

ASSETS, PREMISES AND FUNDING OF THE NSW RURAL FIRE SERVICE

Organisation: Leeton Shire Council

Date Received: 10 May 2024

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Public Accounts Committee
NSW Parliament
Macquarie Street
SYDNEY NSW 2000



To the Chair of the Public Accounts Committee

[Inquiry into the assets, premises and funding of the NSW Rural Fire Service](#)

Introduction

Leeton Shire Council appreciates the opportunity to make a submission to the PAC about the future management, ownership and accounting treatment of rural fire assets and premises.

In making this submission, Leeton Shire Council again expresses its deep appreciation for the RFS service and the many volunteers that help keep our communities safe.

To provide context to our submission, the current arrangements between the RFS and Councils are out of date and no longer reflect functional reality. Arrangements have evolved significantly in the last few decades and it is time they are appropriately reflected in legislation, practices and accountability reporting.

Leeton Shire Council's response is in 3 sections:

- 1.) A reasonable person perspective based on actual current arrangements and practices
- 2.) Two expert technical arguments about why Councils should not account for RFS assets in their annual financial statements
- 3.) Recommendations in relation to the Terms of Reference inquiry lines

1.) A Reasonable Person Perspective about Who Runs the Show when it comes to RFS assets

- To our knowledge there is no argument from any quarters that, today, the Rural Fire Service (RFS) practically runs the RFS as a service arm of the NSW Government. This means the RFS plans for, oversights, manages, procures, deploys and disposes of all assets related to that service – be it sheds or the red fleet. The RFS also employs its own staff and recruits and trains its own volunteers.
- Councils across NSW have no say in the day to day operations of the local RFS, their assets (fixed or loose) or their staffing. Nor do Councils have input into the strategic plans of the RFS. The days of having fire control officers employed by Councils are long gone (circa 2001).

- Communication between Councils and the RFS about their arrangements happens informally and occasionally. There is no joint strategic or annual operations planning – Council is consulted on any RFS plans to the same extent any member of the public or any other agency is consulted. Practically, Council communication with the RFS is similar to Council communication with police, health, ambulance or education and usually relates to an emerging issue or opportunity, or ad hoc training plans / joint training for emergency responses. The RFS simply ‘gets on with things’ without any routine input or interference from Council about their day to day management or decisions around their assets.
- The so-called ‘Service Level Agreements’ between the RFS and Councils have, to our knowledge, mostly expired. They no longer reflect reality and both parties are reluctant to see them re-signed in their current form.
- Councils in NSW operate under the Local Government Act 1993 and the mandated Integrated Planning and Reporting framework. As part of this framework, and after consulting its community, a Council sets its strategic direction having regard to community aspirations as well as its resourcing requirements and resourcing capacity. These are informed by a Resourcing Strategy (including Asset Management Strategy, Workforce Plan and Long Term Financial Plan). Planning for bushfire management is not part of Councils’ IPR frameworks beyond allocating resourcing to fund the ESL (Emergency Services Levy) for the SES, Fire Brigade and RFS and, in some cases, advocacy. It is not right that Councils get “blindly burdened” by the decisions of another entity or agency (viz RFS) that operates entirely independently of Council and outside the IPR Framework.
- The RFS is an established, identifiable State Government Agency with a coordinated command structure under an agency head, the RFS Commissioner. From time to time the RFS moves assets between districts or purchases new assets. It is not a service run at the local government level and its resourcing needs and reporting obligations should definitely not be confused with those of local Councils .
- While local communities benefit from the RFS, so too do they benefit from local schools, local hospitals, the police, SES, NSW Fire Brigade and a range of other government funded services. It makes no sense to isolate and promote RFS activity as benefiting local communities economically when a wide range of State funded services arguably benefit them too. In any case, these benefits should not burden any local Council financially when the activity is not under the Council’s active control
- While Councils in bygone days were responsible for bushfire management, the reality today is that this is no longer the case. The provision of emergency services has changed dramatically over the years from community, to Council to (now) RFS. In fact, the role of the RFS has broadened in recent times beyond bushfire management to matters such as first response duties in the case of accidents and emergencies where ambulances aren’t able to immediately attend. These broadened functions are certainly not the responsibility of a local Council.
- Expecting Councils, who do not run the rural fire service, to do stocktakes of RFS equipment to assess their condition and current value is unreasonable. Not only is this inefficient but it

would also be irresponsible. Asset management is best undertaken by the relevant asset owner/manager who knows and understands how the assets work and their useful lives, and has insights into what assets have been moved and why etc. Many RFS assets are specialized vehicles and machinery and Councils do not have staff with the relevant skillsets to effectively manage these assets.

- For a great many years Councils were able to determine if they would account for RFS assets - or not - based on their professional opinions. Despite this provision, from the 2022 EoFY Council statements, the NSW Auditor General issued 36 qualified audit opinions to Councils who maintained their professional and principled views that accounting for RFS assets would not be appropriate. The Auditor General seemingly ignored two expert accounting opinions in favour of their interpretation of vesting the Rural Fire Act. Their opinion has never been substantiated either beyond confirming it aligns with the views of Treasury.

Neither the Auditor General, nor Treasury, have ever provided a formal accounting standards (AAS) response to the expert technical opinions discussed below.

- In December 2023, the NSW Local Government Code of Accounting Practice and Financial Reporting changed, now obliging Councils – contrary to their professional views - to recognise material RFS assets in their annual financial statements. The Audit Office also put increasing pressure on Councils to undertake stocktakes of the red fleet. This is tantamount to bullying Councils into submission rather than dealing with the reality of the ‘control’ question and its bearing on the accounting treatment of RFS assets.

It is our considered view that any reasonable person would say of the RFS today:

- **The RFS is an entity within the NSW State Government, having full control of its functions / decisions and all associated assets and premises.**
- **Funding for RFS services should be arranged by the State and be removed from local Councils who have no say in how the RFS runs.**
- **All accountability for the RFS, including responsibility for its asset management decisions and reporting, should sit with the RFS and the NSW Government and not local Councils.**
- **It’s time to change the NSW Rural Fires Act to reflect reality and clean up all confusion once and for all. The responsibilities and accountabilities of the RFS need to be fully aligned under a new Act.**

2.) Technical Arguments as to why Councils should not recognise RFS Assets in their Annual Financial Statements

The criteria for asset recognition are contained in various sections of the *Framework for the Preparation and Presentation of Financial Statements* and AASB 116 *Property, Plant and Equipment*.

The Framework, in paragraph 49, defines an asset as 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. Further, in paragraph 51, in assessing whether an item meets the definition of an asset,

attention needs to be given to its underlying substance and economic reality and not merely its legal form. In respect of not-for-profit entities, economic benefit may be synonymous with service provision or enabling them to meet their objectives to beneficiaries. Paragraph 57, makes it clear that the right of ownership is not essential to the determination of control.

AASB 116 requires that an asset be recognised if, and only if, it is probable that future economic benefits associated with the item will flow to the entity and the cost of the item can be measured reliably.

Despite the provision in the Rural Fires Act regarding the “vesting” of fire fighting equipment with Councils, the reality is that once the funds are made available, the assets are alienated from council control. Specifically:

- The RFS is funded directly by the State and acquisitions are made directly by RFS Officers. Councils have no input into the operations or acquisitions of the RFS;
- There is no requirement on RFS to supply to councils and maintain the currency of information about equipment, reinforcing the idea of separation of responsibility and accountability;
- Consent for actions that concern the equipment remains with the NSW Rural Fire Service Commissioner;
- Monies resulting from the sale of equipment or associated with damaged or destroyed equipment cannot be remitted to councils, to the extent that the purchase or construction of the equipment was met by the Fund.

Below are two EXPERT technical opinions prepared by different parties at the request of two different agencies. Each comes from a different angle, however, what they do have in common is the view that Councils should not recognise RFS assets on their books.

Technical Argument 1: Councils do not control RFS fire fighting equipment assets and therefore should not be recognising the assets in their financial statements.

The Office of Local Government (OLG) commissioned Mr Colin Parker, Principal of GAAP Consulting, in April 2018 to review the existing arrangements for evaluating, identifying and recommending the proper recognition of Rural Fire Services (RFS) assets, including how they should be accounted for to achieve more clarity and consistency within the local government sector. Colin Parker is highly respected as a former member of the Australian Accounting Standards Board and independent from the NSW Government, NSW Audit Office, and the local government sector.

Mr Parker’s independent assessment concluded that:

- *The authoritative pronouncements strongly indicate that the fire fighting equipment should be based on control rather than legal vesting (and related assessments of risks and rewards of ownership).*
- *The service potential of an asset is specific to an entity in meeting its objectives. An asset cannot be controlled by two entities. The fire fighting equipment in question benefits both the councils and the RFS in helping them to comply with their legislative requirements.*

- *The RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in local government areas of NSW and controls fire fighting equipment to meet its statutory objectives. It is the reason for the RFS's existence.*
- *On the other hand, councils have their own unique responsibilities under the Local Government Act 1993 such as prescribed functions (s.21) and service functions, including the provision of goods, services and facilities and carrying out of activities (s.24), public land, environmental upgrade agreements, and regulatory functions. The councils also have what I would consider as secondary or ancillary obligations under Rural Fires Act 1997 to those of RFS.*
- *The service potential of an asset is specific to the entity and its objectives. An asset cannot be controlled by two entities. The fire-fighting equipment benefits both the councils and the RFS in helping them to comply with their legislative requirements. The RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in local government areas and other parts of the State, and controls fire-fighting equipment to meet its statutory objectives.*
- *Through its service standards and rural fire district service agreements, the RFS has decision making authority over fire fighting equipment under the Act. The RFS exercises this authority through them, including the functions of zone managers and rural fire brigades. Many of the decisions are delegated by the RFS commissioner.*
- *Furthermore, control of fire-fighting equipment by the RFS is evident by procurement (and replacement and retirement) decisions, service standards for care and maintenance, access, and deployment within the district and elsewhere. These are substantive rights of RFS. The RFS also has a protective right that prevents councils from selling or disposing of the assets without written consent of the RFS commissioner. There are instances noted by some councils where the 'delegates' of the RFS restrict council access to fire fighting equipment.*
- *The councils have no substantive rights for the control of fire fighting equipment – vesting by itself does not confer control.*
- *Fire fighting equipment recognised by some councils should be derecognised.*

Mr Parker concludes that **Councils have no substantive rights for the control of fire-fighting equipment– vesting by itself does not confer control.**

He recommends that Councils should not recognise fire-fighting equipment and that they should be recognised in the financial statements of the RFS given its substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in NSW.

To date it appears that the NSW Government, Treasury and the NSW Auditor General have ignored this advice.

Note: Local Councils were only able to retrieve a report entitled Draft following a GIPA request

of the OLG, however, following an enquiry of Mr Parker himself, understand he resubmitted the same report as Final with no changes to the Draft.

The full Parker (draft) report is at **Attachment 1**.

It is recommended that the PAC seek to interview Mr Parker directly.

Technical Argument 2: Taken together, the Fire Services Act and Service Level Agreement has the features of a Finance Lease (substance over form accounting), with the underlying asset/s of a finance lease (in this case RFS assets) not recognised by the lessor (Council).

Under AASB 16, the underlying asset to a finance lease is not recognised by the lessor (Council) because the lessee (RFS Commissioner) is considered to have the right to control the use of the underlying asset, obtaining the economic benefits from the use of the equipment and the premises attributed to and made available by Council - including directing how and for what purpose the assets are used throughout the period of their use.

Below is the summary from BDO explaining their substance over form argument, with their full opinion to Leeton Shire Council at **Attachment 2**.

SUMMARY

Pursuant to the *Rural Fire Services Act 1997* ('the Act'), all fire fighting equipment purchased or constructed wholly or partly from money to the credit of the NSW Rural Fire Fighting 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. Fire fighting equipment includes:

- Fire fighting apparatus, including 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
- Buildings
- Water storage towers, and
- Lookout towers.

The Commissioner of the NSW Rural Fire Service may, also pursuant to the Act but with the concurrence of the council in which the rural fire fighting equipment is vested:

- Use any of the fire fighting equipment not reasonably required by the council to deal with incidents in the area of the council or incidents outside the area, and
- Enter into a rural fire district service agreement with any local authority responsible for a rural fire district.

Pursuant to Leeton Shire Council's rural fire district service agreement with the Commissioner of the NSW Rural Fire Service:

- The Leeton Shire Council will make available and allow the Commissioner and the NSW Rural Fire Service to use the:
 - Fire fighting equipment allocated to the district, and
 - Premises identified in the agreement
- The agreement will remain in force until such time as:
 - One of the parties to the agreement breaches the agreement and the breach is unable to be rectified within 21 days of the notification of the breach
 - The failure by either party to make a payment required under the agreement, or
 - One of the parties to the agreement has given notice of its intention to terminate the agreement, and 6 months has passed since that notice was given.

Australian Accounting Standards require a 'substance over (legal) form' approach. For instance, where an entity's rights and obligations in respect to a transaction or other event are contained in

two or more contracts or other legal arrangements, substance over form accounting can be achieved by combining the contracts and other arrangements in a single unit of account, thereby treating the group of rights and obligations as a single item. Such an approach is particularly appropriate when the rights and/or obligations an entity has under one contract or legal arrangement nullify all of the rights and/or obligations the same entity has under another contract or arrangement. In such circumstances, combining the two sets of rights and obligations results in a unit of account that comprises no assets or liabilities of the entity, consistent with the substance of the arrangement as a whole.

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides:

- The Commissioner of the NSW Rural Fire Service with the right to all of the economic benefits embodied in the rural fire fighting equipment attributed to the Council and all premises belonging to the Council that are made available to the Commissioner, and
- The Council with the right to receive payments in respect to the rural fire fighting equipment attributed to it as well as all of the premises made available by the Leeton Shire Council to the Commissioner.

From Leeton Shire Council's perspective, this single unit of account has the features of a finance lease under AASB 16 *Leases*. Accordingly, consistent with the requirements in AASB 16, Leeton Shire Council would recognise a receivable from the Commissioner of the NSW Rural Fire Services (rather than the rural fire fighting equipment and premises made available to the Commissioner).

Leeton Shire Council's treatment of the arrangement with the Commissioner of the NSW Rural Fire Service as a finance lease is consistent with the substance of its arrangement with the Commissioner. Under AASB 16, the underlying asset to a finance lease is not recognised by the lessor because the lessee is considered to have the right to control the use of the underlying asset. Pursuant to the Act and the rural fire district service agreement, the Commissioner has the capacity to control the use of the underlying assets (fire fighting equipment and premises) because the Commissioner has the right to:

- Obtain substantially all of the economic benefits from the use of the fire fighting equipment attributed to the Council and the premises made available by the Council, and
- Direct how and for what purpose the assets are used throughout their period of use.

It is recommended that the PAC seek to interview BDO directly.

3.) Recommendations (in relation to Term of Reference Inquiry Lines)

The recommendations to the Public Accounts Committee are summarised in blue font below:

1. The mechanisms for:

a. funding Rural Fire Service assets and premises;

The RFS should be funded, along with FRNSW and SES, from a broad-based property levy. This model already exists in most other states and provides greater transparency, accountability and equity.

b. Maintaining Rural Fire Service assets and premises;

The maintenance of all RFS assets should fall to the RFS who procure, deploy, manage and dispose of those assets.

c. Accounting for the ownership of Rural Fire Service assets and premises;

The accounting for all RFS assets should fall to the RFS who procure, deploy, manage and dispose of those assets. It would be more logical and efficient for the single, specialised agency that owns and operates the equipment to undertake the stocktakes and valuations of their assets (as is done by FRNSW and SES).

It is imperative that nobody is allowed to diminish the impact of accounting for RFS assets on the basis that “depreciation expenses are merely a book entry” when, in reality, it impacts on Councils’ performance ratios and can reflect poorly on Councils’ financial management.

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;

Continue operational management as happens now but remove all legal and accounting confusion by reviewing the Rural Fires Act such that the RFS is clearly the controlling entity supported by a budget that is allocated by the NSW Government (on the same basis as FRNSW and SES).

2. Whether the following arrangements between Councils and the Rural Fire Service are fit for purpose:

a. Service agreements;

No they are not fit for purpose, nor do they reflect the reality of the relationship between Councils and the RFS in 2024. Change the Rural Fire Act to clarify that RFS has full control of their assets.

Districts to determine working relationship with Councils in the same way this can happen with SES and NSW Fire Brigade.

b. The division of responsibilities for bushfire management and hazard reduction;

See point a above.

c. Upkeep of assets;

Each RFS district can work out its own arrangement with Councils or other entities in relation to the upkeep of assets. RFS should engage on a fee for service basis with those entities based on what works best for them.

In reality, the RFS has assumed the responsibility for bushfire fire management / fighting and in recognition of this reality, should logically have ownership of all bushfire management / fighting assets and be responsible for their upkeep.

d. The provision of insurance;

As assets should be owned and controlled by the RFS, the RFS should pay for the insurance of those assets (both fixed and loose).

e. Provision of land and construction management for RFS premises;

As assets should be owned and controlled by the RFS, the RFS should oversee and manage the construction of those assets. In fact, they do already in several cases, tendering at a state level for new sheds and arranging their own project / construction management.

f. Bushfire Management Committees (BMC)

These should continue and be improved, with more regular meetings and reporting. Effective BMC are critical for identifying and mitigating risks. BMCs should be administered by the RFS with Councils being a participant / attendee.

3. The appropriate role for local authorities in the provision of emergency services; Councils most definitely have a support role, when required (staff, vehicles and some equipment). Councils should participate in joint training and planning exercises. Councils should not be the lead in the provision of emergency services but can work closely with the Emergency Controller in relation to public communication (usually the Mayor).

4. The sustainability of local government contributions to emergency service provision; Councils have been saddled with rate pegging and significant cost shifting. Together these have put significant financial strain on Councils. Recent escalations in the Emergency Services Levy – on top of removal of the ESL subsidy last year - have compounded the situation. LGNSW has estimated in their 2023 report on cost shifting that the ESL on Councils imposed as much as \$165M on the sector, rising by 124% over the last 10 years on the back of ESL services budgets that rose by 98% over that same period. These increases far exceeded the rate peg.

Councils should be relieved of paying Emergency Service Levies in favour of the NSW Government introducing / collecting a broad-based property levy. The levy will ensure improved equity and transparency and greater accountability.

It is timely that NSW treasury is currently reviewing ESL (Emergency Service Levy) arrangements. The opportunity to re-organise funding arrangements for the RFS from what they are today should not be missed, including identifying and addressing other 'hidden' costs that are being carried by Councils such as premises (rates, utilities, repairs) and insurances (building, property and public liability).

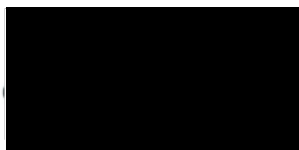
5. Any other related matters.

It is time to amend the Rural Fires Act thoroughly to clearly reflect the current role of the RFS and set out that RFS assets (fixed and loose) are vested in the RFS / NSW Government. As a start, to get the initial impasse with 'qualified' Councils sorted, we recommend the immediate amendment of section 119 of the Rural Fires Act, as set out in the Bill from former MP Adam Marshall, and the immediate adjustment of the LG Code of Accounting Practice to remove all references to Councils accounting for RFS assets.

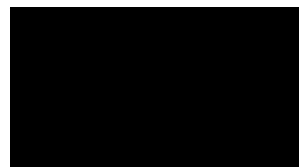
In closing, please contact General Manager Leeton Shire Council, Jackie Kruger, if anything in this submission requires clarification – [REDACTED] or phone [REDACTED].

Leeton Shire Council would also be pleased to be heard by the PAC if possible.

Yours faithfully



Cr Tony Reneker
Mayor



Jackie Kruger
General Manager

Review of accounting for ‘red truck’ assets and other fire-fighting equipment in NSW

An independent expert’s report

by

Colin Parker, principal, *GAAP Consulting*

Team leader – advisory and litigation support services

Former member of the Australian Accounting Standards Board

April 2018

About the author – Colin Parker, principal, GAAP Consulting

I have had over 40 years' experience in financial reporting, auditing and ethics policy and implementation, including as director – accounting and auditing with CPA Australia, member of the Australian Accounting Standards Board, chairman of the Audit Advisory Committee to the board of CA ANZ, and as an adviser to the IPA on all aspects of professional standards.

I lead *GAAP Consulting's* advisory and litigation team and have been involved in more than 40 litigation briefs as either an independent or consulting expert.

I have a public profile on emerging accounting and auditing issues, having given more than 300 talks, speeches and seminars in Australia and overseas (Singapore, Hong Kong, United Kingdom, Kuala Lumpur, Fiji and Dubai).

I have written many technical articles for CPA Australia and other bodies, numbering well over 200. I made contributions on contemporary issues to *Acuity* and the *Public Accountant*.

I am co-author of *Understanding and Implementing the Reduced Disclosure Regime* (two editions), co-authored *Australian GAAP* (nine editions). I was technical editor of the accounting bodies' *The Accounting and Auditing Handbook 1992-2001 (Volumes 1 & 2)* (10 editions).

I am editor of the monthly newsletter *GAAP Alert* and tweet and post on contemporary issues. I am also editor of the *GAAP Consulting* publications *Special GAAP Report* and *NFP Risks and Compliance* newsletter and a major contributor to the *Report Fraud and NOCLAR* newsletter.

About GAAP Consulting

On 1 July 2003, I founded *GAAP Consulting* with a vision and a motto. The motto was easy: *Excellence in financial reporting*. The vision was to give the best, independent advice on all matters to do with financial reporting, auditing and ethics.

GAAP Consulting provides independent financial reporting, auditing, ethics, and risk management solutions to reduce clients' risks. A description of my services, clients and information products is available at www.gaap.com.au. The expanding arch in the logo represents the client's journey from uncertainty to a sure solution through the use of my consulting services and products.

My core values are independence and integrity, and with my motto are reflected in the mnemonic:

T Trust
R Respect
I Innovate
E Energise
D Deliver

and **PROVEN** approach.

As principal of *GAAP Consulting*, I provide expert advice on GAAP and GAAS, quality-assurance reviews, representation expertise, tailored training courses, and litigation support to meet client needs.

