

# Wollongong Local Planning Panel Assessment Report | 17 May 2022

<b>WLPP No.</b>	Item No.4
<b>DA No.</b>	DA -2021/988
<b>Proposal</b>	Commercial fitness training activities
<b>Property</b>	Clowes Park, Railway Avenue, Austinmer
<b>Applicant</b>	Wollongong City Council Property Division
<b>Responsible Team</b>	Development Assessment and Certification - City Wide Team (JP)

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

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#### Reason for consideration by Local Planning Panel- Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Under Clause 1(a) of Schedule 2 of the Local Planning Panels Direction of 30 June 2020, Wollongong City Council is the applicant.

#### Proposal

Commercial fitness training activities.

#### Permissibility

The site is zoned RE1 Public Recreation pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as a Recreation Facility (Outdoor) and is permissible in the zone with development consent.

#### Consultation

The proposal was exhibited in accordance with Council's Notification Policy and two (2) submissions were received. The matters raised are addressed in section 1.5.

#### Main Issues

- Noise
- Parking

## RECOMMENDATION

DA-2021/988 be approved subject to the conditions at **Attachment 2**.

### **1.1 PLANNING CONTROLS:**

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- Wollongong Local Environmental Plan (WLEP) 2009
- Wollongong Development Control Plan 2009
- Wollongong City Wide Development Contributions Plan
- Wollongong Community Participation Plan 2019
- Other Council Policies: Commercial Fitness Training Activities on Public Open Space 2018, and 2022 Community Land Plan of Management

### **1.2 DETAILED DESCRIPTION OF PROPOSAL**

The proposal comprises commercial fitness training activities limited to the normal activities of a registered personal trainer/instructor, that would include:

- outdoor gym sessions (with or without weights, fit balls, skipping ropes etc.),
- boxing and pad training,
- organised aerobic activity,
- yoga, Tai Chi and Pilates classes and like activities,
- circuit training, and
- a combination of any of the above.

The plan identifies one area to be utilised for fitness training with CP01 having a maximum capacity of 18 participants. Council's Property division is the applicant and it is intended that should consent be granted that a separate tender process be undertaken to lease/ licence the identified areas to a suitable commercial operator. Conditions of consent would form part of the licence/ lease agreement. As per cl 1.8 of Council's Commercial Fitness Trainer policy the licence agreement is likely to be greater than 6 months, but less than 5 years.

### **1.3 BACKGROUND**

DA-2011/1362 (commercial fitness training activities on public open space) was approved on 15 December 2011; however, it is understood that the consent has lapsed.

No pre-lodgement meeting was held for the proposal.

