



ORDINARY COUNCIL MEETING

Wednesday 19 October, 2022

at 9:15am

Council Chambers, 56 Chanter Street, Berrigan



Late Items Agenda



Ordinary Council Meeting
Wednesday 19 October, 2022

LATE ITEMS BUSINESS PAPER

The Ordinary Council Meeting of the Shire of Berrigan will be held in the Council Chambers, 56 Chanter Street, Berrigan, on Wednesday 19 October, 2022 when the following business will be considered:-

ITEMS OF BUSINESS

8	REPORTS TO COUNCIL	3
8.33	T01-22-23 Annual Plant Hire Rates for 2022-23	26
8.34	Development Assessment and Prioritisation of Workload.....	31

No business, other than that on the Agenda, may be dealt with at this meeting unless admitted by the Mayor.

A handwritten signature in blue ink that reads 'K. Ewer'.

KARINA EWER
CHIEF EXECUTIVE OFFICER

8 REPORTS TO COUNCIL

8.4 Position paper - Rural Fire Service assets

Author:	Deputy Chief Executive Officer, Matthew Hansen
Strategic Outcome:	2. Good government
Strategic Objective:	2.1. Berrigan Shire 2032 objectives and strategic actions facilitate the effective governance by Council of Council operations and reporting
Delivery Program:	2.1.3. Council operations and financial management support ethical, transparent and accountable corporate governance
Council's Role:	Service Provider: The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council
Appendices:	<ol style="list-style-type: none">29.09.2022 Stalemate over rural fire fleet _ The Saturday Paper.pdf (under separate cover)33.1.1 GAAP Consulting RFS assets opinion - final draft (002).pdf (under separate cover)Letter from the Hon. Wendy Tuckerman MP, Minister for Local Government - Red Fleet Assets A833480.pdf (under separate cover)Attachment - Summary of financial implications Rural Fire Assets A833480.pdf (under separate cover)Council Report - 8.22 Rural Fire Service Assets - Update - 17.08.2022.docx (under separate cover)19.10.2022 Council Meeting RFS Vested Fleet report 2021 - 28.06.2021.pdf (under separate cover)19.10.2020 RFS assets - statement (002).docx ↓13 Attachment 3 - Treasury_Accounting_Paper_re_Red_Fleet_Assets.pdf.pdf ↓19.10.2022 Geoff Provest RFS Assets.pdf ↓

Recommendation

That the Council endorse the position paper on the treatment of RFS "red fleet" assets" included with this report.

Purpose

This report is to reconfirm the Council's existing position regarding accounting for the NSW Rural Fire Service (RFS) "red fleet" assets and to provide updated information on the topic for consideration.

Summary

Berrigan Shire Council has a long-standing position of not recognising RFS red fleet assets nominally vested in the Council's name but in practice operated by the RFS.

This report proposes to continue this approach

Background

The Council has discussed this matter previously and is familiar with the background. Appendix 5 is a report prepared by the CEO presented to the Council in August 2022 summarising the matter.

Since that report was issued there has been some new information released.

1. Mr. Geoff Provest – the Parliamentary Secretary for Police and Emergency Services – has responded to the Mayor's letter to the Minister for Emergency Services earlier this year. This letter is attached as Appendix 9. The letter does not address any of the points made by the Mayor in his letter.
2. Via a formal request under the Government Information (Public Access) Act 2009, Bland Shire Council obtained a draft independent report prepared for the Office of Local Government in 2018 on the status of the RFS red fleet assets. This report, prepared by experienced and well qualified experts on Australian Accounting Standards, endorses the Council's position on control of the red fleet and recommends Council should not include these assets in its accounts and financial statements. This draft report is attached as Appendix 2.
3. Council was provided with advice from NSW Treasury (undated and with no credited author) claiming that Australian Accounting Standards indicate Council does control these assets and as a result, the Council needs to recognise them in its accounts and statements. This advice is attached as Appendix 8
4. The Minister for Local Government wrote to Local Government NSW providing further advice from NSW Treasury and the Office of Local Government. This is attached as Appendix 3 and Appendix 4.
5. The Office of Local Government has provided the Council with a list (dated June 2021) with assets ostensibly vested in the Council. This list is attached as Appendix 6. Anecdotally it may be noted some Councils in our region have tested this list and have identified there are a significant number of assets that cannot be found. The inability to locate assets would suggest the list is quite unreliable at best. This Council has chosen not to audit the assets at this time.
6. The contract auditor commissioned by the NSW Audit Office met with the Audit Risk and Improvement Committee (ARIC) on Wednesday, 12 October 2022. ARIC were informed that other Councils who have chosen not to recognise red fleet assets have been issued qualified audit reports.

Relevance to Community Strategic Plan and Other Strategies /Masterplans / Studies

Delivery Program Objective 2.1.2 "Meet legislative requirements for Council elections, local government and integrated planning and reporting" sets the Council the objective of meeting its legislative requirement to apply the relevant Australian Accounting Standards when preparing its financial statements.

Issues and Implications

Policy

Council's adopted [Accounting Policy](#) includes the following clause

Under section 119 of the Rural Fire Services Act 1997, "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". Until such time as discussions on this matter have concluded and the legislation changed, Council will not recognise Rural Fire Service are recognised

Financial

As detailed in the advice provided by Minister Tuckerman, there is no long-term effect on the Council's financial position as a result of recognising the "red fleet" assets. There may however be short term impacts as the purchase and disposal of "red fleet" items is not evenly spaced every year.

The financial impact on the Council in any case is not material when considering the Council's overall asset base of over \$400m.

A preliminary analysis appears to show that a qualified audit opinion on the Council's financial statements is unlikely to have any subsequent financial effects – i.e., loan covenants and grant agreements.

Legal / Statutory

The *Rural Fires Act 1997* vests the assets controlled by the RFS in the local council where those assets are held. Despite this legal status, this does not necessarily mean that the Council controls these assets.

Under the *Local Government Act 1993*, the *Local Government (General) Regulation 2021* and the NSW Local Government Code of Accounting Practice and Financial Reporting issued under s23A of the Local Government Act, the Council has an obligation to follow Australian Accounting Standards. The Mayor, Deputy Mayor, Chief Executive Officer, and Responsible Accounting Officer sign a statement attesting that the Council has met this obligation.

Community Engagement / Communication

The Saturday Paper released an article on the RFS red fleet accounting matter, including a quote from Berrigan Shire Council staff. This article is attached as Appendix 1.

Human Resources / Industrial Relations (If applicable)

See the People and Culture risk statement below.

Risks

1. Reputational

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

If the Council adopts this position paper, the Council financial statements will almost certainly receive a qualified audit opinion. The NSW Audit Office report on the conduct of the local government audits will name the Council specifically.

This is not ideal however given the circumstances it is unlikely to have a significant impact on the Council's reputation either locally or in the industry. It is expected at least 60 other Councils will receive the same treatment

2. Financial

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

The financial implications of recognising or not recognising the RFS controlled assets in the Council's financial statements are not significant.

Preliminary analysis by staff indicated that a qualified audit opinion is unlikely to have further flow-on effects on the Council – i.e., loan covenants, funding agreements.

3. Governance

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

The NSW Audit Office is almost certain to issue a qualified opinion on the Council’s financial statements.

4. People and culture

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

In ordinary circumstances, the Council would require the Responsible Accounting Officer to make every effort to prepare financial statements that receive an audit report without a qualification. Given this potential qualification will have come from a direction of the Council, this is not the case in these circumstances.

That said, there is a risk that the qualification on the statements may impact on the future career of the Responsible Accounting Officer if the statements are viewed without context.

To mitigate this risk, the Council could (temporarily or permanently) remove the Responsible Accounting Officer delegation from the Finance Manager and place it with the Chief Executive Officer or the Deputy Chief Executive Officer. I do not believe this is necessary and I would not recommend this option unless it was specifically requested by the Finance Manager. The Finance Manager is the person directly responsible for the preparation of the Financial Statements and should be recognised as such.

Options

1. The Council can endorse this position paper. This will almost certainly see the Council receive a qualified audit opinion. - **Recommended**

2. The Council can endorse this position paper with modifications. This will still likely see the Council receive a qualified audit opinion.
3. The Council can choose not to adopt this position paper and instead recommend to Council staff that the RFS-controlled assets are included in the financial statements.

Conclusions

The issue of the accounting treatment of the RFS-controlled “red fleet” is a matter of principle for the Council and not a matter that will have a significant effect on the Council or its operations.

That said, the NSW Government’s position on this matter is not credible and defies common sense. The local government sector, including Berrigan Shire Council, have a responsibility to push back and ensure that the RFS-controlled assets are accounted for in a manner that complies with a common sense reading of Australian Accounting Standards.

It is also important that those Councils choosing to accept qualified audits remain united on this topic. Diluting the argument by acquiescing to the pressures being placed on Councils will only provide more leverage to an Audit Office that is, in the opinion of many, acting outside of its authority and insisting that State Government hide more than \$1Billion worth of assets (a significant misstatement on their part) on the financial statements of local councils, thereby misinforming our communities.

Berrigan Shire Council



Position paper – Accounting treatment of Rural Fire Service assets

19 October 2022

The Council has made the decision not to bring to account the NSW Rural Fire Service (RFS) assets nominally vested in the Council under s119 of the *Rural Fires Act 1997*.

This accounting treatment of RFS assets is explicitly permitted by the NSW Local Government Code of Accounting Practice and Financial Reporting issued by the Office of Local Government.

Councils need to assess whether they control any rural firefighting equipment in accordance with Australian Accounting Standards and recognise in their financial statements any material assets under their control and state the relevant accounting policy in relation to the treatment.

Council does not believe that it controls the assets in question.

Council does not believe that the assets (and associated depreciation) is material in the context of the Council's financial statements.

Control

In making this decision, the Council has considered two divergent opinions on the control of NSW RFS assets.

1. *Rural Fire Service – Considerations of ownership of the red fleet assets* - a paper (undated and with no named author) prepared by NSW Treasury
2. *Review of accounting for 'red truck' assets and other firefighting equipment in NSW* - a (draft) paper prepared in April 2018 by Colin Parker of GAAP Consulting on behalf of the Office of Local Government.

Having considered both opinions, the Council considers on balance the opinion provided by Mr Parker is more persuasive and holds more weight.

The opinion provided by NSW Treasury relies heavily on the legal fiction that Council can control the deployment and disposition of the red fleet – i.e., the red fleet cannot be taken outside the Council area without Council agreement.

Section 119 of the Rural Fires Act nominally vests the assets with the Council. In reality, the (compulsory) Service Level Agreement with the RFS leaves the Council with no control over the purchase, disposal, operation, maintenance, distribution, or condition of RFS equipment.

Note s119 of the *Rural Fires Act* also requires the RFS to seek concurrence of the Council if any of the equipment vested in it is to be used outside the Council area. This concurrence is now not sought or given from this Council by the RFS – nor has it been reasonably expected. The assets are under the control of the RFS.

The opinion provided by Mr Parker supports the Council's conclusion.

Mr Parker is a qualified and experienced expert in this field.

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 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).

Mr Parker's opinion is that:

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 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.

The councils have no substantive rights for the control of fire-fighting equipment - vesting by itself does not confer control.

Mr Parker's opinion is included with this position paper as an appendix.

Materiality

One of the difficulties of bringing to account the RFS assets is that because Council does not control their purchase, disposal, disposition or use, the Council does not hold its own records of what assets nominally vested in the Council – including the number, cost, age, useful life, type, location and condition. This information is necessary if the Council is to record a reliable value for the assets in its statements.

In 2022, the Office of Local Government provided the Council with a list of assets nominally vested in Berrigan Shire Council including an estimated replacement value. This spreadsheet including this list appears to be dated 28 June 2021. The Council does not know the provenance of this list and does not know if the list is current and accurate as of 30 June 2022. The Council does not know who determined the “estimated replacement cost at 28 June 2021” and their relevant qualifications, nor does the Council know what valuation methodology was used.

