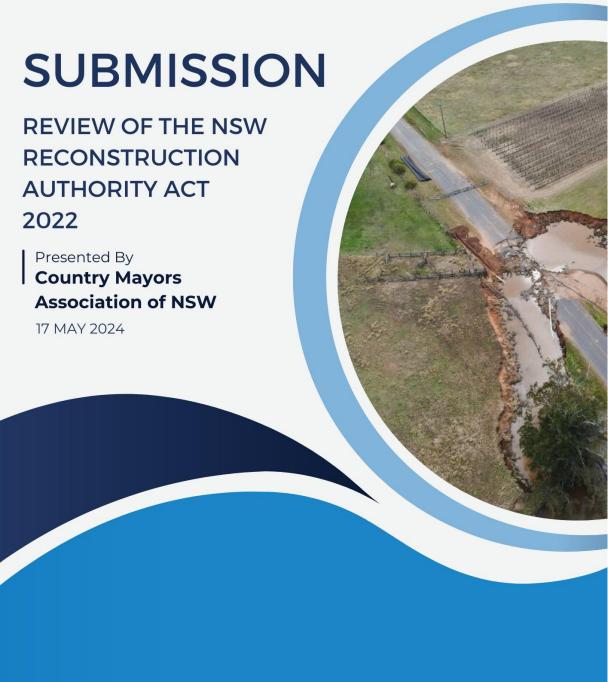
REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022

Organisation: Country Mayors of NSW

Date Received: 17 May 2024





TERMS OF REFERENCE

The functions of the Joint Select Committee on the NSW Reconstruction Authority under section 93 of the NSW Reconstruction Authority Act 2022 (the 'Act') includes reviewing the Act to determine whether—

- (a) the policy objectives of the Act remain valid, and
- (b) the terms of the Act remain appropriate for securing the objectives. The Committee will report by 28 November 2024.

Primary object

The primary object of this Act is to promote community resilience to the impact of disasters in New South Wales through—

- (a) disaster prevention, preparedness and adaptation, and
- (b) recovery and reconstruction following disasters.

The primary object is to be achieved by:

- (a) establishing the NSW Reconstruction Authority to facilitate community resilience to the impact of disasters in New South Wales through prevention, preparedness and adaptation, and
- (b) providing for the functions and powers of the NSW Reconstruction Authority, including functions and powers to—
- (i) facilitate the protection, recovery and reconstruction of affected communities, and
- (ii) mitigate against the impact of potential disasters on communities, and
- (iii) improve the resilience and adaptability of affected communities in relation to potential disasters, including, for example, by the betterment of affected communities, and
- (c) providing for the exercise of functions by the chief executive officer of the NSW Reconstruction Authority, subject to the Minister's control and direction, including ensuring the Authority exercises its functions effectively and efficiently.

In this Act, disaster includes the following:

- (a) natural disasters, including, for example, bushfires, coastal hazards, cyclones, earthquakes, floods, heatwaves, landslides, severe thunderstorms, tornadoes and tsunamis,
- (b) hazards caused by natural disasters including air pollution, water and soil contamination and water insecurity,
- (c) other emergencies in relation to which the Minister has requested assistance from the Authority,
- (d) other emergencies in relation to which—
- (i) a public authority, including a Minister other than the Minister administering this Act, has requested assistance from the Authority, and
- (ii) the Authority has agreed to provide assistance,
- (e) events, incidents or matters, or classes of events, incidents or matters, prescribed by the regulations.

The Country Mayors Association of New South Wales and its role in recovery and resilience

The Country Mayors Association of NSW (CMA) represents 89 Local Councils throughout non-metropolitan NSW. The Association exists because of city-country inequities in Local Government. On a per capita basis, Country Councils have far higher expense to income ratios than their city counterparts and fewer revenue growth opportunities. Country Mayors and their Councils are much more connected to their communities than State and Federal Governments and are a vital employer in the regions. They are the front line for government service delivery in regional communities, as seen since 2019, when the NSW Government partnered with Local Government to recover from a barrage of successive, record-breaking disasters across the State.

Country Mayors and their councillors give a great deal for their constituencies and their staff are often underappreciated dedicated professionals.