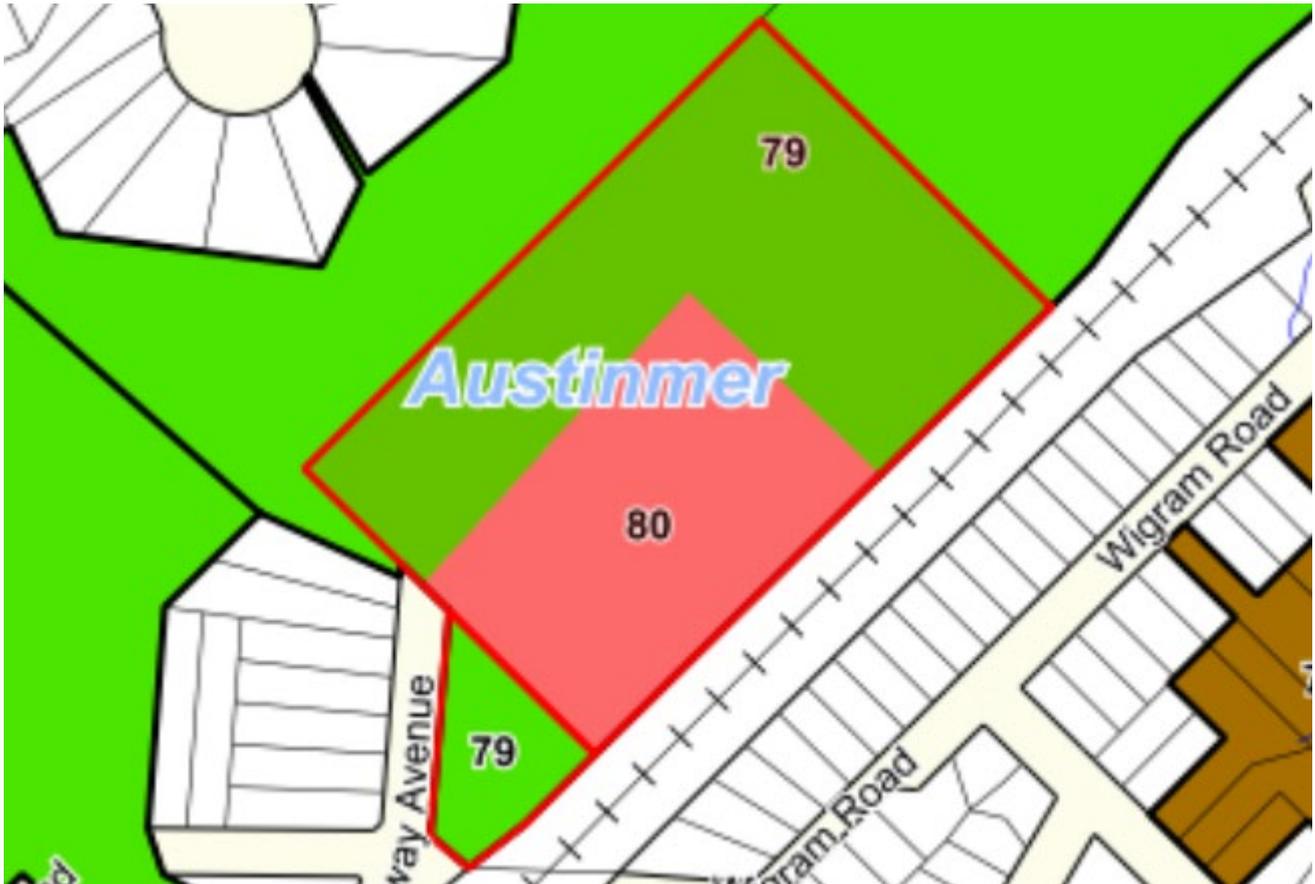
### **1.4 SITE DESCRIPTION**

The site is located at Clowes Park, Railway Avenue, AUSTINMER NSW 2515 and the title references are Lot 11 DP 20987 and Lot 1 DP 329377 The land is zoned as RE1 Public Recreation and is a multi-use sportsground used for junior soccer, cricket and rugby league. The land also contains an amenity building with change rooms, toilets and informal car parking areas. The Park is accessible from Railway Avenue.

The site has an overall area of approximately 4.3ha.

The site is adjoined by residential dwelling houses to the southwest, the South Coast railway line to the southeast and otherwise surrounded by bushland.

The property is owned by Wollongong City Council and is Community land categorised as a "Sportsground" (Figure 1 below).



**Figure 1 –Community Land Management mapping**

Property constraints

Council records identify the land as being impacted by the following constraints:

- Flooding: The site is identified as being flood impacted (Flood Affected-Levels Undetermined)
- Escarpment
- Ecological Sensitive Land – Natural Resource Biodiversity
- Bushfire
- Acid Sulfate Soils
- Unstable Land

There are no restrictions on the title relevant to the proposal. No land constraints would prevent the proposed licence/ lease areas from operating.



Figure 2: Aerial photograph and proposed lease area



Figure 3: WLEP 2009 zoning map



Figure 4 - Site as viewed from the southwestern end of the park

### 1.5 SUBMISSIONS

The application was exhibited in accordance with Council's Community Participation Plan 2019. Two (2) submissions were received, and the issues identified are discussed below.

**Table 1: Submissions**

Concern	Comment
1. Noise/hours of operation	<p>If not well managed, noise from commercial fitness training activities has the potential to affect nearby residents.</p> <p>The proposed operating hours are the same as those for DA-2011/1362 (commercial fitness training activities on public open space) approved on 15 December 2011 and are consistent with Council's Commercial Fitness Training Activities on Public Open Space Council Policy.</p> <p>Any approved development application will be subject to a licence agreement that will stipulate the specific requirements of the area relating to hours of operation, location on the land, number of staff/ clients and the like.</p> <p>Should this application be approved, conditions for restricted hours of operation, no noise nuisance and no public address system will be applied.</p>
2. Car parking, traffic congestion	<p>Traffic and parking conflicts are expected to be minimal as generally all commercial fitness training operations are to give way to the general public, and organised games such as cricket or soccer. It is unlikely that the instructors will be licenced to operate at the same time as any events on the site.</p> <p>Council's development engineer was satisfied that on-street parking would be sufficient to accommodate the proposed use of the site.</p>
3. Inadequate pedestrian access	<p>Noted. This is more of a general issue regarding the sportsground itself, but does not necessarily preclude the use of the site for the proposed low-impact use.</p>
4. No bubblers/fresh water	<p>This is not a matter for this assessment; however the instructor is responsible for participants. Use of facilities on private property may result in the cancellation of a licence.</p>
5. Litter/insufficient waste facilities	<p>If not properly managed, waste generated from commercial fitness training activities has the potential to accumulate on the site.</p> <p>Should this application be approved, conditions for waste management and leaving the site clean and tidy will be applied. This is also a standard requirement of any Council Licence Agreement.</p>
6. Locked toilets	<p>The site contains toilet facilities. It will be up to Council to ensure facilities are open for licence holders.</p>

## 1.6 CONSULTATION

### 1.6.1 INTERNAL CONSULTATION

#### **Development Engineering**

No objections are raised. One condition of consent was recommended and is included in the consent, and no conditions were recommended.

#### **Property Management**

No objections are raised. Conditions of consent were recommended and are included in the consent.

#### **Recreation Services**

No objections are raised. Conditions of consent were recommended and are included in the consent.

#### **Environment**

No objections are raised. Conditions of consent were recommended and are included in the consent.

#### **Community Land Management**

No objections are raised, and no conditions were recommended.

### 1.6.2 EXTERNAL CONSULTATION

None required.

## **2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

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### **Section 1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994**

Not applicable.

## **2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT**

### 2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

#### **Chapter 2 Coastal management**

#### **2.11 Development on land within the coastal use area**

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

*(b) is satisfied that—*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

*(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

*(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

*(2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment

Much of the subject lot and the proposed licensed area are mapped as being within the Coastal Use Area. This section is of limited relevance to this type of proposal, which comprises no built elements, with careful management has limited potential adverse impacts, and falls within the normal activities that might reasonably be expected on a sportsground.

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment

The proposed development not increase the risk of any coastal hazards, ie

- a beach erosion,
- b shoreline recession,
- c coastal lake or watercourse entrance instability,
- d coastal inundation,
- e coastal cliff or slope instability,
- f tidal inundation, or
- g erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters

on the subject lots or other land.

