

# Wollongong Local Planning Panel Assessment Report | 18 July 2023

WLPP No.	Item No. 1
DA No.	DA-2022/767
Proposal	Commercial fitness training activities
Property	Stanwell Park Recreation Area 2A Station Street, Stanwell Park STANWELL PARK NSW 2508
Applicant	Wollongong City Council Property Division
Responsible Team	Development Assessment and Certification - City Wide Team (JP)
Prior WLPP meeting	NA

## 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 five submissions were received, four in opposition to the proposal, and one neutral. The matters raised are addressed in section 1.5.

#### Main Issues

- Noise

### RECOMMENDATION

DA-2022/767 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 2022, and Stanwell Park Reserve and Bald Hill Lookout Plan of Management 2021

### 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 three training areas area to be utilised for fitness training with SPR01 having a maximum capacity of 36 participants, SPR02 54 participants and SPR03 18 participants. The proposed operating hours are to 6.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays and are consistent with Council's Commercial Fitness Training Activities on Public Open Space Policy. In this case, however, consistent with other recent approved development applications for commercial fitness training activities on public land near residences, it is considered reasonable that the hours of operation for the development be restricted to 7.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays.

Council's Property & Recreation division is the applicant and it is intended that, should consent be granted, a separate tender process be undertaken to lease/ licence the identified areas to a suitable commercial operator. Conditions 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-2009/93/B (commercial fitness training activities on public open space) was approved on 8 December 2009; however, it is understood that the consent has lapsed. No submissions were received in relation to that application. No participant numbers or specific areas were set by that consent, leaving this to the lease arrangements. Referral the Panel (at that time, the IHAP) was not required. Note that noise was managed by condition of consent requiring that *"the operation of the commercial fitness training activities to be undertaken in a manner that does not impact residents in the locality by way of unreasonable noise for items including, but not limited to, whistles, excessive shouting, high impact boxing and the like."*

No pre-lodgement meeting was held for the proposal.

### 1.4 SITE DESCRIPTION

The site is located at Stanwell Park Recreation Area, 2A Station Street, STANWELL PARK NSW 2508 and the title reference Lot 7304 Crown DP 1142283. The land is zoned as RE1 Public Recreation. The site sits adjacent to Stanwell Park Beach and also contains a beach kiosk, playground and other associated supporting facilities,

including toilets, change rooms, picnic facilities and formal car parking areas. The park is accessible from Station Street and Park Parade.

The site has an overall area of approximately 11.5ha.

The site is adjoined by residential dwelling houses to the north, south and west, the Pacific Ocean to the east.

The property is Crown Land managed 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-Levels Undetermined)
- 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 southern end of the park (C/o Google)**

### 1.5 SUBMISSIONS

The application was exhibited in accordance with Council's Community Participation Plan 2019. Five submissions were received, four in opposition to the proposal, and one neutral, and the issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. Noise/hours of operation	<p>Noted. If not well managed, noise from commercial fitness training activities has the potential to affect nearby residents.</p> <p>The proposed operating hours are to 6.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays and are consistent with Council's Commercial Fitness Training Activities on Public Open Space Policy. In this case, however, consistent with other recent approved development applications for commercial fitness training activities on public land near residences, it is considered reasonable that the hours of operation for the development be restricted to 7.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays.</p> <p>In addition, should this application be approved, conditions about no noise nuisance and no public address system will be applied.</p>
3. Use of public space	<p>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.</p>
4. Fauna	<p>It is noted that the proposed licence area SPR01 is wholly within a grassed area. According to Council's Commercial Fitness Training Activities on Public Open Space Policy, commercial fitness training activities are not permitted within natural areas or on Council trees. Council's Environment Officer has advised that fauna use of proposed licence area SPR01 would be limited to occasional opportunistic foraging by common species and none would be dependent on this area. The trees near to proposed licence area SPR01 would potentially provide opportunistic foraging and roosting habitat for a range of species, but it would be expected in this area that any fauna would be somewhat tolerant of human disturbance or be able to move to the plenty of other trees that exist further away from near to proposed licence area SPR01.</p>
5. No bubblers/fresh water	<p>Noted; however, this is not a matter for this assessment.</p>

## 1.6 CONSULTATION

### 1.6.1 INTERNAL CONSULTATION

#### Development Engineering

No objections are raised, and no conditions were recommended.