Taking the above into account, the list provided by the Office of Local Government values the RFS red fleet asset nominally vested in Council at \$3.9m – not taking into account potential impairment or accumulated depreciation. Council’s overall Infrastructure, Property, Plant and Equipment (IPPE) assets had a gross carrying amount at 30 June 2021 of \$424.2m.

Thus, the value of the RFS assets as a proportion of total IPPE assets is less than 1% and thus immaterial.

It is more difficult to determine the materiality of depreciation of the RFS red fleet as a proportion of the Council’s overall IPPE depreciation as the useful lives and service potential of the assets is not known. Assuming a depreciation rate of 10%, annual depreciation of RFS assets will be approximately \$0.39m over a total depreciation expense of \$6.55m.

Thus the estimated RFS asset depreciation expense is less than 0.6% of the Council’s total depreciation expense and again, immaterial.

Rural Fire Service – Considerations of ownership of the red fleet assets

Summary of Issue: Whether the Rural Fire Service (RFS) or the local councils should recognise the red fleet assets (RFA) on their books.

Currently RFS do not record the RFA, a position that was presented and agreed with the Audit Office (AO) in 2018. In September 2020, a several councils jointly wrote to the Auditor General querying the accounting treatment of the RFA. As a result, the AO requested Treasury re-examine the accounting treatment.

Background: The Rural Fire Fighting Fund (RFFF) is a special deposit account within Treasury's banking system. RFFF purchases RFA, and other assets such as brigade stations, fire control centres, firefighting equipment, uniforms and protective clothing. RFFF also pays the operating expenses of RFS. RFS manage and pay suppliers with these funds. Each year, the funding target of RFFF is prepared by the Minister and agreed with the Treasurer. As the funding target is an overall number for the aforementioned expenditures, RFS prepares a detailed budget each year to allocate the funding target to specific uses. During this process, RFS consults and agrees with councils the spending on RFA, buildings, equipment and maintenance for each district to be paid by the RFFF. The RFFF is funded by contributions from insurance companies (73.7%), Councils (11.7%) and Treasury (14.6%). RFS oversees the procurement of RFA. The RFA are then vested to individual councils upon completion, in accordance with section 119(2) of the Rural Fires Act 1997 (the RF Act). RFS hold the firefighting equipment, uniforms and protective clothing as inventory and then expense them when dispensing to brigades.

Under OLG's model financial report: Financial Reporting Code, councils have the option whether to recognise these assets on their books and thus, there are instances where the RFA are not recorded by either RFS or a council. However, brigade stations and fire control centres are often recognised as assets of local councils.

Work Performed: We reviewed the previous position paper and held discussions with RFS personnel: Stephen O'Malley (CFO) and Myles Foley (Director Finance); and with General Managers and CFOs from Leeton Shire Council, Coffs Harbour City Council, Nambucca Valley Council and Wingecarribee Shire Council, to understand the daily operation of the RFA. We also held discussions State Emergency Service (SES) personnel: Daniel Crocco (Acting CFO) and Nathan Birch (Management Accountant) to understand the operational differences between SES and RFS. . From these conversations, we have summarised our understanding and those factors that indicate control by RFS or Councils in the following analysis.

Relevant Accounting Standards:

AASB Conceptual Framework for Financial Reporting

4.20 An entity controls an economic resource if it has the present ability to direct the use of the economic resource and obtain the economic benefits that may flow from it. Control includes the present ability to prevent other parties from directing the use of the economic resource and from obtaining the economic benefits that may flow from it. It follows that, if one party controls an economic resource, no other party controls that resource.

4.21 An entity has the present ability to direct the use of an economic resource if it has the right to deploy that economic resource in its activities, or to allow another party to deploy the economic resource in that other party's activities.

4.23 For an entity to control an economic resource, the future economic benefits from that resource must flow to the entity either directly or indirectly rather than to another party. This aspect of control does not imply that the entity can ensure that the resource will produce economic benefits in all circumstances. Instead, it means that if the resource produces economic benefits, the entity is the party that will obtain them either directly or indirectly.

AASB Framework for the Preparation and Presentation of Financial Statements

49(a) An asset is 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

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 is 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.

AASB 10 *Consolidated Financial Statements* – AASB 10 relates to control of ‘entities’ not individual or groups of assets.

AASB 15 Revenue from Contracts with Customers

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. The benefits of an asset are the potential cash flows (inflows or savings in outflows) that can be obtained directly or indirectly.

AASB 16 Leases

B9 To assess whether a contract conveys the right to control the use of an identified asset for a period of time, an entity shall assess whether, throughout the period of use, the customer has both of the following:

- a) the right to obtain substantially all of the economic benefits from use of the identified asset; and
- b) the right to direct the use of the identified asset.

Comparison of Operational Features between RFS and SES:

Operational Features	RFS	SES	Observations
Establishment and main functions	The <i>Rural Fire Act 1997</i> (the RF Act) was written to establish the Rural Fire Service and its functions.	The <i>State Emergency Service Act 1989</i> (the SES Act) was written to establish the State Emergency Service and its functions.	Both RFS and SES are constituted as a volunteer organisation. They co-ordinate volunteer efforts at both a strategic and tactical level.


Operational Features	RFS	SES	Observations
	<p>RFS is comprised of the Commissioner, other RFS staff (salaried employees) and volunteer rural fire fighters (s8 of the RF Act). Although, other parts of the RF Act indicate the rural fire fighters are part of the brigades, that are sperate entities, formed by councils.</p> <p>s9 of the RF Act sets out the functions of RFS, which for this analysis, importantly include:</p> <ul style="list-style-type: none"> • providing rural fire services for New South Wales • providing services for the prevention, mitigation, and suppression of fires in rural fire districts • protecting persons from dangers to their safety and health, and property from destruction or damage, arising from fires in rural fire districts 	<p>SES is comprised of the Commissioner, Deputy Commissioner, other SES staff (salaried employees), the volunteer officers and volunteer members of all SES units (s7 of the SES Act).</p> <p>s8 of the SES Act sets out the functions of SES, which for this analysis, importantly include:</p> <ul style="list-style-type: none"> • acting as the combat agency for dealing with floods, tsunamis and storms and co-ordinating the evacuation and welfare of affected communities • protecting persons from dangers to their safety and health, and property from destruction or damage, arising from floods, storms and tsunamis 	<p>SES is the lead combat agency as specified in the SES Act. However, the RF Act does not appear to have an equivalent objective.</p>
<p>Formation and operation of brigades/units</p>	<p>s15 of the RF Act regulates the formation of rural fire brigades. A local authority (Council) forms the brigade for its rural fire district (RFD). It is only where a Council refuses or fails to form a brigade, that the Commissioner may do so (s15(4) of the RF Act). RFS agency has no knowledge when this power is exercised.</p> <p>s21 of the RF Act confers powers on an officer of a rural fire brigade to exercise functions at a fire, incident or other emergency in the RFD for which the brigade was formed – and with approval of the Commissioner outside of the RFD. This means that brigades are able to self-respond to any incident within their RFD, or with approval, respond to an incident outside of the RFD. This means that outside of the</p>	<p>Under s18 of the SES Act, SES units are registered by the Commissioner. s18AA sets out that membership of an SES unit may be granted by any of the following:</p> <ol style="list-style-type: none"> the Commissioner, a zone commander, local commander or unit commander responsible for the SES unit <p>The Commissioner appoints the zone commander and unit commander (s16(1) and 17A(1) of the SES Act). The Commissioner also appoints the local commander on the recommendation of the Council for that area (s17(1) of the SES Act).</p> <p>The local commander and unit commander are volunteers, whose operations are</p>	<p>Both RFS and SES provide a support and coordination role to the volunteers, by providing input such as information, training, coordination and aerial support.</p> <p>SES appears to have active involvement in the formation of SES units. SES forms and registers local SES units. SES also recruits unit commanders or local commanders, who control the activities of local SES units under the direction of SES. SES considers the SES units to be its unpaid employees.</p>

Operational Features	RFS	SES	Observations
	<p>declaration of an s44 (see below), a brigade is under the control of its officers.</p> <p>s44 of the RF Act gives the Commissioner a responsibility to take charge of bush fire fighting operations in any part of the State if a number of conditions exist (refer to s44(1)(a)-(d) of the RF Act). In summary, these conditions include a local brigade is not effectively controlling a fire; a fire event is too large for that brigade; or a fire event occurs in a location that is not the responsibility of any brigade.</p> <p>In the 2019-20 fire season, fires were protracted and extended the length of the State, with a large number (43) of extended s44 declarations. This resulted in significant 'out of area' deployments for RFA and brigades, which were co-ordinated by RFS in order to combat the bush fires. This compares to 2018/19 and 2017/18, when there were only 15 and 17 s44 declarations respectively.</p> <p>In practice, when a s44 declaration is made, RFS agency will step in and take responsibility for the following:</p> <ul style="list-style-type: none"> • Relocating brigades to other districts as necessary; • Taking charge of the planning and determining how to control/suppress fire events; • Setting up base camps; • Engaging heavy plant providers; • Running the aviation desk; and • Community alerts 	<p>directed by SES (the relevant zone commander or the Commissioner) to undertake response and recovery activities (s17(3), and s17A(2) of the SES Act). A zone commander is a SES salaried employee, who is not involved in the actual response but rather in the coordination activities.</p> <p>In practice, SES follows the legislative requirements as noted above and appears to have active involvement in the formation of SES units. SES is responsible for the recruitment of SES units. Local commanders and unit commanders, who control the operations of the local units, are recruited by SES and are subject to the direction from SES. Community members volunteer to become members of local SES units via applications. The local commander or unit commander makes the assessment and accepts suitable applicants.</p> <p>In the event that there is no SES unit in a location, alternative action by the SES (pursuant to provisions of its enabling legislation) might include:</p> <ul style="list-style-type: none"> • assistance from nearby SES units • directions to other SES units to travel to the location • evacuation to protect life • directions to personnel in other NSW emergency service agencies (such as NSW Police and Fire and Rescue NSW). 	<p>In comparison to SES, RFS has no direct involvement in the formation of the brigades and appointment of Brigade Officers (equivalent to SES unit/local commanders). The brigades operate in accordance with the Brigade Constitution and are able to self-respond to any incident within their RFD. RFS only has statutory power to give direction to brigades where an s44 event has been declared. RFS considers the brigades to be independent associations of persons.</p>

Operational Features	RFS	SES	Observations
	<p>s45(1) allows the Commissioner to give directions to other entities (including brigades) around prevention, control or suppression of a bush fire when he has taken charge under s44.</p> <p>s45(2) specifically allows the Commissioner to exercise the power that apply to an officer under s21, and thereby direct the deployment of resources across the State, provided an s44 event has been declared.</p> <p>As such, the Commissioner only has statutory power to direct resources outside of nominated brigade boundaries where an s44 event has been declared.</p> <p>In practice, RFS follows the legislative requirements as noted above and has no direct involvement in the formation of the brigades. Community members volunteer to become members of local brigades via applications. Brigades accept suitable applicants in accordance with the Brigade Constitution.</p> <p>The Brigade Officers, such as Captain and Deputy Captain, are elected and appointed by brigade members in accordance with the Brigade Constitution (Service Standard 2.1.4). The Brigade Officers lead and control the activities of brigades within their RFD.</p> <p>In practice, the brigades undertake the following activities:</p> <ul style="list-style-type: none"> • Hazard reduction – in accordance with bush fire risk management plan 		