Where appropriate, *GAAP Consulting* uses the services of a network of independent colleagues (subcontractors) to assist with engagements. My colleagues are *all partner-equivalents*.

The *GAAP Consulting* network members and their areas of expertise are:

- Colin Parker (financial reporting, audit, ethics, and risk management)
- Carmen Ridley (financial reporting and a current member of the AASB))
- Stephen LaGreca (financial reporting, audit, and risk management)
- Sonya Sinclair (audit, risk management, and financial reporting)
- Jim Dixon (public and not-for-profit sectors)
- Andrew Parker (marketing and event management), and
- Stephen Downes (client communications).

I also use the services of Stephen Newman, corporate lawyer, Hope Earle, when matters have a legal aspect.

My business model is premised on using only known names and very experienced practitioners in financial reporting, ethics and auditing. Collectively, a unique blend of skills and experience is provided to meet clients' needs.

As a boutique consultancy, *GAAP Consulting* has an impressive list of clients in the private and public sectors to which a wide variety of GAAP, GAAS and training services are provided. My clients include legal firms, regulators, accounting firms, listed entities, and public sector and not-for-profit entities.

About this report

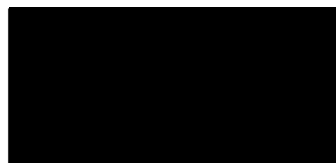
This report has been prepared on the basis of the information sources cited and a brief discussion with Stephen O'Malley, executive director, finance and executive services, chief financial officer, NSW Rural Fire Service. The New South Wales Office of Local Government (OLG) and Treasury provided preliminary input for an earlier draft.

Apart from the preceding, I have yet to hold interviews with key stakeholders, including relevant councils. The OLG has requested that my draft report first be considered by Treasury, the RFS and the auditor-general before any consultation with the sector.

The report has been subject to internal consultation with my quality-assurance reviewer Stephen La Greca and a blind review by Carmen Ridley.

The opinions expressed in this report are my own.

I trust that the report will be a helpful discussion document for all major stakeholders. I welcome feedback to progress its finalisation.



Colin Parker

Principal and team leader – advisory and litigation services

Former member of AASB

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11 April 2018

DRAFT

Executive summary

Introduction

1. Fire-fighting equipment provided by the Rural Fire Service (RFS) to local councils in New South Wales has been a vexed issue for many years. Who controls the assets – the RFS or the councils? This has not an easy question for stakeholders to answer due to factors such as:

- The legislative requirements and obligations of the RFS and councils, including the vesting of fire-fighting equipment with councils
- The choice of accounting under Office of Local Government (OLG) accounting code for local councils and their auditors to consider
- Long standing practices of the RFS and councils
- The effect of RFS service standards mandated for fire-fighting equipment (and its use) and rural fire district service agreements between the RFS and the councils
- The differing perceptions of control for red-fleet vehicles vis-a-vis associated land and buildings by the councils, and
- The lack of specific accounting standards addressing the control of an asset.

2. Under s119(1) of the *Rural Fires Act 1997*, fire-fighting equipment is defined as: *fire-fighting apparatus, buildings, water storage towers or lookout towers*. Fire-fighting apparatus is defined separately as: *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*.

3. There has been inconsistent treatment, as councils have been given the choice (in the OLG accounting code) to recognise or not to recognise fire-fighting equipment assets, but with the intention that this decision would be made in accordance with accounting standards, including the application of materiality. The RFS has not recognised fire-fighting equipment as an asset in its financial statements on the basis that these assets are vested with the councils as stated in the RFS's accounting policy note to the financial statements.

4. With the extension of the auditor-general's mandate to cover local government, she is seeking to ensure an appropriate treatment.

5. Stakeholders' positions vary. The NSW Audit Office, NSW Treasury, and RFS are of the view that councils should recognise fire-fighting equipment in their financial statements *primarily* based on the fire-fighting equipment *vesting* in the councils under the Act.

6. On the other hand, many councils believe that they do not *control* fire-fighting equipment and, therefore, should not recognise them in their financial statements. Furthermore, they believe that fire-fighting equipment should be recognised by the RFS.

7. Stakeholders have provided various arguments and opinions to support their positions, including references to accounting standards and other authoritative pronouncements that they considered relevant. These are summarised in the appendix *Facts and stakeholder views on fire-fighting assets* – where appropriate, I have commented on them. Readers of this report, may wish to familiarise themselves with the appendix before considering the body of my report.

8. A related issue is the control of land and buildings provided by the RFS. They are also fire-fighting equipment as defined. I understand that land and buildings are viewed generally as *controlled* by the relevant council and recorded in councils' financial statements. But are they controlled by the councils?

9. The principle of control should apply to all fire-fighting equipment. RFS-sourced land and buildings, these should be subject to the same control considerations as the red-fleet vehicles. There are likely to be further implications for councils where council land has been used as a contribution to infrastructure. These need to be determined by each council in accordance with their own facts and circumstances, applying the test of materiality. I understand that white vehicles are recognised by the RFS as not vested to councils and are held at RFS districts for RFS use only. Accordingly, this issue is not considered further.

Scope

10. The OLG requested a review of the present arrangements of *how these assets, including red-fleet vehicles*, should be recognised with particular reference to which entity controls them (and should therefore recognise them in financial statements) to improve consistency in financial reporting in accordance with AASB standards.

11. Specifically, the OLG requested consideration of issues about legal versus operational control, future economic benefits of the assets, control of assets' movements, expertise to maintain assets and insurance.

Relevant accounting pronouncements

12. Based on my review of *Facts and stakeholder views on fire-fighting assets* (appendix), and consideration of these in the context of accounting standards and the *Framework for the Preparation and Presentation of Financial Statements*, the issues in contention cannot be resolved by reference to a specific accounting standard. Accordingly, the GAAP hierarchy under AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors* is the starting point for deliberations as to the appropriate accounting for red-fleet vehicles and related issues.

13. In the framework, an asset is defined as '[a] resource: *controlled* [my emphasis added] by an entity as a result of past events; (a) and from which future economic benefits are (b) expected to flow to the entity'. The framework also addresses the concepts of 'faithful representation', 'substance over form', and 'service potential'. 'Control' is defined in SAC 1 *Definition of the Reporting Entity*. These definitions and concepts are helpful in determining who controls fire-fighting equipment (including the red-vehicle fleet).

14. I have also considered the requirements of following accounting standards, and applied them in my deliberations and in forming my opinion:

- AASB 101 *Presentation of Financial Statements*
- AASB 116 *Property, Plant and Equipment*
- AASB 138 *Intangible Assets*
- AASB 117 *Leases*
- AASB 16 *Leases*
- AASB 15 *Revenue from Contracts with Customers*, and

- AASB 10 *Consolidated Financial Statements*.

15. The assets in question meet the definition of ‘property, plant and equipment’ in AASB 116 *Property, Plant and Equipment*. AASB 116 does not set requirements or provide guidance to support the argument that legal ownership is necessary for asset recognition nor an indicator of it.
16. AASB 138 *Intangible Assets* provides guidance on control of an asset – power to obtain the future economic benefits flowing from the underlying resource and to restrict the access of others to those benefits. Also, an enforceable legal right, it is not a necessary condition for intangible asset recognition as there may be other means of exercising control.
17. AASB 117 *Leases* contains a notion of ownership for classification between operating and financing leases. If arguments were mounted based on the principles in AASB 117, it is likely that the conclusion reached would be risks and rewards incidental to ownership of an asset (red-fleet vehicles and related infrastructure) would be retained by RFS.
18. AASB 16 *Leases* applies from 1 January 2019 and employs the principle of ‘a right to control the identified asset’. The notion of ownership of an asset is irrelevant under this model.
19. AASB 15 *Revenue from contracts with customers* applies from 1 January 2019 for not-for-profit entities. It uses control (not ownership) to describe when a good/service (an asset) is transferred to a customer – i.e., when the customer obtains control of it. In this context, control includes the ability to prevent others from directing the use of, and obtaining the benefits from, an asset.
20. AASB 10 *Consolidated Financial Statements* with its principle of ‘control of investee’ (an asset, for the purpose of this report) is a further authoritative source to be considered to the issue of who controls specifically the red-fleet vehicles and land and buildings.
21. In the absence of a specific accounting standard addressing the issues in contention, I have used the GAAP hierarchy and applied *collectively* the principles in AASB 116, AASB 138, AASB 117, AASB 10 and the recently issued standards AASB 16 and AASB 15 to help form my opinions.
22. These authoritative pronouncements strongly indicate that the fire-fighting equipment should be based on control rather than legal vesting (and related assessments of risks and rewards of ownership).
23. The issue also arises as to whether fire-fighting equipment is material in the context of the financial statements of councils concerned and the RFS. This assessment will need to be made by all parties. It may be that the fire-fighting equipment is immaterial to councils but material to the RFS.

In my opinion

- 24.** The service potential of an asset is specific to an entity in meeting its objectives. An asset cannot be controlled by two entities. The fire-fighting equipment in question benefits both the councils and the RFS in helping them to comply with their legislative requirements.
- 25.** The RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in local-government areas of New South Wales and controls fire-fighting equipment to meet its statutory objectives. It is the reason for the RFS's existence.
- 26.** On the other hand, councils have their own unique responsibilities under the Local Government Act 1993 such as prescribed functions (s.21) and service functions, including the provision of goods, services and facilities and carrying out of activities (s.24), public land, environmental-upgrade agreements, and regulatory functions. The councils also have what I would consider as secondary or ancillary obligations under *Rural Fires Act 1997* to those of the RFS.
- 27.** Through its service standards and rural fire district service agreements, the RFS has decision-making authority over fire-fighting equipment under the Act. The RFS exercises this authority through them, including the functions of zone managers and rural fire brigades. Many of the decisions are delegated by the RFS commissioner.
- 28.** Furthermore, control of fire-fighting equipment by the RFS is evident by procurement (and replacement and retirement) decisions, service standards for care and maintenance, access, and deployment within the district and elsewhere. These are substantive rights of RFS. The RFS also has a protective right that prevents councils from selling or disposing of the assets without the written consent of the RFS commissioner. There are instances noted by some councils where the 'delegates' of the RFS restrict council access to fire-fighting equipment.
- 29.** The councils have no substantive rights for the control of fire-fighting equipment – vesting by itself does not confer control.
- 30.** As red-fleet vehicles are not controlled by the councils; also, any land and buildings provided by the RFS, as fire-fighting equipment, for its use are also likely not controlled by councils.

My recommendations

- 31.** Fire-fighting equipment recognised by some councils should be derecognised. If the error is considered material, it should be disclosed as such under AASB 108 *Accounting Policies, Changes in Estimates and Errors*.
- 32.** Fire-fighting equipment vested in councils whether recognised or unrecognised under options in the code should be recognised at cost in the RFS's financial statements. This should be accounted and disclosed as an error under AASB 108 *Accounting Policies, Changes in Estimates and Errors* if the error is determined to be material.
- 33.** Given the diversity of opinion between two group of stakeholders over a long period, an argument could be made that rather than an error, it is a change in accounting policy resulting for consideration of recently issued accounting standards (i.e., AASB 10, AASB 15, AASB

16) that provide more definitive guidance on the control. Accordingly, it would be not treated as error.

34. Under AASB 108, ‘an entity shall change an accounting policy only if the change: ... (b) results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity’s financial position, financial performance or cash flows’ (AASB 108.14).

35. AASB 108 also identifies two circumstances that are not changes in accounting policies: (a) the application of an accounting policy for transactions, other events or conditions that differ in substance from those previously occurring and (b) the application of a new accounting policy for transactions, other events or conditions that did not occur previously or were immaterial’ (AASB 108.16). For an argument of a change in accounting policy to be sustained the ‘differ in substance test’ would need to be argued.

36. As a change in accounting policy, the derecognition of fire-fighting equipment by those councils that had previously recognised such assets and their recognition by the RFS would present more reliable and relevant information to the users of their financial statements and be in line with the entities’ objectives.

37. My preference is for an error correction as the appropriate treatment.

38. Turning specifically to RFS-sourced land and buildings, these should be subject to the same control considerations as the red-fleet vehicles. There are likely to be further implications for councils where council land has been used as a contribution to infrastructure. These need to be determined by each council in accordance with their own facts and circumstances, applying the test of materiality.

My brief

Scope of engagement

1. The New South Wales Office of Local Government (OLG) has engaged Colin Parker, principal, *GAAP Consulting* to:

‘[U]ndertake a review of current arrangements to assess, identify and make recommendations on the appropriate recognition of Rural Fire Services (RFS) assets, including and how they should be treated for accounting purposes to create better clarity and consistency across the local-government sector’.

‘In conducting the review and making a report and recommendations, the focus should be on:

- a desktop review of legislation, policies, guidelines and reports
- identification and consideration of all key issues
- interviews with key stakeholders, including relevant councils
- identifying all possible options for recognising RFS assets
- forming an opinion about whether the best option would be for fire-fighting apparatus (assets) to be recorded in RFS’s or councils’ financial statements (note: land and buildings are generally controlled by the council and already recorded in councils’ financial statements)
- consequential impacts for local government of each option considered in the context of financial reporting, and
- any other matter considered relevant for OLG to be aware of in the course of conducting the work’.

2. The deliverables identified were:

- ‘a report setting out the findings and recommendations of an evidenced-based review of current arrangements, including desktop research and interviews with key stakeholders, and proposed recommendation for the appropriate recognition of RFS assets, and
- any consequential impacts for local government.’

The issue – who controls fire-fighting equipment?

3. Fire-fighting equipment provided by RFS to local councils is a vexed issue. Who controls the asset, the RFS or the councils?

4. Currently, the land and buildings provided by RFS are viewed *generally* as controlled by the council and recorded in councils’ financial statements, the accounting treatment of other assets (particularly, the so called red-fleet vehicles) being the focal point of concern.

5. Some councils are concerned about who controls RFS assets, including red-fleet vehicles, and the consequential financial-reporting effects of ‘ownership’.

6. Furthermore, there has been inconsistent treatment between the RFS, a state-government entity, and some councils. Councils are given the choice (in the OLG accounting code) to recognise or not to recognise the assets as determined by accounting standards.

7. As the auditor-general’s mandate has been extended to cover local governments, the auditor-general is seeking to ensure an appropriate treatment. The auditor-general’s office

recently formed a view that it believed that RFS assets, including red-fleet vehicles, are controlled by councils. This position was informed by a separate view provided by the NSW Treasury to the auditor-general.

8. The OLG requires a review of how *RFS assets, including the red-fleet vehicles*, should be recognised, with particular reference to which organisation controls them (and should therefore record them in their financial statements) for the purposes of informing greater consistency in financial reporting under the Australian Accounting Standards Board standards.
9. Relevant sources of legal and other relevant obligations include: *Rural Fires Act 1997* (the Act); *Local Government Act 1993*; *OLG Code of Accounting Practice and Financial Reporting*; and Australian Accounting Standards.
10. The *Local Government Code of Accounting Practice and Financial Reporting* (Update No. 25, June 2017) stated: 'Councils have the option to continue to recognise or not to recognise Rural Fire Services assets in their accounts until such time as the control issue is agreed upon with the Rural Fire Service'.

Key issues identified in the request for tender

11. The Request for Tender identified the following key issues:
 - Legal vs operational control* – As red-fleet vehicles are legally vested in the council, the RFS does not record them in its financial statements. Many councils also do not record them in their financial statements because they are effectively managed, used and maintained on a day-to-day basis by the RFS via *Rural Fire District Service Agreements* under s12A of the Act. These set out arrangements for maintenance, use, access and delegation of hazard reduction activities.
 - Future economic benefits of the assets* – RFS assets benefit both councils and the RFS in helping them to comply with their legislative requirements. For the purposes of *The Framework for Preparation and Presentation of Financial Statements* for not-for-profit entities in the public sector, economic benefit of an asset equates to its service potential.
 - Control of movement of assets* – Even though S119(2) of the Act vests the assets in the relevant council, S119(3) prevents the council from selling or disposing of the assets without written consent from the RFS commissioner.
 - Expertise to maintain assets* – Under s119(5) of the Act, it is the relevant council's responsibility to take care and maintain the assets, based on standards set by the commissioner, but councils lack expertise to do so and transfer this obligation to the RFS through the agreement.
 - Insurance* – While RFS assets are vested in councils, they may agree to an arrangement whereby the RFS acquires insurance coverage in its name. The RFS pays the premium from the Rural Fire Fighting Fund (RFFF) and is nominated as an insured party under the policy.'

My accounting opinion

Relevant accounting pronouncements

Application of GAAP hierarchy in the absence of a specific accounting standard

12. Based on my review of *Facts and stakeholder views on fire-fighting assets* (appendix), and consideration of these in the context of accounting standards and the *Framework for the Preparation and Presentation of Financial Statements*, I am of the opinion that the issues in contention cannot be resolved by reference to a specific accounting standard.

13. Accordingly, I have formed my views in accordance with AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*. Relevant paragraphs are:

‘10 In the absence of an Australian Accounting Standard that specifically applies to a transaction, other event or condition, management shall use its judgement in developing and applying an accounting policy that results in information that is: (a) relevant to the economic decision-making needs of users; and (b) reliable, in that the financial statements: (i) represent faithfully the financial position, financial performance and cash flows of the entity; (ii) reflect the economic substance of transactions, other events and conditions, and not merely the legal form; (iii) are neutral, i.e. free from bias; (iv) are prudent; and (v) are complete in all material respects.

11 In making the judgement described in paragraph 10, management shall refer to, and consider the applicability of, the following sources in descending order: (a) the requirements in Australian Accounting Standards dealing with similar and related issues; and (b) the definitions, recognition criteria and measurement concepts for assets, liabilities, income and expenses in the Framework.

12 In making the judgement described in paragraph 10, management may also consider the most recent pronouncements of other standard-setting bodies that use a similar conceptual framework to develop accounting standards, other accounting literature and accepted industry practices, to the extent that these do not conflict with the sources in paragraph 11.’

14. I note that the various stakeholders did not use the GAAP hierarchy as a starting point for their deliberations. Instead, they selected specific accounting standards and/or the framework to support their contentions.

15. I have made my assessment based on the ‘11(a) requirements in Australian Accounting Standards dealing with similar and related issues’. Specifically, I considered the requirements of the following accounting standards and applied them *collectively* in my deliberations and in forming my opinion:

- AASB 101 *Presentation of Financial Statements*
- AASB 116 *Property, Plant and Equipment*
- AASB 138 *Intangible Assets*
- AASB 117 *Leases*
- AASB 16 *Leases*
- AASB 15 *Revenue from Contracts with Customers*, and
- AASB 10 *Consolidated Financial Statements*.

16. The standards cited above include those that date back to when Australia transitioned to international standards in 2005-2006 (AASB 116, AASB 117 and AASB 138), AASB 10 (operative from 1 January 2013) and recently issued standards (AASB 15 operative from 1 January this year and AASB 16 operative from 1 January next).

17. I have also considered the reference in my paragraph 13 above to 11(b) in relation to the definition of an asset.

18. In my view, these pronouncements collectively and substantively support the accounting principle that control of an asset takes precedent over ownership (vesting). Providing a weighting or ranking of asset and ownership is neither required nor necessary.

Framework for The Preparation and Presentation of Financial Statements

19. *The Framework for The Preparation and Presentation of Financial Statements* sets out the concepts that underlie the preparation and presentation of financial statements for external users which includes '1(d) assist preparers of financial statements in applying Australian Accounting Standards and in dealing with topics that have yet to form the subject of an Australian Accounting Standard'.

20. The framework, and accounting standards, use the term 'future economic benefits', which the Australian Accounting Standard Board explains in a not-for-profit context like this:

'Aus49.1 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 are synonymous with the notion of service potential and is used in this 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.'

21. The framework defines an asset as 'A resource: controlled by an entity as a result of past events; (a) and from which future economic benefits are (b) expected to flow to the entity' (F.49(a)). I note that the definition refers to control, not ownership of a resource. The resource is controlled by an *entity* and not *entities* (i.e. multiple entities cannot control the same asset with the exception of joint control under AASB 11 *Joint Arrangements*). So, the service potential of fire-fighting equipment would primarily flow to one entity.

22. The framework describes when an asset is recognised: '[W]hen it is probable that the future economic benefits will flow to the entity and the asset has a cost or value that can be measured reliably' (F.89).

23. 'Control' is defined in SAC 1 *Definition of the Reporting Entity* as:

'[T]he capacity of an entity to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of another entity so as to enable that other entity to operate with it in achieving the objectives of the controlling entity' (SAC 1.6)

24. The framework does not contain a definition of 'control of assets', although the withdrawn Statement of Accounting Concept SAC 4 *Definition and Recognition of the Elements of Financial Statements* contained such a definition. Some stakeholders cited it to support the contention that the councils did not control the red-fleet vehicles. The absence of such a definition is not a concern because other definitions and principles in individual standards can be applied to address the issue by analogy. This can often be achieved by substituting the term 'entity' with 'asset'.

25. The following statements regarding 'substance' and 'legal rights' in the framework are also particularly relevant:

- '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 (Framework .51)', and
- 'In determining the existence of an asset, the right of ownership is not essential' and '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' (Framework .57).

AASB 101 Presentation of Financial Statements

26. AASB 101 is relevant as it requires consideration of 'material', 'purpose of financial reporting' and 'fair presentation':

- The definition of material: 'Material Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor' (AASB 101.7).
- Purpose of financial statements: 'The objective of financial statements is to provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions. Financial statements also show the results of the management's stewardship of the resources entrusted to it' (AASB 101.9).
- Fair presentation: 'Financial statements shall present fairly the financial position, financial performance and cash flows of an entity. Fair presentation requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework. The application of Australian Accounting Standards, with additional disclosure when necessary, is presumed to result in financial statements that achieve a fair presentation' (AASB 101.15).

AASB 116 Property, Plant and Equipment – no notion of legal ownership

27. The objective of AASB 116 *Property, Plant and Equipment* includes the following statement:

'[To] prescribe the accounting treatment for property, plant and equipment so that users of the financial statements can discern information about an entity's investment in its property, plant and equipment and the changes in such investment. The principal issues in accounting for property, plant and equipment are the recognition of the assets, the determination of their carrying amounts and the depreciation charges and impairment losses to be recognised in relation to them'. (AASB 116.1)

28. AASB 116 defines 'property, plant and equipment' as tangible items that: '(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes', and '(b) are expected to be used during more than one period'. The

red-fleet vehicles (also the 'white fleet'), and associated land and buildings fall within this definition; and must therefore be accounted for under this standard.