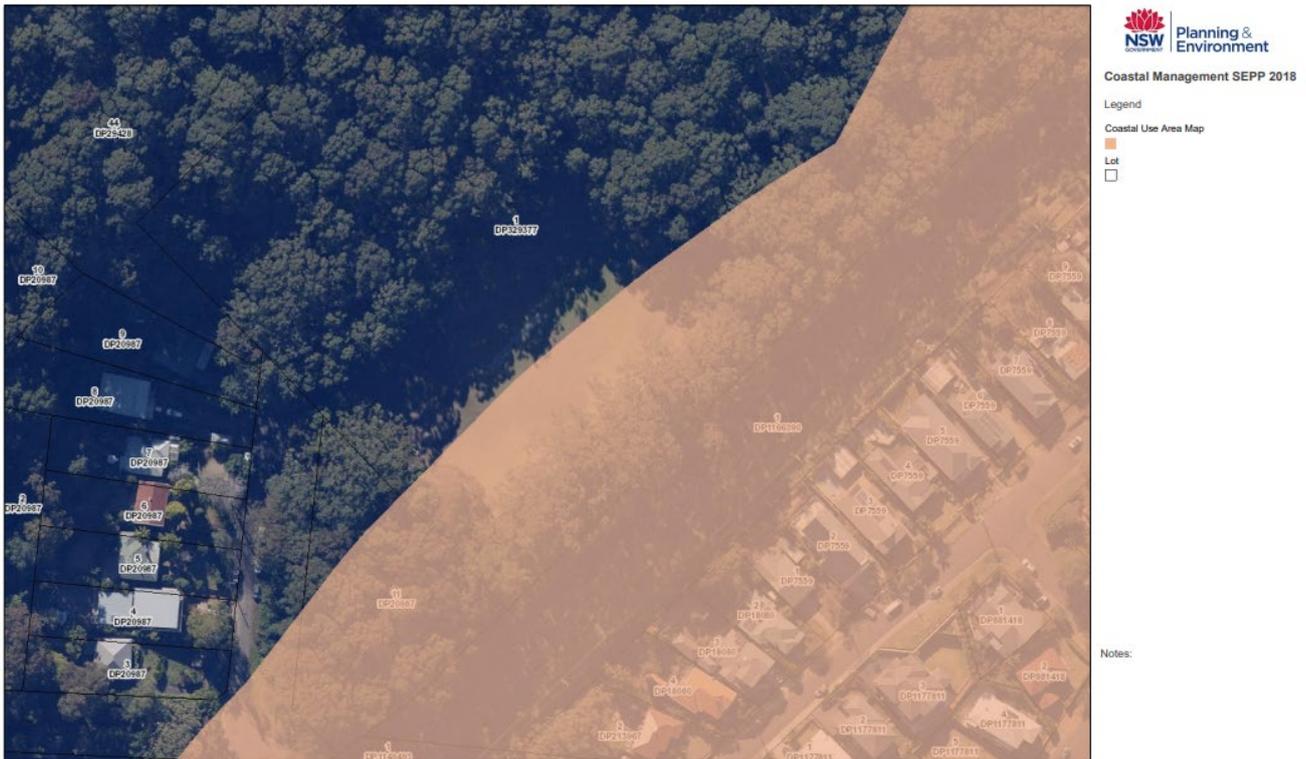
**2.13 Development in coastal zone generally—coastal management programs to be considered**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.*

Comment

The Wollongong Coastal Zone Management Plan (Wollongong CZMP) (BMT WBM 2017) was certified on 20 December 2017 and applies to the coastal zone of the Wollongong Local Government Area which in part includes this development application site.

The Wollongong CZMP does not have any particular provisions for the subject lots.



**Figure 5: Excerpt from Coastal Management SEPP 2018 mapping**

Note: this mapping used rather than ePlanning Spatial Viewer, which is less clear; however, the information is the same.

## Chapter 4 Remediation of land

### 4.6 Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless—

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

- (a) land that is within an investigation area,

*(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

*(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*

*(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*

*(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

#### Comment

The site is currently used as a public park. A desktop audit does not reveal any previous uses that would suggest contamination of the site; therefore, the proposed use of the sportsground for commercial fitness training activities is considered satisfactory.

#### 2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

##### **Chapter 4 Koala Habitat Protection 2021**

The combined lots have an area of more than one hectare. No approved koala plan of management applies to the lots.

No clearing of habitat suitable for koalas is proposed. No potential indirect impacts from the development on koalas would be expected.

The development is not likely to have any impact on koalas or koala habitat.

#### 2.1.3 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

##### Clause 1.4 Definitions

**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).

##### **Part 2 Permitted or prohibited development**

##### Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned RE1 Public Recreation.

##### Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To cater for the development of a wide range of uses and facilities within open spaces for the benefit of the community.*

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

*Aquaculture; Boat sheds; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Helipads;*

*Information and education facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); **Recreation facilities (outdoor)**; Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures*

The proposal is categorised as a **Recreation facility (outdoor)** as defined above and is permissible in the zone with development consent.

#### **Part 4 Principal development standards**

There are no development standards applicable to the proposed development.

#### **Part 5 Miscellaneous provisions**

##### Clause 5.21 Flood planning

The site is identified as being located in a flood affected area where the Flood Risk Precinct Classification is under Review. The flood affectation of the site does not affect the proposed use which will not take place in wet weather and/or flooding events.

#### **Part 7 Local provisions – general**

##### Clause 7.1 Public utility infrastructure

The site is serviced by electricity, water and sewerage services.

##### Clause 7.2 Natural Resource Sensitivity–Biodiversity

Much of Lot 1 DP 329377 and all of Lot 11 DP 20987 are mapped as Natural Resource Sensitivity–Biodiversity. The proposed licensed area is located outside of the area mapped as Natural Resource Sensitivity–Biodiversity on those lots. The areas mapped as Natural Resource Sensitivity–Biodiversity on those lots are shown as excluded zones on the submitted site plan.

No impacts from the proposed development on the areas mapped as Natural Resource Sensitivity–Biodiversity on Lot 1 DP 329377 and Lot 11 DP 20987 are expected.



## **Figure 6 – WLEP 2009 Natural Resource Sensitivity–Biodiversity map**

### Clause 7.5 Acid Sulfate Soils

The subject lot has been mapped as being affected by Class 5 Acid Sulfate Soils. No works are proposed.

No further consideration of acid sulfate soils is required.

