



## **LATE REPORTS TO COUNCIL**

**25 September 2018**

**Late Reports to Council**

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## REPORT TO COUNCIL

<b>Department:</b>	<b>Infrastructure and Regulation</b>
<b>Submitted by:</b>	Manager Planning and Regulation
<b>Reference/Subject:</b>	<b>Late Report 1 – Clarification of imposition of positive covenant – Development Application 27-2018</b>

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### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

<b>Goal:</b>	2.1	An attractive environment for business, tourism and industry
<b>Strategy:</b>	2.1.4	Implement tools to simplify development processes and encourage quality commercial, industrial, and residential development
<b>Activity:</b>	2.1.4.1	Process building and development application
<b>Action:</b>	2.1.4.1.1	Assess and determine development, construction, and other regulatory applications

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### OFFICER'S RECOMMENDATION:

**That Council note the information provided in regard to imposition of a positive covenant – Development Application 27-2018.**

### BACKGROUND:

Development application 27-2018 for a subdivision was received on 1 May 2018.

The application was sent to the Rural Fire Service (RFS) for concurrence in accordance with Section 4.14 of the Environmental Planning and Assessment Act 1979, and Section 100B of the Rural Fires Act 1997. Concurrence for the development was received 31 May subject to the following Integrated General Term of Approval:

*'At the issue of subdivision and in perpetuity, the land around the dwelling on Lot 158 DP 249074 for a distance of 20 metres shall be managed as an inner protection area (IPA) as outlined within the section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection'2006'and the NSW Rural Fire Services' document 'Standards for asset protection zones'.*

Development Application 27-2018 was approved 18 June 2018.

A request for review of the determination was received on 13 July 2018, specifically in relation to the inclusion of the RFS condition regarding an Asset Protection Zone (APZ) as a positive covenant on the title, with the request that the condition requiring the covenant be removed. Council obtained legal advice from its solicitors and advice on consistency of application of bush fire covenants from other councils in relation to the covenant, with the most recent advice received on 7 September 2018 from Armidale Regional Council. Council staff are currently assessing the request for review in the context of this advice.

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This is Page 2 of the Report referred to in the Minutes of the Ordinary Meeting held on 25 September 2018

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### REPORT:

#### Legislative context:

The RFS may issue a bush fire safety authority for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes under the provisions of Section 100B of the Rural Fires Act 1997. In issuing the authority, the RFS must be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document titled *Planning for Bush Fire Protection*. Section 4.1.3 of this document states that:

*'As a condition of development consent, the consent authority is required to ensure that a mechanism is established for the maintenance of APZs over the life of the development. Options include a levy on property owners to fund ongoing maintenance, body corporate or community title schemes and positive covenants (under s.88B of the Conveyancing Act 1919) at the development stage'.*

#### Justification of imposition of a positive covenant:

As the RFS condition specified that the condition be maintained in perpetuity, and a positive covenant is the most suitable mechanism for ensuring a perpetual condition on a property title, the following condition, which has to be satisfied prior to the issue of a subdivision certificate, formed part of the Development Application Determination:

*"The creation by the developer, under Section 88B of the Conveyancing Act, a covenant stating that the land around the dwelling on Lot 158 DP 249074 for a distance of 20 metres shall be managed as an inner protection area (IPA) as outlined within the section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection'2006'and the NSW Rural Fire Services' document 'Standards for asset protection zones'.*

**Note:** Council staff approved 16 subdivisions between August 2017 and August 2018, of which 6 were on bush fire prone land. All 6 of the approvals on bush fire prone land had positive covenants in relation to APZs as part of their consent conditions.