Operational Features	RFS	SES	Observations
	<p>developed by Bush Fire Management Committee (Bush Fire Management Committee is a local committee comprised of representatives from Councils, land managers, community organisations, RFS and other fire authorities);</p> <ul style="list-style-type: none"> • Front-line response to fire events in their district; • Initiating maintenance requirements/needs; • Community education; and • Local training drills. <p>In practice RFS agency, undertakes the following activities (outside of a s44 declaration):</p> <ul style="list-style-type: none"> • Coordination – informing brigades of 000 calls in their districts, and responding to brigades if they request extra support; • Monitoring the hazard reduction activities identified in the bush fire risk management plan; • Creation and maintenance of training and accreditation courses, materials and Service Standards; • Centrally purchasing and dispensing the protective clothing, safety and firefighting equipment to brigades; and • Handling bushfire hazard complaints <p>In the event that there is no brigade in a location, alternative action by the RFS (pursuant to provisions of its enabling legislation) might include:</p> <ul style="list-style-type: none"> • assistance from nearby brigades 		

Operational Features	RFS	SES	Observations
	<ul style="list-style-type: none"> • directions to other brigades to travel to the location • evacuation to protect life • directions to personnel in other NSW emergency service agencies (such as NSW Police and Fire and Rescue NSW). 		
<p>Legal ownership of fleet vehicles</p>	<p>s119(2) of the RF Act requires all fire fighting equipment purchased or constructed from the Rural Fire Fighting Fund (RFFF) to be vested in Councils. Therefore, legal ownership and title rests with the Councils.</p> <p>In practice, RFS follows the legislative requirement as noted above. All RFA are procured or built, this being overseen by RFS and then these assets are vested to the Councils upon completion as per s119(2) of the RF Act. Vested assets will be added to the listing of RFA appended to the rural fire district service agreement.</p>	<p>There is no legislative requirement in relation to equipment purchases in the SES Act.</p> <p>The State Emergency Service Fund (SESF), similar to the RFFF, is a Special Deposit Account within Treasury's banking system to purchase the fleet vehicles, other assets and operating expenses etc. Each year, the funding target of SESF is prepared by the Minister and agreed with the Treasurer. This is then funded by contributions from insurance companies (73.7%), Councils (11.7%) and Treasury (14.6%). SES has control over this account as they manage and pay suppliers with these funds, but SES only has the authority to carry out these payments in regard to what has been approved in the funding target.</p> <p>In practice, all fleet vehicles are centrally procured and legally owed by SES. SES is responsible to register, insure, position, and maintain the fleets.</p>	<p>Both SES and RFS purchase or build the fleet vehicles using money from the Fund. There is no equipment vesting provision in the SES Act compared with the RF Act. SES has the legal ownership of the vehicles, whereas RFS does not.</p>
<p>Service agreement with Councils</p>	<p>s12A of the RF Act allows the Commissioner to enter into a rural fire district service agreement (the Service Agreement) with a Council whereby the Commissioner agrees to undertake functions imposed by or under the RF Act on a Council on behalf of the Council.</p>	<p>There is no legislative requirement in relation to entering into service agreement with Councils in the SES Act.</p>	<p>Both RFS and SES have similar arrangements on the use of Council-owned buildings/facilities. These arrangements are not considered to be leases, because there is no consideration required</p>

Operational Features	RFS	SES	Observations
	<p>An example Service Agreement with the Council of City of Blue Mountains is attached for information.</p>  <p>Attach A - Blue Mountains signed S</p> <p>The Service Agreement specifies functions and obligations the Commissioner manages on behalf of the Council with nominal consideration exchanged. These terms and conditions are generally applied in all Service Agreements. The key function undertaken by RFS on behalf of the Councils is to take care of and maintain the vested fire fighting equipment.</p> <p>Under item 5, the Council allows RFS to use District Equipment which is owned by, vested in or under the control of the Council. In our view it is through this mechanism that RFS is able to direct the use of RFA under s21 of the RF Act outside of a declared s44 event. Councils may technically be able to deny RFS' ability to utilise resources outside of the Council area, but such action would be the subject of significant scrutiny (item 13 of the Service Agreement).</p> <p>Under item 6, the council also grants RFS the occupancy and use of council-owned buildings/facilities.</p>	<p>In practice, there are no service agreements between SES and Councils in relation to fleet vehicles.</p> <p>Councils enter into partnership agreement with SES in relation to the use of the Council-owned buildings/facilities, with nominal consideration exchanged. The purpose of these agreements is to restrict the nature of use and occupancy.</p>	<p>in relation to the occupancy of the buildings/facilities. This position has been confirmed with the Audit Office. The buildings/facilities occupied by RFS and SES are assets owned and recognised by Councils.</p> <p>No service agreements exist between SES and Councils in relation to the use of fleet vehicles. In comparison, Councils enter into the Service Agreements with RFS to allow RFS to use the vested assets.</p>
<p>Everyday usage of the fleet vehicles</p>	<p>s119(6) of the RF Act allows the Commissioner to utilise unused equipment of a Council in another area, but only with the agreement of</p>	<p>There is no legislative requirement in relation to the use of equipment in the SES Act.</p>	<p>There is no legislative requirement in relation to the use of equipment in the SES Act. SES</p>

Operational Features	RFS	SES	Observations
	<p>the Council. As noted above, due to the action of the Service Agreement, RFS is able to direct the use of RFA under s21 of the RF Act outside of a declared s44 event (item 5 of the Service Agreement).</p> <p>In practice, everyday use of RFA is attached to the brigades – who were formed historically by Councils before RFS was established. RFA are routinely located in Rural Fire Brigade Stations for the brigade to which the assets are attached. At various times they may be deployed either within their district or deployed ‘out-of-area’.</p> <p>Equipment is accessible to anyone who has relevant keys or access to the Brigade station. Predominantly this is likely to be brigade volunteers or RFS salaried employees, although may also extend to a variety of Council staff, particularly where the Council provides maintenance services to the RFA and/or Brigade station.</p> <p>Storage, safety and stocktake of the equipment mostly belongs to the brigades, who via their District staff (RFS paid employees), provide information in respect of the vehicle to Councils. The District also provides up to date information on the equipment register to Councils.</p> <p>Decisions on fleet allocation, replacement and relocations are made in consultation by the District staff with its Senior Management Team (volunteer leaders) depending on the build</p>	<p>In practice, SES units operate the fleet vehicles. Fleet vehicles can be stored in a combination of places, such as NSW government properties or local SES unit headquarters (facilities provided by local Councils). The access to the fleet assets is restricted to SES units or other salaried SES employees. SES is responsible for the storage, safety and stocktake of all fleet vehicles.</p> <p>The decision on fleet allocation, replacement and relocations lies with SES. Under SES policy <i>Operational Standard Fleet Allocation Management Version 1.0</i>, Senior Manager Capability and Policy Development, in collaboration with Zone Commanders, determines the operational allocation of fleet assets in accordance with strategic operational and service priorities. Therefore, a vehicle can be permanently relocated by SES from one location to another if it fits the operational need, without the permission of Councils or exchange of consideration.</p>	<p>directs the use of the fleet vehicles.</p> <p>s119(6) allows the Commissioner to utilise unused equipment of a Council in another area, but only with the agreement of the council. However, councils appear to give RFS unrestricted access to the RFA through the service agreements.</p>

Operational Features	RFS	SES	Observations
	<p>program provided by the NSW RFS and funding available from Government.</p> <p>The RF Act also restricts Councils from selling or otherwise disposing of fire fighting equipment without approval of the Commissioner (s119(3)), and directs that the proceeds of sale or loss of fire fighting equipment are returned to the RFFF (s119(4)). As daily use of RFA is attached to brigades, these provisions can be seen as to protect the investment made from the RFFF and ensure RFA being sold and disposed according to operational needs.</p>		
<p>Maintenance of the fleet vehicles</p>	<p>s119(5) of the RF Act requires councils to maintain equipment, including RFA, to the level specified in the service standards determined by the Commissioner.</p> <p>In practice, due to the action of the service agreement, this responsibility falls to the RFS. Brigades initiate the maintenance requirements/ needs. RFS will then engage with councils in that area, utilising councils' maintenance workshops, to carry out the maintenance. Such arrangements are provided at arm's length terms and alternatively, the work can be carried out by external private providers if RFS chooses to.</p>	<p>There is no legislative requirement in relation to the maintenance of fleet vehicles in the SES Act.</p> <p>SES manages the fleet vehicles centrally and is responsible for the maintenance.</p>	<p>The maintenance responsibility appears to follow the legal ownership.</p> <p>SES manages the vehicles centrally. In comparison, RFS manages the maintenance of RFA on behalf of councils through service agreements.</p>
<p>Insurance of the fleet vehicles</p>	<p>Currently, RFA are insured under the TMF by the RFS. The arrangement for RFS to insure the red fleet assets on behalf of Councils is reflected in clause 10.2 of the Service Agreement.</p>	<p>All fleet vehicles are included under the SES insurance policy with iCare. SES makes the premium payment and manages the claims with iCare.</p>	<p>The insurance responsibility appears to follow the legal ownership.</p> <p>SES is responsible for the insurance of the vehicles, whereas</p>

Operational Features	RFS	SES	Observations
	Other assets held in Brigade stations, and Brigade stations themselves are either insured by the council or uninsured.		RFS arranges the insurance of RFA on behalf of councils.

Based on the table above, the key operational differences between SES and RFS are that:

1. SES considers the units to be its unpaid employees, which they form, recruit and direct, while RFS has no responsibility in the formation and recruitment of brigades and considers the brigades to be independent associations of persons.
2. SES centrally manages the fleet vehicles without any involvement from councils, while RFS deploys the RFA under the unrestricted access granted by councils through service agreements.

Although the daily use of the fleet vehicle is attached to both brigades and units, the above essential differences have led to different accounting treatments for SES and RFS. As SES directly procures, registers, insures, maintains, and uses the fleet vehicles to fulfil their business objectives in responding to an emergency, these assets are treated as controlled by SES. In comparison, RFS only has statutory power to give directions to brigades where an s44 event is declared. When there is no s44 event, the brigades are under the direction of Brigade Officers and able to self-respond to any incident within their RFD. It is only through the mechanism set up in the Service Agreements that RFS is able to deploy the RFA on behalf of councils, either within a council’s district or ‘out-of-area’. Refer to the following section for further analysis on the control of RFA.

Application of Accounting Standards:

AASB 15 *Revenue from Contracts with Customers* (AASB 15) defines control of an asset as ‘**the ability to direct the use of, and obtain substantially all of the remaining benefits from the asset**’ (AASB 15.33). A similar definition of control of an asset is also applied in AASB 16 *Leases* (para B9) and AASB Conceptual Framework for Financial Reporting paragraph (para 4.20). Accordingly, when assessing whether RFS has control of the RFA, the following key factors have been considered:

- a) Ability to direct the use of RFA

While RFS procures or constructs the RFA using money from the RFFF, upon completion these assets are vested to councils under s119(2) of the RF Act. Therefore, councils have the legal ownership and title of these RFA.

Under the RF Act [section 9], the key responsibility of RFS (comprised of the Commissioner, salaried RFS employees and volunteer rural fire fighters), is to provide services for the prevention, mitigation, and suppression of fires in rural fire districts. The individual brigades are not controlled by RFS agency, because the formation of brigades rests with councils [section 15 of the RF Act] and Brigade Captains are elected by brigade members [Service Standard 2.1.4].

The brigades and RFS agency have different responsibilities. The RF Act [section 21] states that an officer of a rural fire brigade or group of rural fire brigades is able to self-respond to any incident within the district for which the brigade or group was formed. It is only when an s44 event is declared, that the Commissioner has statutory power to give directions to brigades.

Under Part 4 *Bush Fire Prevention* of the RF Act, councils have the responsibility to take 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 any land, highway, road, street or throughfare under councils' control or management. Routinely it is brigades that perform these activities on behalf of Councils.

On balance, it would appear the councils control the RFA, because:

- (a) The councils are responsible for establishing brigades in their LC districts [section 15 of the RF Act];
- (b) The councils have legal responsibilities for bush fire prevention [Part 4 Bush Fire Prevention of the RF Act] and brigades are responsible for hazard reduction and local fire responses, in their normal course of business (i.e. outside a s44 event); and
- (c) The RFA are legally vested in councils and councils are required to grant permission [section 119(6) of the RF Act] where RFS wants RFA to be used in another LC district.