### Clause 7.8 Illawarra Escarpment Area Conservation

Part of Lot 1 DP 329377 is within the Illawarra Escarpment area. This part is also shown on the submitted site plan as being within the Exclusion Zones.

No adverse impacts from the proposed development on the Illawarra Escarpment area are expected.

## **2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT**

There are no draft planning instruments applicable to the proposed use.

## **2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN**

### 2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

#### **CHAPTER B6 – DEVELOPMENT IN THE ILLAWARRA ESCARPMENT**

Part of Lot 1 DP 329377 is within the Illawarra Escarpment area. This part is also shown on the submitted site plan as being within the Exclusion Zones.

No adverse impacts from the proposed development on the Illawarra Escarpment area are expected.

#### **CHAPTER D1 – CHARACTER STATEMENTS**

##### Austinmer

*Existing Character:*

*Austinmer is a leafy residential village which extends from the coastal strip right up to the slopes and foothills of the escarpment. Austinmer is a medium sized seaside village being slightly smaller than Thirroul but larger than other seaside villages to the north.*

*Austinmer is characterised by predominantly low density detached dwelling-houses with some medium density housing, restricted to the coastal part of the village. Detached dwelling-houses predominantly comprise of a mix of one to two storey weatherboard and brick dwelling-houses with pitched roof lines. Newer two storey contemporary styled consisting of rendered brick and weatherboard dwellings with varied roof forms have been constructed along both the coastal strip and upper slopes and foothills of the escarpment.*

*Brush box street trees also line some streets in Austinmer which add to its leafy village character.*

*Austinmer also contains a number of items of environmental heritage including a number of Norfolk Island Pines along Austinmer Beach and North Austinmer Beach, Glastonbury Gardens, Austinmer railway station, a group of shops in Moore Street as well as several significant dwellings.*

*Austinmer Heritage Conservation Area is divided into three (3) distinct precincts, namely Moore Street, The Grove and Hennings Lane. Moore Street was one of the first formed streets in the early twentieth century with pre-war style allotments that helped to create a new identity for Austinmer from a coal town to a seaside resort. This street connected the railway station to the main tourist attraction, being Austinmer beach. The Grove represents the continuing growth of Austinmer. The presence of palm trees and the mixture of tropical and native vegetation also demonstrates the importance this street played in setting the new identity of Austinmer as a seaside village during the 1920's and 1930's. Hennings Lane provides access to the large dwelling known as 'Rathane' as well as providing rear lane access to the properties fronting either Moore Street or The Grove.*

*A small retail and business centre is contained along Moore Street as well as a small retail strip along Lawrence Hargrave Drive. This provides for the daily convenience needs of the surrounding population. Higher order retailing and business services are provided at Thirroul and Corrimal town centres and Wollongong City Centre.*

*Desired Future Character:*

*The village atmosphere of Austinmer should be retained, and the existing retail centre should remain relatively 'low key'.*

*Austinmer should retain its low-density leafy seaside character and any new residential development should not dominate the scenic environmental quality of the coastal strip and forested escarpment. Dwellings should be generally one to two storeys in height and be designed to retain the nature attributes of the immediate locality.*

*Any new dwellings or major alterations and additions to existing dwellings should be designed to minimise the scale and bulk of the development through well-articulated building forms. Individually designed dwellings with weatherboard or colourbond facades with lighted coloured or light or mid grey finishes are preferred for properties along the coastal strip. The rooflines for dwellings along the coastal strip may either be flat, curved or gently pitched, depending upon existing view sheds from neighbouring properties. In some cases, split-level or varied setbacks for two storey dwellings and sloping flat or gently pitched roof forms may be necessary, to maximise view sharing opportunities for neighbouring dwellings.*

*The impact of upper storeys of a dwelling should also be minimised through a combination of additional front and side setbacks from the ground floor of the dwelling and the selective use of balconies and verandahs.*

*Balconies should be lightly framed in steel and / or timber finishes, rather than of brick or masonry construction.*

*For properties within the treed areas near the escarpment, face brick dwellings with pitched tile or colourbond rooflines in muted earthy colour finishes are preferred.*

*For properties on sloping sites towards the escarpment, new dwellings should be stepped down the slope with suspended floors and decks used to minimise the disturbance of the natural contours of the site and to ensure new dwellings upon the escarpment footslopes are nestled below the tree canopy line.*

*Where front or rear facades of new dwellings are likely to be higher than neighbouring dwellings, the screening of balconies and additional setbacks may be necessary, to minimise any potential privacy or amenity impacts.*

*All new dwellings and major alterations and additions to existing dwellings upon lands classified as a "bush fire" hazard risk must be designed and constructed in accordance with the NSW Rural Fire Service Planning for Bushfire Protection 2006 guidelines and Australian Standard AS 3959 – 1999 Construction of Buildings in Bushfire Prone Areas.*

*Some medium density housing types (ie townhouses and villas) may occur along the coastal strip provided such developments are designed to reflect the natural attributes of the particular locality and to maximise view sharing opportunities for dwellings upon neighbouring properties.*

*New or improved pedestrian and / or bicycle links may be considered as part of the future precinct planning for Austinmer, which may include a possible link between the railway station and Austinmer beach.*

*Comment: The proposal is considered to be consistent with the existing and desired future character for the locality.*

### **CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT**

This chapter of the DCP does not provide any parking controls specific to the proposed use. The limited numbers attending the proposed fitness training activities and the controlled scale of the use having regard to the nature of the site and the availability of car parking spaces is such that impacts on local traffic and car parking will be minimal. Council's development engineer has provided a satisfactory referral, without conditions of consent.

## CHAPTER E13 FLOODPLAIN MANAGEMENT

The site is identified as being located within a flood risk precinct, under review. There is no built form proposed and the use will only operate in dry weather conditions. Accordingly the flood attribute of the site raises no concerns. Council's development engineer has provided a satisfactory referral, without conditions of consent.

