

Wollongong Local Planning Panel Assessment Report | 17 May 2022

WLPP No.	Item No.3
DA No.	DA -2021/987
Proposal	Commercial fitness training activities
Property	Mount Kembla Park, Stones Road, Mount Kembla
Applicant	Wollongong City Council Property Division
Responsible Team	Development Assessment and Certification - City Wide Team (JP)

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

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 Clauses 1(a) and 2(b) of Schedule 2 of the Local Planning Panels Direction of 30 June 2020, Wollongong City Council is the applicant and more than 10 submissions have been received.

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. A portion of the site owned by Council is zoned C4 Environmental Living but is outside of proposed licence/lease areas.

Consultation

The proposal was exhibited in accordance with Council's Notification Policy and eleven (11) submissions were received. The matters raised are addressed in section 1.5.

Main Issues

- Noise
- Parking

RECOMMENDATION

DA-2021/987 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 two separate areas to be utilised for fitness training areas, with MK01 having a maximum capacity of 36 participants and MK02 having a maximum capacity of 18 participants (a total of 54 participants). Council's Property division is the applicant and it is intended 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-2010/191 (use of public open space for commercial fitness training activities at Mount Kembla Park) was approved on 22 April 2010 and modified on 26 May 2010; however, it is understood that the approved use was never commenced and the consent has lapsed.

No pre-lodgement meeting was held for the proposal.

1.4 SITE DESCRIPTION

The site is located at Mount Kembla Park, Stones Road, MOUNT KEMBLA NSW 2526 and the title references are Lot 201 DP 788229, Lot 79 DP 32179, Lot 34 DP 241764 and Lot 35 DP 241764. The land is zoned as RE1 Public Recreation and is used as a sportsground for rugby league. The site also hosts a playground and associated supporting facilities including change facilities, toilets, and informal car parking areas. The park is accessible from Avon Parade.

A portion of the site (Lot 34 DP 241764) is zoned C4 Environmental Living appears on the cadastre as a residential lot and is owned by Council and outside of proposed licences areas.

The site has an overall area of approximately 1.78ha.

The site is adjoined by vacant land to the north and east and residential land uses to the south, southwest and southeast. The land is bounded by Stones Road to the east and Avon Parade to the south. The property is owned by Wollongong City Council and is Community land categorised as a “Park” (Figure 1 below).

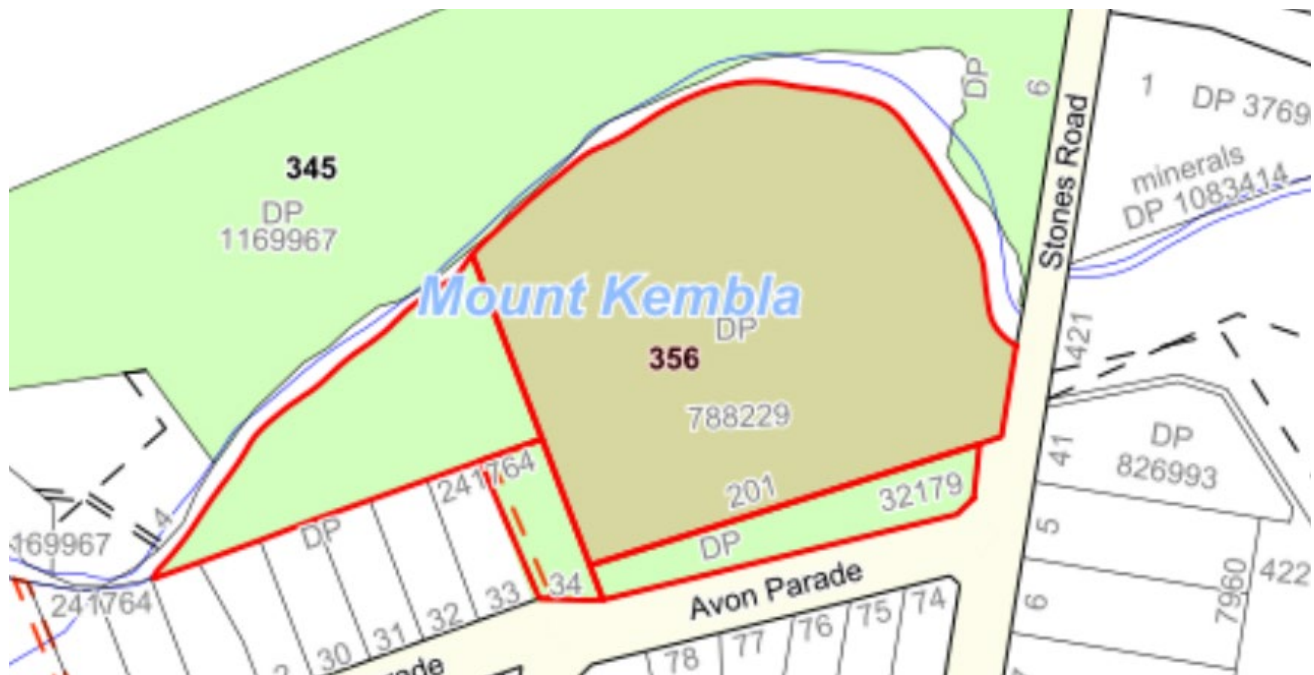


Figure 1 –Community Land Management mapping

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-Uncategorised Flood Risk Precinct)
- Ecological Sensitive Land – Natural Resource Biodiversity
- Bushfire
- Unstable land
- Filled 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 areas