The fact councils can choose to enter into service agreements with RFS agency to maintain and deploy RFA, further indicates these responsibilities sit with councils.

- b) Obtaining the economic benefits from the RFA

According to para Aus49.1 of the *Framework for the Preparation and Presentation of Financial Statements* (the Framework), in the context of not-for-profit entities, future economic benefits is synonymous with the notion of service potential, and is used as a reference also to service potential. As discussed in section a) above, councils have legal responsibility for bush fire prevention and therefore it is councils' service objective. In practice the brigades perform activities for bush fire prevention within their districts on behalf of councils, such as hazard reduction, by utilising the RFA. As a result, these RFA allow for the safety of the people and property within the councils' area. By community assets being protected, councils are able to fulfil their legal responsibility and accrues most benefit from the RFA. In summary, it appears that by contributing 11.7% of the cost, councils obtain the ownership of the RFA and derive 100% of the service potential from these assets.

Concluding Position:

We acknowledge the ownership of assets is judgemental. However, based on the above our view is that RFS should continue to not recognise the RFA that have been vested to the councils, as RFS receive little future economic benefit, and is not able to deploy these assets to another LC district without agreement from councils. This treatment also aligns with our understanding of the operational differences between SES and RFS.



Geoff Provest MP
Parliamentary Secretary for Police and Emergency Services

IM22/16256
M22/1(175)

Mr Matthew Hannan
Mayor
Berrigan Shire Council
56 Chanter Street
BERRIGAN NSW 2712

Dear Mr Hannan

Thank you for your correspondence to the Minister for Emergency Services and Resilience and Minister for Flood Recovery, Steph Cooke, regarding the accounting treatment of NSW Rural Fire Service (RFS) assets vested in Berrigan Shire Council. The Minister has asked me to respond on her behalf.

At the outset, I can assure you the RFS values local government's significant contribution to the State's bush fire management and is committed to working in collaboration with councils in its Rural Fire Districts.

As you are aware, s119(2) of the *Rural Fires Act 1997* states that "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."

NSW Treasury and the Department of Planning and Environment have reached a consensus that rural fire fighting equipment captured by s119(2) is controlled by councils and should be recognised in their financial statements.

The Auditor-General's *Local Government 2021* report to Parliament notes this position and recommends that councils should perform a full asset stocktake of rural fire fighting equipment, including a condition assessment, for 30 June 2022 financial reporting purposes. It further recommends that, consistent with the Australian Accounting Standards, councils should recognise this equipment as assets in their 30 June 2022 financial statements.

The *Local Government 2021* report also notes that the Audit Office of NSW is currently conducting performance audits of both the RFS (Planning and managing bush fire equipment) and the Office of Local Government (The effectiveness of local government regulation and support).

The RFS is assisting the Audit Office in relation to planning and managing bush fire equipment and I look forward with interest to the Auditor-General's findings and any relevant recommendations arising from these two audits.

Thank you again for taking the time to bring this matter to the Government's attention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Provest".

Geoff Provest
Parliamentary Secretary for Police and Emergency Services

8.33 T01-22-23 Annual Plant Hire Rates for 2022-23

Author:	Operations Manager, Gary George
Strategic Outcome:	1. Sustainable natural and built landscapes
Strategic Objective:	1.2. Retain the diversity and preserve the health of our natural landscapes and wildlife
Delivery Program:	1.2.1. Partner with community groups and agencies on projects that retain and preserve the health of our natural landscapes and wildlife
Council's Role:	Agent: Typically, this would involve the Council delivering a service, funded by a government agency that is, or is likely to be regarded as, the responsibility of another government level
Appendices:	1. T01-22-23 Annual Plant Hire rates Evaluation form ↓

Recommendation

That Council:

1. Accept all compliant tenders for the 2022-23 financial year for T01-22-23 Annual Plant Hire Rates.
2. Sign and seal the contract documents.

Report:

The Council wish to compile a list of available specific items of Plant for hire to supplement its own Plant and Fleet. This list is to enable the Council to select suitable Plant on a 'Best Value' basis to support the delivery of works and services to the community as required.

The Annual Plant Hire contract is a schedule of rates contract.

Tenders closed at 2:00pm, Wednesday 1st June, 2022. At the time of closing a total of twenty eight submissions were received.

Submissions were received from the following organisations:

1. Andrew Goldman Excavations Pty Ltd
2. Bencon Civil Construction Pty Ltd
3. Berrigan Water Cartage
4. BuildCivil
5. Cleanaway Co Pty Ltd T/A Toxfree
6. Coates Hire Operations Pty Limited
7. Complete Road Seal
8. Conplant Pty Ltd
9. The Trustee for Boda Family Trust T/A ConX Hire
10. Crawford Civil Pty Ltd

11. Drainflow Solutions Pty Ltd
12. The Trustee for SJ & SD Fox Family Trust T/A Foxys Backhoe Service
13. Innovative Milking
14. John Nolen Pty Ltd
15. Miller Pipe & Civil P/L
16. O'Loughlin Excavations Pty Ltd
17. Pascoe Grading & Earthmoving Contractors Pty Ltd
18. Porter Excavations Pty Ltd
19. Precision Grading Pty Ltd
20. Riverina Stabilisers
21. Rollers Australia
22. RSP Environmental Services
23. Stabilco Pty Ltd
24. Stephen Haynes Pty Ltd
25. The Mining Pty Ltd
26. Tribuzi Transport & Plant Hire
27. Tutt Bryant Hire
28. Stanton Corporation Pty Ltd T/A Universal Mobile Tower Hire

Consideration of the Tenders

All Tenders were considered by the Tender Evaluation Committee consisting of Gary George and Dean Loats and mediated by Judith Cakebread.

The following Tenders submitted were deemed compliant with the specification and are recommended to be accepted:

- Andrew Goldman Excavations Pty Ltd
- Bencon Civil Construction Pty Ltd
- Berrigan Water Cartage
- BuildCivil
- Cleanaway Co Pty Ltd T/A Toxfree
- Coates Hire Operations Pty Limited
- Conplant Pty Ltd
- The Trustee for Boda Family Trust T/A ConX Hire
- Crawford Civil Pty Ltd
- Drainflow Solutions Pty Ltd
- The Trustee for SJ & SD Fox Family Trust T/A Foxys Backhoe Service
- John Nolen Pty Ltd
- Miller Pipe & Civil P/L
- O'Loughlin Excavations Pty Ltd
- Pascoe Grading & Earthmoving Contractors Pty Ltd
- Porter Excavations Pty Ltd
- Precision Grading Pty Ltd
- Riverina Stabilisers
- Rollers Australia
- RSP Environmental Services
- Stabilco Pty Ltd
- Stephen Haynes Pty Ltd

The Mining Pty Ltd
Tribuzi Transport & Plant Hire
Stanton Corporation Pty Ltd T/A Universal Mobile Tower Hire

The following Tenders submitted were deemed non-compliant with the specification and are to be rejected:

Complete Road Seal
Innovative Milking
Tutt Bryant Hire

Supervisor

The superintendent of the contract will be the Director of Infrastructure and the superintendent's representative will be the Operation Manager.

Tender Evaluation Report

Contract Number: T01-22-23
Tender Title: Annual Plant Hire Rates for the 2022/23 Financial Year
Membership of Evaluation Panel: Gary George
 Dean Loats
 Judith Cakebread (Mediator)

Tenderer	Rates value for money	Tender Forms Completed	Compliances				Accept/Reject
			MV Ins.	PL Ins. >=\$20M	Work Cover	OHS Policy	
Andrew Goldman Excavations		✓	✓	✓	✓	✓	Accept/Reject
Bencon Civil Constructions		✓	✓	✓	✓	✓	Accept/Reject
Berrigan Water Cartage		✓	✓	✓	N/A	✓	Accept/Reject
BILDCivil		* C	✓	✓	✓	✓	Accept/Reject
Cleanaway Co		* C	✓	✓	✓	✓	Accept/Reject
Coates Hire Operations		✓	✓	✓	✓	✓	Accept/Reject
Complete Road Seal			✓	✓	✓	✓	Accept/Reject
Conplant		✓	✓	✓	✓	✓	Accept/Reject
ConX Hire		✓	✓	✓	✓	✓	Accept/Reject
Crawford Civil		✓	✓	✓	✓	✓	Accept/Reject
Drainflow Solutions		✓	✓	✓	✓		Accept/Reject
Foxys Backhoe Service		* C	✓	✓	N/A	✓	Accept/Reject
Innovative Milking	X	X	X	✓	✓	✓	Accept/Reject
John Nolen		✓					Accept/Reject
Miller Pipe & Civil		* C	✓	✓	✓	✓	Accept/Reject
O'Loughlin Excavations		✓	✓	✓	✓	✓	Accept/Reject
Pascoe Grading & Earthmoving		* C	✓	✓	✓	✓	Accept/Reject
Porter Excavations		* C	✓	✓	✓	✓	Accept/Reject

Tenderer	Rates value for money	Tender Forms Completed	Compliances				Accept/Reject
			MV Ins.	PL Ins. >=\$20M	Work Cover	OHS Policy	
Precision Grading		✓	✓	✓	✓	✓	Accept/Reject
Riverina Stabilisers		✓	✓	✓	✓	✓	Accept/Reject
Rollers Australia		* C	✓	✓	✓	✓	Accept/Reject
RSP Environmental Services		✓	✓	✓	✓	✓	Accept/Reject
Stabilco		* C	✓	✓	✓	✓	Accept/Reject
Stephen Haynes		✓	✓	✓	✓	✓	Accept/Reject
The Mining Pty Ltd		✓	✓	✓	✓	✓	Accept/Reject
Tribuzi Transport & Plant Hire		✓	✓	✓	✓	✓	Accept/Reject
Tutt Bryant Hire		✓	X	✓	✓	✓	Accept/Reject
Universal Mobile Tower Hire		✓	✓	✓	✓	✓	Accept/Reject

* C – All but Part C Statutory Declaration completed, flag to sign in contract.

Evaluated and Signed By:

Panel Member Name	Signature	Date	Time
Gary George	GG	17/06/2022	
Dean Loats	DL	17/06/2022	

Witnessed By:

Panel Member Name	Signature	Date	Time
Judith Cakebread	JC	17/06/22	

8.34 Development Assessment and Prioritisation of Workload

Author:	Director Strategic Planning & Development, Joanne Ruffin
Strategic Outcome:	1. Sustainable natural and built landscapes
Strategic Objective:	1.1. Support sustainable use of our natural resources and built landscapes
Delivery Program:	1.1.1. Coordinate strategic land-use planning
Council's Role:	Regulator: The Council has legislated roles in a range of areas which it is required to fund from its own funds (apart from fees for cost recovery, government grants etc) Service Provider: The full cost (apart from fees for cost recover, grants etc) of a service or activity is met by Council
Appendices:	Nil

Recommendation

That the direction of the Council on the options proposed is sought.

Purpose

The timely processing of Development Applications by the Council's Building and Planning Services continues to be a key pressure point for Councillors, developers and the Council's Building and Planning Services. Therefore, this report seeks the direction of the Council and clarification of its expectations regarding the assessment and determination of Development Applications and responsiveness to internally generated day-to-day Building and Planning Services assets and facility maintenance tasks and externally generated customer service requests.

Summary

The Council, local developers and community members expect a timely response to general building and planning requests also a 20 – 30-day response to the assessment and determination of a Development Application. Based on feedback Councillors and Council Officers have received we are not meeting community expectations. The Council's Building and Planning Services have year-to-date responded to and closed 801 customer service requests while assessing and finally determining 157 Development Applications (DAs) with the median number of days taken to assess and determine these DAs being 37 days the performance of which is inside the NSW Dept of Planning and NSW Premier's benchmark of 40-days. The direction of the Council is sought on the options proposed to address community and Councillor concerns about the timeliness of the processing and determination of DAs and the overall responsiveness of Building and Planning Services to customer requests.

