Submission No 43

ASSETS, PREMISES AND FUNDING OF THE NSW RURAL FIRE SERVICE

Organisation: Blacktown City Council

Date Received: 10 May 2024

Blacktown City Council

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10 May 2024

Mr Jason Yat-Sen Li MP
Committee Chair
Public Accounts Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Submitted online

Dear Committee Chair

Blacktown City Council welcomes the opportunity to make a submission to the Parliament of NSW into the inquiry on the assets, premises and funding of the NSW Rural Fire Service (RFS). Please find attached Blacktown City Council endorsed submission.

In summary, Council notes the following in response to the current policy of mandating councils to record RFS assets:

- the reality of a lack of control of the RFS assets by Council
- the lack of choice, receiving and disposal of any RFS assets, including 'red fleet' assets
- the inefficiency of having the RFS assets spread across over 100 financial statements of Council and the RFS itself
- the imposition of mandating asset verifications and annual stocktakes upon Councils staff, who are already busy and struggling to meet increasing demands on workload.

Should you require any further information, please contact me on [redacted]

Yours faithfully

[redacted]

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Blacktown City Council

Submission to the NSW Legislative Assembly Public Accounts Committee

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

Blacktown City Council (Blacktown LGA) is the largest council in New South Wales by population, which currently is 435,000 and forecast to grow to 600,000. Blacktown City Council welcomes this Inquiry as a positive step towards resolving the absurd nature of the disagreement between the NSW Government and local government in relation to the ownership and management of the assets, premises and funding of the NSW Rural Fire Service (RFS).

The purpose of this inquiry is to review the funding, maintenance, accounting and operational management of NSW Rural Fire Service (RFS) assets and premises. The inquiry will consider arrangements between the NSW RFS and councils. It will also consider the appropriate role of local authorities in providing emergency services and the sustainability of contributions to emergency service provision.

Blacktown City Council would also welcome the opportunity to present to the Committee when hearings are held.

Terms of reference

That the Public Accounts Committee inquiry into and report on:

1. The mechanisms for:
    a. Funding Rural Fire Service assets and premises
    b. Maintaining Rural Fire Service assets and premises
    c. Accounting for the ownership of RFS assets and premises
    d. Operational management, including the control of assets and premises, risks, and impacts to local government, and the ability to effect a response to emergencies.
2. Whether the following arrangements between Councils and the Rural Fire Service are fit for purpose:
    a. Service agreements
    b. The division of responsibilities for bushfire management and hazard reduction
    c. Upkeep of assets
    d. The provision of insurance
    e. Provision of land and construction management for RFS premises
    f. Bushfire Management Committees.
3. The appropriate role for local authorities in the provision of emergency services.
4. The sustainability of local government contributions to emergency service provision.
5. Any other related matters.

Background

Blacktown City strongly supports the RFS and recognise that it is a world leading firefighting service. Councils wholeheartedly support and respect the large community volunteer base of the RFS.

Council is seeking reform of funding and asset management arrangements, and is not directing any criticism of the core operations or performance of the RFS. Nor do we suggest that funding be reduced. Blacktown City Council agrees that all of our emergency services should be adequately funded. Council acknowledges that as a result of climate change, the frequency and intensity of natural disasters expected to increase. This will mean that is expected that emergency services funding will need to increase over time.

However, the whole of local government is growing increasingly frustrated with many of the current asset, premises and funding arrangements. The primary issue being that of the question of ownership of what are known as the "red fleet" assets, which are essentially, RFS trucks, vehicles and firefighting appliances.

There are, however, also other issues of concern around premises, funding and service level agreements. During the 2022/23 financial year, the assets issue has come to a with a large number of councils refusing to recognise RFS red fleet assets as council assets in their financial statements or record the associated depreciation as they do not meet the definition of ownership within the Australian Accounting Standards Board.

