

PLANNING AND BUILDING REGULATION FOR FITNESS BUSINESSES



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FOR





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PART 1 PRELIMINARY

1.1 CONTEXT

This paper examines the role of planning and building regulation in Australia as it relates to the fitness industry. The paper has been prepared to complement work being undertaken by Bond University as part of a research project looking at “Legal Risk Management of Adverse Health Outcomes and Injury in the Fitness Industry: Developing Evidence Informed Regulation That Improves Safety”. The research project was instigated by Bond University in recognition that access to convenient and appropriate fitness facilities and services can assist in supporting active and healthy lifestyles but that it is also in the interests of operators, customers and the wider community to limit the risks arising from these activities.

1.2 PURPOSE

The purpose of this paper is to:

- provide an overview of the planning and building approval and compliance systems in place in Australia as they relate to the fitness industry; and
- outline the key steps potential operators need to follow to establish or alter a fitness facility, to conduct a small business from home or to use public spaces to carry out fitness activities for a business purpose.

1.3 INTRODUCTION

Planning and building compliance systems are in place across Australia in order to provide for appropriate and compatible land uses and to ensure the safety and suitability of premises. Acting in this way, these systems play a key role in containing adverse health and injury outcomes arising from fitness operations. At the same time, regulation can inhibit fitness activities by restricting where they can take place and by adding to the cost and complexity of compliance. Potential operators may well be discouraged by the maze of planning and building controls and requirements in place across Australia.

While it is beyond the scope of this research to look at the appropriateness of the regulatory frameworks, the paper aims to assist potential operators to navigate and comply with the operative planning and building regulatory systems by outlining, in simple terms, the key steps and considerations involved in establishing or altering a fitness business. In particular, the paper is intended to help operators understand how the control systems work and how they find out about relevant controls. It will provide guidance to help operators to determine when they may need to seek formal approval and when specialist assistance may be required.

1.4 OUTLINE AND SCOPE

The paper begins by providing an overview of how planning and building control systems operate in Australia with particular reference to fitness facilities. It then looks specifically at the processes for establishing, altering or using public spaces for a fitness business.

As specific controls and requirements vary from state to state, and between and within local government areas, it is not possible to outline a single framework or set of requirements. However, there is sufficient similarity between jurisdictions to enable us to map out the key steps involved in satisfying planning and building requirements and to flag when expert advice or support should be sought. The paper examines the general steps to be followed by potential proprietors when:

- establishing a fitness facility in new or converted premises;
- taking over an existing fitness facility;
- running a small fitness business from home; and
- using public spaces to carry out fitness activities for a business purpose.

In keeping with the scope of the research project, the paper concentrates on commercial fitness activities and excludes sporting or other clubs and swimming pools.

The paper also pinpoints some of the key issues to take into consideration when seeking to establish or alter a fitness facility, and some of the considerations to keep in mind in designing and fitting out premises and in the on-going operation of the business.

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PART 2 OVERVIEW OF PLANNING AND BUILDING CONTROL FRAMEWORKS

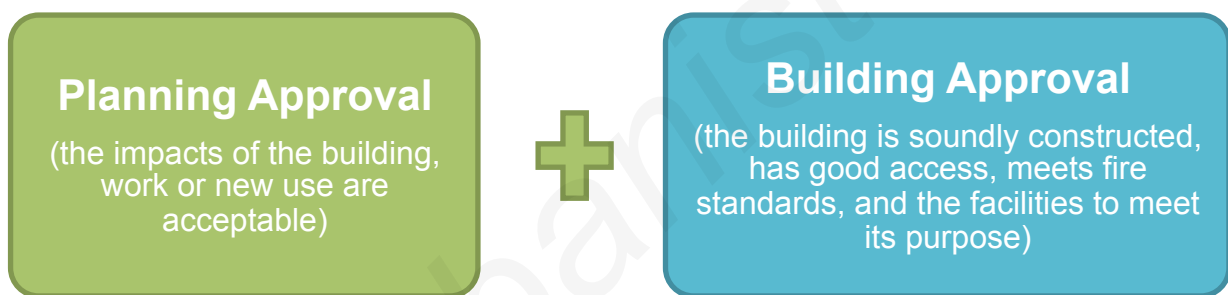
2.1 INTRODUCTION

As the Australian Constitution does not specifically mention the safety, health and amenity of people in buildings, responsibility for these matters rests with the states and territories. Over time each jurisdiction has developed its own framework of laws and regulations to control land uses, building construction standards, business operating hours and the like.