Background

Before the implementation of the NSW Planning Portal, the Council and local developers lodged development applications directly with Council Officers. The process at that time was familiar and

known to all parties. This process allowed Council Officers some discretion in prioritising and escalating Applications and the resultant Post Consent workload. Also, not recorded in a central database were general enquiries and customer requests. Hence it is difficult to know to what extent general enquiries and customer requests formed part of the Planning and Building Services workload. Further, it was also an operational requirement the assessment and determination of Development Applications be less than the NSW Planning and Assessment Benchmark of 40-days.

The past 18-months has seen the introduction of the planning portal, staff turnover, increase in the complexity of Development Applications, in addition to the number of Development Applications generating significant change and delays in the processing of Development Applications.

In response to feedback from the community and the Council considerable effort in the past 12-months has been directed therefore, to improving the responsiveness of Planning and Building Services to the following:

- Customer Service Requests – general planning and building enquiries
- Section 355 Committee Requests – responsive maintenance (vandalism)
- Requests for planning Portal Assistance

Changed in the past 12-months to improve the responsiveness of Planning and Building Services to the above has been:

- The development of planning and building services Duty System responding to general planning and building enquiries
- Planning Portal Assistance Service: a by appointment service this service offers one – one support for community members who book and request assistance with lodging a Development Application via the portal. The council's library services staff have also received basic training and now assist patrons with the lodgement of planning applications
- Pre-lodgement meetings – by appointment offered by the Town Planner and the Building and Planning Manager these meetings provide an opportunity for Council Officers to provide specific advice prior to the applicant lodging an Application via the Planning Portal
- Website content redeveloped providing links to NSW Planning Resources – self-help checklists and videos

Despite these changes it is clear the Council's Building and Planning Services are not meeting Councillor, developer and community expectations with respect to the processing, assessment and determination of Development Applications. The following is presented to provide Councillors with a sense of the ranges of services provided and the resources allocated to Building and Planning Services.

In addition to the assessment and determination of Development Applications this team is also responsible for the responsive maintenance and programmed maintenance of Council's Assets and Facilities, Section 68 approvals per the *Local Government Act 1993*, Post-Consent Building certifications, issue of Planning Certificates and responding to general enquiries and requests for pre-Development Application Assistance etc. These functions must be balanced within available resources – and undertaken by Council Officers qualified to perform these tasks. Outlined below is a summary of the Human Resources allocated and available to respond to competing demands.

Human Resources:

Manager Planning & Building	1 FTE
Town Planner	1 FTE
Asset & Facility Maintenance Officer	1 FTE 1 FTE (New vacant Trainee Position currently being advertised)
Building & Administration Officer	2 FTE 1 FTE (new vacant position currently being advertised)
Director Strategic Planning & Development	.4 FTE – allocated to support Planning and Building functions

Primary Planning and Building Functions x Human Resource Allocated

Function/Service	Human Resource allocated
Planning Portal Administration, Planning & Building Records Management, Trade Waste, Asset & Facilities Maintenance Admin Support, Planning & Drainage Certificate Support	Building & Administration Officer x2
Section 68 Approvals – Local Government Act	Manager Planning and Building Asset & Facility Maintenance Officer
Post Consent Building Certification	Manager Planning and Building Asset & Facility Maintenance Officer
Issue of Planning Certificates	Town Planner
Maintenance of Council Assets and Facilities	Asset & Facility Maintenance Officer
Customer Enquiries – Duty Officer	Asset & Facility Maintenance Officer Town Planner Manager Planning and Building Director
Development Applications Assessment & Determination	Town Planner
Development Applications - Subdivisions	Manager Building and Planning Manager Building and Planning Design Engineer Environmental Engineer
Strategic Planning – LEP Review	Director
LSPS Implementation	Contracted Out – Consultants/Director
Development Control Plan Review	On hold
Contributions Plan Review	On hold
NSW Planning Reforms	On hold
RAMJO Portal Project	Director

Per the NSW Development Assessment Best Practice Guidelines 2017 the guide suggests the ‘majority of determinations be delivered within a 40-day target timeframe’ (p8). To achieve this target the Guide also notes that ‘assessing officers are capable of assessing up to 25 straight forward DAs at any one time’ (p10).

The following (Table 1) is a monthly analysis of average days (workdays) for the determination of a development Application (DA) developed from the monthly report that is tabled at each Ordinary Council meeting. In the past six months, the median number of days for a Determination is thirty-seven. Also presented (Figure 1) is an analysis of Customer Service Requests received and finalised by the Building and Planning Team.

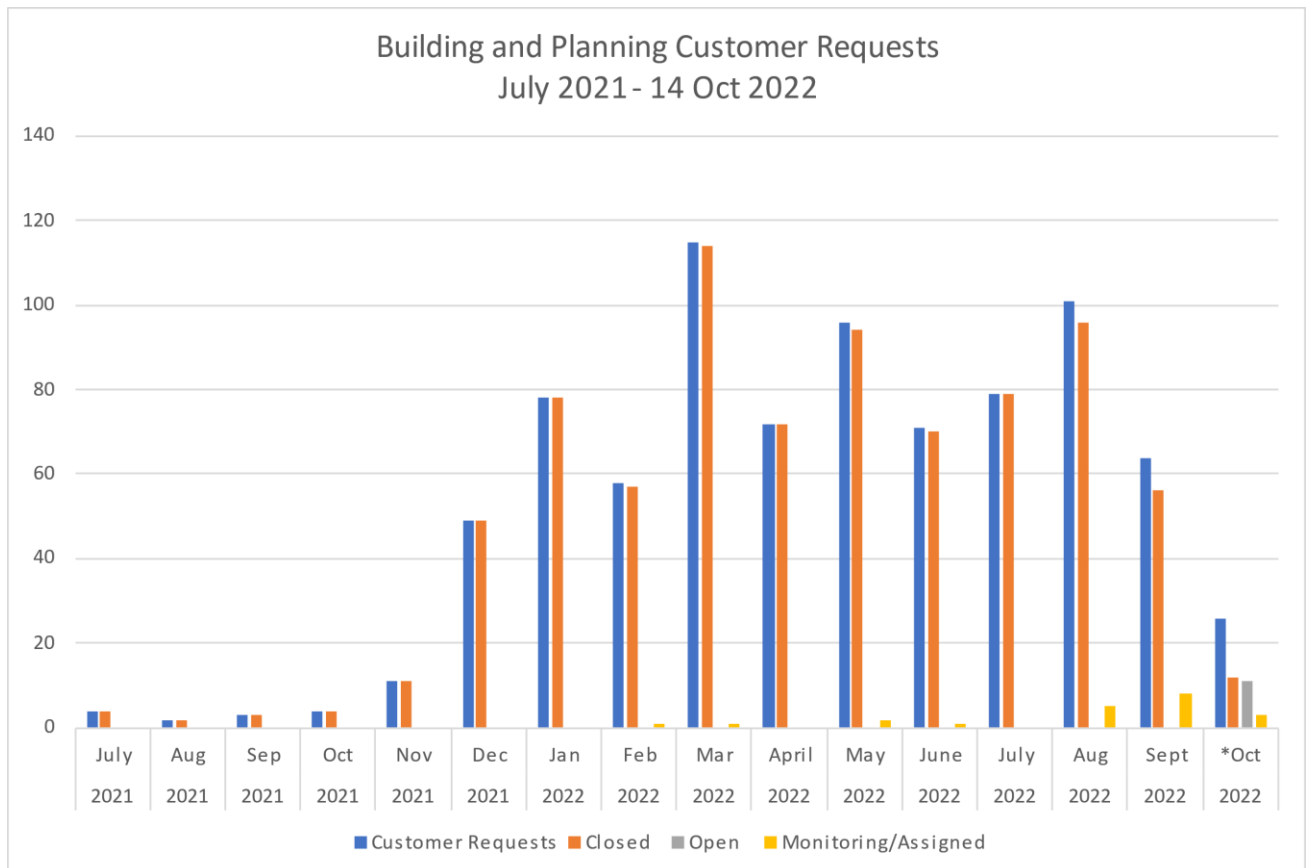
Table 1

	2022	2022	2022	2022	2022	2022	2022	2022	2022	2022
	Jan	Feb	Mar	April*	May#	June	July	Aug	Sept	*Oct
Applications Determined	21	18	21	11	25	12	20	20	11	
Average Days for Determination	27	43	18	46	54	10	37	39	27	
Total Determined										159
Median No. of Days to determine	Includes outliers of Barooga Water Treatment Plant and Fishing Platform / Ampitheatre (Council Projects)									37

* 200 days Barooga Water Treatment Plant

#586 days Fishing Platform and Ampitheatre

Figure 1



The data suggests, therefore, the focus on responding to Customer Requests – Pre DA and general planning and building requests may be impacting the timeliness of DA assessment.

Notwithstanding the data, it is evident something needs to change. The need for additional staff to manage and respond to competing demands and expectations is apparent and operationally acknowledged by the creation of and current advertising of two new positions.

Relevance to Community Strategic Plan and Other Strategies /Masterplans / Studies

The timely processing of DAs and Council Officer responsiveness to Building and Planning customer requests is a key element of the Council's commitment to our communities. Relevant therefore, to the implementation of the Community Strategic Plan and the Council's Local Strategic Planning Statement.

Issues and Implications

The issues described are on the surface issues related to resources and workload. It is however, important to note that resources are constrained. Further, in an environment characterised by change Council staff have, in response to a request to improve their responsiveness to general planning and building Customer Service Requests, had to divert resources from the timely assessment of DAs. Not surprisingly therefore, this has had a flow on effect.

On balance it is likely there will continue to be an ebb and flow in demand and the resources needed for timely assessment and determination of DAs. This leaves staff with the question what is reasonable in the circumstances and do expectations need to change?

Policy

NSW Department of *Planning Development Assessment Best Practice Guidelines 2017*

Financial

The assessment of DAs and the issue of post consent certificates is a user pay service. While responding to requests for assistance with the planning portal, pre-lodgement advice, general planning and building enquiries, and strategic planning activities is a Council or ratepayer funded activity.

Legal / Statutory

Local Government Act 1993 (s68)

Environmental Assessment and Planning Act 1979

Community Engagement / Communication

Berrigan Shire Council Community Engagement Framework

Human Resources / Industrial Relations (If applicable)

Council planning staff are carrying caseloads in excess of recommended best practice guidelines (25 DAs at any one time per FTE) and while this may be sustainable for experienced team members for short periods of time, the Council runs the risk of losing staff due to high workloads.

Risks

1. Reputational

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

Community and Councillor expectations are that Council Officers will process DAs in less than 40-days (20 – 30 days). Further that Council Officers will provide general planning and building assistance in response to a customer request. Data and community feedback confirm that the Council Officers cannot meet these expectations, consequently the reputation of the Council is jeopardised.

Workplace Health and Safety

	Consequence				
Likelihood	1	2	3	4	5
A	Medium	High	High	Very High	Very High
B	Medium	Medium	High	High	Very High
C	Low	Medium	High	High	High
D	Low	Low	Medium	Medium	High
E	Low	Low	Medium	Medium	High

The Council’s Building and Planning Team are relatively new in terms of their experience. It is this lack of experience which has contributed in part to some delays with the more complex DAs but which has also benefitted Council as team members have approached their work with enthusiasm and the resilience needed to adapt to NSW Planning reforms. Data suggests that staff are performing well compared to their peers and are meeting the state benchmark of 90% of DAs completed within a 40-day timeframe with a median number of days taken to determine a DA thirty-seven (37) days.

The Council risks ‘losing staff’ should there continue to be a mismatch between Council, community expectations, resources and benchmarked regional and State expectations and the resourcing allocated to this task.