Despite the clearly important roles of Local Government in NSW, Country Mayors are under ever-mounting pressure, due to financial sustainability barriers. This must be appreciated when considering disaster recovery capacities because most Country Councils are so financially committed that the additional cost challenges of reconstruction after a disaster cannot be borne by them. Further, delays in funding exacerbates already stressed financial positions. Major disasters must trigger more efficient recovery funding; presently there has been a serious lack of urgency in the delivery from NSW Government funds to the Country Councils for disaster recovery works.

In most cases, Country Councils are the most efficient and effective reconstruction operator. They know the infrastructure needs, as well as macro and micro challenges for their LGAs. They are best positioned for identifying and prioritising recovery projects. Their work crews are also generally the best, cost-effective options. Insights from CMA Member Councils have described a consequence of slow, sporadic disaster recovery claim payments from the NSW Government is that where skilled labour and contractors in remote areas are extremely short in supply, if a Council is not able to have them go from one project to the next, they risk losing them to other locations and struggling to get workers back on the job of restoring infrastructure in a timely fashion.

If State required council plans are to be adhered to, if councils are to retain stressed staff in challenging recruitment areas, if infrastructure is to be maintained or renewed as required and if councils are to maintain expected levels of service delivery and solvency, funding for non-metropolitan councils must be increased and made more consistent. It is also imperative that funding to Country NSW Councils be delivered through more streamlined, efficient processes. It is contradictory when the complexity and demands of funding application requirements are beyond the capacities of a small rural Council and they are forced to engage costly consultants. Councils also needlessly spend money when the assessment of grants they expect to receive takes an unpredictably long time – this has been the case with disaster recovery funding to date.

Disaster Funding Claims – Timeframes of Payments

Up until 2019, regional NSW was economically and spiritually depressed by the worst drought on record. Since then, record breaking natural disasters have included bushfires, floods and severe storms. Country NSW Councils are on the front line of disaster recovery. The system of partnering with NSW Government Departments (as funding bodies) has been effective but not efficient and delays in processing claims from country Councils has had compounding impacts, financially and in terms of the recovery process. CMA data collated from member Councils in early 2024 revealed that almost two-thirds of claims/applications were still pending (from submission periods dating back to January 2021). [see attached disaster funding report].

Feedback from member councils described the Disaster Recovery Funding Arrangements (DRFA) as a crucial funding mechanism for Local Government in the aftermath of extreme events. However, the guidelines are interpreted to exclude water and sewer assets damaged in disasters.

Clearly, the cost of repairing or potentially replacing such vital infrastructure as water treatment plants damaged or destroyed during these extreme events is well beyond the means of most country councils. By way of example, one western NSW Council had \$19mil. of damage to water supply assets in November 2022. Without direct government intervention, the Council has not had a suitable funding mechanism to restore the infrastructure. While the large municipal water utilities may be able to self-fund these repairs, the cost on country councils is completely unaffordable. Why such essential infrastructure does not satisfy funding requirements should be a matter for the Reconstruction Authority to address. Such limitations to vital disaster recovery funding is a considerable barrier to financial sustainability for a country NSW Council.

Recommendation

The CMA recommends that minor wording in the Act and the Object of the Act be amended to include terms that reflect the need for expediency. This could, for example, be specified such that legislation requires disaster funding to Local Government be paid within a maximum of 28 days or if there is an effective preliminary assessment for triage that could be for urgent life impacting/isolating matters, while others could have a maximum of three or four months. There must be some urgency in disaster responses and the Country Mayors Association of NSW has shown just how much it is lacking. Enshrining that urgency in the objectives of the NSW Reconstruction Authority Act would be a welcomed improvement.

The immediate aftermath of major disasters obviously receives an emergency response. NSW Government disaster recovery funding to Country NSW Councils has demonstrated a lack of urgency in reconstruction efforts. Local roads remain cut or unsafe and people do not have access to housing or adequate potable water supply might not be available because of processing bottlenecks.

The need for appropriate Ministerial responsibility

The NSW Reconstruction Authority is responsible to the Minister for Emergency Services and the Minister for Planning and Public Spaces.

The Country Mayor Mayors Association of NSW recommends that the Act be amended such that the Authority is also responsible to the Transport and Roads Minister. As experienced by CMA member councils in recent years, road reconstruction and improvements are key to recovering from major disasters and directly impact resilience. Emergency services are generally only on hand during and immediately after a major disaster, not to repair but to make things safe. Transport and roads are more directly linked to the lengthy reconstruction and recovery projects seen in NSW in recent years.