Figure 3: WLEP 2009 zoning map



Figure 4 - Site as viewed from Avon Pde

1.5 SUBMISSIONS

The application was exhibited in accordance with Council's Community Participation Plan 2019. Eleven (11) submissions were received, and the issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. 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 rugby league matches. It is unlikely that the instructors will be licenced to operate at the same time as these events.</p> <p>Council's development engineer was satisfied that on-street parking would be sufficient to accommodate the proposed use of the site.</p>
2. Noise/hours of operation	<p>If not well managed, noise from commercial fitness training activities has the potential to affect nearby residents. Quite a number of submissions to the DA have raised concerns about potential noise and the proposed span of operating hours.</p> <p>The proposed operating hours are the same as those for DA-2010/191/A (use of public open space for commercial fitness training activities at Mount Kembla Park issued 26 May 2010) 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>

Concern	Comment
	Should this application be approved, conditions for restricted hours of operation, no noise nuisance and no public address system will be applied.
3. Use of public space	There is the potential for clashes between licenced fitness groups and the general public that will require a condition to be imposed in any consent granted for the fitness groups to give way to general park users.
4. Not in keeping with “suburban” or “semi-rural” character	<p>The site is identified as a “Park” and use of the site for commercial fitness training is permitted under 2022 Community Land Plan of Management, and appropriate so long as potential adverse impacts are managed. This will be achieved through the licence agreement.</p> <p>The relatively modest scale of the use, with the two licence areas containing 18 and 36 participants respectively, is in keeping with the character of the area.</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. Insufficient amenities	The site contains toilet facilities.
7. Concern that reserve forms part of proposal	The reserve (Council’s Natural Area Asset Unit 203) is specifically excluded from the proposal.
8. Participant numbers are excessive	The maximum participant numbers are consistent with Council’s policy on Commercial Fitness Training Activities on Public Open Space, adopted by Council on 25 June 2018. Nevertheless, the required licencing of any operator can be further restricted to less than these participant numbers if required.

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Development Engineering

No objections are raised, 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

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

This SEPP incorporates and repeals the provisions of the State Environmental Planning Policy 33 - Hazardous and Offensive Development, and State Environmental Planning Policy 55 – Remediation of Land. Chapter 4 Remediation of land - Schedule 3 transfers certain provisions of State Environmental Planning Policy No 55— Remediation of Land to this Chapter.

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, and includes a children's playground. A desktop audit does not reveal any previous uses that would suggest contamination of the site; therefore, the proposed use of the park 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

Lot 34 DP 241764, Lot 201 DP 788229, Lot 79 DP 32179, Lot 35 DP 241764 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. The portion of the site zoned C4 Environmental Living is not intended to be used by this proposal.

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 “Uncategorised”. The flood condition of the site does not affect the proposed use which will not take place in prolonged 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

Parts of Lot 201 DP 788229 and Lot 35 DP 241764 are mapped as Natural Resource Sensitivity–Biodiversity. The proposed licensed area is located outside of the areas mapped as Natural Resource Sensitivity–Biodiversity on those lots, and as the Natural Asset Unit areas on the subject lots are Exclusion Zones on the revised site map, the areas mapped as Natural Resource Sensitivity–Biodiversity are also within the Exclusion Zones.

No impacts from the proposed development on the areas mapped as Natural Resource Sensitivity–Biodiversity on Lot 201 DP 788229 and Lot 35 DP 241764 are expected.