Options

1. No change – business as usual with risks outlined above. There are no benefits with this option.
2. Council directs that within current and planned resources, Planning and Building prioritise fee-paying services - the Assessment of DAs and Post Consent Certificates, S68 approvals and the community advised that general planning and building enquiries will be restricted. This option will ensure fee-paying developers and builders will experience an improvement in the time

taken to assess and determine their application or the issue of their post-consent certificate. The risk will be the Council's Section 355 Committees', and general community requests for planning and building information and responsive asset and facility maintenance will experience further delays.

3. The Council endorse the *NSW Planning Development Assessment Best Practice Guidelines 2017* as the performance and resourcing standard it expects for timely assessment and determination of DAs – 90% of DAs assessed within 40-days. This is a benchmark that sets a standard and community expectation which is sustainable. Further, it is proposed that Council staff continue to develop online resources and activities designed to assist the broader community answer general questions about building and planning Matters.

The benefit of this option is that this may resolve the mismatch between community expectations and what is sustainable and viewed as best practice by the sector. While this option will not address all the issues related to the sustainability and resources needed for Post Consent Certification, s68 approvals, general Planning and Building customer service enquiries and the demands placed on Planning to remain up to date and active in NSW Planning Reforms, and changes related to the further development of NSW Planning Portal and Strategic Planning practice; risks not managed by this option. Nonetheless, a change in expectations and agreement that Planning staff are meeting an industry target will create the 'space' needed to manage expectations, improve services, and deliver in a timely and sustainable manner Building and Planning Services in the Berrigan Shire.

Conclusions

Option three is supported as an approach that establishes a clear performance benchmark (industry accepted) it is also doable and sustainable. Needed however, will be clear communication and support that past and current service level expectations were and are very high. Further, that without additional resources/expertise in what is a competitive market the Council has few options other than suggesting to its community and developers that they align their expectations with a regional and state benchmark. Specifically, that 90% of DAs will be assessed and determined within 40-days.



ORDINARY COUNCIL MEETING

Wednesday 19 October, 2022

at 9:15am

Council Chambers, 56 Chanter Street, Berrigan



Late Items Appendices

Table of Contents

8.4	Position paper - Rural Fire Service assets	
	Appendix 7	19.10.2020 RFS assets - statement (002).docx 4
	Appendix 8	13 Attachment 3 - Treasury_Accounting_Paper_re_Red_Fleet_Assets.pdf.pdf..... 7
	Appendix 9	19.10.2022 Geoff Provest RFS Assets.pdf..... 19
8.33	T01-22-23 Annual Plant Hire Rates for 2022-23	
	Appendix 1	T01-22-23 Annual Plant Hire rates Evaluation form 21

Berrigan Shire Council



Position paper – Accounting treatment of Rural Fire Service assets

19 October 2022

The Council has made the decision not to bring to account the NSW Rural Fire Service (RFS) assets nominally vested in the Council under s119 of the *Rural Fires Act 1997*.

This accounting treatment of RFS assets is explicitly permitted by the NSW Local Government Code of Accounting Practice and Financial Reporting issued by the Office of Local Government.

Councils need to assess whether they control any rural firefighting equipment in accordance with Australian Accounting Standards and recognise in their financial statements any material assets under their control and state the relevant accounting policy in relation to the treatment.

Council does not believe that it controls the assets in question.

Council does not believe that the assets (and associated depreciation) is material in the context of the Council's financial statements.

Control

In making this decision, the Council has considered two divergent opinions on the control of NSW RFS assets.

1. *Rural Fire Service – Considerations of ownership of the red fleet assets* - a paper (undated and with no named author) prepared by NSW Treasury
2. *Review of accounting for 'red truck' assets and other firefighting equipment in NSW* - a (draft) paper prepared in April 2018 by Colin Parker of GAAP Consulting on behalf of the Office of Local Government.

Having considered both opinions, the Council considers on balance the opinion provided by Mr Parker is more persuasive and holds more weight.

The opinion provided by NSW Treasury relies heavily on the legal fiction that Council can control the deployment and disposition of the red fleet – i.e., the red fleet cannot be taken outside the Council area without Council agreement.

Section 119 of the Rural Fires Act nominally vests the assets with the Council. In reality, the (compulsory) Service Level Agreement with the RFS leaves the Council with no control over the purchase, disposal, operation, maintenance, distribution, or condition of RFS equipment.

Note s119 of the *Rural Fires Act* also requires the RFS to seek concurrence of the Council if any of the equipment vested in it is to be used outside the Council area. This concurrence is now not sought or given from this Council by the RFS – nor has it been reasonably expected. The assets are under the control of the RFS.

The opinion provided by Mr Parker supports the Council's conclusion.

Mr Parker is a qualified and experienced expert in this field.

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 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).

Mr Parker's opinion is that:

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 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.

The councils have no substantive rights for the control of fire-fighting equipment - vesting by itself does not confer control.

Mr Parker's opinion is included with this position paper as an appendix.

Materiality

One of the difficulties of bringing to account the RFS assets is that because Council does not control their purchase, disposal, disposition or use, the Council does not hold its own records of what assets nominally vested in the Council – including the number, cost, age, useful life, type, location and condition. This information is necessary if the Council is to record a reliable value for the assets in its statements.

In 2022, the Office of Local Government provided the Council with a list of assets nominally vested in Berrigan Shire Council including an estimated replacement value. This spreadsheet including this list appears to be dated 28 June 2021. The Council does not know the provenance of this list and does not know if the list is current and accurate as of 30 June 2022. The Council does not know who determined the “estimated replacement cost at 28 June 2021” and their relevant qualifications, nor does the Council know what valuation methodology was used.

Taking the above into account, the list provided by the Office of Local Government values the RFS red fleet asset nominally vested in Council at \$3.9m – not taking into account potential impairment or accumulated depreciation. Council’s overall Infrastructure, Property, Plant and Equipment (IPPE) assets had a gross carrying amount at 30 June 2021 of \$424.2m.

Thus, the value of the RFS assets as a proportion of total IPPE assets is less than 1% and thus immaterial.

It is more difficult to determine the materiality of depreciation of the RFS red fleet as a proportion of the Council’s overall IPPE depreciation as the useful lives and service potential of the assets is not known. Assuming a depreciation rate of 10%, annual depreciation of RFS assets will be approximately \$0.39m over a total depreciation expense of \$6.55m.

Thus the estimated RFS asset depreciation expense is less than 0.6% of the Council’s total depreciation expense and again, immaterial.

Rural Fire Service – Considerations of ownership of the red fleet assets

Summary of Issue: Whether the Rural Fire Service (RFS) or the local councils should recognise the red fleet assets (RFA) on their books.

Currently RFS do not record the RFA, a position that was presented and agreed with the Audit Office (AO) in 2018. In September 2020, a several councils jointly wrote to the Auditor General querying the accounting treatment of the RFA. As a result, the AO requested Treasury re-examine the accounting treatment.

Background: The Rural Fire Fighting Fund (RFFF) is a special deposit account within Treasury’s banking system. RFFF purchases RFA, and other assets such as brigade stations, fire control centres, firefighting equipment, uniforms and protective clothing. RFFF also pays the operating expenses of RFS. RFS manage and pay suppliers with these funds. Each year, the funding target of RFFF is prepared by the Minister and agreed with the Treasurer. As the funding target is an overall number for the aforementioned expenditures, RFS prepares a detailed budget each year to allocate the funding target to specific uses. During this process, RFS consults and agrees with councils the spending on RFA, buildings, equipment and maintenance for each district to be paid by the RFFF. The RFFF is funded by contributions from insurance companies (73.7%), Councils (11.7%) and Treasury (14.6%). RFS oversees the procurement of RFA. The RFA are then vested to individual councils upon completion, in accordance with section 119(2) of the Rural Fires Act 1997 (the RF Act). RFS hold the firefighting equipment, uniforms and protective clothing as inventory and then expense them when dispensing to brigades.

Under OLG’s model financial report: Financial Reporting Code, councils have the option whether to recognise these assets on their books and thus, there are instances where the RFA are not recorded by either RFS or a council. However, brigade stations and fire control centres are often recognised as assets of local councils.

Work Performed: We reviewed the previous position paper and held discussions with RFS personnel: Stephen O’Malley (CFO) and Myles Foley (Director Finance); and with General Managers and CFOs from Leeton Shire Council, Coffs Harbour City Council, Nambucca Valley Council and Wingecarribee Shire Council, to understand the daily operation of the RFA. We also held discussions State Emergency Service (SES) personnel: Daniel Crocco (Acting CFO) and Nathan Birch (Management Accountant) to understand the operational differences between SES and RFS. . From these conversations, we have summarised our understanding and those factors that indicate control by RFS or Councils in the following analysis.

Relevant Accounting Standards:

AASB Conceptual Framework for Financial Reporting

4.20 An entity controls an economic resource if it has the present ability to direct the use of the economic resource and obtain the economic benefits that may flow from it. Control includes the present ability to prevent other parties from directing the use of the economic resource and from obtaining the economic benefits that may flow from it. It follows that, if one party controls an economic resource, no other party controls that resource.

4.21 An entity has the present ability to direct the use of an economic resource if it has the right to deploy that economic resource in its activities, or to allow another party to deploy the economic resource in that other party’s activities.

4.23 For an entity to control an economic resource, the future economic benefits from that resource must flow to the entity either directly or indirectly rather than to another party. This aspect of control does not imply that the entity can ensure that the resource will produce economic benefits in all circumstances. Instead, it means that if the resource produces economic benefits, the entity is the party that will obtain them either directly or indirectly.

AASB Framework for the Preparation and Presentation of Financial Statements

49(a) An asset is 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

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 is 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.

AASB 10 *Consolidated Financial Statements* – AASB 10 relates to control of ‘entities’ not individual or groups of assets.

AASB 15 Revenue from Contracts with Customers

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. The benefits of an asset are the potential cash flows (inflows or savings in outflows) that can be obtained directly or indirectly.

AASB 16 Leases

B9 To assess whether a contract conveys the right to control the use of an identified asset for a period of time, an entity shall assess whether, throughout the period of use, the customer has both of the following:
 a) the right to obtain substantially all of the economic benefits from use of the identified asset; and
 b) the right to direct the use of the identified asset.

Comparison of Operational Features between RFS and SES:

Operational Features	RFS	SES	Observations
Establishment and main functions	The <i>Rural Fire Act 1997</i> (the RF Act) was written to establish the Rural Fire Service and its functions.	The <i>State Emergency Service Act 1989</i> (the SES Act) was written to establish the State Emergency Service and its functions.	Both RFS and SES are constituted as a volunteer organisation. They co-ordinate volunteer efforts at both a strategic and tactical level.