Improving resilience alongside recovery works

Both supporting recovery and increasing resilience are core Objectives of the Reconstruction Authority. However, these do not occur concurrently, which would be the optimally efficient approach. Transport for NSW funding guidelines for disaster recovery claims are so rigid about not improving and only restoring infrastructure that numerous CMA survey respondents reported claim refusals due to a lack of pre-disaster evidence to ensure the infrastructure was not being improved upon. For the sake of efficiency, as per the Act, their must be some practical mechanism for enabling improvement of infrastructure as part of the recovery process. Where disaster impacts have shown infrastructure and thus, resilience to be inadequate, it is a reconstruction fail to restore to pre-disaster condition.



Country Mayors Association of NSW Report:

Natural disaster funding efficiency improvements needed

2024

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As a delivery partner in the NSW Government's disaster recovery efforts, the State's country Councils have achieved extraordinary outcomes, in addition to regular council responsibilities and have appreciated the financial support of the State Government. New data from the Country Mayors Association of NSW (CMA) shows that most disaster recovery projects are being funded but have been taking far too long. Projects to repair infrastructure damaged over the past three to four years have been in limbo. Councils have not been able to judge how long the process will take. Inefficient processing of disaster funding claims is adding to the challenges of recovering from natural disasters in regional NSW for already stretched country Councils. After four years of disasters to 2024, two-thirds of funding applications are still yet to be paid by the NSW Government.

The CMA is a bipartisan organisation, representing 88 regional NSW Councils. Since 2020, Councils have been on the front line of response and recovery, from one natural disaster to another. Drought, bushfires, floods and severe storm and tornados set new records, from devastation to dollars.

Through January and February 2024, the CMA surveyed member councils regarding their experiences with disaster funding. Results have come in from right across the State, producing some clear common findings and recommendations. Facts and figures have been supplemented by anecdotal evidence, in the form of first-hand Local Government experience with the NSW disaster recovery funding programs.

When a natural disaster is declared, that event is designated a number, under which Councils submit claims through the following funding programs:

- Essential Public Asset Restoration (EPAR), through Transport for NSW (TfNSW);
- EW Emergency Works (EW), through TfNSW;
- Immediate Reconstruction Works (IRW), through TfNSW;
- Counter Disaster, through the State Emergency Service (SES);
- Category D EPAR, through the Office of Local Government (OLG);
- Category B IRW, through Public Works.

The CMA has found that virtually all member councils have been very happy with the NSW Government's response in funding natural disaster recoveries in regional NSW. However, there has been similar accord that the response has been far too inefficient and inconsistent.

A total of 1709 disaster funding claims from 42 CMA member councils amounted to \$1,380,510,000 yet only \$467,560,000 of that has been approved and paid to Councils (just over one-quarter). Councils are not given timelines for claim processing to work with. In some cases, funding for a project has been delivered in unpredictable instalments.





Figure 1: Across 42 country NSW Councils, Less than one-third of disaster claims have been paid by the NSW Government. Most are expected to be funded but the unpredictable wait is the issue.

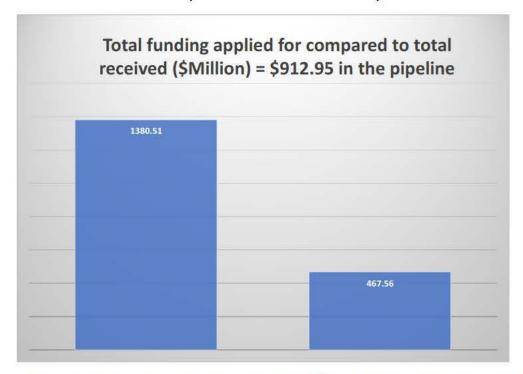
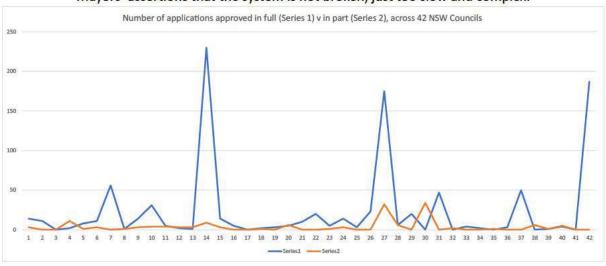


Figure 2: Far more funding claims have been paid in full than in part, quantifying Country NSW Mayors' assertions that the system is not broken, just too slow and complex.