#### Consistency with other NSW councils:

For reference, some consent conditions applied by other councils to subdivisions on bush fire prone land are provided below:

Armidale Regional Council: *"Prior to the issue of a Subdivision Certificate for each stage of the development, a restriction on the land use pursuant to section 88b of the 'Conveyancing Act 1919' shall be placed on all lots containing an asset protection zone, requiring the provision and maintenance of the respective asset protection zones for the life of the development.*

*Asset protection zones on the burdened lots shall be managed as outlined within section 4.1.3 and appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

Blacktown City Council: *"A restriction as to user and suitable easements pursuant to Section 88B of the Conveyancing Act 1919 shall be placed over all lots within the subdivision requiring the provision of asset protection zones (APZ) as identified on the drawing prepared by Ecological Australia Pty Ltd, within Bushfire Protection Assessment, numbered Figure 3, dated 16 December 2010. The APZ shall be managed as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bush fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

Ku-Ring-Gai Council: *"At the commencement of building works, or the issue of a subdivision certificate (whichever comes first) and in perpetuity, the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

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### **Legality of the consent condition:**

Council's solicitors have advised that there is no legal impediment to the Council requiring a covenant of this type in relation to the application.

### **Current position:**

RFS have advised Council that upon review of the application, the distance between the dwelling subject to the required covenant and the property boundary may be less than the 20 metres specified in the supplied condition. Further, the applicant's solicitor has put forward advice that a covenant requires greater detail to be enforceable. In this context, the following amended condition is being considered by Council staff:

*"The creation by the developer, under Section 88B of the Conveyancing Act, a covenant stating that the land around the dwelling on Lot 158 DP 249074 for a distance of 20 metres, or to the property boundary, whichever is the lesser, shall be managed as an inner protection area (IPA) as outlined within the section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection '2006' and the NSW Rural Fire Services' document 'Standards for asset protection zones'.*

### **CONCLUSION:**

The imposition of the consent condition requiring a positive covenant in relation to an Asset Protection Zone for Development Application 27-2018 is:

- Consistent with relevant legislation,
- Consistent with Council's historical and recent requirements for subdivisions on bush fire land, and
- Consistent with conditions imposed by other councils, and
- Legal.

### **COUNCIL IMPLICATIONS:**

- 1. Community Engagement/ Communication (per engagement strategy)**  
Nil
- 2. Policy and Regulation**  
*Environmental Planning & Assessment Act 1979*  
*Rural Fires Act 1997*  
*Environmental Planning and Assessment Regulation 2000*  
*Uralla Local Environmental Plan 2012*  
*Uralla Development Control Plan 2011*  
*Planning for Bush Fire Protection 2006*
- 3. Financial (LTFP)**  
Nil
- 4. Asset Management (AMS)**  
Nil
- 5. Workforce (WMS)**  
Nil
- 6. Legal and Risk Management**  
Nil

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**7. Performance Measures**

Nil

**8. Project Management**

Nil

**9. Disclosure of Political Donations and Gifts**

Has a Political Donations Disclosure Statement been received in relation to this application? No

Political Donation Disclosure Statement register details N/A

Have staff received a gift or benefit from anyone involved in this application that needs to be disclosed? No

Gift and benefits register details N/A

Prepared by staff member: Matt Clarkson, Manager Planning and Regulation

TRIM Reference Number: DA-27-2018

Approved/Reviewed by Manager: Director Infrastructure and Regulation

Department: Infrastructure and Regulation

Attachments: Nil

## LATE REPORTS TO COUNCIL



### REPORT TO COUNCIL

<b>Department:</b>	<b>General Manager's Office</b>
<b>Submitted by:</b>	<i>Andrew Hopkins</i>
<b>Reference/Subject:</b>	<b>Late Report 2 – New England Joint Organisation Draft 2018/19 Operational Plan</b>

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Objective:	4.1	A strong, accountable and representative council.
Strategy:	4.1.4	Provide strong representation for the community at the regional, state and federal levels.
Activity:	4.1.4.1	Maintain effective partnerships and advocacy activities.
Annual Action:		Advocate the needs of the shire to State and Federal Governments through regional joint organisations of councils.

#### SUMMARY:

This report provides Council with the New England Joint Organisation's (NEJO) Draft Operational Plan 2018/19.

#### OFFICER'S RECOMMENDATION:

***That Council note the Draft Operational Plan 2018/19 for the New England Joint Organisation.***

#### REPORT:

At the NEJO Board Meeting held on 27 August, 2018 a draft Operational Plan 2018/19 was endorsed by the Board for the purpose of exhibition.

A copy of the draft Plan is attached.