The current situation is a legacy of the local government origins of the RFS service, which can date back to the early 1900s when councils had direct responsibilities for organising and delivering bush fire services. Since this time, the provision of emergency services has changed dramatically since then.

Over these years, the RFS has evolved from a local community-based reaction to emergencies to then being coordinated through and then part of the local council, and now to being a State Government Agency. This change in evolution needs to be reflected in the *Rural Fires Act* so that the accountability and the responsibility for RFS are fully aligned.

The *Rural Fires Act* took effect in 1997 and the relationship between local government and the RFS has also continued to evolve. These changes have further moved the RFS away from more than 100 separate bushfire services and strong reliance on local government, towards a single State Government Agency (the RFS) with a coordinated command structure up to the RFS commissioner.

By way of example, after the commencement of the 1997 Act, fire control officers were employees of each council. However, 2001 amendments to the *Rural Fires Act* transferred fire control staff from the employment of each council to the employment of the RFS.

In simple terms, the RFS has evolved from a purely community-based activity through to being part of the local council, and now to being a State Government Agency which also now has first response responsibilities that extend well beyond bushfire management and control.

Red fleet assets

The dispute over 'red fleet' assets is centred on the question of ownership of these assets. Blacktown City Council agrees with LGNSW and maintains that they do not have effective ownership of these assets as accounting codes relate ownership to management and control.

We are not involved in the process of the acquisition, deployment, usage or disposal of RFS assets and therefore do not have management and control of the assets. In reality, management and control sit firmly with the RFS. Similar assets held by Fire and Rescue NSW (FRNSW) and the State Emergency Service (SES) are appropriately vested with those organisations. Blacktown City Council is aligned with LGNSW's view that there should be consistency in ownership between the services and cannot see any justification for maintaining local government ownership, which reflects historical arrangements that are no longer relevant.

Despite the evolution of the RFS and the obvious case that ownership should be vested with the RFS, the NSW Government is maintaining a non-sensical position that RFS firefighting assets are the property of councils and must be recorded in councils' financial statements. This means that councils are required to record the assets in their financial statements and absorb the depreciation expense for these assets as well as the costs of inspecting, recording and booking these assets in their accounts.

RFS assets are often specialised vehicles and machinery. Requiring councils to undertake a stocktake of these assets is no simple task. As a starting point, Blacktown City Council has a set of records, the NSW Treasury has another set which it then refers to the Office of Local Government. During the 2022/23 financial year, neither of these lists agreed with one another.

Blacktown City Council relies on information provided at the time of vesting which may or may not be accurate.

In doing so, LGNSW has provided the data to councils for use at their own discretion and cannot vouch for its accuracy. LGNSW also highlighted to councils that the data does not provide current valuations for any of the assets (the information provided is the new replacement cost, not the depreciated value). In recent years, the Office of Local Government has provided LGNSW with a list of red fleet assets compiled by the RFS for operational purposes, and LGNSW has been asked to make this available to councils.

There is no sound logical reason as to why a State Government department would not maintain its own records and have councils keep what is effectively supposedly parallel records. This cannot be an effective nor efficient use of resources at any council.

This diversion of resources distracts all councils from their core work for the community and does not provide any public benefit. It would be far more logical and efficient for the single specialised agency that owns and operates this equipment, the RFS, to undertake this stocktake and reflect these assets in its own financial statements. Again, this approach would be consistent with how FRNSW and SES assets are administered.

Blacktown City Council complied with the state government mandate, enforced by the Audit Office of NSW, that our own employees must conduct a stocktake of assets, which was done for the 2022/23 financial year, but it was noted that not all vehicles were made available for physical inspection.

This NSW Government policy disproportionately impacts smaller rural and regional councils as they have a proportionally larger RFS presence. These councils are already struggling to remain financially sustainable and cannot afford this imposition. The NSW Government and the NSW Auditor General argue that the depreciation expenses are merely book entries and not a cash expense. However, this view fails to recognise that the expense impacts on council financial

performance ratios and has also resulted in qualified audit opinions. This reflects poorly on a council's financial management. Furthermore, dismissing the relevance of the depreciation expense does not answer the fundamental question of why the assets should be vested with councils, nor why each council should individually inspect and assess these specialised assets over which they have no control.

