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

29 November 2021

Dear Jackie

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

In accordance with our engagement letter dated 18 June 2021, we have reviewed the accounting treatment by Leeton Shire Council of NSW Rural Fire Services equipment. Please note that we hereby retract our previous advice issued on 16 September 2021 and replace it with this advice.

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

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

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

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

Should you have any queries regarding this report, please do not hesitate to contact me on 03 9603 1808 or [aletta.boshoff@bdo.com.au](mailto:aletta.boshoff@bdo.com.au).

Yours faithfully

Aletta Boshoff  
Partner



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## EXECUTIVE SUMMARY

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

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

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

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

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides the Council with the right to receive Fire Services in exchange for, in part, surrendering its rights to access and use the fire fighting equipment vested in the Council.

### **Accounting by the Leeton Shire Council for rural fire fighting equipment**

#### **Rural fire fighting equipment attributed during prior and current periods**

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

- (a) Continue not to recognise the rural fire fighting equipment vested in it
- (b) Recognise a receivable at an amount equal to the *net investment in the lease* (as defined in Appendix A of AASB 16) for the lease of the rural fire fighting equipment under the Rural Fire District Service Agreement, and
- (c) Account for any corresponding 'credit entry' arising from (b) as either (as applicable):

- a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the rural fire fighting equipment attributed during prior periods, or
- income in relation to the rural fire fighting equipment attributed during the current period.

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

#### **Rural fire fighting equipment attributed during future periods**

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

### **Accounting by the Leeton Shire Council for Premises**

#### **Premises attributed during prior and current periods**

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

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

#### **Premises attributed during future periods**

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

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



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

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

## BACKGROUND

We have been provided with copies of the following documents:

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

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

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

rural fire brigade contribution payable by a relevant council for a financial year is payable in four instalments, each of which is a 'rural fire brigade contribution instalment' (s. 110A). A relevant council must, in accordance with an instalment notice given to it by the State Revenue Commissioner, pay to the State Revenue Commissioner a rural fire brigade contribution instalment on or before each of the following days in a financial year:

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

- Any amount recovered (whether under a policy of insurance, from the Bush Fire Fighters Compensation Fund under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, or otherwise) in respect of the damage to, or destruction or loss of, any item of rural fire fighting equipment

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

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

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

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

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

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

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

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



*This Agreement will terminate:*

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

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

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

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

register of 'Red Fleet' vehicles (Schedule 4). We understand this represented an amendment to the Rural Fire District Service Agreement, effective from 16 January 2012

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

for the Leeton Shire Council for the year ended 30 June 2020 ('2020 Leeton Annual Financial Statements') states, in part, that:

*Under Section 119 of the Rural Fire Services Act 1997 (NSW), "all firefighting equipment purchased or constructed wholly or from money to the credit of the Fund is to be vested in the council of the area for or on behalf of which the firefighting equipment has been purchased or constructed".*

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

- The Closing Report confirmed that in the Management Letter pertaining to the annual reporting period ending 30 June 2021, the Audit Office of New South Wales would identify the Council's failure to recognise rural fire fighting equipment as assets in its financial statements as a 'high and extreme risk'. The Closing Report noted, in part, the following.

*Council did not record rural fire-fighting equipment in the financial statements.*

*Rural fire-fighting equipment, specifically the red fleet vehicles, is controlled by the Council and should be recognised in their financial statements. This is supported by the requirements in the Rural Fires Act 1997 and service agreements between councils and the RFS.*

*The following are indicators of 'control' by Council:*

- *the Rural Fires Act 1997 vests rural fire-fighting equipment to Council, giving the Council the legal ownership*
- *the service agreement governs how the RFS can use these assets for fire mitigation and safety works in a council area*
- *as land owner, Council has responsibility for fire mitigation and safety works under Rural Fires Act 1997*
- *Council is responsible for maintaining the assets but has transferred this responsibility to the RFS through the service agreement*
- *In the event of the loss of an asset, the insurance proceeds are used to reacquire or build a similar asset, which is again vested in Council.*

*The Department of Planning, Industry and Environment (inclusive of the Office of Local Government) confirmed in the 'Report on Local Government 2020' (tabled in Parliament on 27 May 2021) their view that rural fire-fighting equipment is not controlled by the NSW Rural Fire Service.*

