

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

**Organisation:** Cessnock City Council

**Date Received:** 10 May 2024



10 May 2024

NSW Parliament  
Public Accounts Committee

Contact: Matthew Plumridge  
Our Ref: DOC2024/079066

To whom it may concern

**Public Accounts Committee into the Accounting Treatment of RFS Assets 2024  
Cessnock City Council Submission**

Cessnock City Council is one of many councils that have received qualified audit opinions because of the nonsensical process that NSW Treasury, the Audit Office of NSW and the Rural Fire Service continue to insist that these mobile assets are the assets of our Council.

Cessnock City Council first considered this matter in August 2018 when a report was endorsed by the Audit and Risk Committee of Council:

***That the Audit Committee recommend that Council continues the current practice of recognising Rural Fire Service Land and Buildings which are owned by Council but not recognising Rural Fire Service plant and equipment ("firefighting equipment") within Council's financial accounts as, based on the criteria for recognition of assets within the AASB Accounting Standards, Council does not have control of Rural Fire Service plant and equipment.***

The report is attached for the Committee's reference as it clearly outlines Council's position and the background of the matters that relate to accounting for these assets.

The Council reindorsed the above position in July 2022 after the NSW Auditor General explicitly noted the non accounting of RFS assets by 68 councils recommending that these councils undertake a stocktake of equipment and account for them.

Cessnock City Council receives a qualified audit opinion as we refuse to stocktake these assets to prove that they are immaterial to council's assets. Ironically, this has been a matter on previous management letters of Council without a qualification however after the above mentioned Auditor General's report qualification has become the preferred option of the Auditor General with no change to council processes.

The Auditor General advises that:

*Rural fire-fighting equipment is controlled by the Council as:*

- *these assets are vested in the Council under section 119(2) of the Rural Fires Act 1997 (Rural Fires Act), giving the Council legal ownership*
- *the Council has the ability, outside of emergency events as defined in section 44 of the Rural Fires Act, to prevent the NSW Rural Fire Service from directing the use of the rural fire-fighting equipment by either not entering into a service agreement, or cancelling the existing service agreement that was signed on 2 September 2009*

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- *the Council has specific responsibilities for fire mitigation and safety works and bush fire hazard reduction under Part 4 of the Rural Fires Act. The Council obtains economic benefits from the rural fire-fighting equipment as these assets are used to fulfil Council's responsibilities*
- *in the event of the loss of an asset, the insurance proceeds must be paid into the New South Wales Rural Fire Fighting Fund (section 119(4) of the Rural Fires Act) and be used to reacquire or build a similar asset, which is again vested in the Council as an asset provided free of charge.*

As can be shown in the attached report to council's Audit and Risk Committee these are dubious claims at best.

Ultimately the crux of the problem appears to be the legislated vesting of the assets under the Rural Fires Act 1997 and the conflict of the Auditor General auditing all parties and unable to accept that this is a matter that should have been included in the Rural Fire Service accounts prior to this becoming a matter necessary for an inquiry.

Council has considered the contrasting opinions of NSW Treasury and the report by Mr Colin Parker. To this matter we accept Mr Parker's report given the expertise that the author holds in the development of the Accounting Standards and the lack of detail and understanding presented by NSW Treasury of the local government sector.

Cessnock City Council would welcome the inquiry to resolve the impasse and we would recommend this as an opportunity to reduce a small aspect of cost shifting onto the local government sector.

If you require any further information, please do not hesitate to contact me on telephone

[REDACTED]

Regards

Matthew Plumridge  
Chief Financial Officer

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Corporate and Community Services



**SUBJECT:** ***POLICY POSITION - ACCOUNTING FOR RURAL FIRE SERVICE ASSETS***

**RESPONSIBLE OFFICER:** ***Finance and Administration Manager - Andrew Glauser***

**SUMMARY**

Council's current practice relating to the Rural Fires Services (RFS) is to recognise Land and Buildings owned by council but used by the RFS in its asset schedules, but not recognise RFS Plant and Equipment.

Based on a review of relevant accounting standards, legislation, service agreements, current finance management agreements and the manner the RFS plant and equipment is purchased, managed and utilised Council does not have control over RFS plant and equipment and consequently should not recognise these assets as Council assets.