Up until December 2023, the NSW Government's Local Government Code of Accounting Practice and Financial Reporting provided for councils to determine whether or not they record the RFS assets as council assets based on their professional opinion.

Despite this provision, for 2021-22 financial statements the NSW Auditor General issued 36 qualified audit opinions to councils who have made the principled and professional decision not to recognise RFS assets as council assets.

In December 2023, the NSW Government's Local Government Code of Accounting Practice was updated and now mandates councils to recognise material rural firefighting equipment in their financial statements.

The local government sectors position on this matter is further supported by an independent expert report by a former member of the Australian Accounting Standards Board (AASB), commissioned by the NSW Government, which found that *'councils have no substantive rights for the control of fire-fighting equipment – vesting by itself does not confer control'*. This expert report went on to recommend that councils should not recognise these assets, and that they should be recognised in the financial statements of the RFS.[1]

The NSW Government has referred to the responsibilities of local government under the *Rural Fires Act* as a justification for councils recognising RFS assets in council financial statements. The independent expert report commissioned for the NSW Government directly rebuffed this claim, highlighting that while councils have secondary and ancillary obligations under the *Rural Fires Act*, the RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in NSW.

The NSW Government has also referred to the RFS service agreements with each council as evidence of councils' ultimate control and ownership of RFS assets. The independent expert report also contradicts this claim, finding that:

In my opinion, the RFS has the substantive ability to affect the service potential of fire-fighting equipment through the RFS commissioner's powers under the Act.

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.[2]

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[1] Colin Parker, Principal and Former Member of the Australian Accounting Standards Board, GAAP Consulting, 'Review of accounting for 'red truck' assets and other fire-fighting equipment in NSW', April 2018. The report is listed as a final draft, and notes that the Office of Local Government asked that the draft report first be considered by NSW Government before any consultation with the local government sector. This local government consultation on the report never occurred and the report was not shared publicly until it was successfully released under a Government Information (Public Access) Act request in 2022.

[2] Ibid.

Private Members Bill

Blacktown City Council, LGNSW and councils have been advocating for the ownership argument to be resolved for several years by the amendment of the *Rural Fires Act*. LGNSW and councils have been strongly supportive of the Rural Fires Amendment (Red Fleet) Bill 2024 introduced to Parliament by Adam Marshall MP.

The Bill would make clear that RFS assets vest in the State Government, in the same way that the assets of other critical frontline emergency services such as FRNSW and the SES are vested in the State Government.

This change will also provide the foundation for the improved management and strategic planning of the firefighting fleet recommended by the NSW Audit Office in its report on *Planning and managing bushfire equipment* released in February 2023.

The Bill would do this by simply amending section 119 of the *Rural Fires Act* to clearly set out that RFS fire-fighting equipment is vested in the RFS. Therefore, the RFS will be required to account for this equipment and its depreciation costs.

The evolution of the RFS over many years needs to be reflected in the *Rural Fires Act* so that the accountability and the responsibility for RFS are fully aligned.

RFS funding

The Emergency Services Levy (ESL), funds our emergency services currently and is levied on insurance policies (73.7 per cent), the ESL on councils (11.7 per cent) and the State Government contribution (14.6 per cent).

The 3 agencies covered by this arrangement are:

- The NSW Rural Fire Service (RFS) is responsible for combating bushfires in NSW and leads coordinated bushfire fighting operations across 95 per cent of the State's land mass.
- Fire and Rescue NSW (FRNSW) is responsible for the provision of fire, rescue and hazmat services in cities and towns across NSW.
- The NSW State Emergency Service (SES) is responsible for responding to flood and storm emergencies in NSW, with a majority of rescue efforts in rural parts of the State.