- The Closing Report also noted that the Audit Office of New South Wales had considered the technical advice prepared by BDO (dated 16 September 2021), as well as advice received by other agencies around the application of AASB 16. With respect to BDO's technical advice, the Closing Report confirms that the Audit Office of New South Wales does not agree that there is a

lease agreement between the Council and the Commissioner of the NSW Rural Fire Service or the NSW Rural Fire Service for the following reasons:

- The NSW Rural Fire Service does not obtain ‘substantially all of the economic benefits’ from the use of the rural fire fighting equipment vested in the Council or have exclusive use of those assets. For instance, the Council obtains benefits from the rural fire fighting equipment vested in the Council when that equipment is used to fight bush fires and perform fire mitigation activities in the Council’s local area
- The Rural Fire District Service Agreement does not have a fixed end date, and
- Pursuant to the Rural Fire District Service Agreement, the Commissioner of the NSW rural Fire Service pays no monetary consideration to the Council for the use of rural fire fighting equipment vested in the Council. Accordingly, there is no exchange of consideration for use of the rural fire fighting equipment vested in the Council as anticipated in the definition of a lease in AASB 16.



## **AUTHORITATIVE REFERENCES**

*Framework for the Preparation and Presentation of Financial Statements*

*Conceptual Framework for Financial Reporting*

*AASB 15 Revenue from Contracts with Customers*

*AASB 16 Leases*

*AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors*

*AASB 1058 Income of Not-for-Profit Entities*

## ANALYSIS

### Meaning of ‘vested’ and ‘control’

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

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

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

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

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

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

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

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

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

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

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

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

- The asset is subject to separate legal restrictions that prevent the entity from utilising the asset. For instance, the asset is owned by an entity that is subject to receivership or administration, and/or
- The asset is subject to a lease and the lease meets the necessary criteria in AASB 16 to be classified as a finance lease.

### **Substance over form**

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

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

We also note that:

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

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



Paragraph 2.12 of the Conceptual Framework for Financial Reporting (Conceptual Framework)<sup>2</sup> states that:

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

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

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

Paragraph 4.60 of the Conceptual Framework states that:

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

Paragraph 4.61 of the Conceptual Framework states that:

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

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

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

*A group or series of contracts may achieve or be designed to achieve an overall commercial effect. To report the substance of such contracts, it may be necessary to treat rights and obligations arising from that group or series of contracts as a single unit of account. For example, if the rights or obligations*

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<sup>2</sup> While the Conceptual Framework is not currently applicable to not-for-profit entities, including Leeton Shire Council, we have used it here in the context of our discussion on ‘substance over form’ because it reflects the most up-to-date thinking by the standard setters in respect of the accounting framework applicable to entities preparing financial statements in accordance with Australian Accounting Standards. We also note that much of the guidance in the Conceptual Framework, particularly in relation to substance over form matters, is consistent with the corresponding guidance in the *Framework for the Preparation and Presentation of Financial Statements* (‘the Framework’). For instance, the detailed guidance in paragraphs 4.59-4.62 of the Conceptual Framework is not inconsistent with the limited guidance in paragraph 51 of the Framework. We also note that pursuant to the requirements in paragraphs 10-12 of AASB 108, not-for-profits are obliged to at least consider, if not apply, the guidance in the Conceptual Framework in the absence of any corresponding guidance in the Framework dealing with similar or related issues.

*in one contract merely nullify all the rights or obligations in another contract entered into at the same time with the same counterparty, the combined effect is that the two contracts create no rights or obligations. Conversely, if a single contract creates two or more sets of rights or obligations that could have been created through two or more separate contracts, an entity may need to account for each set as if it arose from separate contracts in order to faithfully represent the rights and obligations (see paragraphs 4.48-4.55). [Emphasis added]*

Paragraph 4.48 of the Conceptual Framework states that:

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

Paragraph 4.53 of the Conceptual Framework states that:

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

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

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

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

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

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

- (a) the contracts are negotiated as a package with an overall commercial objective that cannot be understood without considering the contracts together;*