#### Property

No objections are raised. Conditions were recommended and are included at Attachment 2.

## Recreation Services

No objections are raised, and no conditions were recommended.

## Environment

No objections are raised. Conditions were recommended and are included at Attachment 2.

## 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

#### 2.8 Development on land in proximity to coastal wetlands or littoral rainforest

#### **Note—**

The *Coastal Wetlands and Littoral Rainforests Area Map* identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

*(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*

*(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*

*(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

*(2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

#### Comment

Much of the subject lot has been mapped as being within the Proximity Area for Littoral Rainforests, including all the proposed commercial fitness training activities licence areas. As the proposed commercial fitness training activities will temporarily take place on already maintained turfed land and no works are proposed, significant impacts on the biophysical, hydrological and ecological integrity of the adjacent mapped littoral rainforest, and the quantity and quality of surface and ground water flows to and from the adjacent mapped littoral rainforest would not be expected.

#### 2.10 Development on land within the coastal environment area

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

*(3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6*

#### Comment

The entire subject lot and the proposed commercial fitness training activities licence areas are mapped as being within the Coastal Environment Area.

The proposed commercial fitness training activities will temporarily take place on already maintained turfed land at a distance from the shoreline and would not be expected to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate; or marine vegetation, native vegetation and fauna and their habitats, and undeveloped headlands and rock platforms.

#### 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

The entire subject lot and the proposed commercial fitness training activities licence areas 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 within a park.

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 activity is unlikely to 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. The Wollongong CZMP has identified parts of the subject lot as having 2010, 2050 and 2100 Ocean Inundation, including over proposed licence areas SPR02 and SPR03. Actions included in the CZMP to deal with ocean inundation include monitor frequency, depth and spatial extents of coastal inundation events and update or commence flood studies at all catchments that are impacted by elevated ocean water levels in flood mapping and management.

The commercial fitness operator will need to be made aware of the 2100 ocean inundation hazard and not operate when the site is affected by ocean inundation and wet site conditions.



Figure 5: Coastal Management Area mapping showing site as affected by Coastal Environment, Coastal Use, and Littoral Rainforest layers.

#### 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 playground. The site has been used as a public park for many years. A review of the aerial photos revealed a kiosk and residence of an age that that would have contained asbestos containing materials that was demolished and removed. An area of the lot around the replacement café is mapped as “Contamination Info-Public Land”.



Figure 6: “Contamination Info-Public Land” mapped area

According to Council's records, this is related to likely buried asbestos. The proposed commercial fitness training activities licence areas are located outside of the area mapped as Contamination Info-Public Land. The proposed use of the licence areas of the park for commercial fitness training activities is considered a suitable use of the land. In this regard it is considered the Panel may be satisfied that cl 4.6 matters have been addressed.

#### 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 upon which commercial fitness activities are proposed 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 proposal.

### 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 Levels Undetermined. The flood coding of the site does not affect the proposed use which will not take place in prolonged wet weather and/or flooding events. Council's Development Engineering officer has not raised any concerns.

### 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 the subject lot are mapped as Natural Resource Sensitivity–Biodiversity. The proposed commercial fitness training activities licence areas are located outside of the areas mapped as Natural Resource Sensitivity–Biodiversity on the subject lot.

### Clause 7.4 Riparian Lands

Riparian Land corresponding to Category 2 and 3 watercourses have been mapped on the subject lot. The proposed commercial fitness training activities within the proposed licenced areas would not impact on Riparian Land. Chapter E23 of Wollongong DCP 2009 would not apply to commercial fitness activities.

### Clause 7.5 Acid Sulfate Soils

The subject lot has been mapped as Class 3 and Class 5 land on the Acid Sulfate Soils Map. No works are proposed.

No further consideration of acid sulfate soils is required.