AASB Accounting Standards require a standard higher than ownership when accounting for assets. An entity needs to have control of that asset and must be able to clearly identify future economic benefits flowing to the entity from that asset. If this cannot be demonstrated the asset cannot be included in the entities assets schedule. Council does not receive the future economic benefit and does not have control over those future economic benefits.

Councils obligation and commitment to the rural fire fighting function is fully and accurately reflected in the statutory contribution expense made and the net cost of other relevant facilities provided under the local agreement.

The Office of Local Government and the Audit Office have not reached a consensus view for the accounting treatment of RFS assets. This report is provided to formalise Councils position in regards to control of RFS assets.

**RECOMMENDATION**

**That the Audit Committee recommend that Council continues the current practice of recognising Rural Fire Service Land and Buildings which are owned by Council but not recognising Rural Fire Service plant and equipment ('firefighting equipment') within Council's financial accounts as, based on the criteria for recognition of assets within the AASB Accounting Standards, Council does not have control of Rural Fire Service plant and equipment.**

**BACKGROUND**

The Audit Office has raised a position regarding which entities should reflect firefighting equipment as part of their accounts. Currently there are instances where such equipment is not reflected in either the accounts of the Rural Fire Service or local authorities.

The review covered in the report below has included an analysis of the following relevant documentation:

- The Rural Fires Act

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- Relevant Accounting Standards
- The Code of Accounting Practice
- The Rural Fire Zone Service Agreement
- The Hunter Zone Financial Management Plan

The Rural Fires Act 1997 ("the Act") established the RFS to co-ordinate bush firefighting and prevention throughout the state and to provide rural fire services for New South Wales. The Act specifies how the brigades are established, focuses predominantly on the functions of the service, and also addresses funding arrangements, including the status of firefighting equipment. Relevant sections of the Act have been reviewed to assist with addressing the question of control of firefighting equipment within this report.

To assist with this assessment however the following background regarding Council agreements with the RFS and how the current arrangements have arisen is relevant. In addition some background in funding arrangements and the allocation of costs (funding) between councils is also useful.

***A history of Service Agreements***

The agreements have evolved over time to establish a zone which is larger (across multiple councils) and recognises the independent nature of the service within this context.

A summary of the history of these changes is provided below:

- Council historically captured these assets when the fire zone aligned fully with the Cessnock LGA. It was clear in this situation that Council could possibly be deemed as having control of the firefighting equipment (although as covered in the report some sub-sections in the Act create some uncertainty regarding the level of control). All firefighting equipment acquired during this period were reflected within Council's accounts and depreciated. Numerous assets despite being fully depreciated remain on Council's books.
- On 30 September 2004 a Zone Service Agreement was established between Cessnock and Maitland Council's to establish the Hunter Zone of operation for NSW Fire Service. This service agreement noted in the recital that The Commissioner agreed to exercise all of Council's functions under the Rural Fires Act 1997 (NSW) except for those specified in Schedule 1. This includes maintenance of firefighting equipment. A Hunter Zone Financial Management Plan was also established. The Zone Operations Support Officer will ensure a listing of items.
- On 1 November 2009 a new agreement called the Lower Hunter RFS Zoning Agreement was established covering Cessnock, Maitland, Port Stephens and Dungog councils. The agreement recognised in the section on equipment that "Service Delivery Model improvements and replacement programs will be developed for the zone". This recognised the need to change the operating model to operate effectively as a larger zone. The agreement specifically noted that "All fleet maintenance, repairs and servicing will be co-ordinated through the Zone Operations Section, at the Fire Control Centre". The RFS has undertaken service improvements under this agreement to operate as a zone. RFS maintenance is fully controlled by the RFS and to assist with the maintenance of equipment utilises one vendor rather than multiple councils for this service. All procurement of equipment is undertaken directly by the RFS. Equipment is also not operationally restricted to a particular district but will be utilised where needed. The financial and accounting functions for the zone were

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delegated to Port Stephens Council in recognition in that the financial management needed to be undertaken at the zone level and therefore aligned to how the RFS operates.

