

EGROW 04	Issues and Options Report - Potential amendment to Liverpool Local Environmental Plan to permit a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly
-----------------	--

Strategic Direction	Generating Opportunity Attract businesses for economic growth and employment opportunities
File Ref	237969.2020
Report By	Luke Oste - Executive Planner
Approved By	David Smith - Acting Director City Economy and Growth

EXECUTIVE SUMMARY

On 28 August 2020, the Mayor issued a Mayoral Direction (Attachment 1), pursuant to Section 226(d) of the Local Government Act 1993, requiring the A/CEO to prepare a report that details options available to Council to amend the Liverpool Local Environmental Plan 2008 (LEP) to permit, with development consent, a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly.

The Mayoral Direction relates to the Burns Outdoor Obstacle Training facility which was issued a Notice of Proposed Stop Use Order, Demolish Works Order and Restore Works Order on 4 August 2020 due to the use being prohibited in the R5 Large Lot Residential zone under the LEP.

The facility has operated for the last five years with the landowners believing the use was permitted without development consent in the zone as a home occupation.

This report recommends that Council prepares a planning proposal to amend Schedule 1 of the LEP to permit, with development consent, a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly and forwards the planning proposal to the Department of Planning, Industry, and Environment (DPIE) seeking a Gateway determination.

It is also recommended that the Phase 2 LEP Review considers amending the list of land uses that are permissible with development consent in the R5 Large Lot Residential zone, to include Recreation Facility (Outdoor).

RECOMMENDATION

That Council:

1. Directs the A/CEO to prepare a planning proposal to amend Schedule 1 of the Liverpool Local Environmental Plan 2008 to permit, with development consent, a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly and delegates authority to the A/CEO to forward the planning proposal to the Department of Planning, Industry, and Environment seeking a Gateway determination;
2. Notes that if a Gateway determination is issued, state agency consultation and public exhibition will be undertaken, and a post-exhibition report will be prepared for Council's consideration; and
3. Investigates including Recreation Facility (Outdoor) as a land use permitted with development consent in the R5 Large Lot Residential zone as part of Phase 2 of the LEP Review.

REPORT

Background

Over the past five years, the site at 25 Dwyer Road, Bringelly has been used as a Recreational Facility (Outdoor) known as Burns Outdoor Obstacle Training.

Council received a complaint on 10 July 2020 regarding the use of the premises. Council officers investigated the matter and determined the use did not have a development consent and was prohibited in the R5 Large Lot Residential zone under the Liverpool Local Environmental Plan 2008.

The landowners established the facility believing it was a home occupation and that the use was development permitted without consent. The LEP defines a home occupation as:

Home occupation means an occupation that is carried **on in a dwelling**, or **in a building ancillary** to a dwelling, by one or more permanent residents of the dwelling and that does not involve –

- a) the employment of persons other than those residents, or
- b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil, traffic generation or otherwise, or
- c) the display of goods, whether in a window or otherwise, or
- d) the exhibition of any signage (other than a business identification sign), or

e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

The use being undertaken on the site is not carried on in a dwelling or in a building ancillary to a dwelling and is therefore not defined under the LEP as a home occupation. The use is properly defined as a Recreation Facility (Outdoor) under the LEP:

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

This use is prohibited in the R5 zone. Council therefore issued a Notice of Proposed Stop Use Order, Demolish Works Order and Restore Works Order on 4 August 2020.

There has been a strong community response in support of the continued operation of Burns Outdoor Obstacle Training. A change.org petition has to date received over 5,000 signatures. The Mayor therefore issued a Mayoral Direction pursuant to Section 226(d) of the *Local Government Act 1993* on 28 August 2020 requiring the A/CEO to prepare a report that details options available to Council to amend the Liverpool Local Environmental Plan 2008 (LEP) to permit, with development consent, a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly.

Site Description

The site is known as 25 Dwyer Road, Bringelly and is legally described as Lot 80 within DP 27550. The sites topography is relatively flat, and the allotment is regular in shape. The site currently contains two dwellings, a pool, various storage sheds, a small dam, and outdoor training equipment at the front. The site is within a broader residential area typified by large residential lot developments.

Figure 1 shows the site within its locality. Figure 2 shows the site within its regional context.