## 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

### 3.5 Stanwell Park

#### Existing Character

*Stanwell Park is a seaside residential village which is nestled in a natural amphitheatre at the foot of the Illawarra escarpment.*

*Stanwell Park is characterised by a relatively low density residential suburb with single storey and two storey detached dwellings, including architecturally designed dwellings with a coastal architectural theme. Several pole homes are set amongst the forested (eucalypt and cabbage tree palm) valley floor, inland from the beach.*

*Stanwell Park contains a small village retail centre with a mini-supermarket and a small number of other food outlets and convenience shops as well several art galleries which provide for the daily convenience needs of the population and also attract the passing tourist trade*

#### Desired Future Character

*Stanwell Park should retain its low density village character and any new residential development must not dominate the scenic environmental quality of the coastal headlands and the forested valley floors.*

*Views are an important aspect to the neighbourhood character of Stanwell Park. Whilst views to the coastline or escarpment are not owned or cannot be a right of law, the ability to glimpse the sea or the escarpment from living rooms or balconies is intrinsic to the ‘sense of place’ in this seaside area. Therefore, the siting, height and external form of new dwellings should be designed to maximise the view sharing opportunities for neighbouring properties.*

*Any new dwelling or major alterations and additions to existing dwelling should also be designed to minimise the scale and bulk of the development through the use of split-level building design ‘stepping down’ the site or by irregular floor layout plans such as pavilions with roofline forms to create wellarticulated building forms. The rooflines for dwellings along the prominent coastal headlands should either be flat, curved or gently pitched 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 new dwellings on sloping sites, the dwelling should also be stepped down the slope and suspended floors and decks should be used to minimise the disturbance of the natural contours of the site. 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.*

*Lightweight architecturally designed coastal themed dwellings with weatherboard, rendered brickwork or colourbond walls with lightly coloured beige, light brown (sand) or light to mid grey or blue coloured finishes and colourbond sloping flat, curved or dutch gable pitched rooflines are preferred for buildings around the coastal headlands of the village.*

*Within the forested valleys of Stanwell Park further inland from the beach, dwellings should feature face brickwork or colourbond wall construction with pitched rooflines with muted brown to green finishes preferred. All new dwellings and major external alterations and additions to existing dwellings 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.*

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.

#### CHAPTER E16: BUSH FIRE MANAGEMENT

##### 2.2 Category 1 Vegetation

*Category 1 vegetation appears as orange on the map and represents forests, woodlands, heathlands, pine plantations and wetlands. Land within 100 metres of this category (indicated by the red buffer on the map) is also captured by the Bush Fire Prone Land Map due to the likelihood of bushfire attack.*

Comment: Portions of the north and east of the site are within the 100m red buffer area; however, no training areas are affected, and there are no applicable development controls.

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

Wollongong City Council plays a significant role in providing recreational opportunities and the supporting infrastructure on public land that encourages physical activity among the community. In addition to Council's provision, there is a demand for commercial fitness trainers to provide assistance in enhancing public health and well-being. In supporting the use of public open space for such fitness endeavours, Council recognises the need to plan and coordinate for the provision and maintenance of open space to limit the potential impact of activities and ensure equitable use of open space.

The purpose of this policy is to provide for the effective management of commercial fitness training activities occurring on public open space to ensure that they are delivered in a manner which protects public infrastructure, minimises disturbance to surrounding residents and addresses public risk concerns.

The main objectives of this policy are to:

1. 1 To ensure the sustainable use of public open space while providing equitable access for general community use and commercial fitness training activities.
- 2 To encourage and support the utilisation of public open space for health and recreational pursuits.
- 3 Reduce and manage the potential impact of commercial fitness training activities on public assets.
- 4 Minimise public liability concerns.

The considerations outlined in the policy Approval Process, Exclusion Zones, Activities for which the Policy applies, Prohibited Activities, Exempt Activities/Groups, Signage, Enforcement, and Term of Licence

These requirements will be included in any licence issued by Council. 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.

## 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 2021

### 2 Savings

Any act, matter or thing that, immediately before the repeal of the 2000 Regulation, had effect under the 2000 Regulation continues to have effect under this Regulation.