***Funding Arrangements***

The NSW Rural Fire Fighting Fund holds all contributions required to meet the costs of the service and is maintained by the NSW Treasury. Annual contributions to the fund are sourced from the following:

- NSW Treasurer 14.6%
- Relevant Councils 11.7%
- Insurance Companies 73.7%

Rural Fire districts and Rural Fire Brigades are established generally in line with local council areas. Council shares a fire zone and Rural Fire District Service Agreement with Maitland, Port Stephens and Dungog councils. Port Stephens Council provides the majority of administrative support required under the service agreement. Council maintains buildings within its Local Government Area boundary and used to service RFS Vehicles through its maintenance depot upon request. Council would charge the RFS for vehicle servicing costs. Council no longer provides this service as the RFS has independently sought an alternative service provider.

RFS costs are shared between the councils. There is no clearly dominant council in this arrangement with no council incurring a majority of the costs. The basis of this allocation is tied to a number of criteria currently. This is currently under revision for the next service cost allocation and will in future be based on the number of site locations. This is deemed as the only reliable basis for allocating cost. Previous and proposed RFS contributions are as follows:

Council	Previous Zone Breakdown (since 2009)	Proposed Zone Breakdown 2018/19
Cessnock City Council	32.5%	34.0%
Maitland City Council	14.0%	16.5%
Port Stephens Council	33.0%	29.0%
Dungog Shire Council	20.5%	20.5%

As can be seen from the table above the contributions are not dominated by any particular council and also the contribution split changes over time.

***Current Accounting Treatment of RFS Assets***

Council accounts for land and buildings used by the RFS situated within the Council boundary however Council does not account for RFS plant or other equipment.

***REPORT***

The background provided above provides relevant context and should be considered in conjunction with the analysis below. This report reviews relevant legislation and accounting standards. This report will also consider the service agreements and operating model of the

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RFS (and how it interacts with Council) to support the conclusions reached on the appropriate accounting treatment of RFS assets, in particular plant and equipment.

***Rationale for the Recommendation***

Based on a review of relevant accounting standards, legislation, service agreements, current finance management agreements and the manner the RFS plant and equipment is purchased, managed and utilised Council does not have control over firefighting equipment (as defined in the Rural Fires Act 1997 (NSW) ("The Act") and should therefore not be recognised as Council assets.

AASB Accounting Standards require a standard higher than ownership when accounting for assets. An entity needs to have control of that asset and must be able to clearly identify future economic benefits flowing to the entity from that asset. If this cannot be demonstrated the asset cannot be included in the entities assets schedule.

Applying the standards to Council a distinction can be made between (1) land and buildings and (2) plant and equipment.

Council owned land and buildings that are used by the RFS remain in the ownership of Council as ownership has not been transferred under any legislation or agreement. In addition, Council retains effective control of these assets based on all criteria of asset recognition included in the AASB Accounting Framework and Standards. These assets clearly reside in the Cessnock LGA and Council is responsible as the landlord for their maintenance.

With regard to plant and equipment there are a multitude of different situations to consider. Various agreements and consequently the operating model (and relationship between Council and the RFS) has changed over time and has resulted in the RFS becoming a more independent entity that no longer directly aligns with our council. Prior to the establishment of the RFS as an entity, Council owned firefighting equipment and had staff and volunteers dedicated to protecting the LGA from fire. The establishment of the RFS resulted in a zone being established that aligned fully with the Cessnock LGA.

The nexus between the firefighting assets and councils possible control was weakened (possibly broken) with an agreement in September 2004 that established a rural fire zone between Cessnock and Maitland councils and the Commissioner of the RFS. This established a zone which covered the combined areas of the two LGAs with the assets being utilised across both LGAs. This nexus was further challenged when the rural fire zone was expanded further with a new agreement established between four councils and the RFS with the addition of Port Stephens and Dungog councils

As would be expected with these changes the agreement needed to reflect that the RFS required more control to operate effectively. The Service Agreement transferred responsibility from the councils concerned to the RFS. The recital of the Service Agreement notes "The Commissioner has agreed to exercise all of the Council's functions under the Rural Fires Act 1997 (NSW)" save for a number of functions irrelevant to the control of the firefighting equipment. The RFS now purchases equipment, maintains the equipment with vendors they have selected (i.e. not Council) and utilises the equipment purchased across the entire Lower Hunter Rural Fire Zone. Individual Councils do not have any day-to-day control of these assets and also are not allowed to sell any firefighting equipment (this is legislated in the Rural Fires Act 1997). The only vehicles that Council registers under the Financial Management Agreement are vehicles not typically directly involved in firefighting such as cars, utes and trailers. Fire tankers are not registered by Council.



