agreements with RFS agency to maintain and deploy RFA, further indicates these responsibilities sit with councils

They state in the background:

The Service Agreement specifies functions and obligations the Commissioner manages on behalf of the Council with nominal consideration exchanged. These terms and conditions are generally applied in all Service Agreements. The key function undertaken by RFS on behalf of the Councils is to take care of and maintain the vested fire fighting equipment.

Under item 5, the Council allows RFS to use District Equipment which is owned by, vested in or under the control of the Council. In our view it is through this mechanism that RFS is able to direct the use of RFA under s21 of the RF Act outside of a declared s44 event. Councils may technically be able to deny RFS' ability to utilise resources outside of the Council area, but such action would be the subject of significant scrutiny (item 13 of the Service Agreement).

RFS are acknowledging that they have the right to direct the use of the assets under the SLA. I note they acknowledge that they direct use of the asset in the event of s44. Therefore at that time does Council have a present ability to direct use remembering that if one party controls an economic resource, no other party controls that resource. The comment about technically able to deny RFS use is demonstration of the actual situation over the legal form. The reality is that we do not have this ability.

b) Obtain the economic benefits from the RFA

The refer again that Councils have bushfire prevention responsibilities and therefore it is meeting our service objective. Refer to discussion on section 63 above, this is not to do with red fleet use. Also can they provide examples of brigades undertaking activities for bush fire prevention within their districts on behalf of councils, such as hazard reduction, by utilising the RFA?

Further I would note as highlighted in the background information, I quote from the paper:

s9 of the RF Act sets out the functions of RFS, which for this analysis, importantly include:

- providing rural fire services for New South Wales
- providing services for the prevention, mitigation, and suppression of fires in rural fire districts
- protecting persons from dangers to their safety and health, and property from destruction or damage, arising from fires in rural fire districts

I would argue that the purpose of a red fleet asset is to do those things listed above, therefore those assets are used to meet their objectives not ours.

Neil Bungate
Acting Chief Financial Officer
Mid-Western Regional Council

t [REDACTED]

f [REDACTED]

a 86 Market Street | PO Box 156 Mudgee NSW 2850

w www.midwestern.nsw.gov.au

facebook | twitter | youtube



Confidentiality Notice: This email may contain confidential and/or private information. If you have received this in error please delete and notify the sender.