This arrangement is currently subject to a NSW Treasury review.

Blacktown City Council supports LGNSW in its advocation that the ESL on both insurance and councils should be removed and replaced with a broad-based property levy. This is the model already adopted by most other states and is supported by LGNSW on the grounds that it provides greater transparency, accountability and equity.

While there is a combined funding arrangement it should be noted that there are different budget allocation models utilised by each agency. For example, the SES budget is allocated on a per capita basis while RFS allocations have been made on a district basis and FRNSW allocations are based on property value. This mixed methodology is confusing and lacks clarity. It also has the potential to cause mixed outcomes in terms of equity.

The ESL contributions paid by councils do not represent the entirety of council contributions to the RFS. Council obligations under the *Rural Fires Act* and associated Service Agreements often impose additional costs on councils. For example, the district allocations do not always cover the full costs of premises and insurance.

RFS premises

Section 12A of the *Rural Fires Act* and the related Service Agreements place the onus on councils to provide the RFS with suitable premises. Extracts from Rural Fire District Template Service Agreement 2010 also list the additional premises related costs that councils are responsible for:

Section 6.5:

(b) pay all rates, taxes, electricity, gas, oil and water charges separately metered and charged to the Premises;

(c) maintain the Premises in good repair in accordance with paragraph 6.7; and

(d) effect and keep current at all times during the continuance of this Agreement the following insurances:

(i) building insurance; and

(ii) public risk insurance in an amount of not less than $20,000,000.

Section 6.7:

The Councils will undertake all painting, maintenance and repairs of the Premises involving:

(a) the roof and external structure of the Premises;

(b) any internal or external fittings or fixtures placed by the Councils;

(c) any work that must be carried out by a licensed trades person, including, but not limited to:

(i) electrical repairs and maintenance; and

(ii) plumbing repairs and maintenance; and

(d) maintenance and repair of any air conditioning or heating system.

Section 10:

The Councils agree that during the Term they will effect and keep current the following insurances "the Councils' Insurances":

(a) Property damage and public liability insurance in relation to the Premises;

(b) Compulsory third party and comprehensive insurance in relation to any motor vehicles which form part of the District Equipment, except where otherwise agreed in writing between the Councils and the Commissioner;

(c) property damage and public liability insurance, third party and comprehensive insurance, in relation to all Premises and District Equipment controlled, occupied or managed by the Commissioner or the Service.

These requirements place a considerable cost burden on councils, for many councils this frequently surpassing the Emergency Service Levy (ESL) that they already contribute. Councils have noted the inconsistency and complexity of funding arrangements for premises. At some times, funding originates from the Rural Fire Fighting Fund (RFFF), at others it is funded fully or partially by councils, and occasionally it may stem from a central source.

Many councils have indicated that they would be pleased to transfer the building assets to the RFS to remove these costs on councils.

A number of councils have also suggested that cost savings could be achieved by combining emergency service premises and facilities (RFS, SES & FRNSW) where opportunities arise. Councils have advised that this has been generally resisted by the individual emergency services.

Service Agreements and the *Rural Fires Act 1997*

All RFS/Council Service Agreements are now out of date or expired. The most recent agreements appear to have been signed around 2010. It has also been noted that the agreements have been lost or forgotten in some instances. A new template agreement has been under development for a number of years and a draft was recently due to be released for consultation. However, LGNSW has been advised that this has been deferred pending the outcomes of this Inquiry.

Service Agreements are meant to give effect to the *Rural Fires Act* under which councils are responsible for rural fire fighting functions. This is spelt out in clause 4 of the existing but defunct agreement template:

Section 4

Commissioner to exercise Councils' Functions and manage the District This Agreement is a rural fire district service agreement under section 12A of the Act. The Commissioner will, in consideration of an annual fee of $1.00 payable by the Councils:

(a) exercise, for the Term, all of the functions imposed on the Councils by or under the Act

(b) undertake the day to day management of the Service in the District.