As a result, there is an array of planning and building related controls and requirements in place across Australia aimed at ensuring the safety, health and amenity of building occupants and users, their neighbours and the wider community.

However in recent years, particularly since the 1980s, there has been a push towards greater national uniformity and simplicity in planning and building controls chiefly in the interests of improved productivity. It is fair to say that whilst significant progress has been made, particularly in relation to building regulation, there is still quite a way to achieve uniformity across Australia.

2.2 THE RELATIONSHIP BETWEEN PLANNING & BUILDING REGULATION



Planning and building controls work in conjunction with each other to regulate the development and use of land. In simple terms the planning framework dictates where fitness premises may be established, the overall physical form of premises and how they can be used. Building regulations control the standards which must be met in designing and constructing a facility or adapting an existing building. In most jurisdictions planning controls govern the physical form of development in terms of height, bulk and footprint, and therefore often overlap with building requirements¹. Combined planning and building application processes may be offered for the benefit of applicants and ease of processing.

The planning system is concerned with the physical and social impact of land use and development. Planning regulation will usually dictate where a fitness operation may take place, the general form of building which is allowed, how much car parking is required and the hours the business may operate. For new development or a change in use or major alternations to an existing building, factors taken into consideration include compatibility with the existing streetscape and other land uses in the neighbourhood, impacts on neighbouring properties and the environment, the demands created by the development in terms of services and access, as well as the external impacts of the proposed uses

¹ Victoria has the clearest differentiation of planning and building matters.

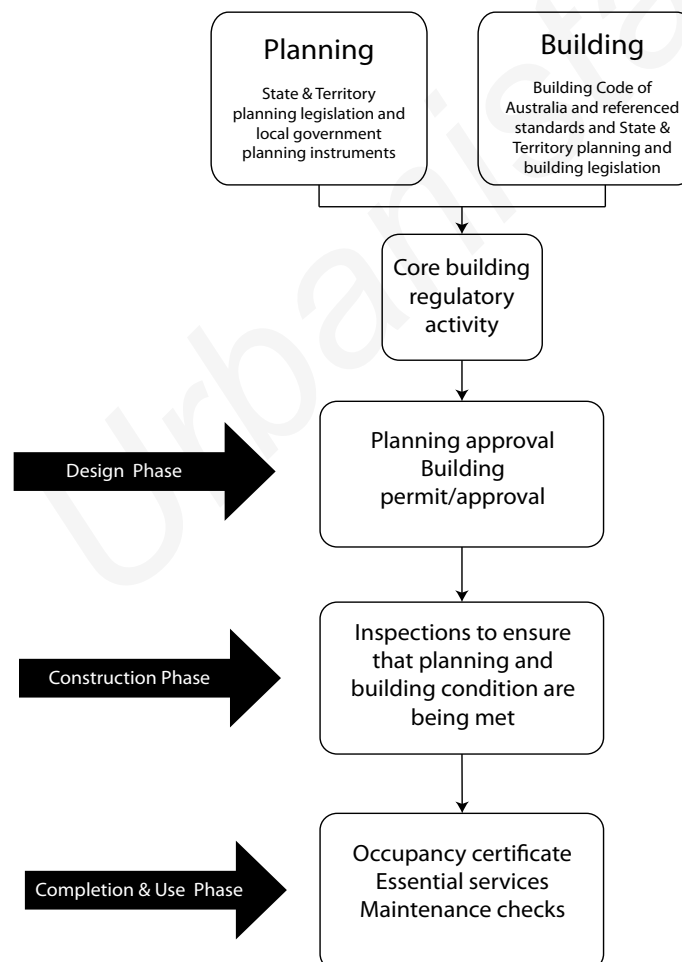
such as noise, pollution, traffic generation and patrons coming and going. Social utility such as improving access to a healthy lifestyle and employment, as well as any negative social impacts will be assessed.