Operational Features	RFS	SES	Observations
	<p>RFS is comprised of the Commissioner, other RFS staff (salaried employees) and volunteer rural fire fighters (s8 of the RF Act). Although, other parts of the RF Act indicate the rural fire fighters are part of the brigades, that are sperate entities, formed by councils.</p> <p>s9 of the RF Act sets out the functions of RFS, which for this analysis, importantly include:</p> <ul style="list-style-type: none"> • providing rural fire services for New South Wales • providing services for the prevention, mitigation, and suppression of fires in rural fire districts • protecting persons from dangers to their safety and health, and property from destruction or damage, arising from fires in rural fire districts 	<p>SES is comprised of the Commissioner, Deputy Commissioner, other SES staff (salaried employees), the volunteer officers and volunteer members of all SES units (s7 of the SES Act).</p> <p>s8 of the SES Act sets out the functions of SES, which for this analysis, importantly include:</p> <ul style="list-style-type: none"> • acting as the combat agency for dealing with floods, tsunamis and storms and co-ordinating the evacuation and welfare of affected communities • protecting persons from dangers to their safety and health, and property from destruction or damage, arising from floods, storms and tsunamis 	<p>SES is the lead combat agency as specified in the SES Act. However, the RF Act does not appear to have an equivalent objective.</p>
<p>Formation and operation of brigades/units</p>	<p>s15 of the RF Act regulates the formation of rural fire brigades. A local authority (Council) forms the brigade for its rural fire district (RFD). It is only where a Council refuses or fails to form a brigade, that the Commissioner may do so (s15(4) of the RF Act). RFS agency has no knowledge when this power is exercised.</p> <p>s21 of the RF Act confers powers on an officer of a rural fire brigade to exercise functions at a fire, incident or other emergency in the RFD for which the brigade was formed – and with approval of the Commissioner outside of the RFD. This means that brigades are able to self-respond to any incident within their RFD, or with approval, respond to an incident outside of the RFD. This means that outside of the</p>	<p>Under s18 of the SES Act, SES units are registered by the Commissioner. s18AA sets out that membership of an SES unit may be granted by any of the following:</p> <ol style="list-style-type: none"> the Commissioner, a zone commander, local commander or unit commander responsible for the SES unit <p>The Commissioner appoints the zone commander and unit commander (s16(1) and 17A(1) of the SES Act). The Commissioner also appoints the local commander on the recommendation of the Council for that area (s17(1) of the SES Act).</p> <p>The local commander and unit commander are volunteers, whose operations are</p>	<p>Both RFS and SES provide a support and coordination role to the volunteers, by providing input such as information, training, coordination and aerial support.</p> <p>SES appears to have active involvement in the formation of SES units. SES forms and registers local SES units. SES also recruits unit commanders or local commanders, who control the activities of local SES units under the direction of SES. SES considers the SES units to be its unpaid employees.</p>

Operational Features	RFS	SES	Observations
	<p>declaration of an s44 (see below), a brigade is under the control of its officers.</p> <p>s44 of the RF Act gives the Commissioner a responsibility to take charge of bush fire fighting operations in any part of the State if a number of conditions exist (refer to s44(1)(a)-(d) of the RF Act). In summary, these conditions include a local brigade is not effectively controlling a fire; a fire event is too large for that brigade; or a fire event occurs in a location that is not the responsibility of any brigade.</p> <p>In the 2019-20 fire season, fires were protracted and extended the length of the State, with a large number (43) of extended s44 declarations. This resulted in significant 'out of area' deployments for RFA and brigades, which were co-ordinated by RFS in order to combat the bush fires. This compares to 2018/19 and 2017/18, when there were only 15 and 17 s44 declarations respectively.</p> <p>In practice, when a s44 declaration is made, RFS agency will step in and take responsibility for the following:</p> <ul style="list-style-type: none"> • Relocating brigades to other districts as necessary; • Taking charge of the planning and determining how to control/suppress fire events; • Setting up base camps; • Engaging heavy plant providers; • Running the aviation desk; and • Community alerts 	<p>directed by SES (the relevant zone commander or the Commissioner) to undertake response and recovery activities (s17(3), and s17A(2) of the SES Act). A zone commander is a SES salaried employee, who is not involved in the actual response but rather in the coordination activities.</p> <p>In practice, SES follows the legislative requirements as noted above and appears to have active involvement in the formation of SES units. SES is responsible for the recruitment of SES units. Local commanders and unit commanders, who control the operations of the local units, are recruited by SES and are subject to the direction from SES. Community members volunteer to become members of local SES units via applications. The local commander or unit commander makes the assessment and accepts suitable applicants.</p> <p>In the event that there is no SES unit in a location, alternative action by the SES (pursuant to provisions of its enabling legislation) might include:</p> <ul style="list-style-type: none"> • assistance from nearby SES units • directions to other SES units to travel to the location • evacuation to protect life • directions to personnel in other NSW emergency service agencies (such as NSW Police and Fire and Rescue NSW). 	<p>In comparison to SES, RFS has no direct involvement in the formation of the brigades and appointment of Brigade Officers (equivalent to SES unit/local commanders). The brigades operate in accordance with the Brigade Constitution and are able to self-respond to any incident within their RFD. RFS only has statutory power to give direction to brigades where an s44 event has been declared. RFS considers the brigades to be independent associations of persons.</p>

Operational Features	RFS	SES	Observations
	<p>s45(1) allows the Commissioner to give directions to other entities (including brigades) around prevention, control or suppression of a bush fire when he has taken charge under s44.</p> <p>s45(2) specifically allows the Commissioner to exercise the power that apply to an officer under s21, and thereby direct the deployment of resources across the State, provided an s44 event has been declared.</p> <p>As such, the Commissioner only has statutory power to direct resources outside of nominated brigade boundaries where an s44 event has been declared.</p> <p>In practice, RFS follows the legislative requirements as noted above and has no direct involvement in the formation of the brigades. Community members volunteer to become members of local brigades via applications. Brigades accept suitable applicants in accordance with the Brigade Constitution.</p> <p>The Brigade Officers, such as Captain and Deputy Captain, are elected and appointed by brigade members in accordance with the Brigade Constitution (Service Standard 2.1.4). The Brigade Officers lead and control the activities of brigades within their RFD.</p> <p>In practice, the brigades undertake the following activities:</p> <ul style="list-style-type: none"> • Hazard reduction – in accordance with bush fire risk management plan 		

Operational Features	RFS	SES	Observations
	<p>developed by Bush Fire Management Committee (Bush Fire Management Committee is a local committee comprised of representatives from Councils, land managers, community organisations, RFS and other fire authorities);</p> <ul style="list-style-type: none"> • Front-line response to fire events in their district; • Initiating maintenance requirements/needs; • Community education; and • Local training drills. <p>In practice RFS agency, undertakes the following activities (outside of a s44 declaration):</p> <ul style="list-style-type: none"> • Coordination – informing brigades of 000 calls in their districts, and responding to brigades if they request extra support; • Monitoring the hazard reduction activities identified in the bush fire risk management plan; • Creation and maintenance of training and accreditation courses, materials and Service Standards; • Centrally purchasing and dispensing the protective clothing, safety and firefighting equipment to brigades; and • Handling bushfire hazard complaints <p>In the event that there is no brigade in a location, alternative action by the RFS (pursuant to provisions of its enabling legislation) might include:</p> <ul style="list-style-type: none"> • assistance from nearby brigades 		

Operational Features	RFS	SES	Observations
	<ul style="list-style-type: none"> • directions to other brigades to travel to the location • evacuation to protect life • directions to personnel in other NSW emergency service agencies (such as NSW Police and Fire and Rescue NSW). 		
<p>Legal ownership of fleet vehicles</p>	<p>s119(2) of the RF Act requires all fire fighting equipment purchased or constructed from the Rural Fire Fighting Fund (RFFF) to be vested in Councils. Therefore, legal ownership and title rests with the Councils.</p> <p>In practice, RFS follows the legislative requirement as noted above. All RFA are procured or built, this being overseen by RFS and then these assets are vested to the Councils upon completion as per s119(2) of the RF Act. Vested assets will be added to the listing of RFA appended to the rural fire district service agreement.</p>	<p>There is no legislative requirement in relation to equipment purchases in the SES Act.</p> <p>The State Emergency Service Fund (SESF), similar to the RFFF, is a Special Deposit Account within Treasury's banking system to purchase the fleet vehicles, other assets and operating expenses etc. Each year, the funding target of SESF is prepared by the Minister and agreed with the Treasurer. This is then funded by contributions from insurance companies (73.7%), Councils (11.7%) and Treasury (14.6%). SES has control over this account as they manage and pay suppliers with these funds, but SES only has the authority to carry out these payments in regard to what has been approved in the funding target.</p> <p>In practice, all fleet vehicles are centrally procured and legally owed by SES. SES is responsible to register, insure, position, and maintain the fleets.</p>	<p>Both SES and RFS purchase or build the fleet vehicles using money from the Fund. There is no equipment vesting provision in the SES Act compared with the RF Act. SES has the legal ownership of the vehicles, whereas RFS does not.</p>
<p>Service agreement with Councils</p>	<p>s12A of the RF Act allows the Commissioner to enter into a rural fire district service agreement (the Service Agreement) with a Council whereby the Commissioner agrees to undertake functions imposed by or under the RF Act on a Council on behalf of the Council.</p>	<p>There is no legislative requirement in relation to entering into service agreement with Councils in the SES Act.</p>	<p>Both RFS and SES have similar arrangements on the use of Council-owned buildings/facilities. These arrangements are not considered to be leases, because there is no consideration required</p>

Operational Features	RFS	SES	Observations
	<p>An example Service Agreement with the Council of City of Blue Mountains is attached for information.</p>  <p>Attach A - Blue Mountains signed S</p> <p>The Service Agreement specifies functions and obligations the Commissioner manages on behalf of the Council with nominal consideration exchanged. These terms and conditions are generally applied in all Service Agreements. The key function undertaken by RFS on behalf of the Councils is to take care of and maintain the vested fire fighting equipment.</p> <p>Under item 5, the Council allows RFS to use District Equipment which is owned by, vested in or under the control of the Council. In our view it is through this mechanism that RFS is able to direct the use of RFA under s21 of the RF Act outside of a declared s44 event. Councils may technically be able to deny RFS' ability to utilise resources outside of the Council area, but such action would be the subject of significant scrutiny (item 13 of the Service Agreement).</p> <p>Under item 6, the council also grants RFS the occupancy and use of council-owned buildings/facilities.</p>	<p>In practice, there are no service agreements between SES and Councils in relation to fleet vehicles.</p> <p>Councils enter into partnership agreement with SES in relation to the use of the Council-owned buildings/facilities, with nominal consideration exchanged. The purpose of these agreements is to restrict the nature of use and occupancy.</p>	<p>in relation to the occupancy of the buildings/facilities. This position has been confirmed with the Audit Office. The buildings/facilities occupied by RFS and SES are assets owned and recognised by Councils.</p> <p>No service agreements exist between SES and Councils in relation to the use of fleet vehicles. In comparison, Councils enter into the Service Agreements with RFS to allow RFS to use the vested assets.</p>
<p>Everyday usage of the fleet vehicles</p>	<p>s119(6) of the RF Act allows the Commissioner to utilise unused equipment of a Council in another area, but only with the agreement of</p>	<p>There is no legislative requirement in relation to the use of equipment in the SES Act.</p>	<p>There is no legislative requirement in relation to the use of equipment in the SES Act. SES</p>

Operational Features	RFS	SES	Observations
	<p>the Council. As noted above, due to the action of the Service Agreement, RFS is able to direct the use of RFA under s21 of the RF Act outside of a declared s44 event (item 5 of the Service Agreement).</p> <p>In practice, everyday use of RFA is attached to the brigades – who were formed historically by Councils before RFS was established. RFA are routinely located in Rural Fire Brigade Stations for the brigade to which the assets are attached. At various times they may be deployed either within their district or deployed ‘out-of-area’.</p> <p>Equipment is accessible to anyone who has relevant keys or access to the Brigade station. Predominantly this is likely to be brigade volunteers or RFS salaried employees, although may also extend to a variety of Council staff, particularly where the Council provides maintenance services to the RFA and/or Brigade station.</p> <p>Storage, safety and stocktake of the equipment mostly belongs to the brigades, who via their District staff (RFS paid employees), provide information in respect of the vehicle to Councils. The District also provides up to date information on the equipment register to Councils.</p> <p>Decisions on fleet allocation, replacement and relocations are made in consultation by the District staff with its Senior Management Team (volunteer leaders) depending on the build</p>	<p>In practice, SES units operate the fleet vehicles. Fleet vehicles can be stored in a combination of places, such as NSW government properties or local SES unit headquarters (facilities provided by local Councils). The access to the fleet assets is restricted to SES units or other salaried SES employees. SES is responsible for the storage, safety and stocktake of all fleet vehicles.</p> <p>The decision on fleet allocation, replacement and relocations lies with SES. Under SES policy <i>Operational Standard Fleet Allocation Management Version 1.0</i>, Senior Manager Capability and Policy Development, in collaboration with Zone Commanders, determines the operational allocation of fleet assets in accordance with strategic operational and service priorities. Therefore, a vehicle can be permanently relocated by SES from one location to another if it fits the operational need, without the permission of Councils or exchange of consideration.</p>	<p>directs the use of the fleet vehicles.</p> <p>s119(6) allows the Commissioner to utilise unused equipment of a Council in another area, but only with the agreement of the council. However, councils appear to give RFS unrestricted access to the RFA through the service agreements.</p>