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At a fundamental level it appears Council should not recognise RFS plant and equipment assets as the Council must (1) receive future economic benefits and also (2) must have control over those future economic benefits. The vast majority of the RFS budget is funded from sources other than councils (councils only provide 11.7% of the funding). All funds are managed by NSW Treasury. Both operating and capital acquisitions are made directly by RFS Officers. Council has no input into the operations or capital acquisitions of the RFS. Under the Act, the NSW RFS has the function to provide rural fire services for NSW. It is considered therefore that it is the RFS and not councils that receive future economic benefit from firefighting equipment assets in terms of both net cash flows and service provision.

Section 119 has been used as a basis for suggesting councils should recognise RFS plant and equipment ("firefighting equipment"). On review it appears that The Act does not address the elements of the AASB Accounting Standards and also does not address how to overcome the issues associated with equipment being purchased to service a zone rather than an individual council. The Act notes (s119) that all firefighting equipment purchased 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.

- The legal meaning of "vested" is generally recognised as reflecting that a party has an interest in an asset. This does not align with the criteria covered in AASB Accounting Standards to determine whether an asset should be included in an entities asset schedule. "Vested" does not necessarily reflect ownership. This legal meaning could have some alignment with economic benefit (as some form interest) however there is no element of "control" within the meaning of vested and the act does not indicate how council's might control such assets.
- Not only is there not control but also where multiple councils are receiving the benefit it appears the Act does not assist in determining which council is deemed to be recognised as receiving the interest (at the exclusion of the other councils). The assets are no longer purchased on behalf of a particular council but rather for the zone and will be utilised across the zone. The procurement decision is now made by the RFS.

The future path of how the RFS operates (and how it interacts with Councils) is also relevant. The path of increasing independence appears likely to continue rather than reversion to operations tightly linked to councils. The RFS might have had a heritage that started with councils however it is an independent entity with a specific purpose and is being structured in a manner that is optimal. The designation of zones and the RFS operating model are being continually refined to maximise operational effectiveness. This path is likely to result in further divergence from its council heritage with councils merely funding and working collaboratively with the RFS just as they do with other emergency services.

Council's current practice is to recognise associated Land and Buildings in its asset schedules, but not Plant and Equipment. It is also considered that in regard to the objectives of financial reporting, Councils obligation and commitment to the rural fire fighting function is fully and accurately reflected in the statutory contribution expense made and the net cost of other relevant facilities provided under the local agreement. The analysis undertaken in determining Council's policy position indicates Council's current practice complies with the AASB Accounting Standards and should not be changed.

***Reference to specific sources in support of the Recommendation***



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- ***The Rural Fires Act 1997 (“the Act”) allows multiple councils to form a rural fire brigade (or zone)***

As noted previously the Act specifies how the brigades are established, focuses predominantly on the functions of the service, and also addresses funding arrangements, including the status of firefighting equipment.

Section 15 of the Act addresses the Formation of rural fire brigades. According to s. 15(2) Two or more local authorities may jointly form a rural fire brigade for a rural fire district constituted for their areas. A rural fire brigade may also be formed on the initiative of the local authority or local authorities concerned or on the request of any interested person (s15(3)) or the Commissioner may form a rural fire brigade. This section of the Act therefore recognises that a rural fire brigade might be established by more than one local authority.

Section 119 of the Act addresses the maintenance and disposal of firefighting equipment purchased from the NSW Rural Fire Fighting Fund (“Fund”). Subsection (2) notes that all firefighting 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 firefighting equipment has been purchased or constructed. The Act does not address the question how this should occur when multiple local authorities have been responsible for the establishment of a rural fire brigade.