The building system, on the other hand, sets out how the building and facilities must be constructed and what standards must be met. The regulations govern issues such as if the building or work is soundly constructed, has appropriate fire safety standards and has reasonable access and facilities for the purpose for which the building is to be used.

Where buildings change their use over time, for example if the ground floor of an office building is converted to a fitness facility, that part of the building may need to satisfy different requirements. These may include the level of mechanical air ventilation needed, access to fire escapes and provision of sanitary facilities.

The main stages involved in building or adapting premises are illustrated in the chart below².

CHART 1: PLANNING, DESIGN AND CONSTRUCTION PROCESS



² Developed from chart shown in the Productivity Commission Research Report Reform of Building Regulation (2005) p XXVI.

2.3 PLANNING SYSTEMS

As urban planning is not specifically mentioned in the Australian Constitution, primary responsibility falls with the states and territories. Each of the jurisdictions has, over time, developed its own framework for land use planning and each has its own governing legislation setting out the framework for controlling land use and development. Nevertheless, there are broad similarities between their approaches and the way they deal with developing and operating a fitness facility.

Generally in each state there will be local planning schemes that control the use and development of land. A local scheme will usually zone land to allow or prohibit specific uses and set out the main controls over the form (height and scale) and density of development. Some of the more detailed controls such as operating hours, car parking and open space requirements and set back from boundaries may be contained in codes or regulations. Each of the Territories has a territory-wide planning scheme which operates in a similar manner.

With some exceptions relating to minor matters and residential premises, planning approval will usually be required for:

- a change in the use of land;
- a new development (eg construction of a new building or alterations to an existing building);
- expansion of an existing development; and
- major demolition, land clearing and subdivision.³

Even if a current use already has planning approval, a new application will usually be required for any proposal that involves:

- an intensification of the use of the land;
- changing the use of existing buildings (eg an office becomes a gym); and
- new activities that are likely to adversely impact upon neighbours or the environment.⁴

Table 1 on page 11 summarises the broad planning framework in place in each jurisdiction.

Within an urban area there will usually be a number of set land use zonings which are applied. The local planning scheme will typically include a map and zoning tables which indicates the zoning for the relevant area. These zonings generally reflect the predominant use within a specific area. For example, a local plan will usually include a number of residential zones allowing differing densities of development, as well as zones for open space and recreational zones, industrial areas and commercial centres. Zonings generally allow other ancillary uses such as corner shops, parks or residences over shops. Often there will be a mixed use zone which permits a variety of commercial, residential and other uses.

Within a zone, a planning scheme prescribes the types of land use that are permitted and those that are prohibited. Sometimes zonings provide that only those uses specifically identified will be allowed and that all other uses are prohibited.

Uses that are permissible will usually be further divided into those that are permitted without consent i.e. they do not require planning approval (or in Queensland self-assessable development, Victoria

³ The Environmental Law Handbook: Your Practical Guide to Tasmania's Environmental Protection and Planning Laws (retrieved from <http://www.edohandbook.org/doku.php>).

⁴ Ibid.

Section 1 and so forth), those allowed if undertaken in accordance with the relevant codes and may offer a more streamlined approval process, and those requiring a development application (assessable development). In NSW, for example, complying development can be undertaken for construction of residential dwellings, alterations to some commercial building and, in some circumstances, a change of use of a building. However, the restricted application of these provisions means that they will not generally apply to a fitness facility.⁵

There is another category, usually referred to as ‘exempt development’, which generally encompasses minor works such as erecting a fence, sign or satellite dish and, in some circumstances internal alterations. Table 1 on page 11 and Box 1 on page 12 summarise the main types of development under each of the state and territory planning systems.