29. In relation to recognition, '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' (AASB 116.8).

30. AASB 116 does not define or describe 'future economic benefits' but the framework extracts are helpful in this regard.

31. In reference to cost, AASB 116 requires that 'for not-for-profit entities, where an asset is acquired at no cost, or for a nominal cost, the cost is its fair value as at the date of acquisition' (AASB 116. Aus15.1).

32. If the fire-fighting equipment (and associated land and buildings) provided by RFS were an asset of the council, they would have to be fair-valued at acquisition date (and they would be carried at fair value going forward due to OLG's direction). It is likely that the RFS as the provider of such assets to council would have fair-value information, particularly of the red-fleet vehicles as the procurer of such assets.

33. AASB 116 does not contain any reference to a definition of control nor discussion of ownership for purpose of asset recognition.

34. In my opinion, there is nothing in AASB 116 which supports an argument that legal ownership is a 'strong indication of control' (Treasury view) and '[a]ssets are vested in the Council as per Rural Fire Services Act 1997, giving Council legal ownership' (NSW Audit Office). This finding is also borne out my consideration of other accounting standards – some dating back to the transition to IFRS in 2005-2006 others being more recent.

AASB 138 *Intangible Assets* –guidance on 'control'

35. AASB 138 *Intangible Assets* is helpful as it contains commentary about 'control of an asset'. It should be noted that AASB 138 contains higher asset-recognition tests than AASB 116 due to the nature of intangible assets and expenditures that give rise to assets, and the difficulty with recognition and measurement. Accordingly, this distinction needs to be borne in mind when applying AASB 138 to the present situation.

36. The objective of AASB 138 is:

'[To] prescribe the accounting treatment for intangible assets that are not dealt with specifically in another Standard. This Standard requires an entity to recognise an intangible asset if, and only if, specified criteria are met. The Standard also specifies how to measure the carrying amount of intangible assets and requires specified disclosures about intangible assets.'

37. In relation to *control*, AASB 138 states:

'13. An entity controls an asset if the entity has the power to obtain the future economic benefits flowing from the underlying resource and to restrict the access of others to those benefits. The capacity of an entity to control the future economic benefits from an intangible asset would

normally stem from legal rights that are enforceable in a court of law. In the absence of legal rights, it is more difficult to demonstrate control. However, legal enforceability of a right is not a necessary condition for control because an entity may be able to control the future economic benefits in some other way.

14 Market and technical knowledge may give rise to future economic benefits. An entity controls those benefits if, for example, the knowledge is protected by legal rights such as copyrights, a restraint of trade agreement (where permitted) or by a legal duty on employees to maintain confidentiality.

16 An entity may have a portfolio of customers or a market share and expect that, because of its efforts in building customer relationships and loyalty, the customers will continue to trade with the entity. However, in the absence of legal rights to protect, or other ways to control, the relationships with customers or the loyalty of the customers to the entity, the entity usually has insufficient control over the expected economic benefits from customer relationships and loyalty for such items (e.g. portfolio of customers, market shares, customer relationships and customer loyalty) to meet the definition of intangible assets. In the absence of legal rights to protect customer relationships, exchange transactions for the same or similar non-contractual customer relationships (other than as part of a business combination) provide evidence that the entity is nonetheless able to control the expected future economic benefits flowing from the customer relationships. Because such exchange transactions also provide evidence that the customer relationships are separable, those customer relationships meet the definition of an intangible asset.'

38. In summary, the principle espoused here is that an entity controls an asset if it has the *power* to obtain future economic benefits flowing from the underlying resource and to *restrict* the access of others to them. The enforceable legal rights ('normally stem from legal rights') are relevant, having regard to the nature of the asset. However, an enforceable legal right is not a necessary condition for intangible-asset recognition.

39. In my opinion, AASB 138 provides a lens through which the current issues should be viewed – 'control of asset' in terms of power, restricted access and that ownership alone does not equate to control. AASB 138, as a piece of authoritative literature, supports the argument for control rather than vesting (legal ownership) of assets leads to an asset's recognition in financial statements.

AASB 117 Leases – title not a deciding factor

40. AASB 117 *Leases* can be of assistance in deliberations as it has an ownership notion. The relevant paragraphs are:

4 A finance lease is defined as 'is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred'.

7 The classification of leases adopted in this Standard is based on the extent to which risks and rewards incidental to ownership of a leased asset lie with the lessor or the lessee. Risks include the possibilities of losses from idle capacity or technological obsolescence and of variations in return because of changing economic conditions. Rewards may be represented by the expectation of profitable operation over the asset's economic life and of gain from appreciation in value or realisation of a residual value.

41. Identification of a finance lease results in the recognition of lease asset and liability in financial statements of the lessee. Whereas, an operating lease is disclosed as a commitment of the lessee.

42. I note that determination of risks and rewards is framed in a for-profit context to which I would overlay with the term 'service potential' in the current context.

43. I make the following comments about current circumstances:

1. Classification does not depend on the title passing, which, in my opinion, weakens the argument that vesting of the assets to the councils under the Act is a *significant factor* in determining asset recognition.
2. The risks and rewards incidental to ownership substantially rest with the RFS to achieve its objectives under the Act. Both the RFS and, to a far lesser degree, the councils benefit from fire-fighting equipment to meet their responsibilities under the Act. The councils have effectively outsourced their responsibilities to the RFS through rural district service agreements. Under these agreements, the red-fleet vehicles are effectively managed, used and maintained on a day-to-day basis by the RFS for the RFS.
3. The RFS has set extensive service standards on fire-fighting equipment and its use by volunteers which, in my opinion, gives the service decision-making powers over that equipment and its service potential.
4. The councils' only partially share any gain on disposal.

44. In my opinion, applying an ownership test based on risks and rewards to the red-fleet vehicles would see the risks and rewards (service potential) being substantially enjoyed by the RFS to meet its obligations under the Act.

45. I also note that the framework uses a finance lease as an example of substance over legal form:

'... 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.'
(Framework .51)

46. In current circumstances, the legal form would focus on the vesting provisions of the Act. Whereas, in my opinion, the substance would take into account all facts and circumstances including:

- The responsibilities of the RFS and its commissioner and those of the councils under the Act and their respective relativities
- The service standards set by the RFS for use of the fire-fighting equipment
- The rural fire district service agreements, and
- Which entity substantially receives the benefit of service potential for the existence and use of the fire-fighting equipment to meet its objectives.

47. I note that *AASB 117 Leases* is to be replaced by *AASB 16 Leases* from 1 January 2019. *AASB 16* employs the principle of 'a right to control the identified asset for a period of time in exchange for consideration'. The notion of ownership of an asset under *AASB 1176* is

superseded. AASB 16, the most recently issued standard, requires that asset assessments be based on control of the asset.

AASB 15 Revenue from Contracts with Customers – further contemporary evident of control

48. I note that the recently issued AASB 15 *Revenue from Contracts with Customer* also uses the concept of control in its requirements regarding satisfaction of performance obligations:

‘31 An entity shall recognise revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service (i.e. an asset) to a customer. An asset is transferred when (or as) the customer obtains control of that asset.

33 Control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. Control includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset.’

49. We can see that AASB 15 as another example of the principle of control and provides another consistent explanation of its meaning (for example, the ability to direct and obtain substantially all the asset’s benefits and to prevent others from the assets’ use).

AASB 10 Consolidated Financial Statements – analogous circumstances application

50. AASB 10 *Consolidated Financial Statements* is a relatively recent accounting standard compared with AASB 116, AASB 138, and AASB 117. It contains a level of detail of how control should be determined that is not found in the other standards I have cited. In this regard, it is helpful in further understanding the term ‘control’ and its use by analogy.

51. AASB 10 embodies the concept of control rather ownership of an investee (an asset). It defines the principle of control and establishes control as the basis for consolidation of an investee.

‘An investor controls an investee when it has all of the following: *power* over the investee’s exposure or rights to variable returns from its involvement with the investee, and the ability to use its power over the investee to affect the amount of the investor’s returns’ (AASB10.7).’

52. Again, I would use the notion of *service potential* as a substitute for *returns* to apply control in the current circumstances.

53. Power (rights) gives the entity the current ability to direct relevant activities (that significantly affect service potential) (AASB10.10).

54. AASB 10 identified considerations for the determination of control (I have substituted ‘asset’ for ‘investee’ to assist with its application by analogy):

‘(a) the purpose and design of the asset; (b) what the relevant activities are and how decisions about those activities are made; (c) whether the rights of the investor give it the current ability to direct the relevant activities; whether the investor is exposed, or has rights, to variable returns from its involvement with the asset; and (e) whether the investor has the ability to use its power over the asset to affect the amount of the investor’s returns’ (AASB 10.B3).

55. Understanding what constitutes ‘relevant activities’ is important in understanding ‘power’ over the ‘asset’:

‘B9 To have power over an investee, an investor must have existing rights that give it the current ability to direct the relevant activities. For the purpose of assessing power, only substantive rights and rights that are not protective shall be considered.’

56. In the current circumstances, these powers are reflected in those assigned to the RFS commissioner under the Act. They include the setting of service standards and entering into rural fire district service agreements with councils. The powers of the RFS and its commissioner are summarised in the appendix as well as aspects of the service standards issued by the RFS.

57. Relevant activities and direction of relevant activities are linked to control:

‘B11 For many investees, a range of operating and financing activities significantly affect their returns. Examples of activities that, depending on the circumstances, can be relevant activities include, but are not limited to: (a) selling and purchasing of goods or services; (b) managing financial assets during their life (including upon default); (c) selecting, acquiring or disposing of assets; (d) researching and developing new products or processes; and (e) determining a funding structure or obtaining funding.’

‘B12 Examples of decisions about relevant activities include but are not limited to: (a) establishing operating and capital decisions of the investee, including budgets; and (b) appointing and remunerating an investee’s key management personnel or service providers and terminating their services or employment.’

58. In my opinion, examples in B11 (b), (c), (d) and in B12 (a) and (b) are relevant activities of the RFS in relation to the red-fleet vehicles, and land and buildings. They are indicative of power under the three-step control-determination rules in AASB 10.

59. Specifically in relation to B11 and the current circumstances:

- Managing assets – maintenance criteria are specified in the RFS service standards
- Selecting, acquiring or disposing of assets – while councils are involved in the bid process for new fire-fighting equipment, the final decision is made by the RFS with, for example, the type of red-fleet vehicles to be acquired specified in RFS service standards
- Researching and developing new products or processes – this is a responsibility of the RFS as central procurer of fire-fighting equipment as are the processes and improvements determined by the RFS through its service standards, and
- Funding – through RRRF which is a restricted asset of RFS.

60. Specifically in relation to B12 and the current circumstances:

- Establishing operating and capital decisions for the fire-fighting equipment – these are set by the Act, and RFS service standards and not by councils, and
- Appointing service providers (volunteers) and terminating their services – these are set by an RFS service standard.

61. Also, AASB 10 addresses the circumstance where two or more investors each have existing rights that give them the unilateral ability to direct different relevant activities. In such a circumstance, the investor who has the current ability to direct activities that most significantly affect the returns of the investee has power over the investee (AASB 10.13).

62. In the current circumstances, councils have rights in terms of the vesting of fire-equipment with them and their use in meeting the council's responsibilities under the Act. In my opinion, though, they do not have a unilateral ability as they are constrained by the RFS commissioner's powers under the Act, including the setting of service standards, entering into rural fire district service agreements with councils, and restrictions on the disposal of fire-fighting equipment. In my opinion, the RFS has the substantive ability to affect the service potential of the fire-fighting equipment through the RFS commissioner's powers under the Act.

63. AASB 11 *Joint Arrangements* defines the term joint control – the contractually agreed sharing of control of an arrangement, which exists only when decisions about the relevant activities require the unanimous consent of the parties sharing control. In my opinion, joint control does not exist in the current circumstances for the reason stated in the preceding paragraph.

64. In my opinion, in considering the requirements in Australian accounting standards in dealing with similar and related issues under the GAAP hierarchy, AASB 10 is suitable to apply in making a judgement about an appropriate accounting policy along with the principles in AASB 116, AASB 138, AASB 117, AASB 16 and AASB 15.

Themes from authoritative literature

65. From my review of the above, the following principles are evident:

- Assets (and their inherent service potential) are the means for an entity to achieve its objectives by their use
- Focus should be on the underlying substance and economic reality and not merely its legal form
- Control of an asset is the power to obtain the future economic benefits flowing from the resource and to restrict the access of others to those benefits
- Only one entity can control an asset, but the service potential of the asset may be enjoyed by others. In such circumstances, control rests with the entity that substantially enjoys the asset's service potential
- An enforceable legal right is not a necessary condition for control of the asset; there may be other means of exercising control, and
- In the more recent standards, the control-based model for recognition is more evident than a legal ownership/risk and reward model.

Control of the fire-fighting equipment

Service potential

66. Fire-fighting equipment (that is, fire-fighting apparatus – all vehicles, equipment and other things used for or in connection with the prevention or suppression of fire or the protection of life and property in case of fire as well as buildings, water-storage and lookout

towers) is an asset. The service potential is the ability to prevent, mitigate and suppress bush and other fires. Buildings and other infrastructure facilitate this ability.

67. Under accounting standards, fire-fighting equipment must be an asset of either the RFS or local councils as the definition of an asset is entity specific.

68. The RFS and individual local councils have ‘fire-fighting’ responsibilities under the Act in which fire-fighting equipment is used. The responsibilities of the RFS are extensive as described under the Act and include:

- 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
- b) for the co-ordination of bush firefighting and bush fire prevention throughout the State.’

69. In comparison, councils’ fire-fighting responsibilities are somewhat limited – they have a duty to prevent the occurrence of bush fires on any land, highway, road and street that is vested in or is under their control. RFS enters rural fire district service agreements with councils to undertake these responsibilities on their behalf.

Rural fire district service agreements

70. It is understood that there may be some differences in the various agreements between the councils and the RFS.

71. Based on a review of a service agreement and some councils’ comments on the broad nature of their agreements, the responsibilities of the RFS and a local council can be summarised as:

The RFS:

- Is responsible for the day-to-day management of RFS in the district, including deployment
- Can provide additional equipment to meet its responsibilities under the agreement
- Is responsible for maintenance of district equipment to the standards set by the RFS
- Maintains a register of district equipment, and
- Procurement decisions are made by the RFS with disputes settled by the Minister.

Councils:

- As legal owners have agreed that the RFS can use the district equipment
- Provide certain information to assist the RFS with its tasks in the district, and
- Engages in the procurement process.

72. The recitals and detail of these agreements tell us about the nature of the relationships between the RFS and councils. In essence, the councils’ responsibilities under the Act have been contracted to the RFS. The RFS has control of district equipment and premises. It is the RFS that enjoys the assets’ service potential.

Asset acquisition and control of their use

73. The NSW Rural Fire Fighting Fund (RFFF) holds all contributions required to meet the costs of co-ordinating bush firefighting and prevention throughout the state and to provision its rural fire services.

74. The fund is maintained by Treasury and used to acquire and build red-fleet vehicles, other assets and to fund RFS activities. RFS has control over the account based on an annual budget approved by the Minister. RFFF is funded by contributions from insurance companies (73.7 per cent), councils (11.7 per cent) and Treasury (14.6 per cent). The councils are entitled to share in the proceeds of disposal of assets (11.7 per cent).

75. The RFS zone manager makes decisions about capital improvements and new assets. While councils may be consulted as part of the decision-making process, they take no part in decisions. Fire-fighting equipment is procured or built, under the direction of the RFS and in accordance the relevant RFS service standards.

76. Under the Act (s119(2)) assets vest in the council for which they have been purchased or constructed. Section 119(3) prevents the council from selling or disposing of the assets without written consent from the RFS commissioner. This is a protective right of the RFS.

77. Under S119(5) of the Act, the councils have the responsibility to take care of and maintain these specialised assets. The Act authorises the RFS commissioner to set maintenance standards for the assets. The councils transfer their maintenance obligations to the RFS through the Rural Fire District Service Agreements.

78. A rural fire brigade (RFB) is generally constituted by the council, the commissioner having the power to constitute an RFB if the council fails to do so. The commissioner controls and directs the functions of the RFB. An RFB is mainly composed of volunteers, and its activities are supervised and co-ordinated by a fire control officer. The FCO is an RFS employee and reports direct to the commissioner.

79. The commissioner may, with the concurrence of the council, use any of the equipment to deal with incidents outside the district area.

80. From the information provided, councils do not have access to red-fleet vehicles and buildings. However, I am informed that this may vary from region-to-region with some councils have limited access to limited use of the red-fleet.

81. The RFS insures plant and equipment, and councils meet the outgoing of buildings and other infrastructure assets.

82. The Minister for Police and Emergency Services has powers regarding disputes between the RFS and councils on matters such as contribution.

Infrastructure provided by the RFS

83. While accounting treatment of red-fleet vehicles has been the focus for many, the appropriate accounting of land and buildings provided by the RFS also needs to be explicitly addressed as required by my brief. Given that the same accounting considerations arise for both red-fleet vehicles and the land and buildings provided by RFS, it puzzles me that stakeholders have failed to canvass appropriate accounting for the latter.

- 84.** Land and buildings *provided by the RFS* have generally been regarded as owned and/or controlled by the councils and recorded in their financial statements. Arguments for the continued recognition of land and buildings have not been advanced.
- 85.** From the information provided, it appears that the recognition of land and buildings is, in part, justified on the basis of councils' responsibility for their maintenance and insurance. In other aspects, they seem similar to red-fleet vehicles. Maintenance and insurance of buildings are obligations. They are not rights to control assets for their service potential to meet councils' objectives.
- 86.** The underlying accounting for fire-fighting equipment, whether red-fleet vehicles or land and buildings, should be subject to the application of the same accounting principles as previously outlined.
- 87.** In my opinion, as red-fleet vehicles are not controlled by the councils, land and buildings provided by the RFS in association with them are also *likely* not controlled by the councils. The latter need to be further investigated.
- 88.** Where councils have provided land and buildings to the RFS, they will need to give consideration to requirements of AASB 117 *Leases* and AASB 1004 *Contributions* and also the new standard AASB 16 *Leases*.

Specific issues

- 89.** The following issues were identified for consideration as part of this review and I provide my opinions on them.
- 90. *Legal vs operational control:*** Accounting issues need to be considered in the context of control over the asset's service potential to contribute to the objectives of the entity. Legal ownership (vesting) is not the crucial determinant for control as explained in my review of the accounting standards and framework.
- 91. *Future economic benefits of the asset:*** The service potential of an asset is specific to the entity and its objectives. An asset cannot be controlled by two entities. The fire-fighting equipment benefits both the councils and the RFS in helping them to comply with their legislative requirements. The RFS has the substantive responsibilities for the prevention, mitigation and suppression of bush and other fires in local government areas and other parts of the State, and controls fire-fighting equipment to meet its statutory objectives.
- 92. *Control (of movement) of assets:*** The RFS has decision-making authority over fire-fighting equipment under the Act and rural fire district service agreements. The RFS exercises this authority through them, including the functions of zone managers and rural fire brigades.
- 93.** Control of fire-fighting equipment is evident by procurement (and replacement and retirement) decisions, service standards for their care and maintenance, access restrictions, and deployment within the district and elsewhere in the state. These are substantive rights of the RFS. The RFS also has a protective right in that councils are prevented from selling or disposing of the assets without written consent from the RFS commissioner (s.119(3)).

Councils have no substantive rights for the control of fire-fighting equipment – vesting does not confer control.

94. Maintenance of assets (including expertise): As the decision-making authority, the RFS is exposed to the risks of poor fire-fighting equipment, with the exception of the exterior of some infrastructure assets within the district. While the relevant council has responsibility under the Act for care and maintenance of the vested assets, the standards of care and maintenance are set by the RFS commissioner under the Act (s119(5)). The councils have outsourced this obligation to the RFS through the rural fire district service agreements. Fire-fighting equipment, with exception of some infrastructure assets, is specialised, and expertise for its maintenance lies with the RFS and not councils. The RFS has set service standards for maintenance.

95. Insurance: As the decision-making authority, the RFS is exposed to the risks of loss of fire-fighting equipment with the exception of the exterior of some infrastructure assets that are insured by councils, and the RFS has insured against its risks.

Conclusion

96. Users of not-for-profit financial statements are concerned with the ability of an entity to achieve its objectives, both financial and non-financial. Financial statements should show the results of the stewardship of management for the resources entrusted to it.

97. The current accounting for fire-fighting equipment fails the information needs of the RFS's and councils' financial-statement users as the equipment has failed to be recognised by the entity that controls its potential to meet its objectives.

98. In my opinion, fire-fighting equipment is controlled by the RFS as determined by application of accounting standards and the framework according to the facts and circumstances described.

99. Recognition of fire-fighting equipment by the RFS in its financial statements, and derecognition by the councils from theirs, also satisfies the definition of an asset and qualitative characteristics of financial statements, including faithful representation and substance over form.

100. Fire-fighting equipment recognised by some councils should be derecognised and this should be accounted and disclosed as an error under AASB 108 *Accounting Policies, Changes in Estimates and Errors*.

101. Fire-fighting equipment vested in councils, whether recognised or unrecognised, under options in the code should be recognised in the RFS's financial statements. This should be accounted and disclosed as an error under AASB 108 *Accounting Policies, Changes in Estimates and Errors*.

102. Alternatively, an argument could be made that rather than an error, it is a change in accounting policy resulting for consideration of recently issued accounting standards (i.e., AASB 10, AASB 15, AASB 16) that provide more definitive guidance on the control. However, in my opinion the long-standing authoritative pronouncements (framework, SAC 1,

AASB 116, AASB 138, and AASB 117) were sufficient to conclude that decisions should be made on the basis of control rather than ownership. Some may not share this view.