Figure 1: Aerial view of subject site (Nearmap Aug 2020)

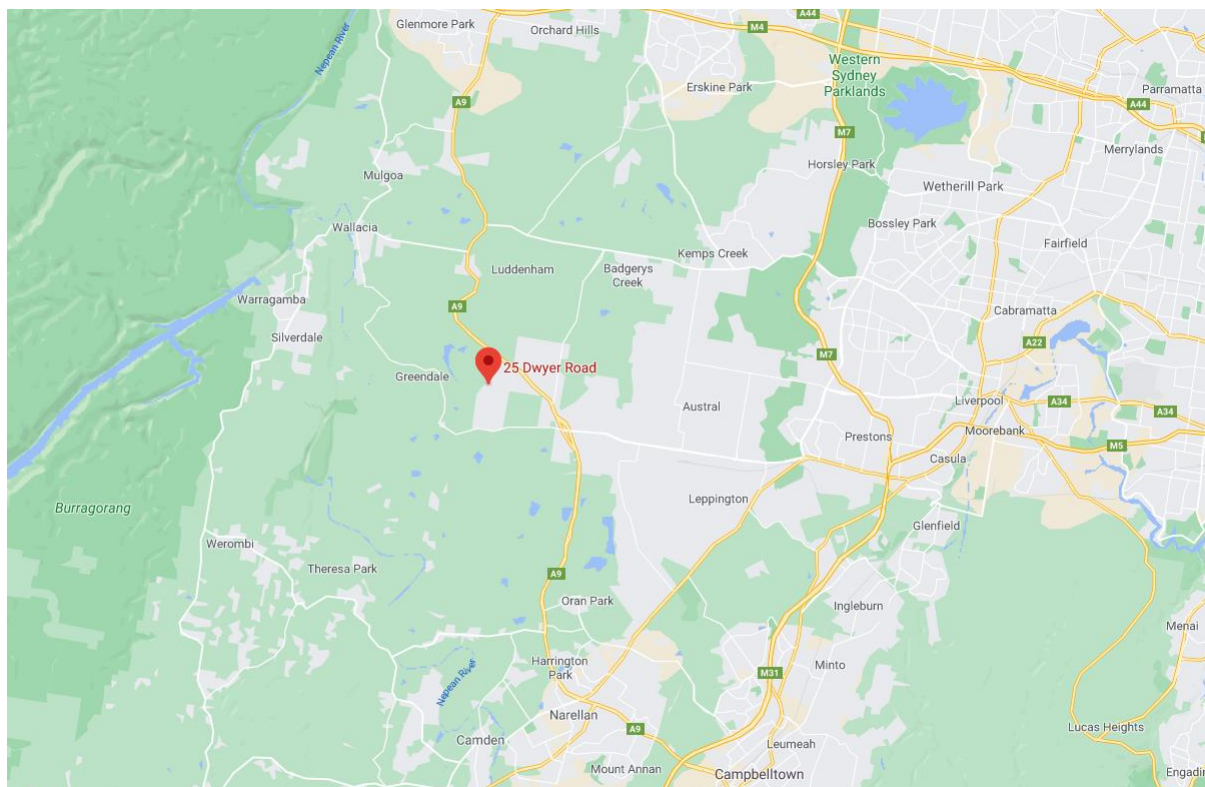


Figure 2 - Regional Context Map (Google Maps)

Planning Framework

The site is zoned R5 Large Lot Residential under the LEP and the objectives of the R5 Large Lot Residential zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To provide for complementary uses that are of low impact and do not unreasonably increase the demand for public services or public facilities.*