## CHAPTER E18: THREATENED SPECIES

Several records for *Rhodamnia rubescens*, a plant listed as critically endangered under the NSW Biodiversity Conservation Act 2016 occur on Lot 1 DP 329377. The submitted site plan shows the area containing the records for *Rhodamnia rubescens* as being within Exclusion Zones.

Provided the proposed commercial fitness training activities are confined to the licensed area shown on the submitted site plan, no impacts on threatened or non-threatened biodiversity would be expected.

### Commercial Fitness Training Activities on Public Open Space Policy

The purpose of this policy is to provide for the effective management of the regular commercial use of open space by commercial fitness training groups and personal trainers and to minimise the impact on surrounding residents and the general public's use of open space whilst recognising the increased community demand for commercial fitness activities in open space. Through the implementation of this policy, Council aims to:

- A *Ensure equity of access to public open space.*
- b *Reduce and manage the potential impact of commercial fitness training activities on public assets.*
- c *Minimise public liability concerns.*
- d *Contribute to delivering Our Wollongong 2028 Community Strategic Plan.*

Licensing of the proposed use of the park for fitness/training activities will take into account the following factors:

- Usage demand, intensity of use of the area and times requested.
- Number of approved trainers already using the area.
- Type of activities to be undertaken and the potential impact on other users and neighbouring residents during the times requested.
- Whether the activities will contribute to increasing congestion or user conflict in the area requested.

The general provisions of the policy are addressed in the following table:.

Provision	Comment
<u>2.1 Industry Compliance</u> All commercial fitness activities must be undertaken in accordance with the recommendations and guidelines of Fitness Australia or other relevant peak body	A condition of consent is recommended to address this requirement.
<u>2.2 Site capacity and Trainer/participant Ratio</u> The size of a licensed site will be determined by Council however the maximum number of participants will not exceed 54 participants at one licensed location. Commercial fitness training activities are to be undertaken in a manner that should ensure that all group participation is appropriately supervised, providing instruction to each individual. Fitness training groups are limited	Individual fitness training groups will require a licence from Council and the licences will determine the number of persons permitted per group and the number of groups that permitted to operate at any given venue.

<p>to 18 participants per instructor where participants are undertaking the same activity and six (6) participants per instructor where participants are undertaking different activities.</p>	
<p><b>2.3 <u>Hours of Operation</u></b></p> <p>Subject to development consent, licence holders are permitted to operate on their licensed area from Monday to Saturday between 6 am and 8 pm, and on Sunday between 7 am until 10 am. When conducting activities beyond daylight hours, Commercial Fitness trainers must monitor and control risks to participants and ensure public safety is not impacted by their activities (e.g. use of personal lighting and high visibility garments). Failure to operate within these specified times will be dealt with in accordance with the Termination clause outlined in a Licence Agreement.</p>	<p>Hours of operation will be re-enforced through conditions of consent. The subject site is not in close proximity to residential properties and it is not envisaged that the standard allowable hours of operation will result in any amenity impacts.</p>
<p><b>2.4 <u>Qualifications</u></b></p> <p>To be eligible for consideration of a Licence Agreement, a commercial fitness activity trainer must: a Provide evidence in having completed accredited courses specific to the type of activity being instructed and endorsed by Fitness Australia and/or VETAB providers such as TAFE, Universities and Nationally Recognised Training institutions/colleges b Have a current Senior First Aid Certificate. c) Proof of being a current registered professional with Fitness Australia or the relevant peak body. All fitness trainers employed by the licence holder are also required to hold the above qualifications</p>	<p>Conditions of consent will require a licence to be obtained which will ensure only qualified trainers are allowed to operate businesses.</p>
<p><b>2.5 <u>Storage</u></b></p> <p>All equipment used for training sessions is to be stored off site. The erection of fixed structures for the storage of fitness equipment is not permitted.</p>	<p>To be conditioned.</p>
<p><b>2.6 <u>sale of merchandise</u></b></p> <p>Licence holders are permitted to provide/offer the sale of health and fitness clothing and equipment associated with the activity to their clients/participants</p>	<p>Noted.</p>
<p><b>2.7 <u>car parking</u></b></p> <p>Licence holders and participants are required to park in designated parking areas. Parking on grassed open space is not permitted and will incur</p>	<p>To be conditioned.</p> <p>It is anticipated that the impacts of commercial fitness training activities on local traffic and car parking will be</p>

<p>penalties in accordance with the Local Government Act 1993.</p>	<p>minimal due to the group size limit and existing provision of car parking.</p>
<p>2.8 <u>Waste</u></p> <p>Licence holders are required to ensure the area used for personal training sessions is clean and tidy after use and that such is communicated to session participants.</p>	<p>It is unlikely that any significant amount of waste/litter will be generated as a result of the proposed activities. Standard garbage receptacles already exist within the park. To reinforce this responsibility to reduce waste impacts on public open space a condition of consent will be imposed to ensure the area used for personal training sessions is clean and tidy after use and that operators communicate this requirement to session participants.</p>
<p>2.9 <u>Environment</u></p> <p>Licence holders must manage the activities to minimise wear and tear on grassed areas (this includes rotating within the designated area and/or alternating activities).</p>	<p>Due to the nature of the proposed commercial fitness training activities, it is not envisaged that additional maintenance requirements will be imposed upon Council's parks maintenance staff. The identified site is currently maintained to a sufficient standard for such activities to occur.</p> <p>Commercial fitness training activities will be limited to selected areas within the parcel of public open space. Such areas will, through the licensing process, be determined by an assessment of the site's current and future use and will ensure the maintenance of thoroughfare access for all park users.</p>
<p>2.10 <u>Risk Management</u></p> <p>Licence holders must comply with industry guidelines including ensuring:</p> <ul style="list-style-type: none"> <li>• Availability of a well-equipped first aid kit in close proximity for the duration of the activity.</li> <li>• Pre-exercise screening of all participants to ensure effective and safe programming. Licence holders must, prior to commencing commercial fitness training activities, assess weather conditions and inspect the immediate area for hazards and take appropriate action to remove those hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council's attention.</li> </ul>	<p>To be addressed by licencing arrangements.</p>
<p>2.11 <u>Insurance</u></p>	