2000 Regulation means the Environmental Planning and Assessment Regulation 2000 as in force immediately before its repeal on 1 March 2022.

### 6 Determination of BASIX development

Not applicable.

### 61 Additional matters that consent authority must consider

Not applicable.

### 62 Consideration of fire safety

Not applicable.

### 63 Considerations for erection of temporary structures

Not applicable.

## 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?

Whilst the proposal is considered appropriate with regard to the zoning of the site there may be impacts on the amenity of the locality by way of topography and noise amplification from fitness activities

### Noise

If not well managed, noise from commercial fitness training activities has the potential to affect nearby residents. Three submissions to DA-2022/767 have raised concerns about potential noise and the proposed span of operating hours, particularly before 7am for the proposed most western licence area (SPR01). The proposed operating hours are to 6.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays, and are consistent with Council's Commercial Fitness Training Activities on Public Open Space Policy.

Notwithstanding, in similar recent cases that attracted one or more representations on the basis of noise and which went before the Panel, the draft conditions were amended by the Panel to a 7.00am start time, Monday to Saturday "due to proximity of residential receptors". Council's Environment Officer has recommended the same in this instance, so the hours of operation for the development in the draft conditions are therefore restricted to 7.00am to 8.00pm Monday to Saturday and 7.00am to 10.00am Sundays.

In addition, should this application be approved, conditions about no noise nuisance and no public address system will be applied.

### 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

Five submissions were received, four in opposition to the proposal, and one neutral. 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

Stanwell Park Recreation Area is Community Land. The proposed use will be located in an area the park mapped as community land and permissibility is subject to the requirements of the WLEP 2009.

The plan of management applicable is the Stanwell Park Reserve and Bald Hill Lookout Plan of Management 2021 and associated mapping, which identifies the land as a Park.

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.

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. Five submissions were received, four in opposition to the proposal, and one neutral, which 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-2022/767 be approved subject to the conditions at Attachment 2.

### 5 ATTACHMENTS

- 1 Statement of Environmental Effects
- 2 Conditions

## ATTACHMENT 1

### STATEMENT OF ENVIRONMENTAL EFFECTS

#### Stanwell Park Recreation Reserve, Stanwell Park

##### Site Description

The site is located at Stanwell Park Recreation Area, 2A Station Street, STANWELL PARK NSW 2508 at Lot 7304 Crown DP 1142283. The land is zoned as RE1 Public Recreation, owned by The State of New South Wales, and is managed under the *Stanwell Park Reserve and Bald Hill Lookout Plan of Management (2020)*. The site sits adjacent to Stanwell Park Beach and also contains a beach kiosk, playground and other associated supporting facilities, including toilets, change rooms, picnic facilities and formal car parking areas. The park is accessible from Station Street and Park Parade.

##### 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.



	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.
<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 may lead 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>	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.
<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>	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

	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'.
<b>Visual Amenity</b>	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. 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.
<b>Traffic /Parking</b>	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; '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.'
<b>Amenities</b>	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.
<b>Signage</b>	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; 'The erection of advertising signs and banners without Council's written consent'.
<b>Risk Management</b>	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'.
<b>Insurance</b>	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; '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'.

<b>Cumulative Impacts</b>	<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"> <li>• Usage demand, intensity of use of the area and times requested.</li> <li>• Number of approved trainers already using the area.</li> <li>• Type of activities to be undertaken and the potential impact on other users and neighbouring residents during the times requested.</li> <li>• Whether the activities will contribute to increasing congestion or user conflict in the area requested.</li> </ul>
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## Attachment 2

### Approved Plans and Specifications

#### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No	Revision No	Plan Title	Drawn By	Dated
gi10246_lscape_2022.mxd		Stanwell Park Recreation Reserve	Wollongong City Council	13 July 2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

**Note:** an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

### 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 12 September 2022 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 (by means including, but not limited to, whistles, excessive shouting, high impact boxing and the like), 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:

SPR01: 36 participants

SPR02: 54 participants

SPR03: 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 7.00am 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.