More specifically the following is of relevance:

- The legal meaning of “vested” is generally recognised as reflecting that a party has an interest in an asset. This does not align with the criteria covered in AASB Accounting Standards to determine whether an asset should be included in an entities asset schedule. “Vested” does not necessarily reflect ownership. This legal meaning could have some alignment with economic benefit (as some form interest) however there is no element of “control” within the meaning of vested and the act does not indicate how council’s might control such assets.
- Not only is there not control but also where multiple councils are receiving the benefit it appears the Act does not assist in determining which council is deemed to be recognised as receiving the interest (at the exclusion of the other councils). The assets are no longer purchased on behalf of a particular council but rather for the zone and will be utilised across the zone. The procurement decision is now made by the RFS.

The following additional subsections of s119 are also of relevance:

- Subsection (3) of the Act notes that a council must not sell or otherwise dispose of any firefighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Commissioner.

*This subsection also indicates that councils do not have control. As noted assets are now utilised for the benefit of the Lower Hunter Zone.*

- Subsection (4) There is to be paid to the credit of the Fund:
  - (a) if the whole of the cost of the purchase or construction of any firefighting equipment was met by money to the credit of the Fund:
    - (i) an amount equal to the proceeds of sale of any such equipment, and

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- (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
  - (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.

*Any funds from the sale of any assets are retained within the NSW Rural Fire Fighting Fund. Only (a) is relevant for Cessnock City Council as Council contributes its allocated share of the cost to the RFS to utilise according to the RFS budget.*

- (5) A council must take care of and maintain in the condition required by the Service Standards any firefighting equipment vested in it under this section.

*This function has been delegated to the RFS under the Lower Hunter RFS Zoning Agreement and is managed at the zone level. The care and maintenance is solely under the control of the RFS which now utilises a vendor rather than councils to undertake the maintenance.*

- ***Responsibility for functions held at the Council under the Act have been delegated by individual councils to the RFS under the Zone Service Agreement and are managed at the zone level.***

The 30 September 2004 RFS Service Agreement between the RFS, Cessnock and Maitland councils transferred responsibility from the councils concerned to the RFS. The recital of the Service Agreement notes "The Commissioner has agreed to exercise all of the Council's functions under the Rural Fires Act 1997 (NSW)" save for a number of functions irrelevant to the control of the firefighting equipment. Schedule 3 of the agreement specifically lists maintenance as the responsibility of the RFS and the development of an asset management system including maintenance, replacement, monitoring and reporting.

The Lower Hunter RFS Zoning Agreement (dated 1 November 2009 and also including Port Stephens and Dungog councils as parties) evolved the operating model further by directly addressing the distinction between zone and local government area and the need to operate as a zone. The recitals included the following:

- The Councils agreed to operate and manage the Rural Fire Districts as a zone
- Councils and Commissioner have agreed to operate and manage the Zone under the terms of the Service Agreement
- The Councils have agreed to delegate certain functions, powers and duties to the Zone Manager in accordance the Service Agreement.

The Zoning Agreement also recognised that the Service Delivery Model improvements and replacement programs will be developed for the Zone.

Under the current operating model the RFS now purchases equipment, maintains the equipment with vendors they have selected (i.e. not Council) and utilises the equipment

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purchased as required across the Lower Hunter Rural Fire Zone. Individual Councils do not have any day-to-day control of these assets and also are not allowed to sell any firefighting equipment (this is legislated in the Rural Fires Act 1997). The only vehicles that Council registers under the Financial Management Agreement are vehicles not typically directly involved in firefighting such as cars, utes and trailers. Fire tankers are not registered by Council.

Councils and the RFS appear to be developing an appropriate operating model within the confines of the Rural Fires Act and to make the model workable have transferred as many operational responsibilities as possible including the procurement, management, maintenance, use and disposal of plant and equipment to the RFS. This is necessary to ensure managing operations by zone rather than by LGA can be supported.