- (b) *the amount of consideration to be paid in one contract depends on the price or performance of the other contract; or*
- (c) *the rights to use underlying assets conveyed in the contracts (or some rights to use underlying assets conveyed in each of the contracts) form a single lease component ... [Emphasis added]*

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

### **Accounting for rural fire fighting equipment**

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

#### **Rural fire fighting equipment attributed during prior and current periods**

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

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

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

#### **Rural fire fighting equipment attributed during future periods**

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

## Accounting for Premises

### Premises attributed during prior and current periods

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

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

### Premises attributed during future periods

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

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

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

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

## CONCLUSIONS

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

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

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

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

Accordingly, in accounting for rural fire fighting equipment, the Leeton Shire Council should treat its respective rights and obligations arising from the Act and its associated Rural Fire District Service Agreement with the Commissioner of the NSW Rural Fire Service as a single unit of account that provides the Council with the right to receive Fire Services in exchange for, in part, surrendering its rights to access and use the fire fighting equipment vested in the Council.

### **Accounting by the Leeton Shire Council for rural fire fighting equipment**

#### **Rural fire fighting equipment attributed during prior and current periods**

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

- (a) Continue not to recognise the rural fire fighting equipment vested in it
- (b) Recognise a receivable at an amount equal to the *net investment in the lease* (as defined in Appendix A of AASB 16) for the lease of the rural fire fighting equipment under the Rural Fire District Service Agreement, and
- (c) Account for corresponding 'credit entry' arising from (b) as either (as applicable):

- a prior period error in accordance with paragraphs 41-49 of AASB 108 in relation to the rural fire fighting equipment attributed during prior periods, or
- income in relation to the rural fire fighting equipment attributed during the current period.

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

#### **Rural fire fighting equipment attributed during future periods**

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

### **Accounting by the Leeton Shire Council for Premises**

#### **Premises attributed during prior and current periods**

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

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

#### **Premises attributed during future periods**

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

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



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

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

## APPENDIX A

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

### Definition of a lease

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

Appendix A of AASB 16 defines a lease as:

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

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

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

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

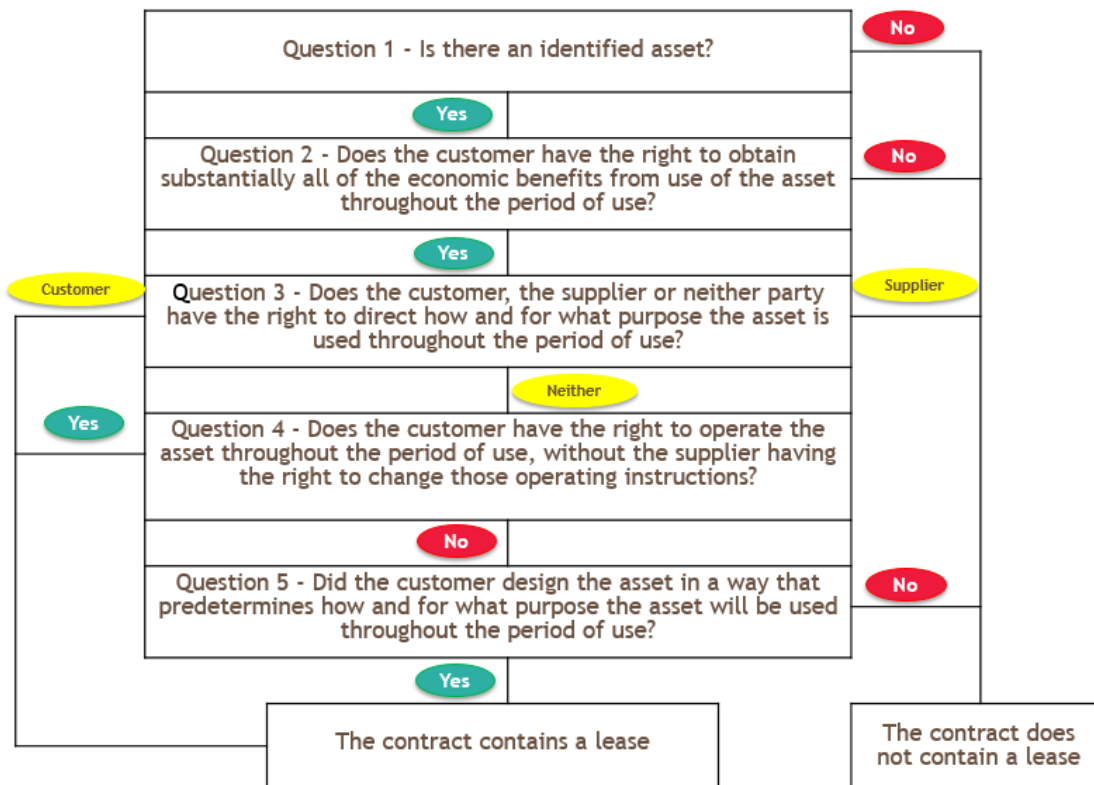
- It provides the parties to the Agreement (the Councils and the Commissioner of the NSW Rural Fire Service) with various rights and obligations under the Agreement, and
- It is made under section 12A of the Act and, consequently, creates enforceable rights and obligations pursuant to section 12A(3)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