Mayors, management and senior officers of Local Councils expressed understanding of the scale of the task of administering the funding programs and the need for due diligence. They expressed frustrated views that the NSW Government apparently does not appreciate the negative consequences of a disaster recovery grant application awaiting funding for 18 to 24 months. Some councils submitted claims in 2021 and are still waiting for a result. Others received approval for a claim but received the payment in instalments, with the timing being unpredictable and the consequence being Council cashflow impacts.

A majority of regional NSW Councils have given a thumbs up to Transport for NSW (TfNSW) staff for their communication, responsiveness and support in extremely difficult times. The frustration is with the criteria and requirements TfNSW staff must enforce.

Country Mayors have been overseeing recording-breaking disasters. All recovery projects are critically important, while some are outright emergencies. Yet the inefficiencies and demanding approaches in the NSW Government's processes shows a lack of urgency.





Figure 3. CMA research revealed that a majority of Council disaster funding claims are approved, so a (2020-24) snapshot shows how much funding is in red tape limbo.

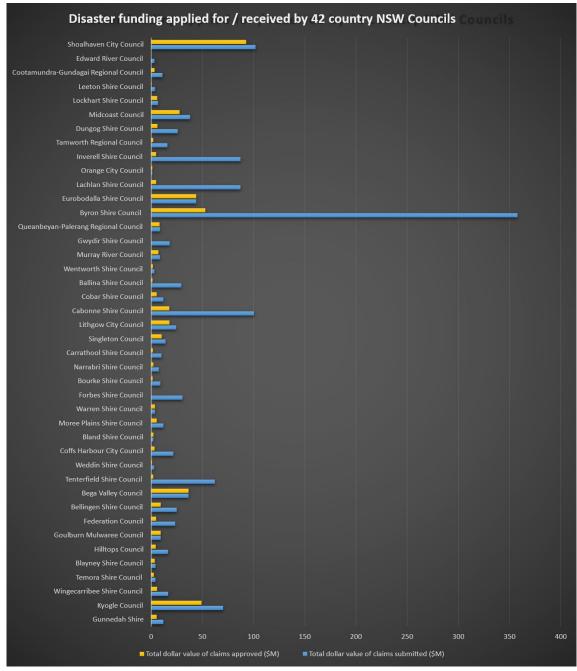
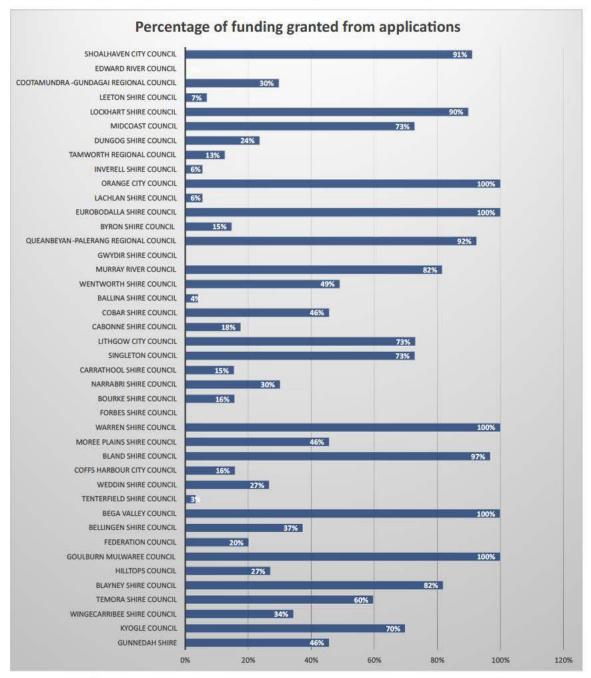






Figure 4: CMA survey data shows most Councils that responded have received less than half of their funding claims (from applications submitted January 2022 to late 2023).







The CMA survey demonstrates that the system (the processes and requirements) needs to be tweaked as a matter of urgency. Delays in payments have had major financial impacts on disaster-stricken Councils, particularly in relation to interest charges, fees and the financial position as it pertains to borrowing capacity.

A western NSW Council that suffered extensive flood damage reported that it took the Council and a contractor nine months to collate all the flood damage data and present it in an acceptable form. Partial approval was received for two priority roads. At the time this report was compiled, they were still awaiting approval for the other 11 packages of EPAR works. No approval was received for Emergency Works.