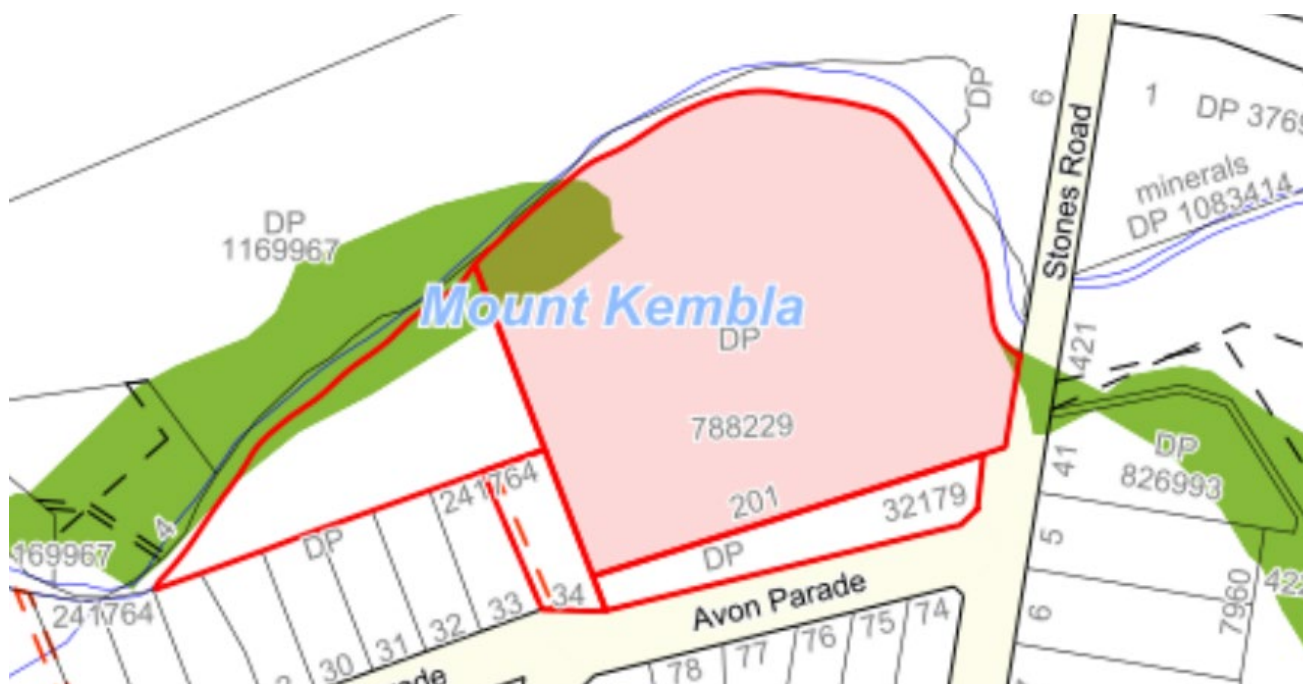


Figure 5 – WLEP 2009 Natural Resource Sensitivity–Biodiversity map

Clause 7.4 Riparian Lands

Riparian Land corresponding to a Category 1 Watercourse has been mapped along the northern boundaries of Lot 201 DP 788229 and Lot 35 DP 241764. The existing playground and some of the sportsground are already within 50 metres of the top of bank. Licence areas MK01 and MK02 are located outside of the riparian corridor area.

The northern boundary of the “Approved Development Consent Area” shown on the submitted revised site plan is within the riparian corridor area. Exclusion Zones covering the Natural Asset Unit areas on the subject lots are shown on the submitted revised site plan and as a result the vegetated riparian corridor area is in the Exclusion Zone. There will be no use of the vegetated riparian corridor area.

The proposed commercial fitness training activities would not be expected to adversely impact Riparian Land.

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 D1 – CHARACTER STATEMENTS

Mount Kembla and Kembla Heights

Existing Character:

Mount Kembla is located approximately 11 km south-west of the Wollongong City Centre, at the foot of the Illawarra escarpment. To the north-east is the suburb of Figtree and to the south-east the suburbs of Cordeaux Heights, Unanderra and Farmborough Heights.

Mt Kembla is distinct from the rest of the Wollongong LGA. It is defined physically by the greenbelt to the north-east, east and south as well as the Illawarra Escarpment to the west. This greenbelt setting of rural and bushland defines the physical nature of the village and distinguishes it from the suburban sprawl.

The character of the village derives largely from its history. From cedar cutting and farming to Australia’s first oil mining (shale), the history progressed to coal mining. Mt Kembla village is best known for the mine disaster of July 1902 – the greatest industrial accident in Australia’s history. The village recognises this history with memorials and commemorative sites and events. Amid the residential development, there are significant heritage buildings including the Soldiers and Miners Memorial Church (1932), the Public School (1859), St Clements Catholic Church (1894) and the Mt Kembla Hotel (1896).

Kembla Heights is a small historic mining village set high in the Illawarra escarpment and is approximately 1.5 kilometres above Mount Kembla village. Kembla Heights was built as company housing for its miners.

The whole of Kembla Heights is contained within the Kembla Heights Heritage Conservation Area, listed under Schedule 5 Part 2 of Wollongong Local Environmental Plan 2009 and comprises mainly of small circa 1840 – 1890 (Victorian) to circa 1890 – 1915 (Federation) single storey weatherboard miner’s cottages on brick, timber or stone piers with hipped iron roofs. The General Store operates as a restaurant. Windy Gully is located 11/2 km south of Kembla Heights and contains historic cottages and the second graveyard commemorating the mining disaster.