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

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

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





### Identified asset

Paragraph B13 of AASB 16 states that:

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

However, paragraph B14 of AASB 16 clarifies that:

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

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

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

- Entitled to use the Fire Fighting Apparatus, comprising all vehicles, equipment and other things used for or in connection with the prevention or suppression of fire or the protection of life or property in case of fire that is owned by or vested in the Leeton Shire Council, including the fire tankers listed in Schedule 4 of the Rural Fire District Service Agreement, and
- Entitled to occupy the Premises, being land and buildings or parts of land and buildings specified in Schedule 2 of the Agreement.

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

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

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

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

#### *Right to obtain economic benefits from use*

Paragraph B21 of AASB 16 states that:

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

It is relevant to note at this juncture that the requirements and guidance in AASB 16 have been drafted with for-profit entities in mind. Consequently, paragraph B21 (and paragraphs B22 and B23, which are not strictly applicable in the current circumstances) of AASB 16 anticipates the lessee has the contractual capacity to limit the 'public good' nature of identified asset by preventing other parties from benefiting from the use of the identified asset throughout the period of use. As noted in the Closing Report, these assumptions arguably do not apply in the context of the fire fighting equipment vested in the Council. Nevertheless, we consider that paragraph B21 of AASB 16 provides adequate

guidance to determine whether the Council has sufficient control over the use of the fire fighting equipment vested in it to justify recognition of the equipment in the Council's financial statements under Australian Accounting Standards.

As detailed in paragraph 24 of the *AASB Not-for-Profit Entity Standard-Setting Framework* (July 2021), the Australian Accounting Standards Board ('AASB') uses IFRS Standards as a basis for developing Australian Accounting Standards for not-for-profit entities, but will make modifications to IFRS Standards by including 'Aus' paragraphs in Australian Accounting Standards. Consistent with this policy, we note that paragraphs 49(a) and Aus49.1 of the Framework state that:

*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.*

...

*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.*

Accordingly, as a minimum, a not-for-profit entity would recognise an asset when a resource meets all of the following (definitional) criteria:

- The resource is controlled by the not-for-profit entity
- The resource (and the not-for-profit's control of the resource) arises from a past event, and
- The resource comprises scarce capacity to provide benefits to the entity, including facilitating the entity to achieve its objectives.

As noted above, paragraph 33 of AASB 15 confirms that control of an asset:

- (a) Refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset
- (b) Includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset, and
- (c) The benefits of an asset can be obtained directly or indirectly in many ways, such as by:
  - i. using the asset to produce goods or provide services (including public services)
  - ii. using the asset to enhance the value of other assets
  - iii. using the asset to settle liabilities or reduce expenses
  - iv. selling or exchanging the asset
  - v. pledging the asset to secure a loan, and
  - vi. holding the asset.