<p>Licence holders must take out and maintain in their name, for the duration of the term of the Licence Agreement, public liability insurance for a minimum of \$10 million (or such greater amount as Council may reasonably require) and produce documentary evidence of this at the time of application and at time of renewal. Failure to hold or produce evidence of public liability insurance to Council's satisfaction will result in cancellation of the licence.</p>	<p>To be addressed by licencing arrangements and reinforced by a condition of consent.</p>
<p>2.12 <u>Business Interruption</u></p> <p>Council will accept no responsibility or liability for any interruption to business caused by the need for Council or any other Authority to carry out any special event or type of maintenance works on the approved public open space site, inclement weather or any other interruption to business howsoever caused.</p>	<p>Noted.</p>
<p>2.13 <u>Noise/Disturbance</u></p> <p>Under this policy and the allocation of a Licence Agreement, commercial fitness training activity operators must:</p> <ul style="list-style-type: none"> <li>• Always conduct themselves in accordance with the Fitness Australia Code of Ethics, in a proper and orderly manner and be considerate to other reserve users and adjacent residents.</li> <li>• Not create any noise from training activities that unreasonably disturbs other users and adjacent residents.</li> <li>• Ensure that all noise associated with their activities does not cause offensive noise as defined by the Protection of the Environment Operations Act 1997.</li> <li>• Ensure that any exercise equipment used does not create any hazards or obstruction.</li> <li>• Ensure that any training group for which they are responsible, runs in single file when running in narrow areas (ie along footpaths, stairways, shared paths and cycleways), and always give way to pedestrians/cyclists using those areas.</li> <li>• Ensure that any activities conducted outside of their licensed area does not interfere with any Council approved or booked activity, or the passive recreational use of an area or impact on the enjoyment of such passive use.</li> </ul>	<p>The nature and scale of the proposed use is unlikely to result in any noise impacts.</p> <p>Noise conditions to be imposed to reinforce licensing agreement.</p>

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• Leave the training area in the same condition it was at the commencement of training.</li></ul> |  |
|---|--|

#### Comment

Council's Community Lands and Environment officers have provided satisfactory referrals, subject to compliance with the above policy, standard licencing including the requirements above, and supporting conditions of consent.

#### 2.4 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

##### **DEVELOPMENT CONTRIBUTIONS**

##### Wollongong City-Wide Development Plan - City Wide

The Wollongong City-Wide Development Contributions Plan applies to the subject property. This Plan levies a contribution based on the estimated cost of development. The proposed cost of development\* is less than \$100,000 - contributions do not apply.

##### **2.5 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4**

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

##### **2.6 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)**

##### **Environmental Planning and Assessment Regulation 2020**

The 2000 Regulation continues to have effect as the application was lodged prior to 1 March 2022. There are no provisions applicable to the proposal.

##### **2.7 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT**

The proposal is considered acceptable with regard to the likely impacts.

##### **2.8 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

##### Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

##### Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

##### **2.9 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS**

Four (4) submissions were received. The matters raised are addressed in section 1.5.

##### **2.10 SECTION 4.15(1)(E) THE PUBLIC INTEREST**

The proposal is in keeping with Council's adopted policies for fitness activities on Community Land.

## **2.11 LOCAL GOVERNMENT ACT 1993 Division 2**

### Use and Management of Community Land

Clowes Park is Community Land. The proposed use will be located in an area to the centre of the sportsground mapped as community land and permissibility is subject to the requirements of the WLEP 2009.

The plan of management applicable is the 2022 Community Land Plan of Management and associated mapping, which identifies the land as a Sportsground (ID80).

36F of the LG Act identifies the core objectives for management of community land categorised as a sportsground as—

*(a) to encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and*

*(b) to ensure that such activities are managed having regard to any adverse impact on nearby residences.*

The proposed use of the site is generally consistent with the core objectives for management of community land categorised as a sportsground.

Section 3 of the Plan of Management( POM) identifies permissible uses and developments. Low intensity commercial activities are permitted under the POM in accordance with the Regulations. The proposal is consistent with the short-term casual purposes identified in Section 116 of the Regulations as follows:

#### 116, Leases, licences and other estates in respect of community land

A licence to be issued by Council's Property Unit is required to use Community Land. Any requirements under this Section are confirmed by Council's Property Unit. A Licence for the occupation of the land would form part of any conditions.

In summary, the proposal is not considered to result in any adverse impacts and is satisfactory with regard to the zoning and applicable planning controls. Two (2) submissions were received and have been addressed, and satisfactory referrals were received from specialist Council staff.

## **3 CONCLUSION**

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This application has been assessed as satisfactory having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. The proposal is considered supportable in its current form.

The proposed development is permissible with consent and is consistent with the zone objectives. There are no departures sought in respect of WLEP2009 or variations to WDCP2009 controls.

It is envisaged that environmental and social impacts arising from the proposed fitness training sessions will be minimal. Regulation of the use through Licence Agreements and conditions of consent will ensure the activity will effectively be managed by Council and operate in accordance with Council's adopted policy for this type of development.

## **4 RECOMMENDATION**

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DA-2021/988 be approved subject to the conditions at **Attachment 2**.

## **5 ATTACHMENTS**

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1. Statement of Environmental Effects
2. Conditions

# Attachment 1

## STATEMENT OF ENVIRONMENTAL EFFECTS

### Clowes Park, Austinmer

#### Site Description

The site is located at Clowes Park, Railway Avenue, AUSTINMER NSW 2515 at Lot 1 DP 329377. The land is zoned as RE1 Public Recreation and is a multi-use sportsground used for junior soccer, cricket and rugby league. The land also contains an amenity building with change rooms, toilets and informal car parking areas. The park is accessible from Railway Avenue.

