
10.2.4. FIN – 22/05/2023 – Proposal to enter a Licence Agreement with COC Limited

Prepared by Sandra Politi – Property and Legal Services Officer

Department Property and Legal Services

Authorised by Chief Financial & Information Officer

Reference

21-242 – Ordinary Meeting of Council held on 25 October 2021

22-238 – Ordinary Meeting of Council held on 28 November 2022

Summary

This report summarises submissions received during the public exhibition period of the proposed Licence Agreement with COC Limited and requests Council's approval to proceed with the Licence Agreement.

Commentary

Council owns Lot 1 in DP43326, located off Inch Street, Lithgow. At the Ordinary Meeting of Council held on 28 November 2022, Council considered a proposal to enter a Licence Agreement with COC Limited to allow use of part of the land (see image below) for access and movement of locomotives along the rail line within Lot 1.



At the meeting Council resolved as follows:

1. Grant preliminary approval to enter a 12 month Licence Agreement with COC Limited for the Rail Line Section of Lot 1 in DP433264.
2. Authorise the General Manager to negotiate the terms and conditions of a Licence Agreement, having regard to Council's Leasing and Licensing Policy 10.20.
3. Give public notice of the proposed Licence Agreement and place it on public exhibition for at least 28 days, in accordance with Section 47 of the Local Government Act 1993.
4. Authorise the general manager to sign all documents and do all things necessary to give effect to the Licence Agreement, if no submissions are received during the public exhibition period.

5. Note that the matter will be returned to Council for further consideration, if any submissions are received during the public exhibition period.
6. Commence action to re-classify the Rail Line Section of Lot 1 in DP433264 from “community” to “operational” land via LEP amendment under section 30 of the Local Government Act 1993.
7. take steps to re-classify the Rail Line Section of the Council Land from “community” to “operational” via LEP amendment.

Submissions received during the public exhibition period

In accordance with resolution number 3 above, the proposed Licence Agreement was placed on public exhibition for the period 28 February 2023 to 28 March 2023.

During public exhibition two submissions were received, details of which are summarised below:

Date of submission	Comments and concerns raised in submissions	Response to concerns
9 March 2023	The respondent provided comments about relevant historical matters including the construction of the railway line in 2001-2002.	These comments are helpful for context and record purposes.
	<p>The respondent recommended that consideration be given to licensing the affected land to an Accredited Rail Safety Operator with the capacity to maintain the track.</p> <p>Alternately any licence holder should be required to nominate a suitably qualified Rail Infrastructure Manager to ensure maintenance of the operational status of the line.</p>	The respondent’s request is agreed, and a provision has been added to the Licence Agreement requiring that the rail infrastructure within the Licensed Area be maintained by an accredited Rail Infrastructure Manager approved by the Office of the National Rail Safety Regulator.
	The submitter requested that a condition be included to provide that the railway line be kept open and operational.	The respondent’s request is agreed, and a provision has been added to the Licence Agreement requiring that the rail infrastructure within the Licensed Area remain open and operational for organisations which have traditionally used the rail infrastructure for movement of locomotives and trains.
23 March 2023	The respondent commented that no purpose or permitted use of part Lot 1 DP433264 is identified in the draft Licence Agreement, so it is not possible to identify any potential impacts on the Blast Furnace Site.	The permitted use is “Access and movement of locomotives”, which is identified in Item 5 on page 2 of the Licence Agreement.
	The respondent commented that the rail spur line from Blast Furnace	The Licence Agreement is for the Licensed Area only and no

	<p>across the Inch Street underbridge to the disused milk depot (both in Council ownership) appear to fall outside the proposed license area. This spur line has a direct historical attachment to the Blast Furnace site having been constructed in the early 20th Century to transport molten iron from Blast Furnace to the steelworks across town near the current sporting field complex. Council commissioned an Archaeological Assessment of the spur line in 2017, which found that the spur line and Inch Street underbridge are considered to have state historical significance.</p> <p>The spur line also provides future opportunities for development of a pedestrian/cycle pathway linking Blast Furnace with Eskbank House Museum.</p> <p>The respondent requested that the spur line and rail underbridge should be preserved, excluded from the licensed area and no activities should be permitted on them.</p>	<p>more.</p> <p>The spur line and rail underbridge do not form part of the Licensed Area and therefore will not be affected by the Licence Agreement.</p>
	<p>The respondent commented that this rail line links State Mine and Eskbank Goods Yard. The railway line has, for a number of years, carried rail locomotives and rolling stock to the State Mine Railway Maintenance Workshop. This facility is unique in Lithgow and I believe employs around 40 staff. The draft license agreement doesn't state how this section of rail track and the adjacent service road will be used and if continued use of this rail track by State Mine Railway Maintenance Workshop will be permitted.</p> <p>The respondent recommended that prior to issuing a license to CoC, the current status of this rail line, and the implications of the proposed CoC license on continuing access to the State Mine Railway Maintenance Workshop should be determined.</p>	<p>The focus and purpose of the Licence Agreement is to provide a legal right to use Council land.</p> <p>To ensure continued access to the State Mine Railway Maintenance Workshop, a provision has been added to the Licence Agreement requiring that the rail infrastructure within the Licensed Area remains open and operational for organisations which have traditionally used the rail infrastructure for movement of locomotives and trains.</p>

A reply has been sent to each respondent to reply to their submissions. One submitter has since commented that they believe this licence process has assisted all stakeholders to reach a mutual understanding.

Whilst two submissions were received, neither submission objected to the proposed Licence Agreement, but instead requested clarification on some aspects and made helpful recommendations which have been implemented in the Licence Agreement.

Additionally, the Licence Agreement has been amended so that it is non-exclusive, thereby allowing Council to enter Licence Agreements with other stakeholders, if necessary.

As all obligations in relation to the proposed Licence Agreement have been satisfied, it is recommended that Council proceed with the Licence Agreement.

Policy Implications

Policy 9.16 - Compliance Policy

Policy 10.20 – Leasing and Licensing Policy

Financial Implications

- Budget approved - N/A
- Cost centre - N/A
- Expended to date - internal staff resources.
- Future potential impact – N/A

Legal and Risk Management Implications

Local Government Act 1993

Environmental Planning and Assessment Act 1979

Attachments

1. Rail Line Section [**11.5.1** - 1 page]

Recommendation

THAT Council:

1. Note the contents of this report on a proposed Licence Agreement with COC Limited.
2. Authorise the General Manager to sign all documents and do all things necessary to give effect to the Licence Agreement.