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Appendix: Facts and stakeholder views on fire-fighting assets

Introduction

1. Stakeholders have provided the Office of Local Government (OLG) with various arguments, opinions, and documents to support their positions on accounting for red-fleet assets in particular. The OLG has provided these for my consideration. Extracts from them have been included in this appendix along with salient matters from my discussions with certain stakeholders.
2. I have also included my views on several issues raised that link to the body of my report. However, I have not commented on individual arguments for and against recognition in the financial statements of councils or the RFS; these have been addressed in the body of my report.
3. The RFS is the lead combat agency for bush fires. It works closely with other agencies to respond to emergencies, including structure fires, motor-vehicle accidents and storms that occur within the rural fire districts.
4. The RFS website contains the following description of responsibilities:
 - ‘The NSW RFS has fire management responsibilities for over 95 percent of the landmass of the State and therefore the Service is spread across the length and breadth of NSW. A total of 47 districts are grouped into four regions.
 - ‘In each District NSW RFS staff members assist volunteers and brigades to prepare for and respond to operational incidents.
 - ‘A Fire Control Centre forms the administrative and operational base of the rural fire district or zone.
 - ‘The coordination and management of local brigade responses to fire and other incidents – including natural disasters, motor vehicle accidents and other civil emergencies – is undertaken through the Fire Control Centre.’

NSW Rural Fire Services (RFS)

Responsibilities of RFS and Councils

5. The Rural Fires Act 1997 (the Act) established the Rural Fire Service (RFS) to co-ordinate bush firefighting and prevention throughout the state and to provide rural fire services for New South Wales.
6. The objects of the *Rural Fires Act 1997* are to provide:
 - 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
 - b) for the co-ordination of bush firefighting and bush fire prevention throughout the State, and

- c) for the protection of persons from injury or death, and property from damage, arising from fires, and c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and
- 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 1999.’ (s.3)

7. The following sections of the Act are noteworthy on control of fire-fighting equipment, and in particular the powers of the commissioner, the service standards, and the requirements of councils:

Functions

- The RFS consists of the commissioner and other staff of the service and volunteer rural fire fighters (s.8).
- The functions of the RFS include ‘to provide rural fire services for New South Wales’ with such services being defined to include ‘services for the prevention, mitigation and suppression of fires in rural fire districts’ (s9).
- The commissioner is, in the exercise of his or her functions, subject to the control and direction of the minister (s11).
- The functions of the commissioner include: ‘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’ (s12).

Service standards

- In relation to service standards ‘[the] Commissioner may from time to time issue written policy statements to members of the Service for or with respect to procedures to be followed in connection with the operation, management and control of the Service’ (s13).

Brigades

- A local authority may form a rural fire brigade, and the commissioner may form one if the local authority refuses or fails to do so within the period prescribed by the regulations after being requested to do so by the commissioner (s.15).
- In relation to the area of operations and officers of groups of rural fire brigades: the fire control officer who forms a group of rural fire brigades is to determine the territory in which the group is to operate, and the officers of the rural fire brigades forming a group of rural fire brigades are those persons selected, in accordance with the service standards, to be officers for the group by the members of the rural fire brigades forming the group. A person selected to be an officer holds office for the period specified in the service standards (s.19).
- The functions of officers of rural fire brigades are conferred or imposed on the officer by or under this or any other Act. Functions may be conferred under the Act by the service standards (s.21).
- The general powers of rural fire brigade officers and others are described. Also, ‘Any function that may be exercised, or action that may be taken, by an officer of a rural fire

brigade or group of rural fire brigades because of this section may be exercised or taken by the Commissioner' (s.22).

- Responsibilities of fire control officers and local authorities are: 'A fire control officer is, subject to any direction of the Commissioner, responsible for the control and co-ordination of the activities of the Service in the rural fire district for which he or she is appointed as fire control officer', and '[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' (s.37).
- The commissioner may authorise officers and members of rural fire brigades to exercise certain functions (s.39).
- The commissioner is to take charge of bush fire-fighting operations and bushfire prevention measures and to take such measures as the commissioner considers necessary to control or suppress any bushfire in any part of the state (with four circumstances identified). The commissioner may delegate the functions to individuals described (s.44).
- The commissioner may give such directions as he or she considers necessary to fire control officers, deputy fire control officers, officers of rural fire brigades, local authorities, officers or members of Fire and Rescue NSW, members of the NSW Police Force and other persons in connection with the prevention, control or suppression of any bushfire in the area or locality in which the commissioner has taken charge or is taking measures under this division (s.45).

8. Under s63, local councils have the duty to prevent the occurrence of bush fires on any land, highway, road and street that is vested in, or is under the control of, that council.

9. Under s119(1) of the Act, fire-fighting equipment is defined as: *fire-fighting apparatus, buildings, water storage towers or lookout towers*. Fire-fighting apparatus is defined as: *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*.

10. This section also requires:

- 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 (s119(2)).
- A council must not sell or otherwise dispose of any fire fighting equipment without the written consent of the Commissioner (s119(2)).
- 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 (s119(5)).
- 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 (s119(6)).

Service standards

11. The RFS sets service standards that are available on its website. They number more than 80 and include the following, which I have grouped under headings.

Delegations and the like

- SS 1.3.1 *Delegations and Authorisations (including supplementary delegations-unincorporated area of NSW)* – The statutory powers created by the Rural Fires Act 1997 (the Act) are vested in the Commissioner, Local Authorities, Fire Control Officers and Officers of Brigades. This Service Standard identifies the Delegations (s 14 of the Act) and Authorisations (s 39 of the Act) of the Commissioner with respect to the NSW RFS. It also includes Delegations (s 44 of the Act) of the Commissioner with respect to co-ordinated bush firefighting.
- SS 2.1.1 *Formation and Disbandment of Brigades and Groups of Brigades* – The NSW RFS is committed to providing a fire service which has relevance to local communities and recognises that local situations can change, and there is a need to periodically review the placement of Brigades.
- SS 2.1.4 *Appointment of Field and Group Officers* – The Rural Fires Act 1997 provides for the appointment of Brigade Officers in accordance with the Service Standards.
- SS 1.3.4 *Rural Fire District Service Agreements* – The majority of Local Authorities which have responsibilities for Rural Fire Districts have entered into Rural Fire District Service Agreements (RFDSAs) with the NSW RFS under section 12A of the Rural Fires Act 1997. In accordance with these RFDSAs, the Commissioner assumes responsibility for the exercise of functions imposed upon those Local Authorities by the Act.

Equipment

- SS 1.1.16 *Fundraising Activities (Provision of Goods and Services)* – Members of the Service engage in a range of fund raising activities in order to assist rural fire brigades and groups of rural fire brigades to acquire additional equipment and facilities, to assist in the payment of running costs and to otherwise enhance the service they provide to the community.
- SS 5.1.4 *Fire Fighting Appliance Construction Standards* – This Service Standard ensures that the NSW RFS provides safe, cost effective, standardised, fit for purpose fire fighting appliances across a range of categories.
- SS 5.1.6 *Secondhand Appliance Transfer Program* – The NSW RFS is continuing the program to modernise, standardise and maintain the fire appliance fleet and has a secondhand appliance transfer program that provides for appliances to be transferred between Districts at certain nominated stages.
- SS 5.1.9 *Breathing Apparatus* – This service standard defines the proper acquisition, use, training and maintenance associated with breathing apparatus in the NSW RFS.
- SS 5.3.1 *Equipment Maintenance* – To ensure the safety and effectiveness of rural firefighting and related activities, all equipment and related facilities need to be maintained in a serviceable condition.

- S 5.4.1 *Asset Disposal* – The NSW RFS is committed to the proper management of surplus or deficient physical assets that might otherwise reduce efficient, effective and safe service delivery. One of the key elements of asset management is the timely, appropriate and cost effective disposal of assets in a frame work that ensures probity, honesty and conformity to Government Policy.

Staffing

- SS 1.1.7 Code of Conduct and Ethics – It establishes standards of behaviour expected of all members of the NSW RFS.
- SS 1.1.2 Discipline –Sets out the procedure to be followed when disciplinary action is taken against a volunteer member of the NSW Rural Fire Service (NSW RFS).
- SS 6.1.3 Training in the NSW RFS – Members of the NSW RFS are required to have the relevant competency to carry out the functions for which they have volunteered or for which they have been employed.

12. The existence of these service standards and the nature of their subject matter need to be considered as to whether they indicate control of service-potential assets by the RFS.

RFS Annual Report 2016-2017

13. The RFS Annual report 2016-2017 provided some relevant contextual information which has reproduced below.

14. Commissioner's Report stated:

‘The year has also seen the continued investment in building new, or refurbishing brigade stations and fire control centres across the state.’

‘With a total of 6315 tankers, air and marine craft and other vehicles, we continue to assess and improve the effectiveness of the Service's fleet, making modifications, refurbishments and purchasing new as required.’

15. One noteworthy information was: There was 72,233 volunteers and 878 salaried staff; and ‘In total across the reporting period, our members attended over 24,500 incidents, including bush and grass fires, motor vehicle accidents, hazard reduction activities and support for other agencies’.

16. The financial statements describe its accounting policy for rural fire-fighting equipment in note 1 as:

‘The ownership of all fire fighting equipment purchased by the Rural Fire Fighting Fund is vested in the relevant local government council. The cost of such equipment is therefore expensed by the Service in the year of purchase.

The exception to this is fire fighting equipment purchased for the State Mitigation Service which is recorded on the Service's asset register’.

17. Note 10 Restricted Assets described cash held as part of RFFF \$139,532,000 (2016 \$104,406,000 as: ‘The Service holds funds that form the NSW Rural Fire Fighting Fund which is a special deposits account established under section 102 of the *Rural Fires Act 1997*.

Funds in the Rural Fire Fighting Fund can only be expended for the purposes defined in the Act.’

Rural fire district service agreements

18. I am informed that councils *generally* enter a rural fire district service agreement with the RFS to undertake these responsibilities on behalf of the council. For completeness, it should be ascertained how many councils have these agreements and those that do not. In relation to the latter, how the assets in question are accounted.

19. The Act (s12A) specifies arrangements for entry into *rural fire district service agreements*:

- (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.
- (2) Without limitation, a service agreement:
 - (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
 - (b) may specify any obligations to be imposed on the local authority as a consequence of the Commissioner agreeing to exercise those functions, and
 - (c) may set performance targets for the exercise of those functions, and
 - (d) may provide for the evaluation and review of results in relation to those targets.
- (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.
- (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.

20. I note that this section gives the commissioner various powers over the services to be provided.

21. In my opinion, the existence and specifics of these agreements support the argument that the RFS has control of the assets in question.

22. I have considered one such agreement – made with Tweed Shire council. General comments made by some councils about their agreements, as described elsewhere in this appendix, are consistent with the extracts below.

Example of a rural fire district service agreement (Tweed Shire Council)

23. Under the Rural Fire Services Act 1997, the commissioner may enter a rural fire district service agreement with any local authority(ies) responsible for a rural fire district(s) (s.12A).

24. I have been provided with the agreement between Tweed Shire Council and the commissioner and have summarised key issues.

25. As noted later, other councils report a common approach to agreements.

26. The agreement began on 1 July 2010 and continues until terminated under clause 14 (cl.3).

27. The recitals include:

- Parties entered into agreement under section 12A of the Rural Fire Services Act 1997 (NSW)
- Commissioner agreed to exercise all the functions imposed on Council under the Act, other than those specified in clause 4.2
- Commissioner agreed to undertake all the day-to-day management of the rural fire services operating in the District on behalf of the Council
- Council has agreed to provide certain administrative accounting and maintenance services to the Commissioner and RFS
- The Council has agreed to allow Commissioner and RFS to use the District Equipment and Premises
- The Council and the Commissioner have agreed to establish a liaison committee, and
- The Council has agreed to delegate certain functions powers duties to members of the RFS.

28. District equipment is defined as ‘Fire Fighting Apparatus and the other vehicles and equipment: owned by the State of NSW; owned by the Council; or vested in the Council and used by members of Rural Fire Service operating in the District’.

29. Premises are defined as ‘Land and buildings or parts of land and buildings specified in schedule 1.’ Nine brigade stations, one other station and one control station are identified.

30. The following details are also noteworthy.

Functions and management responsibilities are:

- The Commissioner exercises the Council’s functions and manages the district (cl. 4) in consideration of \$1 (cl.4.2). The functions include the day-to-day management of RFS in the District (cl.4.2). Certain functions are excluded (cl.4.2).
- The Council provides certain information to the RFS to help RFS to discharge its functions (cl.4.3).
- The Commissioner may, but is not obliged to, utilise or provide additional equipment or personnel in addition to the District Equipment and members of the RFS operating in the District (cl.4.4).

District equipment requirements are:

- Council to make available and allow the use of the District Equipment to Commissioner and RFS (cl.5.1).
- Commissioner agrees to maintain the District Equipment on behalf of the Council in accordance with applicable service standards (cl.5.1). The service standards are those issued by the Commissioner under s.13 of the Act (cl.5.2).
- The RFS will maintain a register of District Equipment with a copy provided to Council every six months (cl.5.3).

Land and buildings requirements are:

- Council agrees to allow the Commissioner and RFS to occupy and use the Premises, or other land and buildings as may be agreed (cl.6.1). Council grants a licence to enter and use (cl.6.2). Commissioner has a personal right of occupation on the terms specific in this licence; but no tenancy, estate, or interest in the land on which the Premises are situated (cl.6.3). Legal right of possession and control over the Premises and land on which they are situated remain vested in the Council (cl.6.4).
- The responsibilities of Council are: not to interfere with the Commissioner’s use; pay rates, taxes etc; maintain premises in good repair (as described in cl.6.7); and insure buildings and have the designated public risk insurance coverage (cl.6.5).
- The Commissioner must not occupy or use the Premises other than the provision of fire-fighting services and for related incidental purposes; not assign the licence or grant a sub-

licence; carryout minor repairs (as described in cl.6.8); comply with all relevant laws regarding the Commissioner's use of property; and not alter the premises without the consent of Council (that shall not unreasonably be withheld) (cl.6.6). There are specific provisions regarding access Tweed Fire Control Centre (cl.6.7).

Finance requirements are:

- Annually the Council makes a bid of estimated probable expenditure on District for next financial year to the Commissioner. Following consultation with the Council, the Commissioner submits a probable allocation of expenditure and a probable contribution by the Council to the Rural Fire Fighting Fund. If the Council and Commissioner disagree on these, a determination on the contribution is made by the Minister (cl.8.1 to 8.3).
- The Commissioner, following consultation with Council, provides a four-year budget forecast expenditure, updated annually. Consultation with Council includes: Council's capacity to contribute to the fund; RFS and government policies for replacement of District Equipment, District's requirements by reference to Standard of Fire Cover and other policies; and standards of fire stations and other facilities. The Commissioner provides a draft 10-year capital work program undated annually (cl.8.4 to 8.6).
- The Council can provide funds for the delivery of rural fire services in the District in addition to statutory contribution. The Commissioner must manage those funds in accordance with the directions of the Council (cl.8.7).
- The Commissioner (and at his/her sole discretion) has unrestricted to and may expend monies received by the Council from the fund for delivery of rural fire services in the District. The Commissioner may also expend additional monies (cl.8.8).
- Funding for repairs and maintenance is a reimbursement basis (cl.8.9).

Insurance and related requirements are:

- Effect and keep current the following: property damage and public liability insurance for the property; compulsory third party and comprehensive insurance for motor vehicles that form part of District Equipment, except where agreed otherwise by the Council and the Commissioner; property damage and public liability insurance, third party and comprehensive insurance, for all Premises and District Equipment controlled, occupied, or managed by the Commissioner or RFS (cl.10.1).

In summary, the RFS:

- Is responsible for the day-to-day management of the RFS in the district, including deployment
- Can provide additional equipment to meet its responsibilities under the agreement
- Is responsible for maintenance of district equipment to the standards set by the RFS
- Maintains a register of district equipment, and
- Procurement decisions are made by the RFS with disputes settled by the Minister.

In summary, the council:

- As the legal owner has agreed that the RFS can use the district equipment
- Provides certain information to assist the RFS with its tasks in the district, and
- Engages in the procurement process.

31. The recitals and details reveal the nature of the relationship between the RFS and the council. In essence, the council's responsibilities under the Act have been contracted out to the RFS. The RFS has control of equipment and premises. It is the RFS that enjoys the service potential of these assets.

32. As the legal owner, the council has granted the RFS the right to occupy and use the premises (10 fire stations and one control centre). Outgoings and insurance are met by the council as are major repairs.

33. Where the land and building, constitute fire-fighting equipment provided by RFS, my comments on the accounting for red-fleet vehicles are likely to be equally relevant for their appropriate accounting.

34. Where the land and building were not provided by the RFS, further information is required about how these premises were acquired and whether on council land; and the implications assessed under AASB 117 and soon to be operative standards – AASB 16 and AASB 1058.

Rural Fire Fighting Fund

35. The NSW Rural Fire Fighting Fund (RFFF) holds all contributions required to meet the costs of co-ordinating bush firefighting and prevention throughout the state and to provide rural fire services for New South Wales (s.102)

36. A special RFFF deposit account is maintained by Treasury and used to acquire and build red-fleet vehicles, other assets and to fund RFS activities.

37. To assist the minister in preparing and adopting the rural fire brigade funding target for a financial year, the commissioner must prepare and give to the minister a written report and recommendations about rural fire brigade expenditure for the year and the estimated expenditure for each rural fire district and each relevant council (s.105).

38. The RFS has control over this account based on an annual budget approved by the minister.

39. As per the provisions of the Act, RFFF is funded by contributions from insurance companies (73.7 per cent), councils (11.7 per cent) and Treasury (14.6 per cent). These are recognised as income by the RFS.

40. The assets acquired or built using the RFFF are of two types:

- White-fleet vehicles, which are operational and commercial and are not designed to fight fires. These assets do not benefit councils and are used state-wide and recorded in RFS financial statements.
- Red-fleet vehicles, which are firefighting assets bought or constructed for the benefit of a particular council. As per s119 of the Act: *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.*

41. Fire-fighting equipment is procured or built and overseen by the RFS.

Arguments advanced that councils control the fire-fighting equipment

NSW Treasury and Rural Fire Service

42. NSW Treasury and RFS formed the view that '[w]hile the arrangements are finely balanced, Treasury has concluded RFS's treatment of not recognising the fire-fighting assets was appropriate' (letter dated 29 September 2017 to the acting chief executive of the OLG).

43. Treasury cited AASB 116 *Property, Plant and Equipment* (para 7) and AASB *Conceptual Framework* (paras. 49 and 89); and Rural Fire Services Act 1997 in forming its view.

44. Treasury's observations were:

1. Legal ownership sits with the Local Authorities (LA), a strong indication of control
2. RFS permission for disposal is only seen as a protective right
3. It is difficult to ascertain future economic benefits for a NFP. These FF assets allow RFS to comply with their governing legislation/ mandate in Rural Fires Act 1997 and to undertake various Statutory obligations imposed on Councils under the Act, for and on behalf of Councils. There are also potential benefits for Councils.
4. Use/control of assets – SLAs appear to give RFS unrestricted access to the assets. This however is predicated on the LA having the right to grant that access
5. Maintenance of the assets – Councils appear to take responsibility for maintenance
6. Insurance – for FF assets, this is paid and organised centrally by RFS to TMF (paid from the RFFF) for and on behalf of all Councils who have the insurable interest. RFS has no insurable Interest.'

45. The conclusion reached was:

'We acknowledge the ownership of assets is a matter of judgement. However, based on the above our view is that RFS should continue to not recognise the FF assets that have been vested to the Councils, as they receive little future economic benefit, are bound to the service level agreement as agreed with the Councils and do not have control to move the assets to other Councils without permission. This treatment would then be consistent with other assets that are used by RFS, namely land and buildings.

NSW Audit Office

Internal position paper

46. The audit office has produced an internal position paper titled *NSW Rural Fire Service Accounting treatment of Rural Fire Services Assets*.

47. The issue addressed was 'Since Red Fleet vehicles are vested in the council, RFS do not record these in their financial statements. Many councils also do not record the Assets'.

48. Control and other considerations were described:

- 'Even though S119(2) of the Act vests the Assets in the council for whom these have been purchased or constructed, S119(3) prevents the council from selling or disposing of the Assets without written consent from the RFS Commissioner.
- As per the *Framework for the Preparation and Presentation of Financial Statements*, for a not-for-profit entity in the public sector, future economic benefits from an asset is synonymous with the notion of its service potential. These Assets allow RFS to comply with their governing legislation and fulfil their mandate as per the Act. At the same time these Assets help fulfil council's duty under the Act, to prevent the occurrence of bush fires on land

controlled by the council. Economic benefits from the Assets are therefore enjoyed by both the council and RFS.

- Under S12A of the Act, the RFS Commissioner may enter into a Rural Fire District Service Agreement (Agreement) with any council responsible for a rural fire district. These Agreements are contractual licences that set out the understanding between the parties as to maintenance, use and access to firefighting equipment and premises.
- Under S63 of the Act, land owners have the responsibility of preventing the occurrence of bush fire. To comply with the requirements of the Act, councils are obliged to perform hazard reduction activities. Councils do not possess firefighting and hazard reduction expertise and therefore delegate the conduct of this activity to RFS through an Agreement under which the council provides RFS access to council Assets. Under the Agreement, the council agrees to make available to and allow the RFS Commissioner to use the Assets which are owned by, vested in or under the control of the council.
- A Rural Fire Brigade (RFB) is generally constituted by the council. The Commissioner has the power to constitute a RFB if the council fails to do so. A RFB can be disbanded by the person or body who constituted it. A RFB is mainly comprised of volunteers and its activities are supervised and co-ordinated by a Fire Control Officer (FCO), who is an RFS employee and reports directly to the RFS Commissioner. The Commissioner controls and directs the functions of the RFB. Under S38 of the Act, a council is obliged to provide facilities and accommodation to enable the FCO to perform his or her functions. Such facilities and accommodation should be of a standard approved by the Commissioner.
- As per S119(5) of the Act, it is council's responsibility to take care and maintain the Assets. The Act authorises the RFS Commissioner to set maintenance standards for the Assets. The Council lacks expertise to maintain such specialised nature Assets. Being the owner of the Assets, the councils transfers their maintenance obligation to RFS through the Agreement. RFFF is funded through an annual RFS budget, which includes planned maintenance expenditure for firefighting equipment held RFS districts. Councils contribute (11.7%) annually to these budgets which includes the maintenance component. Hence, any subsequent maintenance expenditure incurred by the council is reimbursed by RFS using these funds.
- Like planned maintenance expenditure, the expected insurance cost for the Assets is included in the RFS annual budget. Council, by way of its contribution (11.7%) to the RFFF, contributes to such insurance expenditure. While councils own the Assets, for administrative reasons, Treasury Managed Fund (TMF) and councils have agreed to an arrangement whereby RFS is permitted to acquire insurance coverage for the Assets in its own name. RFS pays the insurance premium from the RFFF and is nominated as an insured party under the insurance policy. RFS does not derive any insurable benefit under the insurance policy. In the event of a loss of an Asset (vested in the council), the insurance proceeds are used to reacquire or build a similar Asset, which then again vests in the same council. The arrangement between RFS and a council does not constitute a lease arrangement, since RFS is not paying any consideration to the council for the use of council's assets.
- The Agreement does not satisfy the conditions of a Joint Arrangement under the Australian Accounting Standards (AASB 11).'