The property is owned by Wollongong City Council and is Community land categorised as a sportsground.

#### Development Description

The proposed activity is regulated by the issuing of Licence Agreements with Council (Section 47 Local Government Act 1993) through the Property & Recreation Division and the conditions as outlined in Wollongong City Council's Policy for *Commercial Fitness Training Activities on Public Open Space* (adopted June 2018).

The types of commercial fitness training activities are limited to the normal activities of a registered personal trainer/instructor, which would include:

- outdoor gym sessions (with or without weights, fit balls, skipping ropes etc.),
- boxing and pad training,
- organised aerobic activity,
- yoga, Tai Chi and Pilates classes and like activities,
- circuit training, and
- a combination of any of the above.

The following potential impacts and identified controls complement the *Commercial Fitness Training Activities on Public Open Space* policy.

Potential Impact	Control Measures
Flora and Fauna	It is envisaged that there will not be an impact to local flora and fauna as the proposed activities will be limited to turfed areas within existing public open space which is maintained regularly as a park.
Lighting	No additional lighting infrastructure is proposed for this Development Application. Commercial fitness training activities will be centred on available daylight hours. Existing lighting may be utilised where spill over occurs within public open space.
Noise	To ensure that any noise which may occur as a result of commercial fitness training activities does not impact significantly on other users of public open space, neighbouring residents and businesses, the Council Policy for 'Commercial Fitness Training Activities on Public Open Space' identifies general prohibitions for noise and Licence Agreements will reinforce this. In addition, Council will determine the number of persons permitted per group and the number of groups that are issued a Licence. The size of a site will be determined by Council and identified in a Licence Agreement.

	<p>Noise is further limited through restrictions on the hours of operation for outdoor commercial fitness training. Hours of operation as identified in the policy are <b><u>Monday to Saturday 6am – 8pm and Sunday 7am – 10am.</u></b> Hours of operation were developed in the policy based on community consultation.</p>
<b>Community /Public Use</b>	<p>To limit the impacts of conducting commercial fitness training activities on neighbouring residents and businesses, such activity will be permitted between defined hours of operation as per the final adopted Council Policy and a Licence Agreement. Failure to operate within these specified times will be dealt with in accordance with a Termination clause outlined in a Licence Agreement. Commercial fitness training activity providers will be required to comply with conditions identified through a Licence Agreement. Licence agreements will be issued on a non-exclusive use basis.</p> <p>It is anticipated that increased commercial fitness training activities will benefit the community through the provision of additional outdoor recreational opportunities which will contribute to enhanced community cohesion, health and wellbeing.</p>
<b>Environment</b>	<p>The proposed development and associated commercial fitness training activities are in accordance with the current land zonings of RE1 Public Recreation. RE1 relates to the Draft Wollongong City Council LEP 2009 and defines a 'recreation area' as <i>'a place used for outdoor recreation that is normally open to the public, and includes:</i></p> <ul style="list-style-type: none"> <li><i>(a) a children's playground, or</i></li> <li><i>(b) an area used for community sporting activities, or</i></li> <li><i>(c) a public park, reserve or garden or the like, and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor)'.</i></li> </ul> <p>In addition, the proposed activity of conducting commercial fitness training activities is consistent with the core objectives of Community Land of Wollongong City Council. This Development Application will support the effective management of such activities to minimise the environmental and social impacts and will aid in enhancing public enjoyment of Community Land.</p>
<b>Maintenance</b>	<p>Due to the nature of the proposed commercial fitness training activities, it is not envisaged that additional maintenance requirements will be imposed upon Council's parks maintenance staff. The identified site is currently maintained to a sufficient standard for such activities to occur.</p>
<b>Access</b>	<p>Without proper management, commercial fitness training activities have the potential to limit or inhibit public access to some areas of public open space. This Development Application will form part of a management process of such activities and through a Licence Agreement, commercial fitness training activities will be limited to selected areas within the parcel of public open space. Such areas will be determined through an assessment of the site's current and future use and will ensure the maintenance of thoroughfare access for all park users.</p> <p>It is proposed that a Licence Agreement will be issued on a non-exclusive basis. A licence agreement will clearly identify the base location within the area of public open space.</p>
<b>Waste</b>	<p>It is unlikely that any significant amount of waste/litter will be generated as a result of the proposed activities and standard garbage receptacles already exist in such public open space. To reinforce this responsibility to reduce waste impacts on public open space as a result of those undertaking commercial fitness training activities, the</p>