However, as noted in the Background section above, contrary to many of the features of control outlined in paragraph 33 of AASB 15:

- Under the Act and the terms of the Rural Fire District Service Agreement, the Leeton Shire Council does not have the right to use the fire fighting equipment vested in the Council to meet its obligations under the Act. Under the Act, the Commissioner can, with the concurrence of the Council, use any equipment not reasonably required by the Council to deal with incidents both within the Council and outside. In addition, under the Agreement the Commissioner need not request access to the fire fighting equipment vested in the Council, and therefore presumably has unfettered access to all fire fighting equipment vested in the Council, both now and into the future. Consistent with this, we also note from the Closing Report that:

*The Rural Fire Brigades have extensive day to day use of many of the Council vested assets. Brigades consist of volunteers (that are not employed by RFS or the Councils) that may be directed by the Fire Control Officer or by the Commissioner...*

- Under the Act the Leeton Council is not permitted to sell or otherwise dispose of any rural fire fighting equipment purchased or constructed from money to the credit of the Fund without the written consent of the Commissioner of the NSW Fire Service. In the event that an item of rural fire fighting equipment is sold or otherwise disposed of, and the equipment had been purchased or constructed in whole or part with money derived from the Fund, any proceeds from the disposal are to be remitted to the Fund in proportion to the extent that the equipment was originally funded by the Fund
- Under the Rural Fire District Service Agreement, the Leeton Shire Council is relieved from maintaining on a day-to-day basis the rural fire fighting equipment vested in the Council in accordance with applicable Service Standards, and
- Under the Rural Fire District Service Agreement, the Leeton Shire Council is relieved from having to establish and maintain insurance coverage for the rural fire fighting equipment vested in the Council.

Consistent with the requirements in paragraphs 49(a) and Aus49.1 of the Framework, we consider that Leeton Shire Council does not control the fire fighting equipment vested in the Council because it:

- Does not have the ability to direct the use of the fire fighting equipment
- Cannot prevent other entities from directing the use of the equipment
- May not be able to obtain substantially all of the remaining benefits from the equipment if, for instance, the equipment is used to fight fires within other Council boundaries
- Cannot sell or dispose of the asset, and
- Only has rights to proceeds from the sale of any fire fighting equipment to the extent the equipment was purchased directly by the Council.

Accordingly, with regards to the criteria in paragraph B21 of AASB 16, we note that the Leeton Council does not have exclusive use of the fire fighting equipment vested in it throughout that period. Therefore, by implication, another party ('the customer') must have the right to obtain substantially all of the economic benefits from use of the asset throughout the period of use. Whether the 'customer' is the Commissioner of the NSW Fire Service or another entity is outside the scope of this Letter of Advice.

With regards to requirements in paragraphs 49(a) and Aus49.1 of the Framework, we would also note that under the Rural Fire District Service Agreement, the Commissioner has agreed to undertake the day-to-day management of Fire Services on behalf of all of the Councils that are parties to the Agreement, including Leeton Shire Council. We acknowledge that pursuant to the Act the Councils have a statutory obligation in respect to preventing, mitigating and extinguishing bush fires within their respective boundaries. However, consistent with the discussion above, the 'asset' that facilitates this objective is the Rural Fire District Service Agreement, not the rural fire fighting equipment that vests in the Council.

#### *Right to direct the use*

Paragraph B24 of AASB 16 states that:

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

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

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

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

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

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

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

Consistent with the foregoing discussion, we note that the Leeton Shire Council does not have:

- The right to use the fire fighting equipment vested in the Council as and when might otherwise be required during the term of the Rural Fire District Service Agreement, and
- The ability to direct the Commissioner of the NSW Fire Service regarding the relevant decisions about when, for what purpose or how the fire fighting equipment is used.

Accordingly, with regards to the criteria in paragraphs B24-B26 of AASB 16, we note that the Leeton Council does not have the right to direct how and for what purpose the fire fighting equipment is used throughout the period of use. Therefore, by implication, another party ('the customer') must have the right to obtain substantially all of the economic benefits from use of the asset throughout the period of use.

#### **Identification of Leeton Shire Council as the lessor**

Appendix A to AASB 16 defines a lessor as:

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

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

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

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

We note the observations by the Audit Office of New South Wales in the Closing Report in relation to the absence of any exchange consideration, particularly the following statement:

*The \$1 payable for RFS to the Councils under clause 7.1 would be considered a non-lease component of the agreement.*

As discussed above, we acknowledge there are potentially non-lease components contained within the Rural Fire District Service Agreement. The fact that the payments are described as relating to non-lease components, however, does not preclude the existence of a lease.