49. There are appendices to the position paper *Appendix 1 – Illustration of the overall arrangement* and *Appendix 2 – Indicators of control*. The latter contains an assessment of control from the perspectives of the RFS and councils, applying:

- Legal ownership
- Future economic benefits and/or service potential
- Daily access and use
- Control of movement
- Maintenance, and

- Insurance.

50. The NSW Audit Office reached the following conclusion:

‘Vesting provisions under the Act, substantiated by an Agreement whereby the council allows RFS to use these assets for and on behalf of the council, supports the conclusion that these assets are controlled by the council. In addition, council’s responsibility of maintaining these assets and receiving the benefit of an insurance claim (in the event of a loss), further corroborates this conclusion.’

Audit Office final management letter for 30 June 2017

51. Tamworth Regional Council has provided the following extract from the Audit Office’s management letter dated 30 June last year in its submission to the OLG on the 2017-2018 draft code:

‘As at the 30 June 2017, the Council has exercised the option available under the Local Government Code of Accounting Practice and Financial Reporting not to recognise certain rural fire service assets. RFS assets, specifically the red vehicles, are vested in Council. Combined with other indicators there is a presumption that they are controlled by Council and should be recognised in the Council’s financial statements. This is supported by an analysis of Rural Fire Services Act 1997 and service agreements between the councils and RFS.’

‘The following are indicators of ‘control’ by the Council:

- Assets are vested in the Council as per Rural Fire Services Act 1997, giving Council legal ownership
- As the land owner, Council has the responsibility of fire mitigation and safety works under Rural Fire Services Act 1997
- The service agreement allows the RFS use of the assets for fire mitigation and safety works within the Council’s area
- Council is responsible for maintaining the assets but has transferred this responsibility to RFS through the service agreement
- In the event of loss of an asset, the insurance proceeds are used to reacquire or build a similar asset, which is again vested in the Council.’

Arguments advanced that councils do not control the fire-fighting equipment

Albury City

Introduction

52. Albury City has prepared a *Position statement on the recognition of Rural Fire Service assets*. Excerpts reproduced below reveal the council’s view that equipment is not a council asset but land and buildings are.

Background

53. ‘Rural Fire districts and Rural Fire Brigades are established generally in line with local council areas. Albury City shares a fire zone and Rural Fire District Service Agreement with Greater Hume Shire Council. Greater Hume Shire Council provides the majority of administrative support required under the service agreement. Albury City maintains

buildings within its Local Government Area boundary and services RFS Vehicles through its maintenance depot upon request. Albury City charges the RFS for vehicle servicing costs.'

54. 'Rural Fire Services costs are shared between Albury City and Greater Hume Shire, with Greater Hume Shire paying 80% of the cost and Albury City 20%. The basis of this allocation is tied to the number of fire services identified in each Council area, Greater Hume Shire 19 and Albury City 5.'

55. 'Albury City accounts for land and buildings used by the RFS situated within the Albury City boundary, however does not account for Rural Fire Service plant or other equipment'.

Application of accounting literature

56. The following points are made with reference to the framework.

1. 'An asset is defined as a resource that is controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity (49).
2. Attention needs to be given to its underlying substance and economic reality and not merely its legal form (51).
3. In respect of not-for-profit entities, economic benefit is synonymous with service provision or enabling them to meet their objectives to beneficiaries (54).
4. The right of ownership is not essential to the determination of control (57)'.

57. Reference was also made to AASB 116 *Property, Plant and Equipment*:

'[R]equires that an asset can only be recognised if it is probable that future economic benefits associated with the item will flow to the entity.'

58. Reference was also made to SAC 4 *Definition and Recognition of the Elements of Financial Statements* and definition of a 'control of an asset' ('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'). I note that SAC 4 has been withdrawn.

Facts and circumstances

59. Albury City's statement notes that the Act provides for:

- 'All firefighting equipment acquired from the fund is to be vested in the council of the area (S119)
- A council must not dispose of such equipment without the written consent of the Commissioner, and
- Albury City and Greater Hume Shire are entitled to a share of 11.7% of the disposal proceeds.'

60. The agreement between Albury City and the commissioner includes a basic section on district equipment (section 5):

- 'Council will allow the RFS to use the equipment which is owned by, vested in or under the control of the Council
- The Commissioner agrees to maintain the equipment on behalf of the council, and
- The RFS will maintain and supply to Council a register of the equipment.'

61. The statement further reads:

'This can be compared to a very detailed section on Land and Buildings (section 6) which specifically states that the legal right to possession and control over the premises and land

remains vested in Council and the RFS only has right of occupation. In addition: council must maintain the premises in good repair; council must pay all utility costs associated with the premises; and Council must pay all insurances associated with the building and public risk’.

62. In relation to land and buildings, it states:

‘The Rural Fire Service 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’.

63. In relation to 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’, and
- ‘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.’

Conclusion

64. The statement concluded:

‘It is clear that the AASB Accounting Standards require a standard higher than ownership when accounting for assets. Entities may own an asset, but unless they have control of that asset and can clearly identify future economic benefits flowing to the entity from that asset, then it cannot be included in the entities assets schedule.’

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

‘Albury City retains effective control of associated Land and Buildings, but that the RFS retains control of plant and equipment. Accordingly, Albury City’s 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.’

Bellingen Shire Council

65. Bellingen Shire Council prepared a *Position Statement Rural Fire Service Assets Treatment* (November 2017). It is very similar to other councils’ positions, and therefore the commonalities not repeated.

66. The following extracts are, however, noteworthy.

‘For Bellingen, RFS assets total approximately \$7.6M, with an annual depreciation expense of \$0.5M per year. Bellingen Shire Council has taken the approach to *not* recognise any RFS assets on their books.’

‘Under Bellingen Shire Council’s Service Level Agreement with the RFS, the following conditions are in place:

- Council has agreed to allow the RFS and the Commissioner to use the district equipment
- Council has agreed to allow the RFS and the Commissioner to use the premises (per schedule 1 in agreement)
- The Commissioner agrees to maintain the equipment on behalf of the Council
- The RFS will maintain and supply to Council a register of the equipment
- With reference to the financing arrangements, the Commissioner will, by the 28 February each year, submit to Council: a probable allocation of expenditures for the district for the next financial year; and a probable contribution by the Council to the fund, and
- In the event the Commissioner and the Council cannot agree upon the contribution of the Council to the Fund within 28 days of the Commissioner delivering the probable allocation by Council, the Minister (Police and Emergency Services) will make a determination on behalf of the parties.’

‘Further to the above, the following observations can be made about the RFS fleet and buildings:

- All RFS vehicles are managed through State Fleet NSW. Council has no control of the type of fleet purchased. Vehicles are insured and registered through State Fleet.
- Council has no control over the vehicles allocated to their RFS district: Council does not have keys or usage of these assets. Vehicles allocated to the district can be used throughout the State without Council consultation or permission.
- Council does not hold keys to the buildings, make decisions about the use of them, has no access to use of, nor earn any income from RFS buildings.’

67. The statement concluded:

1. ‘The Accounting Standards require a standard higher than ownership when accounting for assets. Entities may own an asset, but unless they have control of that asset and can clearly identify future economic benefits flowing to the entity from that asset, then it cannot be included in the entities assets schedule.
2. Whilst the RFS Act refers to assets being ‘vested’ in Council, there is no mention of the Council having ‘ownership’ of these assets.
3. As per the RFS Act, Council does not receive the proceeds from the sale of the assets. You cannot have control of an asset without also having control of the proceeds.
4. Council do not insure or register the fleet assets, nor do Council hold keys or have access to any of these vehicles. Fleet are used throughout the state without the permission or knowledge of Council. This fails the very basic of asset control tests.
5. Council does not hold keys to the buildings, make decisions about the use of them, has no access to use of, nor earn any income from RFS buildings.
6. RFS (not Councils) receive future economic benefit from firefighting equipment assets in terms of both net cash flows and service provision.
7. Whilst Council has a detailed Rural Fire District Service Agreement, this appears to be an “on paper arrangement only” and does not represent what is happening in practice.
8. RFS make all the decisions about capital improvements and new assets. While Council is consulted, it has no final decision.
9. Should there be any disagreement as to Councils contribution to the fund, the Minister for Police and Emergency Services has the final say.’

68. And finally:

‘It is clear that even the most basic of control tests have not been met, the evidence is also compelling that the RFS receives the flow of future economic benefits, not Council. Based on the evidence, Council, in complying with the Accounting Standards, has no choice but to not recognise the RFS Assets.’

Clarence Valley

Background

69. Clarence Valley Council wrote a *Position Statement on the Recognition of Rural Fire Service Assets* dated 3 October 2017. The council stated:

‘Clarence Valley Council maintains buildings within its Local Government Area boundary whilst plant and other equipment is fully owned and maintained by RFS. Clarence Valley Council accounts for land and buildings used by the RFS situated within the Clarence Valley Council boundary.’

Application of accounting literature

70. Clarence Valley Council used the same accounting references as Albury City. They are not repeated.

Facts and circumstances

71. Cogent extracts from the statement include:

‘The Rural Fire District Service Agreement (RFS 2) between Clarence Valley Council and the Commissioner includes a basic section on District equipment (section 5) and section on Land and Buildings (section 6)’. (The descriptions are the same as Albury City and not repeated.)

‘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 Rural Fire Service and not councils that receive future economic benefit from firefighting equipment assets in terms of both net cash flows and service provision.’

Conclusion

72. Clarence Valley Council has reached the same conclusion as Albury City. It is not repeated.

Tamworth Regional Council

73. Tamworth Regional Council prepared a *Position statement on the recognition of Rural Fire Service assets*. It is very similar to other councils’ positions and is therefore not repeated.

OLG conversations with councils about the Rural Fire Service’s assets

74. The OLG spoke to four councils (28 August 2017) on three issues. Did they recognise land and buildings? Did they write off the trucks in financial statements? Was this arrangement covered by an agreement with the RFS or a district or council?

75. The responses were:**Narrandera Shire Council (Hiscox):**

‘Recognise building and land only – not the red fleet. They don’t believe they should recognise the fleet as it does not meet the 8 criteria of control as per the standards. They are covered by a zone agreement which would need to be updated as there are former councils on it. They will provide us with a copy.’

Leeton (Stewart):

‘Recognise buildings only (they own the land). They do not believe they control the red fleet under the definition of the Standards, they have absolutely no control over the red fleet. They were even told by RFS that they did not have to insure them anymore and that RFS would. When the assets are sold the money goes to RFS and they replace the old with the new.’

Cowra (Scott):

‘Recognise all assets including the red fleet – they wanted to change the policy but were told that they couldn’t – once they have them in the books they had to stay. In their opinion they do not control the red fleet. They depreciate the fleet on the same basis as heavy vehicles. These vehicles turn over quite regularly and are quite expensive. RFS have the final say over these assets.’

Email from Cowra (Stuart) to OLG (Love) dated 29 August 2017. ‘Following up on our conversation yesterday regarding RFS assets here is a bit of additional information:

- Bushfire sheds are located on land owned or controlled by Council
- Bushfire sheds are included on council insurance schedule
- Council is generally responsible for maintaining the shed although some reimbursement does come from RFS
- RFS trucks are not under the control of council and can be required to attend fires or other emergencies at other NSW & interstate locations at the direction of RFS
- RFS trucks are not registered by council
- RFS are not insured by council
- RFS trucks are not maintained by council
- RFS truck maintenance & fuel costs are paid by council (due to the ridiculous funding arrangement) but reimbursed by RFS.’

Tweed (Chorlton):

‘Recognise the buildings and land – not the red fleet. Does not believe that Council has control of the fleet. Believes the legislation needs to be changed to take out the [vesting] and should be the same as SES. [Agreed] that vested does not mean that councils have control.’

Narrandera Shire Council (Hiscox) email from to Crowe Horwarth (Lucas) headed *Assessment of the RFS Red Fleet as a council asset* and dated 22 September 2017. The email stated: ‘Council has considered the following in determining that the RFS Red Fleet should not be booked as an asset on council’s balance sheet.

- The items in the Red Fleet are specified and procured in a timeframe determined by the RFS in accordance with the RFS budget. Sale of items is determined by the RFS and proceeds of sale flow to the RFS
- Future economic benefits derived from the Red Fleet accrue to the RFS as the Red Fleet is used to address RFS objectives and service delivery exclusively
- Council has no access to the Red Fleet for any of its purposes
- The RFS determine where the Red Fleet is deployed within the shire and may task the fleet outside the shire

- Council maintain the Red Fleet under direction from the RFS and within a budget set by the RFS
- Council maintains brigade stations under councils building maintenance program and insures the buildings under council's policy
- The RFS has directed council not to insure the Red Fleet under council's motor vehicle cover.'

City of Parramatta (Matthew Walker) exchanged a series of emails with Audit NSW (Celia Withers) headed Rural Fire Assets and dated 23 and 24 September 2017. Relevant extracts from the City of Parramatta correspondence are:

- Extract from section 119(3) of the Rural Fire Services Act 1997 (NSW): '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 would indicate that Council does not have control of the assets as it does not possess the right to dispose of assets without consent of the RFS.'
- Extract from section 119(5) of the Rural Fire Services Act 1997 (NSW): '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.'
- 'In operation this is done in accordance within a service agreement with the Local Rural Fire Service Command. This maintenance is included in the annual budget prepared by the Local Rural Fire Command which is submitted to the central Rural Fire Service for approval and includes requests for Capital items to be funded by the Rural Fire Service. Access to Rural Fire Service buildings and equipment is restricted to the personnel (including volunteers) of the local rural fire area command and this indicates that Council cannot just access the assets for utilisation in the course of its daily operations.'
- 'Further highlighting issues with determination of control and the difference of crown land assets under council's care and control, where the access is not restricted nor is an annual budget prepared by another entity for services to be provided.'

Council comments on the draft *Code of Accounting Practice*

76. The OLG sought comments on the draft *Code of Accounting Practice* and some councils responded. The following comments and extracts are cited to help further understanding of the councils' views.

77. *Armidale Regional Council's* Mr Peter Dennis, CEO, stated in a submission to OLG dated 2 February 2018 that:

- AASB 116 *Property, Plant and Equipment* defines 'assets' and 'control of assets' and is the basis for Council's arguments on these terms. (I note that AASB 116 no longer defines these terms).
- 'With regards to Rural Fire Services assets (buildings, plant and equipment), Council is unable to determine there is a future economic benefit, an ability to gain control over the assets, or demonstrate there is a transaction that will give rise to control in future.'
- 'The Council's preferred position is that Rural Fire Services operates and is funded as NSW Fire Brigade and State Emergency Service. Where all that council is required [to do is] to make a financial contribution annually.'
- 'In applying AASB 116, Council should make no reference to Rural Fire Service assets, or recognition in the asset register. In addition, all reference to Rural Fire Service should be removed from the Code.'

78. *Cessnock Council's* Mr Robert Maginnity, director of corporate and community services, provided the following comments:

- 'I agree RFS assets should be recognised, but it should be with the RFS who have control of those assets. This is particularly so for the vehicle fleet. Council has no control of the purchase, disposal or usage of such asset, so to mandate recognition flies firmly in the face of not only common sense, but also the fundamental accounting concept of control.'
- 'RFS assets should only be accounted for by a council if in accordance with the accounting standards they determine that they have control of those assets and can clearly identify future economic benefits flowing to the council from those assets. Due to differing arrangements that are in place at the local level across the State, this may need to be assessed by each council on a case by case basis.'

79. *Finance Network Executive and Local Government Professionals Australia, NSW*, stated (undated):

'It is the view of the Finance Network Executive and Local Government Professionals Australia, NSW, that Rural Fire Service assets should only be accounted for by a council, if in accordance with the accounting standards, they determine that they have control of those assets and can clearly identify future economic benefits flowing to the Council from those assets.'

80. *Mid North Coast Regional Organisation of Councils (MIDROC)* made a submission to the OLG dated 30 January 2018. The submission contained background information and cited what MIDROC considers to be relevant accounting literature. They are not repeated here; these matters have been previously described.

81. MIDROC provided the following summary of a service-level agreement:

'Under councils Service Level Agreement with the RFS, the following conditions are in place:

- Council has agreed to allow the RFS and the Commissioner to use the district equipment;
- Council has agreed to allow the RFS and the Commissioner to use the premises (per schedule 1 in agreement);
- The Commissioner agrees to maintain the equipment on behalf of the Council; and
- The RFS will maintain and supply to Council a register of the equipment.
- With reference to the financing arrangements, the Commissioner will, by the 28 February each year, submit to Council: a probable allocation of expenditures for the district for the next financial year and a probable contribution by the Council to the fund. In the event the Commissioner and the Council cannot agree upon the contribution of the Council to the Fund within 28 days of the Commissioner delivering the probable allocation by Council, the Minister (Police and Emergency Services) will make a determination on behalf of the parties.'

The following observations were made about the RFS fleet and buildings:

- 'All RFS vehicles are managed through State Fleet NSW – Council has no control of the type of fleet purchased; and vehicles are insured and registered through State Fleet.
- Councils have no control over the vehicles allocated to their RFS district – Council does not have keys or usage of these assets; and vehicles allocated to the district can be used throughout the State without Council consultation or permission.
- Councils do not hold keys to the buildings, make decisions about the use of them, has no access to use of, nor earn any income from RFS buildings.'

82. MIDROC summarised its findings as follows:

- 'The Accounting Standards require a standard higher than ownership when accounting for assets. Entities may own an asset, but unless they have control of that asset and can clearly identify future economic benefits flowing to the entity from that asset, then it cannot be included in the entities assets schedule.'

- Whilst the RFS Act refers to assets being “vested” in councils, there is no mention of the councils having “ownership” of these assets.
- As per the RFS Act, councils do not receive the proceeds from the sale of the assets. You cannot have control of an asset without also having control of the proceeds.
- Councils do not insure or register the fleet assets, nor do councils hold keys or have access to any of these vehicles. Fleet are used throughout the state without the permission or knowledge of councils. This fails the [most] basic of asset control tests.
- Councils do not hold keys to the buildings, make decisions about the use of them, has no access to use of, nor earn any income from RFS buildings.
- The RFS (not councils) receive future economic benefits from firefighting equipment assets in terms of both net cash flows and service provision.
- Whilst councils have detailed Rural Fire District Service Agreement, this appears to be an “on paper arrangement only” and does not represent what is happening in practice.
- RFS make all the decisions about capital improvements and new assets. While councils are consulted, it has no final decision.
- Should there be any disagreement as member council contributions to the fund, the Minister for Police and Emergency Services has the final say.’

83. MIDROC concluded:

‘It is clear that even the most basic of control tests have not been met, the evidence is also compelling that the RFS receives the flow of future economic benefits, not councils.’

84. Tamworth Shire Council, Mr Rick Sanderson, stated in a submission dated 2 February 2018:

‘Council considers that the only valid point (sic a reference Audit Office final management letter of June 2017) in this is legal ownership and ignores other significant elements of the accounting concept of control. Council’s position on this issue is attached showing that we strongly believe that controls lies with RFS (Appendix A).’

85. Temora Shire Council, G C Lavelle, general manager, stated (2 February 2018):

‘In the Council’s view Rural Fire Service assets should only be accounted for by a Council, if in accordance with the accounting standards, they determine that they have control of those assets and can clearly identify future economic benefits flowing to the council from those assets. Temora Shire Council does not have control over the purchase sale, or usage of the Rural Fire Services Assets. We do believe we should recognise these assets in our financial statements.’

86. Tweed Shire Council’s, Mr Brian Unwin, senior accountant, wrote:

‘[The reasons] for local government not reporting RFS assets include, but are not limited to:

- Councils are unable to dispose of or restrict access to these assets – there is no control
- Councils are unable to effectively maintain an asset register for these assets – they have no access to the asset inventories and must rely on accurate and timely information being provided to them by RFS
- As Councils have no authority over the RFS they can’t compel the RFS to provide this information
- It is unlikely that RFS will inform Councils when transfers of mobile assets occur between LGAs
- As RFS purchase these assets, acquisitions must be shown on Councils’ income statements as non-cash contributions
- As RFS receives the cash for the disposal of these assets, Councils must disclose a loss on disposal when this occurs.

Whether or not legislation vests the legal ownership of these assets to local government, RFS clearly has control of these assets and should be fulfilling its reporting obligations.'

DRAFT



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Ms Jackie Kruger
Leeton Shire Council
23-25 Chelmsford Place
LEETON NSW 2705

16 September 2021

Dear Jackie

TECHNICAL ACCOUNTING ADVICE - ACCOUNTING ADVICE ON ACCOUNTING FOR RURAL FIRE SERVICE ASSETS

In accordance with our engagement letter dated 18 June 2021, we have reviewed the accounting treatment by Leeton Shire Council of NSW Rural Fire Services equipment. Please note that we hereby retract our previous advice issued on 5 August 2021 and replace it with this advice.

You have requested that we provide advice in relation to the appropriate accounting treatment of these assets under Australian Accounting Standards.

Please note that this advice does not address any tax, regulatory or other matters other than the specific financial reporting matters described below.

Our advice, which is included in an appendix to this letter, is based on the information provided and accordingly, should additional information come to light, it may alter the basis of conclusions included within this report.

