

3.9. F&G - 24/06/2024 - Lake Lyell Lease - Proposed Excise of Lot 2 in DP792415 and Related Matters

Strategic Context for this matter:

Responsible Governance & Civic Leadership To develop community confidence in the organisation by the way it is directed, controlled and managed

Author: Sandra Politi - Property and Legal Services Officer

Responsible Officer: Ross Gurney - Director Finance and Governance

Executive Summary

This report seeks Council resolutions in relation to a request from EnergyAustralia NSW Pty Ltd (**EA**) to excise part of Lot 2 in DP792415 (**Lot 2**) from the Lake Lyell lease, the addition of option terms to the Lake Lyell lease and an amendment to the restrictive covenant affecting Council owned land at Lake Lyell.

EA has requested Council's agreement to excise part of Lot 2 from the Lake Lyell lease – in the event of EA seeking to establish a workforce village on that land. It is important to note that the workforce village will only proceed if EA obtains planning approval for the development that creates the demand for the workforce village (pumped hydro), and they then make a final investment decision to proceed with that development.

While EA does not expect to make a decision in relation to the Lake Lyell Pumped Hydro project until mid-2025, it needs to be in a position to lodge development applications promptly if it decides to proceed. An application for state significant development requires significant preparation and has a long lead time. As part of its preparation, EA needs certainty as to whether Council supports the excision of part of Lot 2 from the Lake Lyell lease.

Other items discussed in this report are the Administration's requests which are being negotiated concurrently with the request to excise part of Lot 2:

- for option terms to be added to the lease with a view to providing Council with security of tenure for public recreation until 2072;
- to amend the restrictive covenant on Council owned land to permit a commercial use being the operation of a primitive camping ground; and,
- Payment of a monetary contribution to the Council as an off-set to the public being unable to use the portion of the land that would be excised from the lease for a number of years.

This report demonstrates that, on balance, agreement to vary the lease to allow the landowner to consider establishing a workforce village at the location would support public recreation at Lake Lyell being retained and enhanced into the future.

Administration's Recommendation

THAT Council:

1. Agree to excise part of Lot 2 (as outlined in this report) from the Lake Lyell lease, in the event that EA proceeds to construct temporary workforce accommodation, should the proposed Lake Lyell Pumped Hydro project be approved.
2. Endorse negotiation of option terms to the Lake Lyell lease between Council and EnergyAustralia NSW Pty Ltd.
3. Endorse an amendment to the restrictive covenant affecting the Council owned land to allow for a commercial use, including but not necessarily limited to being the operation of a primitive camping ground.
4. Authorise the General Manager to negotiate a monetary contribution to the Council as an offset to the public being unable to use the portion of the land that would be excised from the lease for a number of years.
5. Authorise the General Manager to sign all documents and do all things necessary to give effect to the resolutions made.

Attachments

1. Plan 1 - Lot 2 in D P 792415 [3.9.1 - 1 page]

Reference to any relevant previous minute

N/A

Background and discussion

This report involves three matters being the excision of part of Lot 2 in DP792415 from the Lake Lyell lease, a request to add option terms to the Lake Lyell lease and an amendment to the restrictive covenant affecting Council owned land at Lake Lyell. Each of these matters is addressed below.

1. EA's request to excise part of Lot 2 in DP792415 from the Lake Lyell lease

Lot 2 in DP792415 (**Lot 2**) is owned by EA and leased to Council. EA has requested to use part of Lot 2 to establish a workforce village to accommodate workers who will be involved in the Lake Lyell Pumped Hydro project (if the project proceeds following development approval). All planning decisions/approvals must be completed before there can be a Financial Investment Decision by EA.

About Lot 2

Lot 2 is shown on **plan 1** attached to this report; it is zoned SP2 Infrastructure and comprises a total area of 45.71ha, which includes a large portion of the lake itself.

EA anticipates that the workforce village will require a land area of around 9.24ha (shown on the image below) - this is the area proposed to be excised from the lease.



EA has considered other land in the Lithgow LGA for the workforce accommodation, but has determined that this is the preferred location due to:

- Proximity to the main project site;
- Avoids additional traffic contribution to Great Western Highway or busier thoroughfares of Lithgow;
- Minimises total number of nearby neighbours;
- Development of the site with utilities providing future options for the site; and
- Positive worker amenity, improving worker wellbeing and positive demeanour.

On conclusion of the workforce village

At the conclusion of the construction project the workforce village will be decommissioned, and EA would make good the site.

Also, EA will retain any elements of the site that Council considers beneficial such as benching, drainage roads, power, waste and wastewater utilities.