Member Councils are invited to provide feedback on the Draft Operational Plan 2018/19 by COB **Friday 12 October, 2018**

The NEJO does not currently have a permanent executive officer or projects which have associated budgets. As a consequence the membership fee for the current financial year has been set at \$5,000 per member council. It is anticipated that once the organisation engages a permanent executive officer and commits to undertake regionally relevant projects, the membership fee will increase to a level similar to that which Council was previously contributing to the NAMOI JO – ie in the order of \$30,000 per annum.

Prepared by staff member:	Andrew Hopkins
TRIM Reference Number:	TBC
Approved/Reviewed by Manager:	N/A
Department:	General Manager's Office
Attachments:	A: NEJO Draft Operational Plan 2018/19

NEJO  
LOGO

OPERATIONAL PLAN  
2018/19

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DRAFT

Version	1.0
Date	August 2018
Prepared by	Interim Executive Officer
Adopted by Board	##/##/####
Reviewed	
Amended	

# PART A – REVENUE POLICY

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## 1 INTRODUCTION

In accordance with the Local Government Act 1993 and General Regulations 2005, Council must provide a statement of the Joint Organisations Revenue Policy and the basis in which charges will be made.

The Joint Organisation’s Revenue Policy goal is to ensure that the approved activities of the organisation are funded in a manner that ensures the operational effectiveness and financial sustainability for the organisation.

In pursuit of this goal, the following financial strategies will be followed:

- To raise sufficient revenue to match the approved activities of the Joint Organisation
- To generate revenue in a fair and equitable manner, over time to ensure there is sufficient capacity to meet operational costs and project expenses
- To establish reserves sufficient to meet obligations to staff, stakeholders and member Councils

## 2 PRICING PRINCIPLES

The following principles will be utilised when establishing a price for services:

- a) An equal contribution by all member Councils in order for the Organisation to perform the principle functions of delivering on strategic regional priorities, regional leadership and intergovernmental cooperation
- b) Member contributions will increase each year by the maximum permissible amount for general rate increases as determined by the Independent Pricing and Regulatory Tribunal (IPART)
- c) A ‘User Pays’ pricing model for the provision of works associated with special projects/activities approved by the Board
- d) Should the organisation seek to compete in a market, where private business is a competitor, the notion of competitive neutrality will be observed – the organisation will not seek to gain a net competitive advantage simply by virtue of its public sector membership.

## 3 CONTRIBUTION AND CHARGES

The following contributions and charges shall be applied in 2018/19:

- a) Member council contributions
  - Equal contributions of \$5,000

b) GIPA (*Government Information (Public Access) Act 2009*)

A processing charge based on hourly Staff Services fee is applied where applicable. Subject to notes 1 to 4.	\$30 per application
<p>NOTE:</p> <ol style="list-style-type: none"> <li>1. Application fee covers costs of receiving application including registration and initial discussions with applicants. Any applications requiring more than ½ hour file research will involve processing charges (subject to note 4).</li> <li>2. An advance deposit may also be required in accordance with Section 68 and 69 of the <i>Government Information (Public Access) Act 2009</i>, if Council's costs are likely to exceed the application fee.</li> <li>3. A 50% reduction in fees applies for eligible pensioners and non-profit organisations under financial hardship.</li> <li>4. First 20 hours free of processing charge for person accessing documents relating to their personal affairs.</li> </ol>	
Research and Processing	\$30 per hour
Application for review of determination	\$40 per application