Operational Features	RFS	SES	Observations
	<p>program provided by the NSW RFS and funding available from Government.</p> <p>The RF Act also restricts Councils from selling or otherwise disposing of fire fighting equipment without approval of the Commissioner (s119(3)), and directs that the proceeds of sale or loss of fire fighting equipment are returned to the RFFF (s119(4)). As daily use of RFA is attached to brigades, these provisions can be seen as to protect the investment made from the RFFF and ensure RFA being sold and disposed according to operational needs.</p>		
<p>Maintenance of the fleet vehicles</p>	<p>s119(5) of the RF Act requires councils to maintain equipment, including RFA, to the level specified in the service standards determined by the Commissioner.</p> <p>In practice, due to the action of the service agreement, this responsibility falls to the RFS. Brigades initiate the maintenance requirements/ needs. RFS will then engage with councils in that area, utilising councils' maintenance workshops, to carry out the maintenance. Such arrangements are provided at arm's length terms and alternatively, the work can be carried out by external private providers if RFS chooses to.</p>	<p>There is no legislative requirement in relation to the maintenance of fleet vehicles in the SES Act.</p> <p>SES manages the fleet vehicles centrally and is responsible for the maintenance.</p>	<p>The maintenance responsibility appears to follow the legal ownership.</p> <p>SES manages the vehicles centrally. In comparison, RFS manages the maintenance of RFA on behalf of councils through service agreements.</p>
<p>Insurance of the fleet vehicles</p>	<p>Currently, RFA are insured under the TMF by the RFS. The arrangement for RFS to insure the red fleet assets on behalf of Councils is reflected in clause 10.2 of the Service Agreement.</p>	<p>All fleet vehicles are included under the SES insurance policy with iCare. SES makes the premium payment and manages the claims with iCare.</p>	<p>The insurance responsibility appears to follow the legal ownership.</p> <p>SES is responsible for the insurance of the vehicles, whereas</p>

Operational Features	RFS	SES	Observations
	Other assets held in Brigade stations, and Brigade stations themselves are either insured by the council or uninsured.		RFS arranges the insurance of RFA on behalf of councils.

Based on the table above, the key operational differences between SES and RFS are that:

1. SES considers the units to be its unpaid employees, which they form, recruit and direct, while RFS has no responsibility in the formation and recruitment of brigades and considers the brigades to be independent associations of persons.
2. SES centrally manages the fleet vehicles without any involvement from councils, while RFS deploys the RFA under the unrestricted access granted by councils through service agreements.

Although the daily use of the fleet vehicle is attached to both brigades and units, the above essential differences have led to different accounting treatments for SES and RFS. As SES directly procures, registers, insures, maintains, and uses the fleet vehicles to fulfil their business objectives in responding to an emergency, these assets are treated as controlled by SES. In comparison, RFS only has statutory power to give directions to brigades where an s44 event is declared. When there is no s44 event, the brigades are under the direction of Brigade Officers and able to self-respond to any incident within their RFD. It is only through the mechanism set up in the Service Agreements that RFS is able to deploy the RFA on behalf of councils, either within a council’s district or ‘out-of-area’. Refer to the following section for further analysis on the control of RFA.

Application of Accounting Standards:

AASB 15 *Revenue from Contracts with Customers* (AASB 15) defines control of an asset as ‘**the ability to direct the use of, and obtain substantially all of the remaining benefits from the asset**’ (AASB 15.33). A similar definition of control of an asset is also applied in AASB 16 *Leases* (para B9) and AASB Conceptual Framework for Financial Reporting paragraph (para 4.20). Accordingly, when assessing whether RFS has control of the RFA, the following key factors have been considered:

- a) Ability to direct the use of RFA

While RFS procures or constructs the RFA using money from the RFFF, upon completion these assets are vested to councils under s119(2) of the RF Act. Therefore, councils have the legal ownership and title of these RFA.

Under the RF Act [section 9], the key responsibility of RFS (comprised of the Commissioner, salaried RFS employees and volunteer rural fire fighters), is to provide services for the prevention, mitigation, and suppression of fires in rural fire districts. The individual brigades are not controlled by RFS agency, because the formation of brigades rests with councils [section 15 of the RF Act] and Brigade Captains are elected by brigade members [Service Standard 2.1.4].

The brigades and RFS agency have different responsibilities. The RF Act [section 21] states that an officer of a rural fire brigade or group of rural fire brigades is able to self-respond to any incident within the district for which the brigade or group was formed. It is only when an s44 event is declared, that the Commissioner has statutory power to give directions to brigades.

Under Part 4 *Bush Fire Prevention* of the RF Act, councils have the responsibility to take 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 any land, highway, road, street or throughfare under councils' control or management. Routinely it is brigades that perform these activities on behalf of Councils.

On balance, it would appear the councils control the RFA, because:

- (a) The councils are responsible for establishing brigades in their LC districts [section 15 of the RF Act];
- (b) The councils have legal responsibilities for bush fire prevention [Part 4 Bush Fire Prevention of the RF Act] and brigades are responsible for hazard reduction and local fire responses, in their normal course of business (i.e. outside a s44 event); and
- (c) The RFA are legally vested in councils and councils are required to grant permission [section 119(6) of the RF Act] where RFS wants RFA to be used in another LC district.

The fact councils can choose to enter into service agreements with RFS agency to maintain and deploy RFA, further indicates these responsibilities sit with councils.

- b) Obtaining the economic benefits from the RFA

According to para Aus49.1 of the *Framework for the Preparation and Presentation of Financial Statements* (the Framework), in the context of not-for-profit entities, future economic benefits is synonymous with the notion of service potential, and is used as a reference also to service potential. As discussed in section a) above, councils have legal responsibility for bush fire prevention and therefore it is councils' service objective. In practice the brigades perform activities for bush fire prevention within their districts on behalf of councils, such as hazard reduction, by utilising the RFA. As a result, these RFA allow for the safety of the people and property within the councils' area. By community assets being protected, councils are able to fulfil their legal responsibility and accrues most benefit from the RFA. In summary, it appears that by contributing 11.7% of the cost, councils obtain the ownership of the RFA and derive 100% of the service potential from these assets.

Concluding Position:

We acknowledge the ownership of assets is judgemental. However, based on the above our view is that RFS should continue to not recognise the RFA that have been vested to the councils, as RFS receive little future economic benefit, and is not able to deploy these assets to another LC district without agreement from councils. This treatment also aligns with our understanding of the operational differences between SES and RFS.



Geoff Provest MP
Parliamentary Secretary for Police and Emergency Services

IM22/16256
M22/1(175)

Mr Matthew Hannan
Mayor
Berrigan Shire Council
56 Chanter Street
BERRIGAN NSW 2712

Dear Mr Hannan

Thank you for your correspondence to the Minister for Emergency Services and Resilience and Minister for Flood Recovery, Steph Cooke, regarding the accounting treatment of NSW Rural Fire Service (RFS) assets vested in Berrigan Shire Council. The Minister has asked me to respond on her behalf.

At the outset, I can assure you the RFS values local government's significant contribution to the State's bush fire management and is committed to working in collaboration with councils in its Rural Fire Districts.

As you are aware, s119(2) of the *Rural Fires Act 1997* states that "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."

NSW Treasury and the Department of Planning and Environment have reached a consensus that rural fire fighting equipment captured by s119(2) is controlled by councils and should be recognised in their financial statements.

The Auditor-General's *Local Government 2021* report to Parliament notes this position and recommends that councils should perform a full asset stocktake of rural fire fighting equipment, including a condition assessment, for 30 June 2022 financial reporting purposes. It further recommends that, consistent with the Australian Accounting Standards, councils should recognise this equipment as assets in their 30 June 2022 financial statements.

The *Local Government 2021* report also notes that the Audit Office of NSW is currently conducting performance audits of both the RFS (Planning and managing bush fire equipment) and the Office of Local Government (The effectiveness of local government regulation and support).

The RFS is assisting the Audit Office in relation to planning and managing bush fire equipment and I look forward with interest to the Auditor-General's findings and any relevant recommendations arising from these two audits.

Thank you again for taking the time to bring this matter to the Government's attention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Provest".

Geoff Provest
Parliamentary Secretary for Police and Emergency Services

Tender Evaluation Report

Contract Number: T01-22-23
Tender Title: Annual Plant Hire Rates for the 2022/23 Financial Year
Membership of Evaluation Panel: Gary George
 Dean Loats
 Judith Cakebread (Mediator)

Tenderer	Rates value for money	Tender Forms Completed	Compliances				Accept/Reject
			MV Ins.	PL Ins. >=\$20M	Work Cover	OHS Policy	
Andrew Goldman Excavations		✓	✓	✓	✓	✓	Accept/Reject
Bencon Civil Constructions		✓	✓	✓	✓	✓	Accept/Reject
Berrigan Water Cartage		✓	✓	✓	N/A	✓	Accept/Reject
BILDCivil		* C	✓	✓	✓	✓	Accept/Reject
Cleanaway Co		* C	✓	✓	✓	✓	Accept/Reject
Coates Hire Operations		✓	✓	✓	✓	✓	Accept/Reject
Complete Road Seal			✓	✓	✓	✓	Accept/Reject
Conplant		✓	✓	✓	✓	✓	Accept/Reject
ConX Hire		✓	✓	✓	✓	✓	Accept/Reject
Crawford Civil		✓	✓	✓	✓	✓	Accept/Reject
Drainflow Solutions		✓	✓	✓	✓		Accept/Reject
Foxys Backhoe Service		* C	✓	✓	N/A	✓	Accept/Reject
Innovative Milking	X	X	X	✓	✓	✓	Accept/Reject
John Nolen		✓					Accept/Reject
Miller Pipe & Civil		* C	✓	✓	✓	✓	Accept/Reject
O'Loughlin Excavations		✓	✓	✓	✓	✓	Accept/Reject
Pascoe Grading & Earthmoving		* C	✓	✓	✓	✓	Accept/Reject
Porter Excavations		* C	✓	✓	✓	✓	Accept/Reject

Tenderer	Rates value for money	Tender Forms Completed	Compliances				Accept/Reject
			MV Ins.	PL Ins. >=\$20M	Work Cover	OHS Policy	
Precision Grading		✓	✓	✓	✓	✓	Accept/Reject
Riverina Stabilisers		✓	✓	✓	✓	✓	Accept/Reject
Rollers Australia		* C	✓	✓	✓	✓	Accept/Reject
RSP Environmental Services		✓	✓	✓	✓	✓	Accept/Reject
Stabilco		* C	✓	✓	✓	✓	Accept/Reject
Stephen Haynes		✓	✓	✓	✓	✓	Accept/Reject
The Mining Pty Ltd		✓	✓	✓	✓	✓	Accept/Reject
Tribuzi Transport & Plant Hire		✓	✓	✓	✓	✓	Accept/Reject
Tutt Bryant Hire		✓	X	✓	✓	✓	Accept/Reject
Universal Mobile Tower Hire		✓	✓	✓	✓	✓	Accept/Reject

* C – All but Part C Statutory Declaration completed, flag to sign in contract.

Evaluated and Signed By:

Panel Member Name	Signature	Date	Time
Gary George	GG	17/06/2022	
Dean Loats	DL	17/06/2022	

Witnessed By:

Panel Member Name	Signature	Date	Time
Judith Cakebread	JC	17/06/22	