2.4 BUILDING REGULATION

The first edition of the Building Code of Australia (BCA) was introduced in 1988 after many years of effort amongst states and territories to bring about a uniform national regulatory system to replace the separate systems applying in each jurisdiction. This edition of the BCA was progressively adopted throughout Australia during the early 1990s.⁶

In 1994, the Australian Building Codes Board was established to progress further reforms including converting the BCA into a performance-based document. In response, the first performance-based BCA (BCA96) was adopted by most states and territories on 1 July 1997, with the remainder adopting the reforms by early 1998.⁷ An annual amendment cycle, whereby the BCA is reviewed and amended each year to include various technical and regulatory changes, was introduced in 2004.⁸ Note, in general, existing buildings will not be required to meet updated standards unless further building work that requires approval is being undertaken.

The content of the Building Code of Australia is determined by the Australian Building Codes Board (ABCB) and adopted into regulatory systems of each jurisdiction by the state and territory governments, who are also responsible for implementation.

The introduction of the BCA is attributed with reducing many of the regulatory differences across jurisdictions and for establishing a performance-based regulatory regime with a strong emphasis on technical evidence to inform building requirements. Nevertheless the national regime does allow for jurisdictions to add additional building requirements and other related controls such as energy-efficiency standards. Some jurisdictions, such as Victoria, have actively worked to minimise their state-specific provisions.

The BCA is based around a system of building classes which link with the required standards of construction and related matters. A mixed use building may have more than one building classification. A summary of the components of the BCA and the building classifications is provided at Attachment 1.

⁵ In NSW changes have been foreshadowed that will include internal alterations of fitness buildings in the scope of “Complying Development”.

⁶ <http://www.abcb.gov.au/en/about-the-national-construction-code/history-of-the-ncc>.

⁷ Ibid.

⁸ Ibid & <http://www.masterbuilders.asn.au/laws-codes-and-regulations/building-act/building-code-of-australia>.

TABLE 1: SUMMARY OF STATE AND TERRITORY PLANNING FRAMEWORKS

	New South Wales	Queensland	South Australia	Tasmania	Victoria	Western Australia	ACT	Northern Territory
Governing / enabling legislation	Environmental Planning and Assessment Act 1979	Sustainable Planning Act 2009	Development Act 1993 Development Regulations 2008	Land Use Planning and Approvals Act 1993	Planning and Environment Act 1987	The Planning and Development Act 2005	Planning and Development ACT 2007	Northern Territory Planning Act 2009
Principal consent authority	Local Government	Local Government	Local Government	Local Government	Local Government	Local Government	ACT Planning and Land Authority	The Development Consent Authority
Source of local planning controls	Local Environment Plan	Local Area Plans / Local Planning Scheme	Local Development Plan	Local planning scheme	Planning scheme	Local planning scheme and policies	Territory Plan	Northern Territory Planning Scheme
Planning term usually used for fitness facilities	"Recreation facility (indoor)" Standard definition being adopted state-wide	Varies across local planning schemes eg "Indoor sport and recreation" (Brisbane)	"Indoor recreation centre" State-wide	"Sport and Recreation" State-wide standard definition now being adopted	"Minor sports and recreation facility - Indoor recreation facility" State-wide	Varies between LGA Examples "Recreation facility", "Private Recreation", "Health studio"	"Indoor Recreation Facility"	"Leisure and recreation"
Main planning categories <u>No approval required</u>	Exempt – no planning approval required Permitted – use does not require approval as long as all conditions are met	Exempt – no planning approval required Self-assessable – satisfies relevant codes and planning schemes. May require building approval.	Exempt – no planning or building approval required	Exempt – very limited category Permitted (No Permit Required) Must comply with relevant codes and planning requirements. May still require building approval	Section 1 - No planning permit required	Exempt – not uniform across all local government areas (LGAs) "P" - Permitted in local scheme where the use meets all planning requirements	Exempt – no planning or building approval required. Can include minor internal alterations subject to conditions.	Permitted - no planning approval required where it meets all planning requirements
<u>Streamlined approval</u>	Complying - meets certain requirements and is assessed by accredited certifier and approved in 10 days	Compliance assessment – Very restricted category not relevant to fitness businesses	Complying – where listed as complying and meets requirements, planning consent must be issued within 2 weeks	See below	NA	NA	Code assessment – Requires development application. Very limited application	NA
<u>Full application required</u>	Permitted with consent - Merit assessment that requires an application for planning approval	Code assessable development - requires an application for planning approval	Merit assessment – requires an application for planning approval	Permitted (Permit Required) Must be approved if fully complies with all applicable standards	Section 2 – development application required	"D" Discretionary use - requires planning approval	Merit assessment - Requires development application	Discretionary use - requires an application for planning approval
		Impact assessable – requires an application for planning approval and more rigorous assessment	Non-complying is development not considered consistent with the zone and requires rigorous assessment	Discretionary use - requires an application for planning approval. May be classified as discretionary or be a Permitted Use that does not fully comply		"A" – Discretionary use subject to public consultation and use requires planning approval	Impact assessment - Requires development application Has major impact on environment.	
<u>Not permissible</u>	Prohibited	Prohibited	Non-complying – no rationale for approval	Prohibited	Prohibited	"X" - Not permitted	Prohibited	Prohibited