- ***The Accounting Recognition of Assets relies on two major factors to determine whether assets should be recognised***

SAC 4 "Definition and Recognition of the Elements of Financial Statements" sets the basis on which an "Asset" should be recognised. There are two major factors to determine:

- The Entity must receive future economic benefits; and
- The Entity must have control over those future economic benefits.

- ***Future Economic Benefit: The future economic benefits of individual items of plant and equipment is received by the RFS and cannot be attributed to a particular council.***

The RFS is funded directly by the State; both operating and capital acquisitions are made directly by RFS Officers. Council has no input into the operations or capital acquisitions of the RFS.

The Fire Services Act provides that;

The NSW Rural Fire Service has the function to provide rural fire services for New South Wales [9 (1)(a)]. It is considered therefore that it is the RFS and not councils that receive future economic benefit from firefighting equipment assets in terms of both net cash flows and service provision.

- ***Control of Assets: Council does have control of Land and Building assets but does not have control of RFS plant and equipment assets.***

SAC 4 defines "control of an asset" as; the capacity of the entity to benefit from the asset in the pursuit of the entity's objectives and to deny or regulate the access of others to that benefit.

#### *Land & Buildings*

The RFS Agreement clearly identifies that Council retains full legal right to possession and control over premises occupied by the RFS. Councils are required to maintain buildings, pay all utility costs associated with the building and pay all insurances on the buildings and public risk associated with the use of the building.

This is similar to a lease agreement, and as such Council retains control of the building and is required to hold the land and associated building as an asset.

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*Equipment*

Section 119 (3) of the Rural Fires Act 1997 (NSW) stipulates that Council must not sell or otherwise dispose of any firefighting equipment without the consent of the Commissioner. Section 119 (4) requires any funds received from sale must be credited to the RFS fund. The RFS Zone manager makes all decisions about capital improvements and new assets, while Council may be consulted in these decisions it takes no part in the final decision. The RFS insures all plant and equipment.

In practice the RFS makes all decisions to switch fleet and equipment to other fire districts as it feels necessary.

Council has no access to and is not permitted to use of any plant and equipment held by the RFS. Council has taken the view that it has no control over the purchase, use or sale of any RFS equipment. As such the requirements of SAC 4 have not been met and RFS equipment should not be included as assets in Councils accounts.

**CONSULTATION**

Director Works and Infrastructure  
Director Corporate and Community Services  
Plant Superintendent, Depot Services  
Management Accountant  
Port Stephens Emergency Management Coordinator

**IMPLICATIONS**

**Policy / Procedural / Financial / Legislative / Risk Implications**

The recommendation supports the current practice of not including RFS plant and equipment in Council's asset schedule. Following this recommendation there will be no change and therefore no implications. Council does not have control of these assets so there is no risk created by not recognising these assets.

If Council was required to recognise these assets there is risk that Council will be deemed to have some responsibility for assets that it does not control. Council would be held responsible for assessing the useful life, the condition of the assets and possible adjustments to depreciation for assets that are used across the Rural Fire Zone. It is possible that assets are placed arbitrarily on Council's books merely to ensure an asset has been accounted for by one of the councils' that is a party to Lower Hunter Rural Fire Zoning Agreement.

**OPTIONS**

1. That Council continues the current practice of recognising RFS Land and Buildings which are owned by Council but not recognising RFS plant and equipment ("firefighting equipment") within Council's financial accounts as, based on the criteria for recognition of assets within the AASB Accounting Standards, Council does not have control of RFS plant and equipment. (The recommended option.)
2. Include both RFS Land and Buildings which are owned by Council and RFS plant and equipment within Council's financial accounts.

**CONCLUSION**

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Council's current practice is to recognise RFS Land and Buildings that are owned by Council in its asset schedules, but not RFS Plant and Equipment. It is also considered that in regard to the objectives of financial reporting, Council's obligation and commitment to the rural fire fighting function is fully and accurately reflected in the statutory contribution expense made and the net cost of other relevant facilities provided under the local agreement. The analysis undertaken in determining Council's policy position indicates Council's current practice complies with the AASB Accounting Standards and should not be changed.

***ENCLOSURES***

- [1](#) OLG correspondence regarding accounting treatment for RFS assets