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# Appendix one – Response from the Office of Local Government within the Department of Planning, Housing and Infrastructure

Department of Planning, Housing and Infrastructure



Ref: A891070

Ms Margaret Crawford  
Auditor General for New South Wales  
GPO Box 12  
SYDNEY NSW 2001

Dear Ms Crawford,

Thank you for your email of 12 February 2024 and the opportunity to respond to your draft Report on Local Government 2023 (the Report). I would like to recognise the contribution of the Audit Office towards strengthening governance, financial management, and reporting in the local government sector. I note the report's recommendations to the Department of Planning, Housing, and Infrastructure and provide a response to these below (the Department).

## Rural firefighting assets

As you would be aware the Office of Local Government (OLG) amended the Local Government Code of Accounting 2023-24 to require councils to recognise material Rural Fire Service (RFS) assets in their financial statements. Councils are required to prepare financial statements in accordance with the *Local Government Act 1993* (the Act), the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board and the Local Government Code of Accounting Practice and Financial Reporting.

I note that you report a number of councils' financial statements were qualified in the 2022 - 2023 financial year because they did not recognise RFS assets or were unable to determine the carrying value of roads, water and sewerage assets.

OLG will continue to communicate to the local government sector that councils should recognise material RFS assets.

I also note that the Minister for Local Government has asked the Public Accounts Committee to examine the arrangement for assets, premises, and funding of the RFS.

## Developer Contributions

Developer contributions are governed by the *Environmental Planning and Assessment Act 1979*. The administration of policy regarding the collection and expenditure of these contributions falls under the responsibility of the Planning Group within the Department.

Section 7.3 of the *Environmental Planning and Assessment Act 1979* states that all contribution funds, including interest earned on those funds, must be held for the purpose for which they were paid and must be applied towards that purpose within a reasonable time. This makes it clear that money collected under councils' contributions plans must be held as an externally restricted asset. The revenue can only be used to fund infrastructure identified in a plan.

The legislation does not specifically refer to repealed funds, which is revenue collected under a contributions plan that has been repealed by a council. The Audit Offices' recommendation for more clarity on the classification and use of these funds is supported. The Planning Group of the Department will work closely with OLG to develop and publish this advice. It is expected that it will be delivered through the Department's policy guidance to councils, the Infrastructure Contributions Practice Notes and any necessary updates to the Local Government Code of Accounting Practice and Financial Reporting.

#### **Early financial reporting procedures**

The Department continues to support, in principle, the recommendation that councils adopt early financial reporting procedures and recognises a number of councils continue to be unable to meet the statutory deadline for the lodgement of their annual financial statements without applying for an extension. The adoption of a practice will assist councils in meeting the reporting timetable and it is to be encouraged.

A council's Audit and Risk and Improvement Committee remains the most suitable body to identify and implement measures to ensure regulatory requirements are met. Councils are, and will continue to be, encouraged to commence earlier processes for financial reporting activities including asset valuations.

However, to support the move to wider early close procedures OLG will include key steps/stages for Councils in the Compliance Calendar. The calendar is provided to Councils early to assist the identification of key regulatory and governance actions.

#### **Cyber Security**

In December 2022, OLG released the 'Cyber Security Guidelines – Local Government'. Compliance with the Guidelines is voluntary, but strongly encouraged. The Report mentions that 47 councils did not have in place any formal cyber security planning and governance.

I understand that the Audit Office is undertaking a performance audit of cyber security in local government. Given this, OLG will await the results from that audit before deciding additional actions that may be taken to encourage councils to have appropriate cyber security measures in place.

#### **Status of previous recommendations**

I note Appendix 3 sets out the status of previous recommendations. In relation to the previous recommendation to the Department about the legal framework relating to restrictions of water, sewerage, and drainage funds (restricted reserves), I can advise that OLG has met with the NSW Department of Climate Change, Environment, Energy and Water and is considering regulatory options which may be available.

Finally, I note the report refers to the issue of a Performance Improvement Order for Kiama Council. It should be noted the Minister for Local Government has publicly identified and issued Council with a notice of intent to vary the Order to extend its timeframes and continue to hold Council to its roadmap for financial improvement. OLG has also identified a number of minor amendments that are listed in the attached.

Should you require further assistance in relation to these matters, please do not hesitate to contact Brett Whitworth, Deputy Secretary, Office of Local Government on [redacted] or by email at [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Sincerely,



Kiersten Fishburn  
Secretary

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