	<p>Council Policy for 'Commercial Fitness Training Activities on Public Open Space' identifies that 'licence holders are required to ensure the area used for personal training sessions is clean and tidy after use and that such is communicated to session participants'.</p>
<b>Visual Amenity</b>	<p>The conducting of commercial fitness training activities does not generally impact upon the visual amenity of public open space which is designed to cater for recreational activities as such.</p> <p>The Council Policy for 'Commercial Fitness Training Activities on Public Open Space' prohibits the installation of fixed structures and identifies that equipment used to aid in commercial fitness training activities is to be stored off site.</p>
<b>Traffic /Parking</b>	<p>It is anticipated that the impacts of commercial fitness training activities on local traffic and car parking will be minimal due to the group size limit and existing provision of car parking. The Council Policy for 'Commercial Fitness Training Activities on Public Open Space' reiterates car parking requirements as follows;</p> <p>'Licence holders and participants are required to park in designated parking areas. Parking on grassed open space is not permitted and will incur penalties in accordance with Section 632, Section 650 and Section 651 of the Local Government Act 1993.'</p>
<b>Amenities</b>	<p>Due to the nature of commercial fitness training activities, sessions are mostly limited to brief lengths of time. Therefore is it not envisaged that there will be a need for the provision of additional amenities for public open space users.</p>
<b>Signage</b>	<p>In understanding the potential public safety hazards associated with temporary signage installed daily within public open space (particularly adjoining footpaths), the Council Policy for 'Commercial Fitness Training Activities on Public Open Space' the following limitation is noted;</p> <p>'The erection of advertising signs and banners without Council's written consent'.</p>
<b>Risk Management</b>	<p>To reduce the potential risks associated with undertaking fitness training activities, the Council Policy for 'Commercial Fitness Training Activities on Public Open Space' requires that all 'licence holders must, prior to commencing commercial fitness training activities, inspect the immediate area to ensure no hazards are evident and take appropriate action to remove those hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council's attention'.</p>
<b>Insurance</b>	<p>Should Development Consent be granted, it is anticipated that a Licence Agreement issued by Council's Property &amp; Recreation Division will identify the following indemnity provision which require that commercial fitness training operators;</p> <p>'must take out and maintain in their name, for the duration of the term of the Licence Agreement, public liability insurance for a minimum of \$10 million (or such greater amount as Council may reasonably require) and produce documentary evidence of this at the time of application and at time of renewal'.</p>

**Cumulative  
Impacts**

In assessing the cumulative impacts of the proposed activity, it is envisaged that environmental and social impacts will be minimal. Through regulation via Council Policy and Licence Agreements, the activity may be more effectively managed by Council and other users of public open space.

Ultimately, applications for licences and the number of licences to be issued will be determined by Council taking into account the following factors:

- Usage demand, intensity of use of the area and times requested.
- Number of approved trainers already using the area.
- Type of activities to be undertaken and the potential impact on other users and neighbouring residents during the times requested.
- Whether the activities will contribute to increasing congestion or user conflict in the area requested.

## Attachment 2

### Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Drawing No. gi12801\_port.mxd dated 11 April 2022 prepared by Wollongong City Council and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

### General Matters

#### 2 **Industry Compliance**

All commercial fitness activities must be undertaken in accordance with the recommendations and guidelines of Fitness Australia or other relevant peak body.

#### 3 **Licence Agreement**

Prior to the commencement of fitness training operations, commercial users of the site must enter into an appropriate licence arrangement with Council under the provisions of Council's Commercial Fitness Training Activities on Public Open Space policy adopted on 25 June 2018 and amended from time to time.

#### 4 **Insurance**

In accordance with the provisions of Council's Policy entitled 'Commercial Fitness Training Activities on Public Open Space' the operator of fitness training activities conducted under this consent must take out and maintain in their name, for the duration of the term of the Licence Agreement, public liability insurance for a minimum of \$10 million (or such greater amount as Council may reasonably require). Evidence of such insurance shall be required to obtain a Licence from Council.

#### 5 **Protection of Environment**

The fitness training operator must carry out activities at all times in a manner which will not cause a nuisance, by the generation of unreasonable noise, access impediment or other activity, to the general public or other commercial fitness trainers using the land.

#### 6 **Protection of Public Infrastructure**

No permanent fitness/exercise structures are to be installed at any time and in the event of any damage to any of its infrastructure such as the park furniture and trees within the site being identified, Council must be notified within 24 hours of discovering any such damage.

Adequate protection must be provided for Council infrastructure during commercial fitness training operations.

#### 7 **Separate Consent Required for Advertising Signage**

This consent does not authorise the erection of any advertising signage. Any such advertising signage will require separate Council approval, in the event that such signage is not exempt development, under Schedule 2 of Wollongong Local Environmental Plan 2009.

Any new application for advertising signage must be submitted to Council in accordance with Chapter C1 – Advertising and Signage Structure of Wollongong Development Control Plan 2009.

### Operational Phases of the Development/Use of the Site

#### 8 **Capacity**

The participant capacity of the licence areas shall be limited to the following:

CP01: 18 participants

These limits shall be reflected in the respective Licence Agreement for each area.

#### 9 **No Nuisance**

The commercial fitness training activity operator must carry out activities at all times in a manner which will not cause a nuisance, by the generation of unreasonable noise, access impediment or other activity, to the general public or other commercial fitness trainers using the land.

- 10     **Public Address System**  
The commercial fitness training activity operator must not install or operate a public address system or sound amplifying equipment in the licensed area without the prior consent of Council.
- 11     **Erosion Control**  
The commercial fitness training activity operator must not conduct activities in areas that are not sturdy underfoot by way of being well turfed or having a sealed surface. Turfed areas soaked from prolonged rainfall must be avoided by commercial fitness training groups.
- 12     **Waste Management**  
The commercial fitness training activity operator must ensure all waste generated by the activities is lawfully disposed of. This can include the provision of a waste receptacle or ensuring their clients are aware of existing waste receptacles available on the site. Consideration should be given to the source separation of recyclable and reusable materials.
- 13     **Restricted Hours of Operation**  
The hours of operation for the development shall be restricted to 6.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays. Any alteration to the approved hours of operation will require separate Council approval.
- 14     **Site Left Clean and Tidy**  
The commercial fitness training activity operator must ensure the site is left clean and tidy after use.
- 15     **General public use to take precedence over commercial operations**  
Where access conflicts arise between commercial fitness training operations and the general public, general public access is to be given precedence over commercial fitness training operations at all times.
- 16     **Parking**  
Licence holders and participants are required to park in designated parking areas and to obey parking restriction signs. Parking on grassed open space is not permitted. Instances/events of parking required on any area other than marked bays or kerb side will require prior approval via a section 4.55 modification to the development consent.
- 17     **Prolonged Rainfall Events**  
The applicant is advised that under existing conditions and during prolonged rainfall events, flooding of the site may occur and it is in the applicant's interest to take all necessary precautions to minimise the risk of property loss and/or damage.