Desired Future Character:

The historic character of Mt Kembla should be retained and historic buildings located within the area preserved. Given the proximity of the suburb to the protected escarpment and the geotechnical constraints of much of the suburb, the area is considered generally unsuitable for multi-dwelling development. Future development must retain the character and preserve the buffer greenbelt.

The historic character of Kembla Heights as a whole village of original miner’s cottages is unique and hence, the miner’s cottages must be preserved as per the Kembla Heights Heritage Conservation Area, listed under Schedule 5 Part 2 of Wollongong Local Environmental Plan 2009. Similarly, the significance of the late nineteenth – early twentieth century miner’s cottages in Windy Gully should also be retained and preserved.

Any proposed alteration and addition to an existing miner's cottages within the township must be sympathetic with the original built form of the building. Decorative balustrading and lace work will only be permitted where previous evidence of this can be demonstrated.

This small historic village is set within the steep slopes below Kembla Heights and comprises many old mining cottages, with some newer detached housing clustered around Cordeaux Road and set in secluded, leafy streets at the edge of the urban area. Large sections of undeveloped rural and steep land surround the developed areas.

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 an uncategorised precinct. 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.

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	A condition of consent is recommended to address this requirement.

recommendations and guidelines of Fitness Australia or other relevant peak body	
<p><u>2.2 Site capacity and Trainer/participant Ratio</u></p> <p>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 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>	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><u>2.3 Hours of Operation</u></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>	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><u>2.4 Qualifications</u></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>	Conditions of consent will require a licence to be obtained which will ensure only qualified trainers are allowed to operate businesses.
<p><u>2.5 Storage</u></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>	To be conditioned.

<p>2.6 <u>sale of merchandise</u></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>2.7 <u>car parking</u></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 the Local Government Act 1993.</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 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"> • Availability of a well-equipped first aid kit in close proximity for the duration of the activity. • Pre-exercise screening of all participants to ensure effective and safe programming. Licence holders must, prior to commencing commercial 	<p>To be addressed by licencing arrangements.</p>

<p>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.</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"> • 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. • Not create any noise from training activities that unreasonably disturbs other users and adjacent residents. • Ensure that all noise associated with their activities does not cause offensive noise as defined by the Protection of the Environment Operations Act 1997. • Ensure that any exercise equipment used does not create any hazards or obstruction. • Ensure that any training group for which they are responsible, runs in single file when running in 	<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>

<p>narrow areas (ie along footpaths, stairways, shared paths and cycleways), and always give way to pedestrians/cyclists using those areas.</p> <ul style="list-style-type: none"> • 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. • Leave the training area in the same condition it was at the commencement of training. 	
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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

Eleven (11) 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

Mount Kembla Park is Community Land. The proposed use will be located in the central area of the park 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 Park (ID356).

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

(a) to encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and

(b) to provide for passive recreational activities or pastimes and for the casual playing of games, and

(c) to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

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

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. Eleven (11) submissions were received and have been addressed, and satisfactory referrals were received from specialist Council staff.

3 CONCLUSION

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

DA-2021/987 be approved subject to the conditions at **Attachment 2**.

5 ATTACHMENTS

1. Statement of Environmental Effects
2. Conditions

Attachment 1

STATEMENT OF ENVIRONMENTAL EFFECTS

Mt Kembla Park, Mount Kembla

Site Description

The site is located at Mount Kembla Park, Stones Road, MOUNT KEMBLA NSW 2526 and the title reference is Lot 201 DP 788229. The land is zoned as RE1 Public Recreation and is used as a sportsground for junior soccer. The site also hosts a playground and associated supporting facilities including change facilities, toilets, and informal car parking areas. The park is accessible from Avon Parade.

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.

	<p>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> <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 <u>Monday to Saturday 6am – 8pm and Sunday 7am – 10am.</u> Hours of operation were developed in the policy based on community consultation.</p>
Community /Public Use	<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.</p> <p>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 may lead to enhanced community cohesion, health and wellbeing.</p>
Environment	<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"> <i>(a) a children's playground, or</i> <i>(b) an area used for community sporting activities, or</i> <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> <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>
Maintenance	<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>
Access	<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>
Waste	<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</p>

	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 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'.
Visual Amenity	<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>
Traffic /Parking	<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>
Amenities	<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>
Signage	<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>
Risk Management	<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>
Insurance	<p>Should Development Consent be granted, it is anticipated that a Licence Agreement issued by Council's Property & 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	<p>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.</p> <p>Ultimately, applications for licences and the number of licences to be issued will be determined by Council taking into account the following factors:</p> <ul style="list-style-type: none"> • 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.
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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_lscape.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:

MK01: 36 participants

MK02: 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.