The definition of a lease in Appendix A of AASB 16 necessitates the existence of ‘consideration’ in exchange for a ‘contract’ that includes the right to use an asset, not necessarily consideration for the right to use an asset. To narrowly read the definition of a lease to imply that only those contracts that explicitly identify consideration for a lease component to be within the scope of AASB 16 would be, in our view, inconsistent with the guidance on accounting for non-lease components in paragraphs 13-16 of AASB 16 and paragraphs BC133-BC137 of the Basis for Conclusions to IFRS 16.

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

Pursuant to paragraph 61 of AASB 16, the Leeton Shire Council must assess whether the lease of the fire fighting equipment and premises meets the definition of an operating lease or a finance lease, which are defined in Appendix A of AASB 16 as follows:

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

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

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

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

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

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

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

- (a) if the lessee can cancel the lease, the lessor’s losses associated with the cancellation are borne by the lessee;*



- (b) gains or losses from the fluctuation in the fair value of the residual accrue to the lessee (for example, in the form of a rent rebate equaling most of the sales proceeds at the end of the lease); and
- (c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.

*The examples and indicators in paragraphs 63-64 are not always conclusive. If it is clear from other features that the lease does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset, the lease is classified as an operating lease. For example, this may be the case if ownership of the underlying asset transfers at the end of the lease for a variable payment equal to its then fair value, or if there are variable lease payments, as a result of which the lessor does not transfer substantially all such risks and rewards.*

As discussed above, the Rural Fire District Service Agreement exhibits a number of the features identified in AASB 16 as being reflective of a finance lease from the perspective of Leeton Shire Council, including the following.

*The lease term is for the major part of the economic life of the underlying asset.*

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

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

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

As noted above, the Rural Fire District Service Agreement

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

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

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

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

In November 2019, the IASB's Interpretation Committee ('IFRIC') clarified how the guidance in paragraph B34 of AASB 16 should be applied in the context of a cancellable lease. In its deliberations, the IFRIC noted that, consistent with paragraph BC156 of the Basis for Conclusions to IFRS 16, the lease



term should reflect an entity's reasonable expectation of the period during which the underlying asset will be used. The IFRIC also noted that, in applying the guidance in paragraph B34 of AASB 16 and determining the enforceable period of the lease, an entity considers:

- The broader economics of the contract, and not only contractual termination payments. For example, if either party has an economic incentive not to terminate the lease such that it would incur a penalty on termination that is more than insignificant, the contract is enforceable beyond the date on which the contract can be terminated, and
- Whether each of the parties has the right to terminate the lease without permission from the other party with no more than an insignificant penalty. Applying paragraph B34, a lease is no longer enforceable only when both parties have such a right. Consequently, if only one party has the right to terminate the lease without permission from the other party with no more than an insignificant penalty, the contract is enforceable beyond the date on which the contract can be terminated by that party.<sup>3</sup>

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

- In the case of the Commissioner of the NSW Fire Service, termination of the Agreement would mean the NSW Rural Fire Service's access to rural fire fighting equipment vested in the Leeton Shire Council would be limited to the circumstances anticipated under section 119(6) of the Act, in which case the Commissioner would only be able to access the rural fire fighting equipment:
  - When that equipment is not reasonably required by the Council, and
  - With the concurrence of the Council, and
- In the case of the Leeton Shire Council, termination of the Agreement would mean the Council would have to undertake the day-to-day management of Fire Services within the Council's boundaries.

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

- Consistent with the guidance in paragraph B34 of AASB 16, the lease term of the Rural Fire District Service Agreement should be considered to be indefinite, and
- Therefore, from the Leeton Shire Council's perspective, the fire fighting equipment should be derecognised, consistent with the arrangement being classified as finance lease under AASB 16.