Although the primary failure in disaster funding has been the time frames involved, some Councils have been dismayed at an apparently inflexible adherence to rules, over common-sense resilience and capacity building. Disaster damaged infrastructure is being restored like-for-like, despite its demonstrated failings. Funding for disaster recovery was delayed or withheld if the project was perceived by the NSW Government to improve on the standard of the infrastructure prior to the disaster. Even though a retaining wall's collapse indicates the need for improvement to negate damage in the future, funding is limited to restoration to pre-disaster condition. Numerous country NSW Councils have encountered delays or negative outcomes from funding claims because they did not have sufficient evidence showing the condition of a road pre-disaster (for comparison). This is not feasible or even possible in the more remote Local Government Areas, with vast networks of rural roads; the vital economic arteries and community access lines severely affected by unprecedented damage in recent years.

The skilled labour shortages in regional NSW are so bad that they exacerbate the impacts funding delays on disaster recovery. Some more remote Local Councils in NSW have had to shut some crews down due to the inability of the NSW Government to provide timely approvals and these contractor crews have since left the region, seeking work and are now lost to Council's recovery effort.

Councils have also expressed concerns that their Project Management expenses are not clearly covered by existing funding programs.

Evidentiary requirements to support Councils' claims for funding have lacked real-life awareness of what a country Council's response to a natural disaster emergency entails. Some councils have been declined or had funding approvals delayed because of a lack of evidence, with one council told they needed images showing staff in the rain placing signage, directing traffic or manning road closure. Their reaction was "Unfortunately our response to the event was prioritised over capturing images as most emergency or event response tended to be during the evening/night in continuing rainfall/poor conditions in most cases, along with staff working solo due to stretched resources to respond."





It was reported that the costing for gravel patching, where the depth of gravel needed to be anywhere from 50mm to 150mm to restore the road asset, the NSW Government only approved funding for 10mm of gravel. Reductions in restoration work funding or treatment types leaves a long-term financial burden on councils. Councils know the demands on their roads and the standards required, so their local knowledge should be respected, as part of assessments for funding disaster response and recovery.







The review process has been described as slow and lacking in collaborative communication.

Country NSW Councils have reported that funding program guidelines changed during or after project delivery, adding stress to Councils (as they were not informed if or from what point changes would be retrospective). In some cases, new criteria have reportedly been applied to claims that had already been approved, changing eligibility. All Council submissions cost staff time.

Councils staff time has often gone unfunded, despite recovery projects going outside normal Council works, meaning that Councils have been forced to use contractors. Not only can the funding of Council staff in disaster responses be more cost-effective, in more remote areas contractors are lacking.

The smaller and more remote Councils have greater expenses to revenue ratios per capita. Remoteness increases the costs and challenges of disaster recovery. The NSW Government must understand their position and provide approved funds upfront or in schedule (not ad hoc) milestone payments. Some Councils have had their financial position as severely impacted by natural disaster as their infrastructure has been.



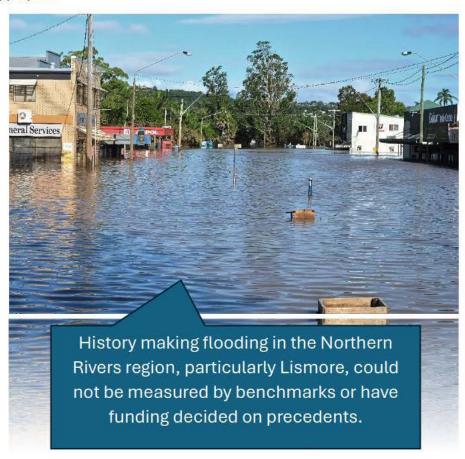
This image of flood damage in Forbes is typical of the infrastructure destruction faced by country NSW Councils in the 2020's.





One remote Council explained that the parameters associated with a disaster declaration requiring that Council demonstrate a "coordinated, multi-agency response" to be eligible to activate disaster funding assistance discriminates against remote areas that are very reliant on road access, localised response and have limited coverage by emergency response agencies.

Councils reported one of the reasons for funding claims being unsuccessful was precedence. Similar claims made by another LGA in a previous disaster event had been approved by TfNSW, and were subsequently rejected by NEMA (the National Emergency Management Agency) upon later audit (a common reason). Over a period of 'unprecedented' natural disasters, with uniqueness to individual circumstances or damaged infrastructure, the consideration of precedents for determining a funding claim is inappropriate.