Additionally, EA will discuss with Council how the site could be improved so that after 2030/31 it can be returned to Council under a registered lease and perhaps be integrated into any longer term plans that Council may have for the Lake Lyell recreation area.

Is a decision to excise part of Lot 2 premature?

EA requires certainty regarding the excise of part of Lot 2 now so that it can prepare for a State Significant Development application, in the event that it decides in 2025 to proceed with the Lake Lyell Pumped Hydro project.

If EA decides not to proceed with the project

In the event that EA decides not to proceed with the Lake Lyell Pumped Hydro project or EA does not receive the required planning approvals, no part of Lot 2 will be excised from the lease and the status quo will remain.

Risks and opportunities

Risk

Although Lot 2 is included in the Lake Lyell lease to Council, the portion of Lot 2 that EA wishes to utilise (for a period of 5-6 years) does not form part of the Lake Lyell public recreation area.

Council owns adjoining land being Lot 1 in DP792415, which is used for public recreation and camping. EA has confirmed that the use of part of Lot 2 for the workforce village will not impact the Council land and will not restrict public access to the water which can be gained via Lockyer's Line of Road (a council public road).

The Administration has not identified any added risk to Council that will result from excising part of Lot 2 from the lease.

Opportunities

EA has agreed that at conclusion of the project, it will retain any elements of the site that Council considers beneficial such as benching, drainage roads, power, waste and wastewater utilities.

Additionally, EA will discuss with Council how the site could be improved so that after 2030/31 it can be returned to Council under a registered lease and perhaps be integrated into any longer term plans that Council may have for the Lake Lyell recreation area.

These opportunities arise from Council's agreement to excise part of Lot 2 from the Lake Lyell lease.

2. The addition of option terms to the Lake Lyell lease between Council and EA

Currently the Lake Lyell lease expires on 31 December 2042, subject to early termination provisions including a right for either party to terminate the lease upon one month's notice if both Wallerawang Power Station and Mount Piper Power Station permanently close or cease to operate for a continuous period in excess of 12 months.

The Administration has commenced discussions with EA regarding option terms to be added to the Lake Lyell lease so that Council has an opportunity to plan for the future of Lake Lyell. The aim will be to agree on option terms to give Council potential tenure for a further 30 years, until 31 December 2072.

At present, Mount Piper Power Station is scheduled to close in 2040. The Administration will discuss removal of the early termination provisions with EA. If the Mount Piper Power Station site is sold after closure, Council may need to negotiate lease terms with a new owner.

An extended term is economically necessary, if Council intends to invest in capital works to support the future of Lake Lyell for public recreation and camping.

3. Approve the Administration's request to amend the restrictive covenant on Council owned land

The Council owned land at Lake Lyell is burdened by a covenant restricting the land from being used for any industrial, residential or commercial purpose. This restriction was imposed by the Electricity Commission when it transferred the land to Council in 1990. As EA now owns the land that benefits from this covenant, EA has authority to release, vary or modify the covenant.

The Administration has requested a variation of the covenant to allow for the operation of a primitive camping ground on a commercial basis and EA has indicated in principle support.

There may also be the potential for other commercial uses beyond the primitive camping ground use so it is intended that the discussions canvas if other such uses should equally be able to be considered without the limitation of this existing covenant. Please note, however, that any such uses would need to demonstrate that they do not impinge or compromise the use of the lake for power generating purposes (which is its dominant purpose). Also, rezonings may be required and they are not assured. Modification of the covenant though would at least enable consideration to be given to broader commercial uses that are complementary to the existing recreation ground and offer greater overall public benefit.

4. Payment of a monetary contribution to the Council as an off-set to the public being unable to use the portion of the land that would be excised from the lease for a number of years.

If the workforce village proceeds, the public will for some years be unable to use the 9.24 hectares of land which Council currently holds a lease over. Lake Lyell is one of the city's recreational jewels and it is attracting greater visitation from a Sydney based market. It is envisaged that there is some likelihood that Council might wish to make use of the 9.24 hectares to service this demand and opportunity. It is reasonable that the loss of this potential be offset, by payment of an appropriate monetary contribution. Although the approach to calculating the value of the contribution is still to be developed, it will be the case that a proper commercial process or methodology can be used to determine a fair value.

Policy

N/A

Legal

The subject matter of this report is a function of Council conferred by the Local Government Act 1993 and the registered lease between Council and Energy Australia NSW Pty Ltd.

A decision to surrender, exchange or re-classify land is a non-delegable function under section 377 of the Local Government Act 1993. Therefore, only council can decide in relation to the matters in this report.

Risk Management

There are no foreseeable risks to Council in relation to the matters outlined in this report.

Financial

- Budget approved - N/A
- Cost centre - N/A
- Expended to date - N/A
- Future potential impact - N/A