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<sup>3</sup> IFRIC Update (November 2019) (<https://www.ifrs.org/news-and-events/updates/ifric/2019/ifric-update-november-2019/>)

*Other risks and rewards incidental to ownership of the fire fighting equipment not retained by the Leeton Shire Council*

As discussed above, under the Rural Fire District Service Agreement and the Amendment to that Agreement, the Leeton Council is relieved of:

- Day-to-day maintenance of the rural fire fighting equipment vested in the Council in accordance with applicable Service Standards
- Responsibility for establishing and maintaining insurance coverage for the rural fire fighting equipment, and
- Responsibility for maintaining an asset register of the fire fighting equipment.

## APPENDIX B

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

<i>Rural Fire Services Act 1997 (NSW)</i>	
Section Number	Requirements
7	<p>(1) A function conferred or imposed by or under this Act on a local authority for and in respect of a rural fire district is to be exercised:</p> <p>(a) by the local authority for the area for which the district is constituted under section 6, or</p> <p>(b) if, under subsection (2), two or more local authorities agree to combine responsibility for and in respect of their rural fire districts—by the local authorities jointly or, if a local authority is nominated in the agreement, by the local authority or local authorities nominated in the agreement, or</p> <p>(c) if, under subsection (3), two local authorities agree that one of the local authorities is to have responsibility for and in respect of the whole or part of the rural fire district of the other local authority—by the local authority nominated in the agreement as the local authority to be responsible for the whole or part of that rural fire district.</p> <p>(2) Two or more local authorities may agree in writing to combine responsibility for and in respect of their rural fire districts. Responsibility for those rural fire districts is to be exercised jointly by the local authorities or, if the authorities nominate one of them in the agreement as the responsible authority, by that authority.</p> <p>(3) A local authority may agree in writing with another local authority that the other local authority have responsibility for or in respect of the whole or part of the rural fire district for the area of the local authority.</p>
12A	<p>(1) The Commissioner is responsible for managing and controlling the activities of the Service and has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.</p> <p>(2) The Commissioner may determine the various duties that members of the staff of the Service are required to perform and allocate the duties to be carried out by each member of the staff.</p> <p>(3) The Commissioner may, when the Commissioner considers it appropriate to do so, conduct an audit of all or any activities of members of the Service to determine whether the members are carrying out the activities effectively and doing so efficiently and in compliance with the Service Standards.</p> <p>(4) The ranks of members of the Service are to be determined by the Commissioner.</p> <p>(5) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the Service.</p>

	(6) This section is subject to the other provisions of this Act and the regulations.
37(3)	The local authority for the rural fire district for which a fire control officer is appointed must provide facilities and accommodation to enable the fire control officer to exercise his or her functions.
60(2)	The Bush Fire Co-ordinating Committee may, with the consent of a public authority: <ul style="list-style-type: none"> <li>(a) vary or revoke any provision of an approved bush fire management plan imposing a requirement on the authority, or</li> <li>(b) vary an approved bush fire management plan so as to impose a requirement on the authority.</li> </ul>
60(6)	A bush fire management plan communicated to a public authority to which it relates is to be adopted by that authority and, as far as practicable, carried into effect by the authority in the circumstances indicated by the plan.
62	A bush fire management plan or draft bush fire management plan must be available for public inspection at, and be able to be obtained free of charge from, the office of the local authority for the area to which it relates during ordinary office hours.
63	<p>(1) It is the duty of a public authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from:</p> <ul style="list-style-type: none"> <li>(a) any land vested in or under its control or management, or</li> <li>(b) any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority.</li> </ul> <p>(2) It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.</p> <p>(3) A public authority or owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section.</p> <p>(4) The Bush Fire Co-ordinating Committee may advise a person on whom a duty is imposed by this section of any steps (whether or not included in a bush fire risk management plan) that are necessary for the proper performance of the duty.</p>
64	If a fire (not being a fire or part of a fire lit under the authority of this Act or any other Act) is burning on any land at any time during a bush fire danger period applicable to the land the occupier of the land must: <ul style="list-style-type: none"> <li>(a) immediately on becoming aware of the fire and whether the occupier has lit or caused the fire to be lit or not, take all possible steps to extinguish the fire, and</li> <li>(b) if the occupier is unable without assistance to extinguish the fire and any practicable means of communication are available, ensure that the fire is reported immediately to the 000 emergency telephone number.</li> </ul>
65	(1) In this section: " <b>authorised person</b> ", in relation to land, means: <ul style="list-style-type: none"> <li>(a) a hazard management officer, or</li> </ul>