We thank you for all the assistance provided in conducting this engagement and we look forward to continuing to provide services to your organisation.

Should you have any queries regarding this report, please do not hesitate to contact me on

[REDACTED] or [REDACTED].

Yours faithfully

[REDACTED]

Aletta Boshoff
Partner



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EXECUTIVE SUMMARY

Nature of the Rights and Obligations in Respect to Rural Fire Fighting Equipment and Premises under the Rural Fire District Service Agreement

While the *Rural Fire Services Act 1997* (NSW) ('the Act') provides a basis for understanding the various rights and obligations of NSW Local Government Councils in respect to rural fire fighting equipment and premises, it is not a sufficient basis on which to determine the accounting by the Leeton Shire Council for rural fire fighting equipment and any premises made available to the Commissioner of the NSW Rural Fire Service, particularly in circumstances where the rural fire fighting equipment and premises are dealt with in the Rural Fire District Service Agreement between the Council and the Commissioner.

Both the Act and the Rural Fire District Service Agreement impose different and in some cases offsetting rights and obligations on the Leeton Shire Council in respect to the rural fire fighting equipment attributed to it. Consequently, to understand the Council's relationship with the rural fire fighting equipment attributed to it, the Council should consider the implications of the total net sum of the rights and obligations imposed on it under the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service.

To be useful, financial information must not only represent relevant phenomena, but it must also faithfully represent the substance of the phenomena that it purports to represent. In circumstances where linked or related rights and/or obligations arise from different contractual sources (as in the case with the rural fire fighting equipment attributed to NSW Local Councils), one way in which 'substance over form' accounting outcomes can be achieved is by combining the contracts (or other arrangements) that are linked or otherwise cannot be fully understood if accounted for separately.

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides:

- The Commissioner of the NSW Rural Fire Service with the right to all of the economic benefits embodied in the rural fire fighting equipment attributed to the Council and all premises belonging to the Council that are made available to the Commissioner, and
- The Council with the right to receive payments in respect to the rural fire fighting equipment attributed to it as well as all of the premises made available by the Council to the Commissioner.

Accounting by the Leeton Shire Council for rural fire fighting equipment

Rural fire fighting equipment attributed during prior and current periods

With respect to rural fire fighting equipment that has been attributed to the Leeton Shire Council in a prior reporting period and that, to date, has not been recognised by the Council in its statement of financial position, the Council should:

- (a) Continue not to recognise the rural fire fighting equipment vested in it

- (b) Recognise a receivable at an amount equal to the *net investment in the lease* (as defined in Appendix A of AASB 16) for the lease of the rural fire fighting equipment under the Rural Fire District Service Agreement, and
- (c) Account for any corresponding 'credit entry' arising from (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the rural fire fighting equipment attributed during prior periods, or
 - income in relation to the rural fire fighting equipment attributed during the current period.

We do not anticipate that the net investment in the peppercorn lease would be material due to the required \$1 payment per annum.

Rural fire fighting equipment attributed during future periods

With respect to any fire fighting equipment that is attributed to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, the Council would not process any further journal entries because all fire fighting equipment attributed under the Act and the Agreement are already captured in the receivable as outlined above.

Accounting by the Leeton Shire Council for Premises

Premises attributed during prior and current periods

Consistent with the approach outlined above in respect to rural fire fighting equipment, Leeton Shire Council would derecognise any land and buildings that are classified as Premises under the Rural Fire District Service Agreement. To this end, for any Premises that were made available to the Commissioner of the NSW Rural Fire Service in a prior reporting period and that are currently subject to the Rural Fire District Service Agreement, the Leeton Shire Council should:

- (a) Derecognise the Premises
- (b) Recognise a receivable at an amount equal to the *net investment in the lease*, and
- (c) Account for the balancing 'debit entry' arising from (a) and (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the premises attributed during prior periods, or
 - an expense in relation to the premises attributed during the current period.

Premises attributed during future periods

With respect to any premise that is attributable to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, upon the premise becoming subject to the Agreement the Council would:

- (a) Derecognise the premise
- (b) Recognise a receivable from the Commissioner of the NSW Rural Fire Service at an amount equal to the net investment in the individual lease of the premise, and
- (c) Recognise any difference between (a) and (b) immediately as income or an expense, as applicable.

Accounting for Rural Fire Fighting Equipment and Premises in the absence of the Rural Fire District Service Agreement

In the event that either or both the Leeton Shire Council or the Commissioner of the NSW Rural Fire Service were to terminate the Rural Fire District Service Agreement, the Council would need to re-evaluate its accounting for the rural fire fighting equipment vested in it and premises made available to the Commissioner under the Agreement at that time and in accordance with any replacement arrangements.

BACKGROUND

We have been provided with copies of the following documents:

- A copy of a document titled 'Rural Fire District Service Agreement - MIA Zone' between the Council of the Griffith City Council, the Council of Leeton Shire Council, the Council of Murrumbidgee Shire Council, the Council of Narrandera Shire Council and the Commissioner of the NSW Rural Fire Service (dated 1 January 2011) ('Rural Fire District Service Agreement')
- A copy of a letter from Mr Shane Fitzsimmons (Commissioner, NSW Rural Fire Service) to Mr David Laughler (Leeton Shire Council) titled 'Rural Fire Zone Service Agreement - Amendment' (dated 16 January 2012 and signed) ('Rural Fire District Service Agreement Amendment')
- A copy of a letter from Mr Graham Bradley (Independent Chair, Leeton Shire Council) to Ms Margaret Crawford (Auditor General NSW) (dated 30 August 2020 and signed)
- A copy of a letter from Mr Scott Phillips (Chief Executive, Local Government NSW) to Mr Graham Bradley titled 'Reporting of RFS Assets' (dated 12 October 2020 and signed)
- A copy of a letter from Mr Graham Bradley to Mr Scott Phillips (dated 7 June 2021 and signed)
- A copy of Schedule 2 - Premises that the Commissioner will occupy and use in the execution of the SLA - to the Rural Fire District Service Agreement ('Schedule 2'), and
- A copy of Schedule 4 - List of Tankers - to the Rural Fire District Service Agreement ('Schedule 4').

Based on the information provided to us in emails from Mr Graham Bradley (dated 15 June 2021, 23 June 2021 and 24 June 2021) and Ms Melissa Seymour (dated 29 June 2021), the foregoing documents and other information available to us, we understand the following.

- In accordance with the *Rural Fire Services Act 1997* (NSW) ('the Act'):
 - The NSW Treasurer is required to pay an annual contribution to the NSW Rural Fire Fighting Fund ('the Fund'), which is established in the Special Deposits Account of the NSW Treasury (ss. 102 & 103). The annual contribution is the 'rural fire brigade funding amount' (s. 106). The rural fire brigade funding amount each year is the estimated rural fire brigade expenditure for that financial year ('rural fire brigade funding target') [s. 108(2)]
 - Each 'relevant council' (meaning a council or an area that is wholly or partly outside a fire district) is required to pay to the NSW State Revenue Commissioner a 'rural fire brigade contribution' each financial year (s. 109). The annual total contributions payable by relevant NSW councils for rural fire districts is 11.7% of the rural fire brigade funding target for each rural fire district [s. 110(3)]
 - The responsible Minister determines the contribution payable by each relevant council on the basis of the rural fire brigade funding target for each rural fire district [s.110(2)]. A rural fire brigade contribution payable by a relevant council for a financial year is payable in four instalments, each of which is a 'rural fire brigade contribution instalment' (s. 110A). A relevant council must, in accordance with an instalment notice given to it by the

State Revenue Commissioner, pay to the State Revenue Commissioner a rural fire brigade contribution instalment on or before each of the following days in a financial year:

- 30 September
 - 31 December
 - 31 March, and
 - 30 June (s. 111)
- Rural fire brigade contribution instalments collected by the NSW State Revenue Commissioner are credited to the Fund. Money to the credit of the Fund may be applied by the NSW Treasurer in or towards rural fire brigade expenditure incurred under the authority of the Act. The NSW Treasurer may pay such money out of the Fund on the certificate of the Minister (s. 118). Any money remaining in the Fund to the credit of the NSW Rural Fire Service at the end of the financial year, other than money that is required to be paid to the credit of the Fund, is to be paid into the NSW Rural Fire Service's operating account (s. 118A)
 - 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 [s. 119(2)]. Fire fighting equipment includes:
 - Fire fighting apparatus, including 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 (Dictionary)
 - Buildings
 - Water storage towers, and
 - Lookout towers [s. 119(1)]
 - A council must take care of and maintain in the condition required by the Service Standards issued by the Commissioner of the NSW Rural Fire Service any rural fire fighting equipment vested in it [s. 119(5)]. The Commissioner of the NSW Rural Fire Service may, with the concurrence of the council in which the rural fire fighting equipment is vested, use any of the equipment not reasonably required by the council to deal with incidents in the area of the council or incidents outside the area [s. 119(6)]
 - A council must not sell or otherwise dispose of any rural fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without written consent of the Commissioner of the NSW Rural Fire Service [s. 119(3)]. If an item of rural fire fighting equipment is sold or otherwise disposed of and the whole of the cost of the purchase or construction of the rural fire fighting equipment was met by money to the credit of the Fund:
 - An amount equal to the proceeds from the sale of the item of rural fire fighting equipment, or
 - 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 item of rural fire fighting equipment

is to be paid to the credit of the Fund. If only a part of the cost of the purchase or construction of any such rural fire fighting equipment was met by money to the credit of the Fund, which bears to the amount that would be required to be paid to the Fund if the whole of that cost had been met by money to the credit of the Fund in the same proportion as that part of the cost bears to the whole of that cost [s. 119(4)], and

- The Commissioner of the NSW Rural Fire Service may enter into a rural fire district service agreement with any local authority or authorities responsible for a rural fire district or districts. Without limitation, such a service agreement may:
 - Specify functions imposed on the local authority by or under the Act that are to be exercised by the Commissioner during a period (if any) specified in the agreement
 - Specify any obligations to be imposed on the local authority as a consequence of the Commissioner agreeing to exercise those functions
 - Set performance targets for the exercise of those functions, and
 - Provide for the evaluation and review of results in relation to those targets.

The Commissioner of the NSW Rural Fire Service and the local authorities must, as far as practicable, exercise the functions and carry out the obligations in accordance with the service agreement (s. 12A)

- The Rural Fire District Service Agreement has been made under section 12A of the Act and specifies, among other things, in consideration of an annual fee of one dollar payable by the Councils, the Commissioner of the NSW Rural Fire Service will:
 - exercise (for the term of the Agreement) all of the functions imposed on the Councils to the Agreement under the Act other than those specified in:
 - Sections 7, 12A, 37(3), 60(6), 62, 63, 64, 65, 74(1), 74(2)(a), 74(2)(b), 74C(3), 76, 77, 79, 83(1)(a), 95, 100E(2)(b), 100E(2)(c), 100G, 100H, 104, 109, 110, 119 other than 119(5), 120 and 126, and
 - Regulations 14(a) and 37 of the *Rural Fires Regulations 2013* (NSW),¹ and
 - Undertake the day-to-day management of the 'Service' in the Zone (cl. 4.2), including the provision of rural fire services as defined section 9(4) of the Act

- Clause 3.1 of the Rural Fire District Service Agreement states that:

Notwithstanding the date upon which this Agreement is signed the parties agree that the operation of the Agreement will commence on 1st January 2011, and continue until it is terminated pursuant to provisions of clause 14.

Clause 14.1 of the Rural Fire District Service Agreement confirms that:

This Agreement will terminate:

¹ Refer to Appendix A to this Letter of Advice for a summary of the listed sections of the *Rural Fire Services Act 1997* (NSW) and the listed regulations of the *Rural Fires Regulations 2013* (NSW).

- (a) *if any party breaches their obligations under this Agreement and fails to rectify that breach within 21 days of another party giving written notice to the party in default requiring that breach to be rectified;*
- (b) *immediately upon the revocation of, or failure to renew, the delegation;*
- (c) *immediately in the event that any of the Councils refuse to advance moneys in respect of maintenance of the Zone Equipment; or*
- (d) *upon the expiration of six months notice in writing given by either the Councils or the Commissioner.*

Accordingly, we understand that the Rural Fire District Service Agreement:

- Has no fixed end date, and
- As at the date of this advice:
 - Had not been terminated by either the Councils or the Commissioner, and
 - Neither the Commissioner nor the Leeton Shire Council had provided the counterparty with notice of their intention to terminate the Agreement
- To facilitate the Commissioner of the NSW Rural Fire Service providing the Service, the Rural Fire District Service Agreement confirms that:
 - The Councils will, during the term of the Agreement:
 - Make available and allow the Commissioner and the Rural Fire Service to use District Equipment, meaning the Fire Fighting Apparatus comprising 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 that is owned by the State of NSW, owned by the Council, or vested in the Council) that is owned by, vested in, or under the control of the Councils (cl. 5.1). To assist in the application of these provisions, the Agreement includes Schedule 4, which lists the fire tankers within the Leeton district available for use by the Commissioner
 - Allow the Commissioner and the Rural Fire Service to occupy and use the Premises, being land and buildings or parts of land and buildings specified in Schedule 2 of the Agreement, or such other land and buildings as may be agreed upon in writing between the Councils and the Commissioner, on the following terms and conditions:
 - i. Each of the Councils grants in relation to those parts of the Premises over which they have control and the Commissioner accepts a licence to enter and use the Premises during the term of the Agreement
 - ii. The Commissioner has:
 - A personal right of occupation of the Premises on the terms specified in the Licence, and
 - No tenancy, estate or interest in the land on which the premises are situated
 - iii. The legal right to possession and control over the Premises and the land upon which they are situated remains vested in the respective Council throughout the term of the Agreement (cl. 6.4)
 - iv. The Councils will:
 - Not interfere with the Commissioner's use and enjoyment of the Premises during the term of the Agreement

- Pay all rates, taxes, electricity, gas, oil and water charges separately metered and charged to the Premises
 - Effect and keep current at all times during the term of the Agreement building insurance and public risk insurance in an amount not less than \$20 million, and
 - Undertake all painting, maintenance and repairs of the Premises specified in cl. 6.7 of the Agreement (cl. 6.5), and
- v. The Commissioner:
 - Does not occupy or use the Premises made available by the Councils for any purpose other than the provision of rural fire services and other purposes incidental thereto, without the prior consent of the respective Council, which shall not be unreasonably withheld or delayed
 - Does not assign the benefit of the licence or grant any sub-licence of the Premises
 - Keeps the Premises clean and tidy,
 - Complies with all statutes, regulations and ordinances regarding its use of the Premises
 - Does not deface or alter the Premises without the consent of the respective Council, such consent not to be unreasonably withheld or delayed, and
 - Undertake any painting, maintenance and repairs of the Premises anticipated under clause 6.8 of the Agreement (cl. 6.6), and
- o The Commissioner of the NSW Rural Fire Service and/or the Rural Fire Service will, during the term of the Agreement:
 - Maintain the District Equipment on behalf of the Council in accordance with the applicable Service Standards (cl. 5.2), and
 - Maintain a register of the Zone Equipment (cl. 5.3)
- The Rural Fire Services Agreement also confirms that the Councils will, in consideration of an annual fee of one dollar payable by the NSW Rural Fire Service to the Councils, provide to the NSW Rural Fire Commissioner and the NSW Rural Fire Service the administrative, accounting and maintenance services specified in Schedule 2 to the Agreement (cl. 7.1). In turn, the Councils or their General Manager will delegate to the Zone Manager ('ZM') the functions specified in Annexure A of the Agreement, for the purpose of enabling the ZM to utilise the Councils' administrative, accounting and maintenance services (cl. 7.2). Clause 7.3 of the Rural Fire Services Agreement confirms that the ZM will, in exercising the functions delegated to him or her by the Councils under clause 7.2 of the Agreement, ensure they are exercised in accordance with the Councils' policies and procedures
- Rural Fire District Service Agreement Amendment confirms that the NSW Rural Fire Service has assumed responsibility for establishing and maintaining insurance coverage under the indemnity provided by the NSW Treasury Managed Fund for those motor vehicles that form part of the District Equipment identified under the Rural Fire Services Agreement and are listed on the register of 'Red Fleet' vehicles (Schedule 4). We understand this represented an amendment to the Rural Fire District Service Agreement, effective from 16 January 2012

- Leeton Shire Council is a not-for-profit entity for the purposes of preparing financial statements and has an annual reporting date of 30 June
- Leeton Shire Council prepares its annual financial statements on a general purpose basis in accordance with:
 - All applicable Australian Accounting Standards
 - The *Local Government Act 1993* (NSW)
 - The *Local Government (General) Regulation 2005* (NSW), and
 - The NSW Local Code of Accounting Practice and Financial Reporting
- The NSW Audit Office's 'Report on Local Government 2020' (dated 27 May 2021) notes the following in respect to the accounting treatment by NSW local councils of rural fire fighting equipment.
 - Sixty-eight councils did not record rural fire fighting equipment in their financial statements worth \$119 million. The NSW Government has confirmed these assets are not controlled by the NSW Rural Fire Service and are not recognised in the financial records of the NSW Government(p. 7)
 - Twenty-seven percent of uncorrected errors identified by the NSW Auditor General or the relevant local council during audits for years ended 30 June 2020 were due to unrecorded rural fire fighting equipment
 - In 2018, the NSW Auditor General recommended that the NSW Office of Local Government within the NSW Department of Planning, Industry and Environment ('OLG') should address the different practices across the Local Government sector in accounting for rural fire fighting equipment
 - Currently, the financial statements of the NSW Total State Sector and the NSW Rural Fire Service do not recognise any NSW rural fire fighting equipment. NSW Treasury and the NSW Rural Fire Service have stated that rural fire fighting equipment is not controlled by the NSW State Government
 - The non-recording of rural fire fighting equipment in financial management systems increases the risk that these assets are not properly maintained or managed. Accordingly, the OLG should communicate the State's view that rural fire fighting equipment is controlled by NSW local councils, and therefore this equipment should be properly recorded in their financial statements
 - The NSW Department of Planning, Industry and Environment has confirmed that the NSW Rural Fire Service does not control rural fire fighting equipment. It is now the responsibility of the OLG to determine what action will be taken to ensure that \$119 million of assets held by 68 NSW local councils are properly recorded and accounted for (p. 14)
- The Leeton Shire Council currently recognises all land and buildings used in relation to rural fire fighting responsibilities and activities. In addition, Note 10(a) to the Annual Financial Statements for the Leeton Shire Council for the year ended 30 June 2020 ('2020 Leeton Annual Financial Statements') states, in part, that:

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”.

In accordance with the requirements of SAC4 and AASB 116 Council has critically examined whether they control any rural fire-fighting equipment and have determined that the Rural Fire Service is the Controlling Authority. Consequently, Leeton Shire Council has not brought to account in the financial statements any rural fire service plant and equipment assets that have been vested in Council.

AUTHORITATIVE REFERENCES

Conceptual Framework for Financial Reporting

AASB 15 Revenue from Contracts with Customers

AASB 16 Leases

AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors

AASB 1058 Income of Not-for-Profit Entities

ANALYSIS

Meaning of ‘vested’ and ‘control’

As noted in the Background section, pursuant to section 119(2) of the Act, all rural fire fighting equipment and premises purchased or constructed wholly or partly from money to the credit of the NSW Rural Fire Fighting Fund is to be *vested* in the council of the area for or on behalf of which the rural fire fighting equipment and premises have been purchased or constructed. However, the term ‘vested’ is not explicitly defined in the Act or the associated Regulations.

The Pocket Oxford Dictionary defines ‘vest’ (verb) to mean (among other things):

...furnish (person) with authority, property, etc; place the right to (property, power) in a person...

We also note that a number of provisions of the Act utilise the phrases ‘vested in or under the management (of)’ or ‘vested in or under the control of’, indicating that drafters of the legislation considered the management or control of an item to be potentially different in nature, and therefore distinct, from the item being vested in an individual or entity.

Under Australian Accounting Standards, concepts such as ‘vest’ and ‘control’ are defined. Appendix A of AASB 2 *Share-based Payment* defines vest as:

To become an entitlement. Under a share-based payment arrangement, a counterparty’s right to receive cash, other assets or equity instruments of the entity vests when the counterparty’s entitlement is no longer conditional on the satisfaction of any vesting conditions.

While Australian Accounting Standards do not explicitly define the concept of control in the context of an individual or group of assets that are not an entity, paragraph 33 of AASB 15 states, in part, that:

...Control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. Control includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset. The benefits of an asset are the potential cash flows (inflows or savings in outflows) that can be obtained directly or indirectly in many ways, such as by:

- (a) using the asset to produce goods or provide services (including public services);*
- (b) using the asset to enhance the value of other assets;*
- (c) using the asset to settle liabilities or reduce expenses;*
- (d) selling or exchanging the asset;*
- (e) pledging the asset to secure a loan; and*
- (f) holding the asset.*

AASB 15 paragraph 38(c) outlines the following in relation to control:

The customer has legal title to the asset—legal title may indicate which party to a contract has the ability to direct the use of, and obtain substantially all of the remaining benefits from, an asset or to restrict the access of other entities to those benefits. Therefore, the transfer of legal title of an asset may indicate that the customer has obtained control of the asset. If an entity retains legal title solely as protection against the customer’s failure to pay, those rights of the entity would not preclude the customer from obtaining control of an asset. [Emphasis added]

Consistent with the manner in which the terms ‘vest’ and ‘control’ are defined and used in Australian Accounting Standards, the Act appears to anticipate vesting is a necessary, but not necessarily a sufficient, feature of control. For instance, the legal right to an asset may vest in an entity, but the entity may not, in turn, control the asset, or at least does not control the economic benefits embodied in the asset. The inability of an entity to control an asset or the economic benefit embodied in the asset, notwithstanding the asset is vested in the entity, can arise in a number of circumstances, including:

- The asset is subject to separate legal restrictions that prevent the entity from utilising the asset. For instance, the asset is owned by an entity that is subject to receivership or administration, and/or
- The asset is subject to a lease, the non-cancellable term of which exceeds the estimated economic, physical and/or legal life of the asset.