# PART B – 2018/19 BUDGET

NEW ENGLAND JOINT ORGANISATION					
2018-2019					
BUDGET					
AS AT 1-7-2018					
100% of year complete					
<b>Income</b>	<b>NOTE</b>	<b>2018-2019 Total Budget</b>	<b>2018-2019 Actuals</b>	<b>Variance</b>	<b>(%)</b>
<b>Income from Continuing Operations</b>					
Council Contributions	1	35,000		(35,000)	0.0%
Interest & Investment Revenue		600		(600)	0.0%
Other Revenue		0		0	0.0%
Grants & Contributions provided for Operating Purposes	2	300,000	300,000	0	100.0%
<b>Total Income from Continuing Operations</b>		<b>335,600</b>	<b>300,000</b>	<b>(35,600)</b>	<b>89%</b>
<b>EXPENSES</b>	<b>NOTE</b>	<b>2018-2019 Total Budget</b>	<b>2018-2019 Actuals</b>	<b>Variance</b>	<b>(%)</b>
<b>Expenses from Continuing Operations</b>					
JO Establishment Costs	3	26,370			
Employee Benefits & On-Costs	4	36,450		-36,450	0.0%
Material & Contracts	5	10,500		-10,500	0.0%
Administrative Expenses	6	21,280		-21,280	0.0%
Other Expenses	7	26,000		-26,000	0.0%
JO Grant Funded Projects	8	215,000		-215,000	0.0%
<b>Total Expenses from Continuing Operations</b>		<b>335,600</b>	<b>0</b>	<b>-335,600</b>	<b>0%</b>
<b>Sub Total</b>		<b>0</b>	<b>300,000</b>	<b>300,000</b>	<b>undefined</b>
<b>Transfers from Reserves</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Net Operating Profit / (Loss) for the Year</b>		<b>0</b>	<b>300,000</b>	<b>300,000</b>	<b>undefined</b>
<b>NOTES</b>	<b>NOTE</b>	<b>2018-2019 Total Budget</b>	<b>2018-2019 Actuals</b>	<b>Variance</b>	<b>(%)</b>
<b>Council Contributions</b>					
Armidale Regional Council	1	5,000		(5,000)	0.0%
Glen Innes Severn Shire Council		5,000		(5,000)	0.0%
Inverell Shire Council		5,000		(5,000)	0.0%
Moree Shire Council		5,000		(5,000)	0.0%
Narrabri Shire Council		5,000		(5,000)	0.0%
Tenterfield Shire Council		5,000		(5,000)	0.0%
Uralla Shire Council		5,000		(5,000)	0.0%
		35,000	0		

<b>Grants &amp; Contributions provided for Operating Purposes</b>	<b>2</b>				
OLG Joint Organisation Establishment Funding		300,000	300,000	0	100.0%
		300,000	300,000	0	100.0%
<b>JO Establishment Costs</b>	<b>3</b>				
Entity Establishment		900	900	0	100.0%
Web Site Development		3,620	3,619	(1)	100.0%
Email Setup and Hosting		350	344	(6)	98.3%
Graphic Art Designs (Logo Etc)		5,000		(5,000)	0.0%
Operational Plan		10,000		(10,000)	0.0%
Telephone		1,000		(1,000)	0.0%
Computer Equipment		2,500		(2,500)	0.0%
Other		3,000		(3,000)	0.0%
		26,370	4,863	(21,507)	18.4%
<b>Employee Benefits &amp; On-Costs</b>	<b>4</b>				
Salaries - Executive Officer		30,000		(30,000)	0.0%
Superannuation		2,850		(2,850)	0.0%
Leave Entitlements		2,500		(2,500)	0.0%
Workers Compensation Insurances		1,100		(1,100)	0.0%
		36,450	0	(36,450)	0.0%
<b>Material &amp; Contracts</b>	<b>5</b>				
Interim JO Management - Inverell Shire Council		9,000		(9,000)	0.0%
Interim JO Management - Glen Innes Severn Shire Council		1,500		(1,500)	0.0%
		10,500	0	(10,500)	0.0%
<b>Administrative Expenses</b>	<b>6</b>				
Bank Fees		160		(160)	0.0%
Accountancy Software		900		(900)	0.0%
Audit Fees		2,000		(2,000)	0.0%
Printing & Stationary		2,500		(2,500)	0.0%
Telephone		720		(720)	0.0%
Web Site Expenses		1,300		(1,300)	0.0%
Email Hosting		1,200		(1,200)	0.0%
Information Technology		2,500		(2,500)	0.0%
Contingency Funds		10,000		(10,000)	0.0%
		21,280	0	(21,280)	0.0%
<b>Other Expenses</b>	<b>7</b>				
Travel Expenses - OLG Meetings		12,000		(12,000)	0.0%
Travel Expenses - EO		7,500		(7,500)	0.0%
Training / Conferences		6,500		(6,500)	0.0%
		26,000	0	(26,000)	0.0%
<b>JO Grant Funded Projects</b>	<b>8</b>				
Unallocated Project Funding		215,000		(215,000)	0.0%
		215,000	0	(215,000)	0.0%