

1.6. F&G - 28/01/2026 - Proposal to Enter Licence Agreement with LSMR Limited

Strategic Context for this matter:

Caring for Our Community: To retain, respect and strengthen both our overall sense of community, and the unique linked communities of groups, rural areas, villages and towns that make up the Lithgow LGA.

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Executive Summary

This report requests preliminary approval to enter a licence agreement with Lithgow State Mine Railway Limited (LSMR) and to initiate steps to re-classify part of Council land from "community" to "operational".

Administration's Recommendation

THAT Council:

1. Grant preliminary approval to enter a 12-month licence agreement with Lithgow State Mine Railway 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.

Attachments

Nil

Reference to any relevant previous minute

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

Minute 23-95 Ordinary Meeting of Council held on 22 May 2023

Minute 24-171 Ordinary Meeting of Council held on 22 July 2024

Background and discussion

Council Land

Lot 1 in DP433264 is situated off Inch Street, Lithgow (Council Land) and forms part of the Blast Furnace Park and Lake Pillans area. The Council Land is shown framed in red on the image below.



The Council Land came to be in Council's ownership when it, together with the adjoining Lake Pillans lot (1/435393), were transferred from the State Rail Authority to Council in June 2000.

Attributes of the Council Land

The Council Land is zoned RE1 public recreation and comprises an area of 1.93 ha. It is classified "community" and categorised "cultural significance" under the Local Government Act 1993 (the Act).

The Council Land includes an area of about 3,330m² containing a tourist rail line (Rail Line Section), which is the subject of this report. The Rail Line Section is shown framed in red on the image below.



Background

On 28 November 2022, Council agreed to enter a 12 month licence agreement with C.O.C Limited (C.O.C.) for the rail line section of the Council owned land, Lot 1 in DP 433264. C.O.C. Limited managed the land at the Lithgow State Mine Railway site.

Additionally, Council authorised the Administration to take steps to re-classify the rail line section to operational land via an LEP amendment.

Subsequently, no licence agreement was entered with C.O.C. and at the 22 July 2024 Ordinary Meeting, Council resolved that work will cease on the proposal to enter a licence agreement with C.O.C. Ltd.

LSMR's use of the Rail Line Section

LSMR is a local non-profit organisation committed to protecting and promoting Lithgow's rail and industrial heritage. Plans include operating a rail heritage experience from State Mine to Eskbank Station.

In November 2025, LSMR requested to temporarily store one locomotive and three wagons on the Council Land, which is required as the current storage location is now under a licence agreement with the Southern Shorthaul Railway (SSR) with restricted access. It is anticipated that an Expressions of Interest process for a more suitable and long-term location will commence from July 2026.

While the Administration have not been able to locate documentation in Council's records, previous advice has been that in 2001 a rail extension was constructed to connect the tourist rail line from the Eskbank branch to the railway workshop located at State Mine Gully. The rail connection was part of a joint project between LSMR and Council and that the project was supported by a grant awarded under the Centenary of Federation scheme.

Restrictions on dealing with Community Land

The Council Land (including the Rail Line Section) is classified "community" land. The Act restricts how councils can deal with community land. In particular, the Act provides that councils may only grant a lease, licence or other estate if a Plan of Management (POM) for the land expressly authorises it.

There is no POM for the Council Land, and it is estimated that development of a POM would cost between \$65K and \$85K. The land is categorised cultural significance (together with the other parcels of land that make-up Blast Furnace and Lake Pillans). Land that is categorised "cultural significance" requires a plan of management that applies exclusively to that land. Strict compliance with the Act would mean that Council is not able to grant a licence to LSMR until a POM is adopted.

However, it is suggested that the Rail Line Section of the Council Land is inadvertently classified "community" and should be re-classified "operational" land for the following reasons:

- it contains operational rail infrastructure that connects to rail infrastructure on private land. LSMR has indicated that locomotives move across it to head to the railway workshop located in the State Mine Gully;
- the Rail Line Section of the Council Land should not be accessible to the public, for safety reasons;
- the Rail Line Section directly benefits one party and not the broader community; and
- Council should not bear any risk in relation to the Rail Line Section.

Suggested approach to correct the situation

With the above in mind, the following steps are recommended to correct the situation:

1. Grant a 12-month licence agreement to LSMR for access, use and maintenance of the Rail Line Section, subject to public notice and exhibition in accordance with section 47 of the Act.
2. Take steps to re-classify the Rail Line Section of the Council Land from "community" to "operational" via LEP amendment (s.30 of the Act).
3. Following re-classification, Council may consider subdividing the Rail Line Section from the Council Land and either disposing of it or retaining it, then granting a long-term lease over the land.

Consultation and Communication

The report recommends that the proposed licence agreement to LSMR is placed on public notice and exhibition for a period of 28 days. If any submissions are made, a further report will be tabled to Council.

Policy

Policy 9.16 - Compliance Policy.

Policy 10.20 - Leasing and Licensing Policy.

Legal

The subject matter of this report is a function of Council conferred by the Local Government Act 1993 and Environmental Planning and Assessment Act 1979.

Risk Management

Entering into a licence agreement will mitigate the risks associated with the proposal.

Financial

Any legal costs incurred to enter into the licence agreement are to be borne by LSMR. There will be unbudgeted income generated in terms licence fees, which will be immaterial, in accordance with Policy 10.20, under Category C – being the minimum base rent under the Crown Management Act 2016.