Substance over form

As outlined in the Background section of this advice, the Act, among other things:

- Provides the legal structures through which monies collected by the NSW State Revenue Commissioner are applied by the NSW Treasurer towards the purchase of rural fire fighting equipment and premises for the benefit of both the NSW Local Government Councils and the Commissioner of the NSW Rural Fire Service, and
- Outlines how the rights and obligations in respect to the rural fire fighting equipment are allocated between the Commissioner of the NSW Rural Fire Service and the respective NSW Local Government Councils.

We also note that:

- The Act anticipates that the Commissioner of the NSW Rural Fire Service may enter into Rural Fire District Service Agreements with the NSW Local Government Councils in order to, among other things, reallocate the respective rights and obligations of both parties under the Act, including those in relation to rural fire fighting equipment and premises, and
- Consistent with the requirements and guidance in AASB 16 (refer to Appendix A of this document for a detailed analysis), the Rural Fire District Service Agreement between the Leeton Shire Council and the Commissioner of the NSW Rural Fire Service transfers substantially all of the risks and rewards associated with the rural fire fighting equipment and premises to the Commissioner for the estimated economic life of the equipment.

However, while the Act provides a basis for understanding the various NSW Local Government Councils rights and obligations in respect to rural fire fighting equipment and premises, it is not a sufficient basis on which to determine their accounting for the rural fire fighting equipment and premises, particularly in circumstances where the rural fire fighting equipment and premises are dealt with in an agreement (i.e. Rural Fire District Service Agreement) between the Council and the Commissioner of the NSW Rural Fire Service.

Paragraph 2.12 of the Conceptual Framework for Financial Reporting (Conceptual Framework) states that:

Financial reports represent economic phenomena in words and numbers. To be useful, financial information must not only represent relevant phenomena, but it must also faithfully represent the substance of the phenomena that it purports to represent. In many circumstances, the substance of an economic phenomenon and its legal form are the same. If they are not the same, providing information only about the legal form would not faithfully represent the economic phenomenon (see paragraphs 4.59-4.62). [Emphasis added]

Paragraph 4.59 of the Conceptual Framework for Financial Reporting (Conceptual Framework) states that:

The terms of a contract create rights and obligations for an entity that is a party to that contract. To represent those rights and obligations faithfully, financial statements report their substance (see paragraph 2.12). In some cases, the substance of the rights and obligations is clear from the legal form of the contract. In other cases, the terms of the contract or a group or series of contracts require analysis to identify the substance of the rights and obligations. [Emphasis added]

Paragraph 4.60 of the Conceptual Framework states that:

All terms in a contract—whether explicit or implicit—are considered unless they have no substance. Implicit terms could include, for example, obligations imposed by statute, such as statutory warranty obligations imposed on entities that enter into contracts to sell goods to customers. [Emphasis added]

Paragraph 4.61 of the Conceptual Framework states that:

Terms that have no substance are disregarded. A term has no substance if it has no discernible effect on the economics of the contract. Terms that have no substance could include, for example:

- (a) terms that bind neither party; or*
- (b) rights, including options, that the holder will not have the practical ability to exercise in any circumstances.*

One way in which ‘substance over form’ accounting outcomes are achieved is by combining contracts (or other arrangements) that are linked or otherwise cannot be understood if accounted for separately. To this end, paragraph 4.62 of the Conceptual Framework states that:

A group or series of contracts may achieve or be designed to achieve an overall commercial effect. To report the substance of such contracts, it may be necessary to treat rights and obligations arising from that group or series of contracts as a single unit of account. For example, if the rights or obligations in one contract merely nullify all the rights or obligations in another contract entered into at the same time with the same counterparty, the combined effect is that the two contracts create no rights or obligations. Conversely, if a single contract creates two or more sets of rights or obligations that could have been created through two or more separate contracts, an entity may need to account for each set as if it arose from separate contracts in order to faithfully represent the rights and obligations (see paragraphs 4.48-4.55). [Emphasis added]

Paragraph 4.48 of the Conceptual Framework states that:

The unit of account is the right or the group of rights, the obligation or the group of obligations, or the group of rights and obligations, to which recognition criteria and measurement concepts are applied. [Emphasis added]

Paragraph 4.53 of the Conceptual Framework states that:

Sometimes, both rights and obligations arise from the same source. For example, some contracts establish both rights and obligations for each of the parties. If those rights and obligations are interdependent and cannot be separated, they constitute a single inseparable asset or liability and hence form a single unit of account. For example, this is the case with executory contracts (see paragraph 4.57). Conversely, if rights are separable from obligations, it may sometimes be appropriate to group the rights separately from the obligations, resulting in the identification of one or more separate assets and liabilities. In other cases, it may be more appropriate to group separable rights and obligations in a single unit of account treating them as a single asset or a single liability. [Emphasis added]

The principles outlined in the Conceptual Framework in relation to substance over form and unit of account are also included in AASB 15, which states in paragraph 17 that:

An entity shall combine two or more contracts entered into at or near the same time with the same customer (or related parties of the customer) and account for the contracts as a single contract if one or more of the following criteria are met:

- (a) the contracts are negotiated as a package with a single commercial objective;*
- (b) the amount of consideration to be paid in one contract depends on the price or performance of the other contract; or*
- (c) the goods or services promised in the contracts (or some goods or services promised in each of the contracts) are a single performance obligation ... [Emphasis added]*

The principles outlined in the Conceptual Framework in relation to substance over form and unit of account are also included in AASB 16 which states in paragraph B2 that:

... an entity shall combine two or more contracts entered into at or near the same time with the same counterparty (or related parties of the counterparty), and account for the contracts as a single contract if one or more of the following criteria are met:

- (a) the contracts are negotiated as a package with an overall commercial objective that cannot be understood without considering the contracts together;*
- (b) the amount of consideration to be paid in one contract depends on the price or performance of the other contract; or*
- (c) the rights to use underlying assets conveyed in the contracts (or some rights to use underlying assets conveyed in each of the contracts) form a single lease component ... [Emphasis added]*

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides:

- The Commissioner of the NSW Rural Fire Service with the right to all of the economic benefits embodied in the rural fire fighting equipment attributed to the Council and all premises belonging to the Council that are made available to the Commissioner, and
- The Council with the right to receive payments in respect to the rural fire fighting equipment attributed to it as well as all of the premises made available by the Leeton Shire Council to the Commissioner.

Accounting for rural fire fighting equipment

The following discussion considers how the Leeton Shire Council would apply a 'substance over form' approach to accounting for rural fire fighting equipment that are subject to its agreement with the Commissioner of the NSW Rural Fire Service.

Rural fire fighting equipment attributed during prior and current periods

With respect to rural fire fighting equipment that has been attributed to the Leeton Shire Council in a prior reporting period and that, to date, has not been recognised by the Council in its statement of financial position, the Council should:

- (a) Continue not to recognise the rural fire fighting equipment vested in it
- (b) Recognise a receivable at an amount equal to the *net investment in the lease* (as defined in Appendix A of AASB 16) for the lease of the rural fire fighting equipment under the Rural Fire District Service Agreement, and
- (c) Account for corresponding 'credit entry' arising from (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the rural fire fighting equipment attributed during prior periods, or
 - an income in relation to the rural fire fighting equipment attributed during the current period.

We do not anticipate that the net investment in the peppercorn lease would be material due to the required \$1 payment per annum.

Rural fire fighting equipment attributed during future periods

With respect to any fire fighting equipment that is attributed to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, the Council would not process any further journal entries because all fire fighting equipment attributed under the Act and the Agreement are already captured in the receivable as outlined above.

Accounting for Premises

Premises attributed during prior and current periods

Consistent with the approach outlined above in respect to rural fire fighting equipment, Leeton Shire Council would derecognise any land and buildings that are classified as Premises under the Rural Fire District Service Agreement. To this end, for any Premises that were made available to the Commissioner of the NSW Rural Fire Service in a prior reporting period and that are currently subject to the Rural Fire District Service Agreement, the Leeton Shire Council should:

- (a) Derecognise the Premises
- (b) Recognise a receivable at an amount equal to the *net investment in the lease*, and
- (c) Account for the balancing 'debit entry' arising from (a) and (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the premises attributed during prior periods, or
 - an expense in relation to the premises attributed during the current period.

Premises attributed during future periods

With respect to any premise that is attributable to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, upon the premise becoming subject to the Agreement the Council would:

- (a) Derecognise the premise
- (b) Recognise a receivable from the Commissioner of the NSW Rural Fire Service at an amount equal to the net investment in the individual lease of the premise, and
- (c) Recognise any difference between (a) and (b) immediately as income or an expense, as applicable.

Accounting for rural fire fighting equipment and Premises in the absence of the Rural Fire District Service Agreement

In the event that either or both the Leeton Shire Council or the Commissioner of the NSW Rural Fire Service were to terminate the Rural Fire District Service Agreement, the Leeton Council would need to re-evaluate its accounting for the rural fire fighting equipment vested in it and Premises made available to the Commissioner under the Agreement at that time and in accordance with any replacement arrangements.

CONCLUSIONS

Nature of the Rights and Obligations in Respect to Rural Fire Fighting Equipment and Premises under the Rural Fire District Service Agreement

While the *Rural Fire Services Act 1997* (NSW) ('the Act') provides a basis for understanding the various NSW Local Government Councils rights and obligations in respect to rural fire fighting equipment and premises, it is not a sufficient basis on which to determine the accounting by the Leeton Shire Council for rural fire fighting equipment and any premises made available to the Commissioner of the NSW Rural Fire Service, particularly in circumstances where the rural fire fighting equipment and premises are dealt with in the Rural Fire District Service Agreement between the Council and the Commissioner.

Both the Act and the Rural Fire District Service Agreement impose different and in some cases offsetting rights and obligations on the Leeton Shire Council in respect to the rural fire fighting equipment attributed to it. Consequently, to understand the Council's relationship with the rural fire fighting equipment attributed to it, the Council should consider the implications of the total net sum of the rights and obligations imposed on it under the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service.

To be useful, financial information must not only represent relevant phenomena, but it must also faithfully represent the substance of the phenomena that it purports to represent. In circumstances where linked or related rights and/or obligations arise from different contractual sources (as in the case with the rural fire fighting equipment attributed to NSW Local Councils), one way in which 'substance over form' accounting outcomes can be achieved is by combining the contracts (or other arrangements) that are linked or otherwise cannot be fully understood if accounted for separately.

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides:

- The Commissioner of the NSW Rural Fire Service with the right to all of the economic benefits embodied in the rural fire fighting equipment attributed to the Council and all premises belonging to the Council that are made available to the Commissioner, and
- The Council with the right to receive payments in respect to the rural fire fighting equipment attributed to it as well as all of the premises made available by the Leeton Shire Council to the Commissioner.

Accounting by the Leeton Shire Council for rural fire fighting equipment

Rural fire fighting equipment attributed during prior and current periods

With respect to rural fire fighting equipment that has been attributed to the Leeton Shire Council in a prior reporting period and that, to date, has not been recognised by the Council in its statement of financial position, the Council should:

- (a) Continue not to recognise the rural fire fighting equipment vested in it

- (b) Recognise a receivable at an amount equal to the *net investment in the lease* (as defined in Appendix A of AASB 16) for the lease of the rural fire fighting equipment under the Rural Fire District Service Agreement, and
- (c) Account for corresponding 'credit entry' arising from (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the rural fire fighting equipment attributed during prior periods, or
 - income in relation to the rural fire fighting equipment attributed during the current period.

We do not anticipate that the net investment in the peppercorn lease would be material due to the required \$1 payment per annum.

Rural fire fighting equipment attributed during future periods

With respect to any fire fighting equipment that is attributed to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, the Council would not process any further journal entries because all fire fighting equipment attributed under the Act and the Agreement are already captured in the receivable as outlined above.

Accounting by the Leeton Shire Council for Premises

Premises attributed during prior and current periods

Consistent with the approach outlined above in respect to rural fire fighting equipment, Leeton Shire Council would derecognise any land and buildings that are classified as Premises under the Rural Fire District Service Agreement. To this end, for any Premises that were made available to the Commissioner of the NSW Rural Fire Service in a prior reporting period and that are currently subject to the Rural Fire District Service Agreement, the Leeton Shire Council should:

- (a) Derecognise the Premises
- (b) Recognise a receivable at an amount equal to the *net investment in the lease*, and
- (c) Account for the balancing 'debit entry' arising from (a) and (b) as either (as applicable):
 - a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the premises attributed during prior periods, or
 - an expense in relation to the premises attributed during the current period.

Premises attributed during future periods

With respect to any premise that is attributable to the Leeton Council in future reporting periods and is subject to Rural Fire District Service Agreement, upon the premise becoming subject to the Agreement the Council would:

- (a) Derecognise the Premise
- (b) Recognise a receivable from the Commissioner of the NSW Rural Fire Service at an amount equal to the net investment in the individual lease of the premise, and
- (c) Recognise any difference between (a) and (b) immediately as income or an expense, as applicable.

Accounting for Rural Fire Fighting Equipment and Premises in the absence of the Rural Fire District Service Agreement

In the event that either or both the Leeton Shire Council or the Commissioner of the NSW Rural Fire Service were to terminate the Rural Fire District Service Agreement, the Council would need to re-evaluate its accounting for the rural fire fighting equipment vested in it and premises made available to the Commissioner under the Agreement at that time and in accordance with any replacement arrangements.

APPENDIX A

The Rural Fire District Service Agreement contains a number of features of a lease agreement. The following analysis assesses the application of AASB 16 to the Rural Fire District Service Agreement.

Definition of a lease

To fall within the scope of AASB 16, and therefore be subject to the recognition, measurement and disclosure requirements in that Standard, an arrangement must meet the definition of a lease.

Appendix A of AASB 16 defines a lease as:

A contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration.

While the term ‘contract’ is not explicitly defined in AASB 16, paragraph 10 of AASB 15 *Revenue from Contracts with Customers* states that:

A contract is an agreement between two or more parties that creates enforceable rights and obligations. Enforceability of the rights and obligations in a contract is a matter of law. Contracts can be written, oral or implied by an entity’s customary business practices...

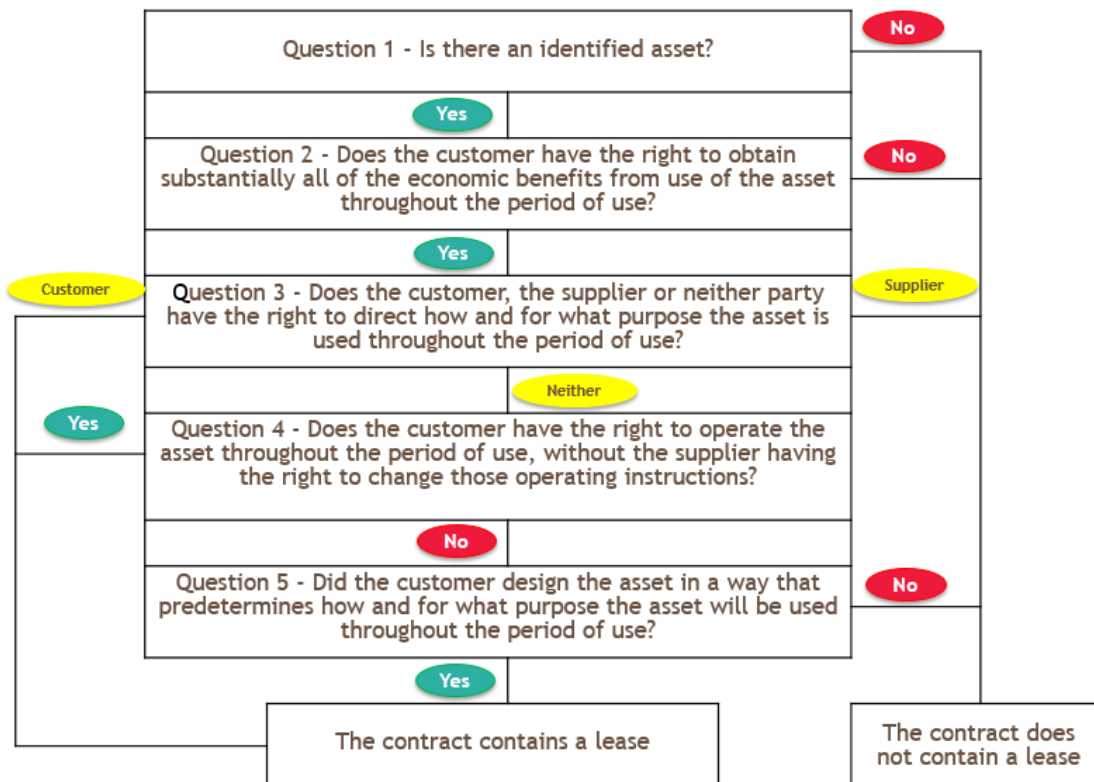
The Rural Fire District Service Agreement contains a number of features of a contract as defined in AASB 15, including:

- It provides the parties to the Agreement (the Councils and the Commissioner of the NSW Rural Fire Service) with various rights and obligations under the Agreement, and
- It is made under section 12A of the Act and, consequently, creates enforceable rights and obligations pursuant to section 12A(3) of the Act.

AASB 16 paragraphs B9-B31 provide further guidance to assist entities in determining whether a contract is, or contains, a lease. Consistent with the definition of a lease, paragraphs B9-B31 clarify that the right to use the underlying asset means the entity has the right to control the use of an identified asset, and this is taken to mean that:

- The underlying asset is either explicitly specified in the contract or is implicitly specified at the time the asset is made available to the customer
- The entity has the right to obtain substantially all of the economic benefits from use of the identified asset, and
- The entity has the right to direct the use of the identified asset.

AASB 16 paragraph B31 provides the following tree diagram to explain how these concepts are interrelated in the determination of whether a contract is, or contains, a lease.



Identified asset

Paragraph B13 of AASB 16 states that:

An asset is typically identified by being explicitly specified in a contract. However, an asset can also be identified by being implicitly specified at the time that the asset is made available for use by the customer.

However, paragraph B14 of AASB 16 clarifies that:

Even if an asset is specified, a customer does not have the right to use an identified asset if the supplier has the substantive right to substitute the asset throughout the period of use. A supplier's right to substitute an asset is substantive only if both of the following conditions exist:

- the supplier has the practical ability to substitute alternative assets throughout the period of use (for example, the customer cannot prevent the supplier from substituting the asset and alternative assets are readily available to the supplier or could be sourced by the supplier within a reasonable period of time); and*
- the supplier would benefit economically from the exercise of its right to substitute the asset (ie the economic benefits associated with substituting the asset are expected to exceed the costs associated with substituting the asset).*

Consistent with paragraph B13 of AASB 16, under the Act the Commissioner of the NSW Rural Fire Service is entitled to, with the concurrence of the relevant council, use any rural fire fighting equipment that is vested in the council that is not reasonably required by the council to deal with incidents in the area of the council or incidents outside the area. In addition, under the Rural Fire District Service Agreement the Commissioner of the NSW Rural Fire Service is:

- Entitled to use the Fire Fighting Apparatus, comprising 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 that is owned by or vested in the Leeton Shire Council, including the fire tankers listed in Schedule 4 of the Rural Fire District Service Agreement, and
- Entitled to occupy the Premises, being land and buildings or parts of land and buildings specified in Schedule 2 of the Agreement.

Accordingly, collectively under the Act and the Rural Fire District Service Agreement, all rural fire fighting equipment and Premises that are vested in or controlled by the Council are either explicitly identified or implicitly specified in the context of the arrangement as being available for the exclusive use by the Commissioner of the NSW Rural Fire Service.

It is relevant to note also that paragraph B17 of AASB 16 states that:

If the asset is located at the customer's premises or elsewhere, the costs associated with substitution are generally higher than when located at the supplier's premises and, therefore, are more likely to exceed the benefits associated with substituting the asset.

From discussions with members of the Leeton Shire Council, we understand that the rural fire fighting equipment is either located within the Premises made available to the Commissioner of the NSW Fire Service or on other properties controlled by the Commissioner, and therefore is inaccessible to the members of the Leeton Shire Council and their representatives.

Right to obtain economic benefits from use

Paragraph B21 of AASB 16 states that:

To control the use of an identified asset, a customer is required to have the right to obtain substantially all of the economic benefits from use of the asset throughout the period of use (for example, by having exclusive use of the asset throughout that period). A customer can obtain economic benefits from use of an asset directly or indirectly in many ways, such as by using, holding or sub-leasing the asset. The economic benefits from use of an asset include its primary output and by-products (including potential cash flows derived from these items), and other economic benefits from using the asset that could be realised from a commercial transaction with a third party.

As noted above, the Commissioner of the NSW Fire Service has effectively exclusive access to and use of:

- All rural fire fighting equipment vested in the Leeton Shire Council, and
- All Premises identified in the Fire Service Agreement.

In addition, as noted in the Background section:

- Under the Rural Fire District Service Agreement, the Commissioner of the NSW Fire Service is obliged to maintain the rural fire fighting equipment vested in the Leeton Shire Council on behalf of the Council in accordance with applicable Service Standards, and
- the Rural Fire District Service Agreement has no fixed end date.

Accordingly, for the period of the Fire Service Agreement (which we note has no fixed end date), the Commissioner of the NSW Fire Service has the right to obtain substantially all of the economic benefits from the use of the rural fire fighting equipment vested in the Leeton Shire Council, and from the Premises identified in the Rural Fire Services Agreement.

Right to direct the use

Paragraph B24 of AASB 16 states that:

A customer has the right to direct the use of an identified asset throughout the period of use only if either:

- (a) *the customer has the right to direct how and for what purpose the asset is used throughout the period of use (as described in paragraphs B25-B30); or*
- (b) *the relevant decisions about how and for what purpose the asset is used are predetermined and:*
 - (i) *the customer has the right to operate the asset (or to direct others to operate the asset in a manner that it determines) throughout the period of use, without the supplier having the right to change those operating instructions; or*
 - (ii) *the customer designed the asset (or specific aspects of the asset) in a way that predetermines how and for what purpose the asset will be used throughout the period of use.*

In addition, paragraphs B25 and B26 of AASB 16 clarify with respect to a customer's right to direct the use of an identified asset:

A customer has the right to direct how and for what purpose the asset is used if, within the scope of its right of use defined in the contract, it can change how and for what purpose the asset is used throughout the period of use. In making this assessment, an entity considers the decision-making rights that are most relevant to changing how and for what purpose the asset is used throughout the period of use. Decision-making rights are relevant when they affect the economic benefits to be derived from use. The decision-making rights that are most relevant are likely to be different for different contracts, depending on the nature of the asset and the terms and conditions of the contract.