Recommendations, positive approaches and suggestions



It is vital that the NSW and Australian Governments

recognise that country NSW Councils are the optimal frontline responders, when it comes to steering natural disaster recovery. They are in touch with their communities and know how a disaster has impacted them and their public infrastructure. Councillors and Council staff are a part of their communities. They know they cannot wait months or years to work on locally critical infrastructure, such as a cemetery, water treatment facilities or broader economic concerns, like roads and bridges. A cut road can mean a family is stranded, isolated from the rest of the world.





Councils are working with the NSW Government to deliver the most efficient and cost-effective outcomes from natural disaster recovery funding. To facilitate that, a more collegiate approach must exist. Councils' role, expertise and experience should be respected and considered.

Claim assessments must be processed as urgent matters. The number of disasters in recent years has warranted increased assessment and processing staff. Projects in limbo cost country NSW Councils. Outcome timelines should be supplied at the time of claim submissions and adhering to them should be considered critically important and ties to Government KPIs (Key Performance Indicators).

Country Mayors across NSW appreciate the need for disaster recovery funding claims to be assessed with due diligence. However, the criteria for assessment that requires evidence of the condition of assets before and after a disaster are demonstrably impractical. Moree Plains Shire Council in the Northwest of the State has, like many Local Government Areas in regional NSW in the 2020's experienced costly flood damage. Documenting road conditions with photographic evidence throughout the entirety of the Shire's road network, is unfeasible. "Moree Plains Shire's local road network is the largest in the Northern Tablelands – an enormous 2,466 kilometres," Member for Northern Tablelands Adam Marshall said in a December 2023 media article.

Those who have worked on disaster recovery efforts in regional council areas have told of State Government requirements forcing them to stop and take photos at various stages of asset restoration. A contemptuous lack of trust has resulted in needless inefficiencies.

A Council in the southwest Riverina region of NSW has the second largest rural roads network in NSW, consisting of more than 2,500 kilometres and costing the Council \$8mil. per year in maintenance. Of that Council's 69 disaster recovery funding claims totalling \$10.07Mil, five have been paid in full and six in part, totalling \$1.56Mil.

The Transport for NSW website promotes a different approach for Sydney on a webpage entitled NSW Road Networks (despite only detailing metropolitan transport infrastructure).

In Greater Sydney the 3,000 kms of state roads are made up of 270,000 roads assets including bridges, traffic signals, tunnels, cycleways, drainage systems, noise walls, safety barriers, road signs, warning signs and school safety zone signs.

To enhance the customer experience of using our road network we are spending \$674m over the financial years of 2022, 2023 and 2024 on road maintenance in Greater Sydney, plus an estimated \$312 million on works remediating road assets after the flooding and severe weather of 2022. (Transport for NSW 2024)





Regional NSW deserves to see equity in consideration of disaster recovery funding and the significance of restoring local road infrastructure as efficiently as possible, as advocated by Local Government.

One reason for delays in disaster funding claims has been the scale of disaster devastation across the State of NSW and a limited number of TfNSW assessors. Members of the Country Mayors Association have suggested that local consultancy firms within a region have an intimate knowledge of the local roads networks as they live and work there. One Council representative suggested that "these consultants can be quickly trained up to fill the void in TfNSW assessors and can be engaged on longer-term contracts to keep pricing reasonable by pivoting them from assessor once this body of work is complete to auditors for both NEMA and NSWRA. These assessors/auditors could be colocated into the respective Councils so questions and information requests could be addressed immediately. All of this could happen immediately and get the process moving now."

Not just assessments but also supply chain and contractor/labour availability issues have slowed flood recovered efforts. These factors and the sheer scale of disaster damage throughout NSW LGAs mean that on-the-ground experience, not just projections, indicate that recovery works will take two to four years. The end of the 2023/24 financial year deadline some projects have been given is another example of the disconnect between the Local Council recovery efforts and the bureaucratic systems currently in place within the NSW Government.

Requiring contractors to come into a Council area and work on a disaster recovery project, then move on is not supporting the holistic socio-economic recovery needs of the area in question. Supported training of local young people and utilisation of Council resources would better rebuild the local economy and the skills it needs to grow again.

Councils have requested that discussions be held with NEMA for one auditor (across all levels of government), not one for each State Department and the Federal Government. Country Mayors in NSW are ever working to improve efficiencies in financially challenged times.

Applications for Restoration of Essential Public Assets must be compiled by the council/claimant using Form 306 and a separate form for associated works involving State roads. Country Mayors have suggested reducing the red tape from two forms to one.

