
Position Paper

Suggested Transfer of Mobile Fire Fighting Assets from Councils to the NSW Rural Fire Service

Current Position

Motions presented to Annual Conferences of both Associations over recent years have requested that representations be made to transfer the ownership of fire vehicles and equipment from councils to the RFS

Justification for transfer of ownership includes

- Service Level Agreements with the RFS provide that council agrees that fire plant at all times remain in the custody of the RFS, be housed in Brigade facilities, and be maintained at intervals convenient to the RFS and council
- Vehicle specifications must at all times be consistent with specifications issued by the RFS (Sec 119(5) of the Rural Fires Act)
- Most vehicles are fully funded by the Rural Fires Fighting Fund, with council meeting its 13.3% contribution, although a small number of other vehicles are fully funded by a few councils
- Insurance brokers have seriously questioned whether councils have an "insurable interest", by virtue of council no longer having custody and control of the vehicles
- The Department of Local Government agrees that there is conflict between compulsory Accounting Standards and the Rural Fires Act. The Rural Fires Act states that fire fighting equipment shall be vested in council and the Department of Local Government has referred the matter to a future meeting of the Local Government Accounting Advisory Group

The Commissioner of the NSW RFS has verbally indicated that

- The RFS is experiencing difficulty in finalising a listing of all assets, because brigades are self funding the repurchase of old tankers which would otherwise be sold
- Local Government would face increased contributions because
 - Some councils continue to purchase plant, and self fund it. This would probably cease if all plant was owned by the RFS
 - Some councils do not receive a complete reimbursement of operating costs. If the RFS owned all assets, the full costs would be reflected in the RFS accounts
 - The procurement processes would become more specific and specifications more strenuously policed, if plant was purchased, owned and operated by the RFS

Legislative amendments would be needed to change ownership requirements under the Rural Fires Act

Before the Commissioner will take the issue to the Government with LGSA support, the Commissioner has requested that the Associations obtain the majority support of councils in NSW

Supplementary Information

- **Accounting Standards**

Local Government Asset Accounting Manual (available from DLG website, "Standards")

Update No 4 Issued by the Department of Local Government in July 1999 devotes Chapter 3 (pages 301 to 313) to the question of definition, recognition and control over assets

Paragraph 3 2 2 on page 302 indicates that

“Subject to evidence to the contrary, a council has control over an asset if the following three criteria is established -

- Council can deny or regulate access of others to the asset
- The asset is held to meet the objectives of the council
- Council enjoys the majority of risks and benefits relating to the asset

In determining control over an asset, council should also consider a number of other criteria including the following

- Does the council have legal title to the asset?
- Was the asset purchased by the council?
- Is the absolute property right with the council?
- Are there any restrictions on the use of the asset?
- Is the asset vested in the council?
- Is the asset vested in a Committee or other undertaking controlled by council?
- Is the council required to make commercially realistic payments to another entity for the use of the asset?

This list is not exhaustive and councils should consider other local and external factors which will affect the determination of control over assets generally”

Paragraph 4 on page 306 indicates

“In order to establish whether a council controls an asset, the elements of what constitutes control must be reviewed closely on an asset by asset basis. As a guide, set out on the following pages are a series of tests which can be applied on an asset basis to establish whether control exists

Councils control an asset if questions 1, 2 and 3 have been answered “Yes” subject to evidence to the contrary. A council may possess an object or right but not expect to enjoy the services or benefits embodied in it, in which case the council would not control the asset. In the case of restrictions on use of assets, these will need to be reviewed carefully before making a final decision on the question of control. In the final analysis, the substance of each position should prevail. The ultimate aim is to recognise all assets that a reporting entity brings to bear in the delivery of services/products to its community in accordance with council objectives

There may be other factors which can result in control being questioned. Hence the checklist on page 307 is a comprehensive, though not exclusive guide to indicators of control”

• **Department of Local Government**

In a letter to Urana Shire Council on 20 April 2006, the Department said in part

“As you have stated, the Interpretation of the *Rural Fires Act 1997* appears to conflict with the Accounting Standards. The *Rural Fires Act 1997* states that fire fighting equipment is to be vested in the council while the accounting standards state that the assets should be vested in whoever has control of them

Under section 412 of the *Local Government Act 1993*, councils are required to keep accounting records in accordance with the *Local Government Code of Accounting Practice and Financial Reporting* (cl 198 and 206 of the Local Government (General) Regulation 2005). The Code expressly requires financial reports to be prepared in accordance with the Australian Accounting Standards (Pt 3 2). The Accounting Standards are issued by the Australian Accounting Standards Board pursuant to the *Australian Securities and Investment Commission Act 2001* (Cth)

The interpretation and treatment of rural fire service assets seems to be an issue for many NSW councils. Therefore, I have referred your letter to the NSW Local Government Accounting Advisory Group for further advice."

- **Asset Schedules and Reacquisition of Plant**

The RFS is having difficulties in clearly listing all fire vehicles. This is made more difficult by Brigades using private funds to reacquire traded-in vehicles, irrespective of their condition and roadworthiness.

The RFS has requested the Associations to request councils to take action to prevent brigades from acquiring traded in vehicles (there is no objection to their purchase by private individuals).

- **Increased Expenditure**

Many councils approve expenditure on fire vehicles above and beyond their commitment to assets acquired under the Rural Fires Fighting Fund. If the Service assumed ownership of all fire plant, total expenditure would increase, and council contributions would similarly increase.

- **Higher Maintenance Costs**

If all vehicles were owned by the RFS, maintenance standards and specifications are likely to be higher, because of fluctuations that now occur in varying maintenance capacities among councils. Higher maintenance requirements will require higher expenditure, and result in higher council contributions.

- **Insurance**

The Service Level Agreements require each council to insure all roadworthy vehicles. Insurance excesses, discounts, insurance rates and claims experience vary significantly between councils. There is also a continuing concern about the Indemnities provided by the RFS, because some insurance brokers are of the opinion that the indemnities are unenforceable (this aspect is continuing to receive attention with a Crown Solicitors advice to be received from the RFS shortly).

Initial consideration given by a major insurance broker to the concept of all fire vehicles being insured under a common insurance arranged through the Associations, has concluded that savings are not guaranteed, and is made complex by varying discounts, no claim bonuses and excess amounts experienced by individual councils. Another concern is under insurance and non insurance in some instances.

The RFS has considered insuring all fire vehicles under a State Treasury Managed Fund, but ownership aspects currently prevent the RFS from contemplating blanket insurances.

- **Legislative Amendments**

The Commissioner has indicated his willingness to develop a Position Paper to the Government on transfer of assets to the RFS, provided there is clear widespread support from local government.

Any decision to seek legislative change to the Rural Fires Act would occur during 2007, as part of a number of other amendments that the RFS will discuss with the Associations at a later time.

The Associations support in principle the concept of a transfer of mobile assets to the RFS even though there is a risk of increased long term contributions to cover increased expenditure costed in full to the RFS.

Comments are sought from councils by 30 September 2006.

The Associations will then determine the extent of future negotiations with the RFS and the Government.