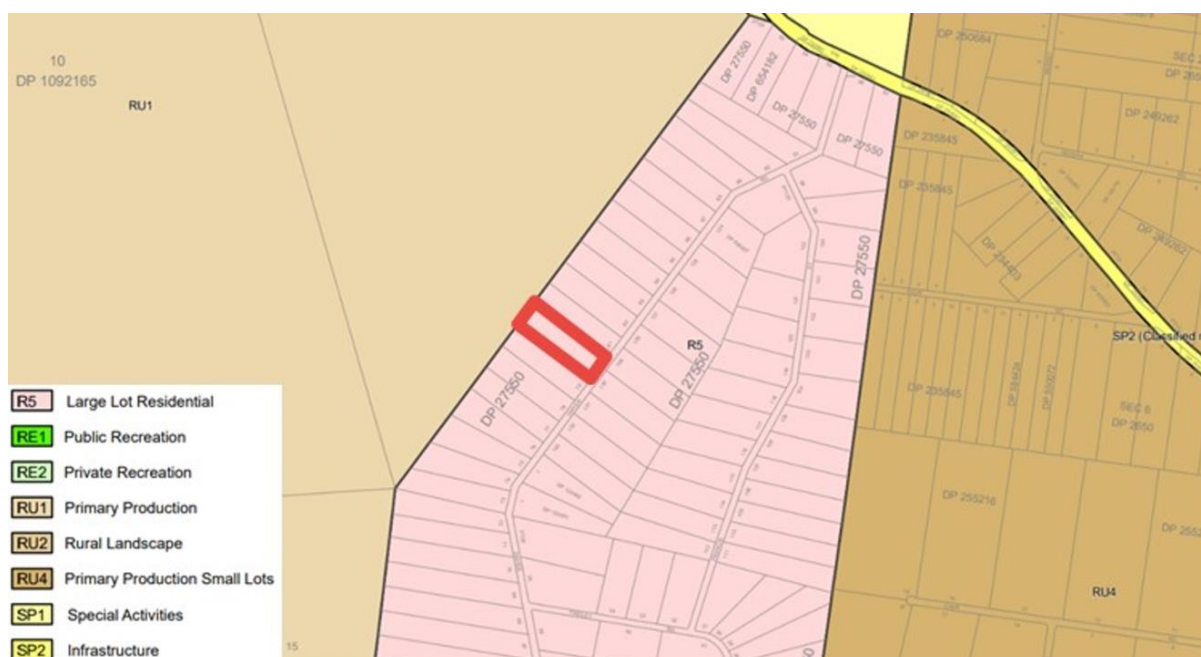


Figure 3 – Existing land use zoning in the LEP (subject site outlined in red)

The site is subject to the following development standards under the LEP:

- Minimum lot size of 2 hectares;
- Maximum height of buildings of 8.5m; and
- Maximum floor space ratio (FSR) of 0.2:1.

The site is located south-west of the Western Sydney International (Nancy-Bird Walton) Airport (WSA) which is currently under construction.

The site is identified within the Dwyer Road precinct of the Western Sydney Aerotropolis Plan (WSAP) and is a non-initial precinct not subject to rezoning under State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. Therefore, the Liverpool LEP continues to apply.

Options to permit a Recreational Facility (Outdoor) at 25 Dwyer Road, Bringelly

The options available to Council to permit, with development consent, a recreational facility (outdoor) on this site are:

Option 1 – Schedule 1 Amendment to the LEP

A Schedule 1 amendment to the LEP allows a specific additional use to be permitted on a site, subject to development consent, even if it is not listed as a permitted land use in the land use tables in the LEP.

The advantage of Option 1 is that it will provide a tailored solution to the current issue by permitting the use of the site as a Recreation Facility (Outdoor) with development consent. Given the minor nature of the proposal, there is no requirement for the planning proposal to be considered by the Liverpool Local Planning Panel (LPP), which will reduce the time taken to progress the planning proposal to a Gateway determination.

The *Local Planning Panels Direction – Planning Panels (Attachment 2)* issued by the Minister for Planning & Public Spaces under Section 9.1 of the Environmental Planning & Assessment Act states:

1. *A council to whom this direction applies is required to refer all planning proposals prepared after 1 June 2018 to the local planning panel for advice, **unless** the council's general manager determines that the planning proposal relates to:*
 - a. *the correction of an obvious error in a local environmental plan,*
 - b. *matters that are of a consequential, transitional, machinery or other minor nature, or*
 - c. ***matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.***

(Emphasis added)

It is considered that this planning proposal would not have any significant adverse impact on the environment or adjoining land that can't be appropriately managed through the merit assessment of a development application, and if considered appropriate to approve, with conditions.

A potential downside of this option is that the community could perceive Council is giving preferential treatment to the landowner by allowing a currently prohibited land use in the R5

zone to be permitted, subject to a future development consent and that other landowners are not been afforded the same opportunity.

Option 2 – Amendment to the Land Use Table in the LEP

An alternate way of permitting a Recreation Facility (Outdoor) is to amend the R5 land use table by adding Recreation Facility (Outdoor) to the list of land uses permitted with consent in the zone. This will then permit the use on all sites within the R5 zone across the LGA, subject to future development consent.

This option would also require a minor amendment to Part 3.8 Non-Residential Development in Residential Zones in the Liverpool Development Control Plan 2008 (DCP) to include guidance for the development of Recreation Facility (Outdoor) in the R5 Large Lot Residential zone.

Table 1 identifies other Councils that permit Recreation Facility (Outdoor) with development consent in the R5 Large Lot Residential zone in their LEPs.