The State and Federal Governments best serve disaster impacted communities by being a resource to assist Local Government in NSW, rather than trying to act as a delivery agency, micromanaging recovery projects or demanding excessive evidence to ensure recovery efforts do not improve an asset. Facilitation of regional or inter-council approaches and regional recovery plans would be a NSW Government action the Country Mayors of NSW would appreciate.







The Kempsey Armidale Road after bushfire and storm damage, late 2019/early 2020.





Inclusion of Water and Sewer Assets in the Disaster Recovery Funding Arrangements (DRFA)

The Disaster Recovery Funding Arrangements (DRFA) is a funding mechanism crucial to support Local Government in the aftermath of extreme events. However, the guidelines are interpreted to exclude water and sewer assets damaged in disasters.

Clearly the cost of repairing or potentially replacing such vital infrastructure as water treatment plants damaged or destroyed during these extreme events is well beyond the means of most country councils. By way of example, a Central West NSW Council had \$19mil. of damage to water supply assets in November 2022. Without direct government intervention, the Council has not had a suitable funding mechanism to repair the damage.

While the large municipal water utilities may be able to self-fund these repairs, the cost burden on country councils is completely unaffordable.

Country Mayors strongly recommend the inclusion of water / water treatment infrastructure in disaster recovery funding. These big budget assets are often severely damaged by major floods events.

The positive examples/approaches from one regional NSW council:

- The Council has directly managed the process for procuring works and the claims for all EW works and most IRW works. All EPAR works were managed by a Consultant engaged by the Council to manage and coordinate the entire process for all EPARs.
- The Council committed funds (at risk) to procure investigation and design and obtain market prices/cost estimates through a tender process before making EPAR submissions. This brought efficiencies and benefits to the process including:
- o Estimates have been accurate so there have been very few projects that have gone over budget overall/to date forecast completion cost of all EPARs is \$22.5M vs \$25.4M originally claimed.
- o Completed designs and accurate costing provided early confidence in the final outcome.
- o Early tenders (in 2021) secured beneficial pricing before market forces resulted in price increases in 2022/2023.





o The time from EPAR submission to WOL payment claim was significantly reduced, lowering exposure of projects to risk generated by delays caused by all sorts of potential factors; inflation, market effects, material & resource availability, etc.

o It is noted that most EPARs were less than \$1M so the cost exposure for up front commitment was not excessive and the benefits have paid off with close to \$18.2M/\$22.5M of works complete to date and 46/48 EPAR projects due to be completed by June 2024.

Issues with the Claim and Assessment Process and suggestions (as put forward by the same Council):

- 1. TfNSW's ability to process claims has been hampered by their lack of experienced resources, brought about by having limited staff permanently employed for this function and regular turnover or relocation of staff, due to constant flow of natural disaster events.
- 2. Constant/regular changes/updates to the submission requirements and submission forms
- 3. Councils not having sufficient records to meet the claim requirements (such as pre-existing photo evidence of a remote rural road impacted by a disaster). Improvements in technology will improve this going forward.
- 4. Councils still find it difficult to submit claims that meet the requirements, due to resource constraints and full appreciation of the process. This can be improved by the assessment agency preparing/providing:
- o Claim checklists
- o Claim process diagrams that summarise the process and provide timelines etc.
- o Finalising the process and establishing a final set of document templates that make the submission process fool proof, without being too rigid to accommodate exceptions to the rule can occasionally occur.
- 5. Establishing the eligible cost of internal Council staff on opt-in projects, including wages and eligible on-costs has been a time-consuming exercise and the difference in cost claimed verses a standard pre-accepted charge-out rate /hr is insignificant. This process could be simplified to avoid an unnecessary waste of Council resources by the assessing agency agreeing a standard upfront all-encompassing rate/hr for Council staff resources.







Storms, floods, tornados, fires and more, from 2019 to 2024 recovery has not been achieved before the next disaster in many country NSW locations.







Sources

Country Mayors Association of NSW member council survey January/February 2024.

Member for Northern Tablelands, The Hon Adam Marshall's media release: "Moree Plains Shire Road Network Receives a \$6.9 Million Boost" (4 December 2023)

https://www.adammarshall.com.au/moree-plains-shire-road-network-receives-a-6-9-million-boost/

Transport for NSW Website: https://www.transport.nsw.gov.au/operations/nsw-roads-network