Again, the lapsed service agreements do not reflect the reality of the current relationship between councils and the RFS. While the *Rural Fires Act* substantially modernised the relationship between the RFS and local government, a number of significant but outdated arrangements have persisted and were carried over into the new *Rural Fires Act*. The Act and related Service Agreements are predicated on local government responsibility for bushfire fighting and localised ownership of assets, including premises, fire fighting vehicles and appliances.

In reality, the RFS has assumed the responsibility for bushfire fighting and in recognition of this reality, should logically have ownership of bushfire fighting assets.

NSW Treasury underlines this position in its current *Consultation Paper on Reforming the Emergency Services Funding System* where it states that:

The NSW Rural Fire Service is responsible for combating bushfires in NSW and leads coordinated bushfire fighting operations across 95 per cent of the State's land mass.[3]

This description strongly suggests that the RFS effectively has the responsibility and controls its assets and thus should own them

[3] Reforming the emergency services funding system - Consultation paper. NSW Treasury, 10 April 2024.

Sustainability of Local Government contributions

Blacktown City Council has a policy of balanced budgets and the significant and increasing costs of its contributions is a drain on our ability to better serve our community and we acknowledge that many NSW councils are also facing significant challenges in maintaining financial sustainability. The ongoing increase in the ESL on councils is exacerbating these challenges. This issue is aggravated by the additional contributions that councils are obligated to provide, particularly to the RFS.

Disappointingly, it is an example of cost shifting onto local government and ultimately ratepayers.

LGNSW's latest cost shifting report was released in November 2023, highlight a total cost shift to councils of $1.36 billion in 2021/22, which is the equivalent of more than $460 per ratepayer annually. This is a dramatic increase of 78% since the 2015/16 financial year, when the total cost shift was estimated at $820 million. For the 2024/25 financial year, Blacktown City Council's calculation of government cost shifting exceeds $30 million.

The ESL on councils was identified as one of the major cost shifts at $165 million.

For further information, please refer to the summary and full report below:

- Summary and Highlights: Cost shifting 2023: How State Costs Eat Council Rates
- Full Report: Cost shifting 2023: How State Costs Eat Council Rates

The following tables also clearly demonstrate that the escalation of emergency services budgets and the ESL on councils far exceeded the rate peg over the past 10 years. LGNSW has conducted independent analysis with the following data obtained from NSW Budget Papers over the last decade and observed the following:

1. Total ESL council contributions have risen by 124% over the last 10 years.
2. Total budgets for the three agencies covered by the emergency services arrangements have risen by 98% over the 10 years.
3. Overall, the escalation of emergency services budgets and the ESL on councils far exceeded the rate peg over the past decade.

Conclusion

This submission makes a clear case for the comprehensive reform of arrangements for the assets, premises and funding of the NSW Rural Fire Service. Current arrangements are out of date and no longer reflect the reality of the current functional arrangements between the RFS and local government. In conclusion Blacktown City Council makes the following recommendation that the Public Accounts Committee:

1. Support amendment of section 119 of the *Rural Fires Act 1997* to clearly set out that the red fleet assets are vested in the RFS. This should be done in the near term.
2. Recommend that the *Rural Fires Act 1997* be subject to a comprehensive review as noted above.
3. Recommend that the review of the Act should investigate and redefine the respective roles, responsibilities and functional arrangements of the RFS and local government.
4. Recommend that lead responsibility for bushfires be transferred from local government to the RFS to reflect current practice.
5. Recommend that the negotiation of new Service Agreements be further delayed until the Act review has been completed.
6. Support the removal of the ESL on insurance and local government, to be replaced by a broad-based property levy.

Blacktown City Council would be pleased to provide clarification on any matter raised in this submission. For further information please contact Wayne Rogers, Director Corporate Services by email at [redacted] or on [redacted]