Examples of decision-making rights that, depending on the circumstances, grant the right to change how and for what purpose the asset is used, within the defined scope of the customer's right of use, include:

- (a) *rights to change the type of output that is produced by the asset (for example, to decide whether to use a shipping container to transport goods or for storage, or to decide upon the mix of products sold from retail space);*
- (b) *rights to change when the output is produced (for example, to decide when an item of machinery or a power plant will be used);*

- (c) *rights to change where the output is produced (for example, to decide upon the destination of a truck or a ship, or to decide where an item of equipment is used); and*
- (d) *rights to change whether the output is produced, and the quantity of that output (for example, to decide whether to produce energy from a power plant and how much energy to produce from that power plant).*

Consistent with the notion that the Commissioner of the NSW Rural Fire Service has the right to direct the use of the rural fire fighting equipment vested in the Leeton Shire Council and the Premises, we note that:

- Under the Fire Service Agreement, the Commissioner is not restricted to using only those items of rural fire fighting equipment that are vested in the Leeton Shire Council to provide rural fire services to areas within the Leeton Shire Council boundary. Conversely, the Commissioner is not prevented from using those items of rural fire fighting equipment that are vested in other councils to the Fire Service Agreement to provide rural fire services to the Leeton Shire Council, and
- Section 119(6) of the Act provides that, with the concurrence of the Leeton Shire Council, the Commissioner of the NSW Rural Fire Service could use rural fire fighting equipment vested in the Leeton Shire Council to deal with incidents outside of the area Leeton Shire Council.

Consistent with the definition of a lease and the associated relevant guidance in AASB 16, the Rural Fire District Service Agreement comprises a lease by the Leeton Shire Council to the Commissioner.

Identification of Leeton Shire Council as the lessor

Appendix A to AASB 16 defines a lessor as:

An entity that provides the right to use an underlying asset for a period of time in exchange for consideration.

While the Rural Fire District Service Agreement does not explicitly require the Commissioner of the NSW Fire Service to pay consideration for the use of the rural fire fighting equipment and Premises, we note that Agreement comprises a number of additional components, including:

- The Commissioner of the NSW Fire Service assuming responsibility for various Councils obligations under the Act, and
- The Councils providing administrative, accounting and maintenance services.

Accordingly, the absence of any explicit requirement for the Commissioner to make lease payments to Council arguably reflects both parties providing valuable services ‘in kind’ (rather than in a monetary form) to the counterparty. Consequently, we do not consider the absence of an explicit fee payable by the Commissioner to the Councils for the use of the rural fire fighting equipment and Premises to preclude the Leeton Shire Council being a lessor under the Agreement.

Classification by Leeton Shire Council of the Rural Fire District Service Agreement as an operating and/or finance lease

As Leeton Shire Council is the lessor, pursuant to paragraph 61 of AASB 16 the Council must assess whether the lease meets the definition of an operating lease or a finance lease, which are defined in Appendix A of AASB 16 as follows:

operating lease - A lease that does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

finance lease - A lease that transfers substantially all the risks and rewards incidental to ownership of an underlying asset.

To facilitate the consistent application of these definitions by lessors, paragraphs 62-65 of AASB 16 provide the following guidance.

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. Examples of situations that individually or in combination would normally lead to a lease being classified as a finance lease are:

- (a) the lease transfers ownership of the underlying asset to the lessee by the end of the lease term;*
- (b) the lessee has the option to purchase the underlying asset at a price that is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception date, that the option will be exercised;*
- (c) the lease term is for the major part of the economic life of the underlying asset even if title is not transferred;*
- (d) at the inception date, the present value of the lease payments amounts to at least substantially all of the fair value of the underlying asset; and*
- (e) the underlying asset is of such a specialised nature that only the lessee can use it without major modifications.*

Indicators of situations that individually or in combination could also lead to a lease being classified as a finance lease are:

- (a) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;*
- (b) gains or losses from the fluctuation in the fair value of the residual accrue to the lessee (for example, in the form of a rent rebate equaling most of the sales proceeds at the end of the lease); and*
- (c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.*

The examples and indicators in paragraphs 63-64 are not always conclusive. If it is clear from other features that the lease does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset, the lease is classified as an operating lease. For example, this may

be the case if ownership of the underlying asset transfers at the end of the lease for a variable payment equal to its then fair value, or if there are variable lease payments, as a result of which the lessor does not transfer substantially all such risks and rewards.

As many of the factors identified in paragraphs 63 and 64 of AASB 16 are not applicable or relevant to the Leeton Shire Council or the Rural Fire District Service Agreement, the primary factor the Leeton Shire Council must consider in determining whether the Rural Fire District Service Agreement gives rise to an operating lease and/or a finance lease in respect to both the rural fire fighting equipment and the Premises is whether *the lease term is for the major part of the economic life of the underlying asset.*

The phrase 'lease term' is defined in Appendix A of AASB 16 as:

The non-cancellable period for which a lessee has the right to use an underlying asset, together with both:

- (a) periods covered by an option to extend the lease if the lessee is reasonably certain to exercise that option; and*
- (b) periods covered by an option to terminate the lease if the lessee is reasonably certain not to exercise that option*

As noted above, the Rural Fire District Service Agreement

- Has no fixed end date, and
- Can be terminated by either the Councils or the Commissioner giving notice to the other party or parties.

Under AASB 16, such leases are often described as 'cancellable leases'.

Paragraph B34 of AASB 16 provides the following guidance in respect to the determination of a lease term:

In determining the lease term and assessing the length of the non-cancellable period of a lease, an entity shall apply the definition of a contract and determine the period for which the contract is enforceable. A lease is no longer enforceable when the lessee and the lessor each has the right to terminate the lease without permission from the other party with no more than an insignificant penalty.

In November 2019, the IASB's Interpretation Committee ('IFRIC') clarified how the guidance in paragraph B34 of AASB 16 should be applied in the context of a cancellable lease. In its deliberations, the IFRIC noted that, consistent with paragraph BC156 of the Basis for Conclusions to IFRS 16, the lease term should reflect an entity's reasonable expectation of the period during which the underlying asset will be used. The IFRIC also noted that, in applying the guidance in paragraph B34 of AASB 16 and determining the enforceable period of the lease, an entity considers:

- The broader economics of the contract, and not only contractual termination payments. For example, if either party has an economic incentive not to terminate the lease such that it would incur a penalty on termination that is more than insignificant, the contract is enforceable beyond the date on which the contract can be terminated, and

- Whether each of the parties has the right to terminate the lease without permission from the other party with no more than an insignificant penalty. Applying paragraph B34, a lease is no longer enforceable only when both parties have such a right. Consequently, if only one party has the right to terminate the lease without permission from the other party with no more than an insignificant penalty, the contract is enforceable beyond the date on which the contract can be terminated by that party.²

Consistent with these observations, we note that both the Leeton Shire Council and the Commissioner of the NSW Rural Fire Service have economic incentives not to terminate the Rural Fire District Service Agreement because both are likely experience more than an insignificant penalty if that was to occur. For instance:

- In the case of the Commissioner of the NSW Fire Service, termination of the Agreement would mean the NSW Rural Fire Service's access to rural fire fighting equipment vested in the Leeton Shire Council would be limited to the circumstances anticipated under section 119(6) of the Act, in which case the Commissioner would only be able to access the rural fire fighting equipment:
 - When that equipment is not reasonably required by the Council, and
 - With the concurrence of the Council, and
- In the case of the Leeton Shire Council, termination of the Agreement would mean all of the Council's responsibilities under the Act assumed by the Commissioner under the Agreement (as detailed in Appendix A to this advice) would be reassumed by the Council, including undertaking the day-to-day management of rural fire services within the Council boundaries.

As the obligations are prescribed by the Act, termination of the Agreement would mean that the penalties imposed on both parties as a consequence of terminating the Agreement would be ongoing, until such time as the Act was amended to relieve either or both of the parties of their respective legislative obligations. On this basis, we consider that:

- Consistent with the guidance in paragraph B34 of AASB 16, the lease term of the Rural Fire District Service Agreement should be considered to be indefinite, and
- Therefore, the leases provided by the Leeton Shire Council under the Rural Fire District Service Agreement should be classified as finance leases under AASB 16.

² IFRIC Update (November 2019) (<https://www.ifrs.org/news-and-events/updates/ifric/2019/ifric-update-november-2019/>)

APPENDIX B

Summary of Selection Provisions from the *Rural Fire Services Act 1997* (NSW) and the *Rural Fires Regulations 2013* (NSW)

<i>Rural Fire Services Act 1997</i> (NSW)	
Section Number	Requirements
7	<p>(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:</p> <ul style="list-style-type: none"> (a) by the local authority for the area for which the district is constituted under section 6, or (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 (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. <p>(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.</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>
12A	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) The ranks of members of the Service are to be determined by the Commissioner.</p> <p>(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.</p>

	(6) This section is subject to the other provisions of this Act and the regulations.
37(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.
60(2)	The Bush Fire Co-ordinating Committee may, with the consent of a public authority: (a) vary or revoke any provision of an approved bush fire management plan imposing a requirement on the authority, or (b) vary an approved bush fire management plan so as to impose a requirement on the authority.
60(6)	A bush fire management plan communicated to a public authority to which it relates is to be adopted by that authority and, as far as practicable, carried into effect by the authority in the circumstances indicated by the plan.
62	A bush fire management plan or draft bush fire management plan must be available for public inspection at, and be able to be obtained free of charge from, the office of the local authority for the area to which it relates during ordinary office hours.
63	(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. (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. (3) A public authority or owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section. (4) The Bush Fire Co-ordinating Committee may advise a person on whom a duty is imposed by this section of any steps (whether or not included in a bush fire risk management plan) that are necessary for the proper performance of the duty.
64	If a fire (not being a fire or part of a fire lit under the authority of this Act or any other Act) is burning on any land at any time during a bush fire danger period applicable to the land the occupier of the land must: (a) immediately on becoming aware of the fire and whether the occupier has lit or caused the fire to be lit or not, take all possible steps to extinguish the fire, and (b) if the occupier is unable without assistance to extinguish the fire and any practicable means of communication are available, ensure that the fire is reported immediately to the 000 emergency telephone number.
65	(1) In this section: " authorised person ", in relation to land, means: (a) a hazard management officer, or

	<p>(b) any officer of a rural fire brigade for the time being nominated for the purposes of this section by the Commissioner, or</p> <p>(c) any person for the time being nominated for the purposes of this section by the Bush Fire Co-ordinating Committee, or</p> <p>(d) a person exercising functions under a bush fire risk management plan, or</p> <p>(e) an authorised officer of a fire fighting authority.</p> <p>(2) An authorised person may, with the permission of the fire fighting authority or other authority responsible for unoccupied Crown land or managed land or a person nominated by the authority to give such permission, enter the land and carry out bush fire hazard reduction work with the assistance of such other persons as the authorised person considers to be necessary for the purpose.</p> <p>(3) The authority responsible for unoccupied Crown land or managed land is to be taken to have given the permission under this section to the extent necessary to give effect to a bush fire risk management plan.</p> <p>(4) If permission under this section is given subject to conditions, the conditions must be complied with.</p>
74(1)	Each public authority that is responsible for managed land must report to the Commissioner not later than 1 month after the end of the financial year on its activities to reduce bush fire hazards on the managed land during the preceding financial year.
74(2)(a)&(b)	<p>(2) Any (bush fire hazard report provided to the Commissioner) must include:</p> <p>(a) details of the extent of implementation of any scheme for the reduction of bush fire hazards set out in a bush fire risk management plan that applies to the land, and</p> <p>(b) information about such other matters (if any) as are prescribed by the regulations.</p>
74C(3)	(3) A local authority must refer any complaint made to it under this Division to the Commissioner within 14 days of receipt of the complaint.
76	<p>(1) An adjoining owner who has cleared land on the adjoining owner's side of a dividing fence of all combustible matter for a distance of 6 metres from the fence may, by notice in writing, require the adjoining owner on the other side of the fence to repair or restore the dividing fence if it is damaged or destroyed by a bush fire caused by the failure of the other adjoining owner to clear the adjoining owner's side of the fence of all combustible matter for the same distance.</p> <p>(2) The adjoining owner to whom a notice is given must repair or restore the dividing fence at that adjoining owner's expense:</p> <p>(a) within one month of being given the notice, or</p> <p>(b) within such longer period as the Local Court may allow on application by the adjoining owner to the Local Court.</p> <p>(3) The dividing fence is to be restored to a reasonable standard, having regard to its state before damage or destruction.</p> <p>(4) The adjoining owner may apply to the Local Court for an order authorising the adjoining owner to repair or restore the fence if:</p>

	<p>(a) the adjoining owner to whom a notice is given fails to repair or restore the fence in the required time, or</p> <p>(b) the adjoining owner has not, after making reasonable inquiries, been able to ascertain the whereabouts of the adjoining owner for the purposes of serving the notice.</p> <p>(5) An adjoining owner who repairs or restores a fence under this section (including the owner's employees or agents) may, at any reasonable time, enter on the land adjoining the dividing fence for the purpose of carrying out the work.</p>
77	<p>(1) An adjoining owner who repairs or restores a fence in accordance with an order under section 76 (4) is entitled to recover from the other adjoining owner the cost of carrying out the work.</p> <p>(2) Any money that an adjoining owner is required or liable to pay under this section may be recovered as a debt in a court of competent jurisdiction.</p> <p>(3) In any proceedings for the recovery of money the certificate of the Local Court as to the making and content of an order made by it under section 76 is evidence of the matters set out in the certificate.</p>
79	<p>An adjoining owner who has cleared land in the manner referred to in section 76 may enter the land of an adjoining owner who has failed to so clear that adjoining owner's land and take all necessary steps to extinguish any unattended fire that at its closest point has approached a distance that unreasonably endangers or threatens the adjoining owner's land and any fence or property on it.</p>
83(1)	<p>(1) The Commissioner must, before making a declaration under section 82 that is to have effect only for the bush fire danger period occurring when the declaration is made, consult with and take into account any recommendations made:</p> <p>(a) by the local authority for any area to which the declaration relates, and</p> <p>(b) by any fire fighting authority exercising functions in the rural fire district or fire district constituted for the area.</p>
95	<p>(1) Nothing in this Division requires a public authority or a person acting under the direction of a public authority to hold a permit to light a fire.</p> <p>(2) However, a public authority:</p> <p>(a) must not light a fire in any area of an authority (or part of such an area) if it has been notified that a determination referred to in section 93 (b) has been made in respect of the area, and</p> <p>(b) must not light a fire in any rural fire district unless the fire control officer for the district has been advised that it is to be lit, and</p> <p>(c) must not light a fire on land in any fire district unless the officer in charge of the fire station that is nearest to the land has been advised that it is to be lit.</p>
100E(2)(b) & (c)	<p>(2) The "certifying authority" for a bush fire hazard reduction certificate in respect of bush fire hazard reduction work to be carried out:</p> <p>...</p>

	<p>(b) on any land by a local authority—is the local authority for the area in which the land is situated,</p> <p>(c) on managed land or unoccupied Crown land by a public authority—is the public authority responsible for the land.</p>
100G	<p>(1) Before a certifying authority carries out any bush fire hazard reduction work on land, the certifying authority must certify:</p> <p>(a) that a bush fire risk management plan applies to the land, and</p> <p>(b) that the certifying authority has taken into consideration the provisions of any bush fire code applying to the land and determined which of them should be complied with in carrying out the work and whether any conditions should be imposed having regard to any provisions of that code, and</p> <p>(c) if the certifying authority is a local authority or a public authority, that the notice will be given to the fire control officer for the district in which the land is situated before the work is carried out and to any other person prescribed by the regulations.</p> <p>(1A) In the case of a single bush fire hazard reduction certificate certified by a certifying authority in respect of several parcels of adjoining land, as referred to in section 100E (3), a reference in subsection (1) to the certifying authority carrying out bush fire hazard reduction work on land is taken to include a reference to any authority or person carrying out the work on any of the land.</p> <p>(2) A bush fire hazard reduction certificate certified by a certifying authority must:</p> <p>(a) specify the provisions of any bush fire code applying to the land that the certifying authority has determined should be complied with in carrying out the work, and</p> <p>(b) specify any conditions that have been imposed by the certifying authority having regard to that bush fire code, and</p> <p>(c) specify the period for which the bush fire hazard reduction certificate operates.</p>
100H	<p>(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of section 100F or 100G, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.</p> <p>(2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.</p> <p>(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.</p>
104	<p>To enable the Minister to prepare the rural fire brigade funding target, a relevant council, rural fire brigade or fire control officer must, at the times and in the way required by the Commissioner, give the Commissioner any of the following information required by the Commissioner:</p>

	<ul style="list-style-type: none"> (a) information relating to the rural fire brigades or other fire fighting personnel, (b) information relating to the fire fighting apparatus of the rural fire brigades or other fire fighting personnel, (c) information about any other matter relating to the organisation of the rural fire brigades or other fire fighting personnel.
109	A relevant council is to pay to the State Revenue Commissioner a rural fire brigade contribution for each financial year.
110	<ul style="list-style-type: none"> (1) The amount of the rural fire brigade contribution is the amount determined by the Minister for each relevant council. (2) The Minister is to determine the contribution payable by a relevant council on the basis of the rural fire brigade funding target for each rural fire district. (3) The contribution payable by relevant councils for each rural fire district is 11.7% of the rural fire brigade funding target applicable to the rural fire district. (4) The contribution to be paid for a rural fire district is to be paid by the relevant council or councils of an area the whole or part of which is included in the rural fire district. (5) In determining the contribution payable by a relevant council, the Minister may apportion the rural fire brigade funding target for rural fire districts between councils of an area, the whole or part of which are included in that district, in the way the Minister thinks fit. (6) A relevant council or an officer of a relevant council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's rural fire brigade contribution.
119 other than 119(5)	<ul style="list-style-type: none"> (1) In this section: "fire fighting equipment" means fire fighting apparatus, buildings, water storage towers or lookout towers. (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. (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. (4) There is to be paid to the credit of the Fund: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) an amount equal to the proceeds of sale of any such equipment, and (ii) any amount recovered (whether under a policy of insurance, from the Bush Fire Fighters Compensation Fund under the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i>, or otherwise) in respect of the damage to, or destruction or loss of, any such equipment, and

	<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>...</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>
120	<p>(1) Any of the following purposes are purposes to which the consolidated fund of a council may be applied under section 409 of the <i>Local Government Act 1993</i>:</p> <p>(a) the purchase, distribution, maintenance and storage of fire fighting apparatus for the prevention, mitigation and suppression of bush and other fires,</p> <p>(b) the organising of rural fire brigades and such matters as are relevant to doing so, including the establishment of fire stations and fire control centres,</p> <p>(c) the establishment and maintenance of fire breaks,</p> <p>(d) the removal or destruction of combustible matter,</p> <p>(e) the taking of measures generally for the prevention, mitigation or suppression of bush fires.</p> <p>(2) For the purposes of section 495 of the <i>Local Government Act 1993</i>, any work relating to the prevention, mitigation and suppression of bush and other fires is work in respect of which a council may make a special rate.</p>
126	<p>Any person or body on which a function is conferred by or under this Act must furnish such information (and in such form) relating to the exercise of that function or the administration of this Act as the Commissioner or Bush Fire Co-ordinating Committee may reasonably require.</p>

<i>Rural Fires Regulations 2013 (NSW)</i>	
Regulation Number	Requirements
14(a)	<p>Unless the Bush Fire Co-ordinating Committee determines otherwise, the following persons are to be invited to become members of a Bush Fire Management Committee—</p> <p>(a) a person nominated by each local authority whose area comprises land in the Bush Fire Management Committee's area, being (in the case of a local authority that is a council) the Mayor, or a councillor or senior representative of the council,</p>
37	<p>For the purposes of sections 100F(6)(c) and 100G(1)(c) of the Act, the officer in charge of the fire station that is nearest to the land on which bush fire hazard reduction work is to be carried out is prescribed as a person to whom notice of bush fire hazard reduction work must be given but only in relation to work carried out on land in a fire district.</p>

DISCLAIMER

This advice is prepared solely for the internal use of the Leeton Shire Council and is not intended to, and should not, be used or relied upon by any other person. Accordingly, neither BDO, nor any employee of BDO, undertakes responsibility arising in any way whatsoever to any person other than the Leeton Shire Council in respect of this advice.

This advice has been prepared solely for the purpose of assisting you in your evaluation of the appropriate financial reporting requirements discussed in this letter. The advice is not to be used for any other purpose other than those specified herein. No extracts or quotations can be taken from it without BDO's express written approval.

Responsibility for the determination of the appropriate financial reporting requirements for Leeton Shire Council rests with the preparers of the financial statements, including the entity's councillors and management, paying particular regard to any facts that they are aware of that differ from those set out in this advice, especially the possibility of other contracts or arrangements that may affect the overall substance of the transaction.

Our views expressed in this letter are based on the information provided to us by Leeton Shire Council, as outlined above, and our interpretation of relevant Australian Accounting Standards and other financial reporting requirements. If the facts, circumstances, assumptions or other information outlined prove to be different from those described above, our advice may change. Accordingly, we reserve the right amend this advice in these circumstances.

Consistent with the date of the transaction subject to this advice, our conclusions are based on our interpretation of Australian Accounting Standards and Interpretations applicable to the annual reporting period ending 30 June 2021. As you would be aware, new and revised Accounting Standards and Interpretations have been issued since this time. We are not under any obligation in any circumstances to update our advice for any changes in Australian Accounting Standards or Interpretations subsequent to 30 June 2021.

The interpretation of Australian Accounting Standards and Interpretations involves the exercise of professional judgement. In particular, many issues relating to Australian Accounting Standards presently remain subject to professional interpretation in the absence of authoritative announcements. Accordingly, the views expressed in this letter may be different to the views of others. We are not under any obligation to update our advice for changes in our interpretation of Australian Accounting Standards.

This advice has not addressed any tax, regulatory, or other matters other than the specific financial reporting matters described above.