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

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

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

	<ul style="list-style-type: none"> <li>(a) information relating to the rural fire brigades or other fire fighting personnel,</li> <li>(b) information relating to the fire fighting apparatus of the rural fire brigades or other fire fighting personnel,</li> <li>(c) information about any other matter relating to the organisation of the rural fire brigades or other fire fighting personnel.</li> </ul>
109	A relevant council is to pay to the State Revenue Commissioner a rural fire brigade contribution for each financial year.
110	<ul style="list-style-type: none"> <li>(1) The amount of the rural fire brigade contribution is the amount determined by the Minister for each relevant council.</li> <li>(2) The Minister is to determine the contribution payable by a relevant council on the basis of the rural fire brigade funding target for each rural fire district.</li> <li>(3) The contribution payable by relevant councils for each rural fire district is 11.7% of the rural fire brigade funding target applicable to the rural fire district.</li> <li>(4) The contribution to be paid for a rural fire district is to be paid by the relevant council or councils of an area the whole or part of which is included in the rural fire district.</li> <li>(5) In determining the contribution payable by a relevant council, the Minister may apportion the rural fire brigade funding target for rural fire districts between councils of an area, the whole or part of which are included in that district, in the way the Minister thinks fit.</li> <li>(6) A relevant council or an officer of a relevant council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's rural fire brigade contribution.</li> </ul>
119 other than 119(5)	<ul style="list-style-type: none"> <li>(1) In this section:  <b>"fire fighting equipment"</b> means fire fighting apparatus, buildings, water storage towers or lookout towers.</li> <li>(2) All fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund is to be vested in the council of the area for or on behalf of which the fire fighting equipment has been purchased or constructed.</li> <li>(3) A council must not sell or otherwise dispose of any fire fighting equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Commissioner.</li> <li>(4) There is to be paid to the credit of the Fund: <ul style="list-style-type: none"> <li>(a) if the whole of the cost of the purchase or construction of any fire fighting equipment was met by money to the credit of the Fund: <ul style="list-style-type: none"> <li>(i) an amount equal to the proceeds of sale of any such equipment, and</li> <li>(ii) any amount recovered (whether under a policy of insurance, from the Bush Fire Fighters Compensation Fund under the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i>, or otherwise) in respect of the damage to, or destruction or loss of, any such equipment, and</li> </ul> </li> </ul> </li> </ul>



	<p>(b) if a part only of the cost of the purchase or construction of any such equipment was met by money to the credit of the Fund—an amount which bears to the amount that would be required by this subsection to be paid if the whole of that cost had been met by money to the credit of the Fund the same proportion as that part of the cost bears to the whole of that cost.</p> <p>...</p> <p>(6) The Commissioner may, with the concurrence of the council in which fire fighting equipment is vested under this section, use any of the equipment not reasonably required by the council to deal with incidents in the area of the council to deal with incidents outside the area.</p>
<p>120</p>	<p>(1) Any of the following purposes are purposes to which the consolidated fund of a council may be applied under section 409 of the <i>Local Government Act 1993</i>:</p> <ul style="list-style-type: none"> <li>(a) the purchase, distribution, maintenance and storage of fire fighting apparatus for the prevention, mitigation and suppression of bush and other fires,</li> <li>(b) the organising of rural fire brigades and such matters as are relevant to doing so, including the establishment of fire stations and fire control centres,</li> <li>(c) the establishment and maintenance of fire breaks,</li> <li>(d) the removal or destruction of combustible matter,</li> <li>(e) the taking of measures generally for the prevention, mitigation or suppression of bush fires.</li> </ul> <p>(2) For the purposes of section 495 of the <i>Local Government Act 1993</i>, any work relating to the prevention, mitigation and suppression of bush and other fires is work in respect of which a council may make a special rate.</p>
<p>126</p>	<p>Any person or body on which a function is conferred by or under this Act must furnish such information (and in such form) relating to the exercise of that function or the administration of this Act as the Commissioner or Bush Fire Co-ordinating Committee may reasonably require.</p>

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



## DISCLAIMER

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

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

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

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

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

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

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