LGA	Recreation Facility (Outdoor) permissibility
Camden Council	Yes
Campbelltown City Council	Yes
Hawkesbury City Council	Yes
Penrith City Council	No
Shoalhaven City Council	No
Wingecarribee Shire Council	Yes
Wollondilly Shire Council	No
Wollongong City Council	No

Table 1 – Permissibility of the 'Recreation Facility (Outdoor)' use in the R5 zone

The advantage of Option 2 is that it will resolve the current issue by permitting Recreation Facility (Outdoor) with development consent on the site and on other R5 zoned sites throughout the LGA. However, there is a risk that the timeframe may be slower than Option 1 as the LEP would be amended by adding this use for all R5 zoned land within the LGA.

It is also likely that the planning proposal would be required to be considered by the Liverpool Local Planning Panel given that it would have a larger scope when compared to Option 1 resulting in a slightly longer period of time to proceed to a Gateway determination.

Figure 4 below identifies the location of the existing R5 zone land in the Liverpool LGA

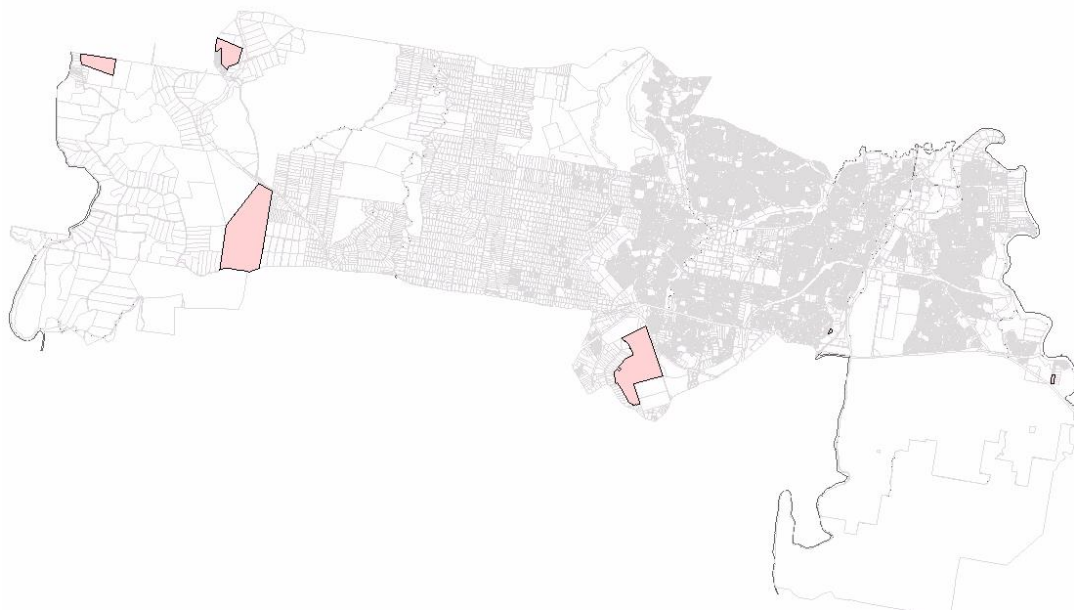


Figure 4 Location of R5 zoned land in Liverpool LGA

Option 3

The recommended option is to pursue a Schedule 1 amendment to the LEP as per Option 1 and pursue Option 2 as part of the LEP Review Phase 2 process. The advantage of Option 3 is that the planning proposal, to permit with development consent, the ongoing operation of the Burns Outdoor Obstacle Training facility can progress in a timely manner.

The broader issue of whether Council should permit, subject to development consent, a Recreation Facility (Outdoor) throughout the R5 zone can then be considered as part of the LEP Review Phase 2.

Conclusion

It is recommended that Council supports Option 3 and directs the A/CEO to prepare a planning proposal to amend Schedule 1 of the Liverpool Local Environmental Plan 2008 to permit, with development consent, a Recreation Facility (Outdoor) at 25 Dwyer Road, Bringelly and delegates authority to the A/CEO to forward the planning proposal to the Department of Planning, Industry, and Environment seeking a Gateway determination.

In addition, it is recommended that as part of Phase 2 of the LEP Review, Council investigates including Recreation Facility (Outdoor) as a land use permitted with development consent in the R5 Large Lot Residential zone.

CONSIDERATIONS

Economic	Facilitate economic development. Facilitate the development of new tourism based on local attractions, culture and creative industries.
Environment	There are no environmental and sustainability considerations.
Social	Support community organisations, groups and volunteers to deliver coordinated services to the community. Support access and services for people with a disability. Deliver high quality services for children and their families.
Civic Leadership	Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.
Legislative	Environmental Planning and Assessment Act 1979
Risk	There is no risk associated with this report.

ATTACHMENTS

1. Mayoral Direction
2. Local Planning Panels Section 9.1 Direction - Planning Proposals