BOX 1: PLANNING TERM EXPLANATIONS

Exempt development

Development classified as “exempt” (or its equivalent in a particular state) is considered to have minimal environmental impact. This category generally includes work such as erecting a fence, sign or satellite dish and internal alterations in limited jurisdictions. Change of use of a building to a fitness facility is not exempt development.

To be classified as exempt, the proposal must be legal within the area or zone and it must not be in an area subject to special requirements, such as a foreshore protection area, or have special heritage significance. Usually criteria will need to be satisfied for the exemption to be available eg must not interfere with easements, must not compromise fire safety standards (in the case of internal alterations) or increase the floor space.

Permitted without consent development (or Section 1 Vic)

Zoning tables may specify certain types of development that do not require approval. Commonly the establishment of a home occupation (such as operating a small fitness business from home) falls into this category, though certain conditions may need to be satisfied depending on the jurisdiction. New commercial development or the change of use of an existing building will not generally come within this category.

Self-assessable or code assessable (Qld only)

In Queensland, there is a category of “self-assessable” development that does not require planning approval for changing a building to a fitness facility in certain zones. However, the development must comply with all the “Acceptable Outcomes” of the relevant Code (eg the Centre of Mixed Use Code). Where all these conditions cannot be met, a proposal will become “code assessable” and will need to meet the performance objectives of the code, though this is still a more streamlined approval process than full impact assessment (see below).

Complying development or code assessment

The pathway for approval of development classified as “complying” or “code assessment” (or the equivalent - see Table 1 on page 11) will usually be more streamlined than for development requiring a regular planning application. Generally if a development that is classified as “complying” and satisfies the relevant codes and planning requirements, it will be approved as a matter of course.

At present, this category does not apply to change of use of a building to a fitness facility except in some jurisdictions in Queensland (see above). However, in NSW it is expected that internal alterations to an existing fitness facility will be included as “complying” development in the near future. This will allow an accredited building certifier to plan and certify the work, followed by a 10-day approval process through local council.

Assessable development - Permitted with consent (NSW), Section 2 (Vic), Discretionary (WA, Tas, NT) Merit Assessment (SA, ACT), Impact Assessment (Qld)

In most cases, the development of a new fitness facility in a purpose built or adapted building will require a full development application and assessment process.

The various planning systems employ a range of different categories for development for which a full development application is required. Some jurisdictions such as Western Australia and the ACT differentiate between developments considered to have greater potential impact by directing these applications through a more rigorous assessment process. Others, such as New South Wales, have a uniform process though the way it is applied may vary with the complexity and nature of the application.

Prohibited Sometimes the uses that are prohibited will be specified. In other cases anything that is not specifically permitted will be prohibited

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PART 3 GUIDE TO PLANNING AND BUILDING FOR FITNESS OPERATORS

3.1 INTRODUCTION

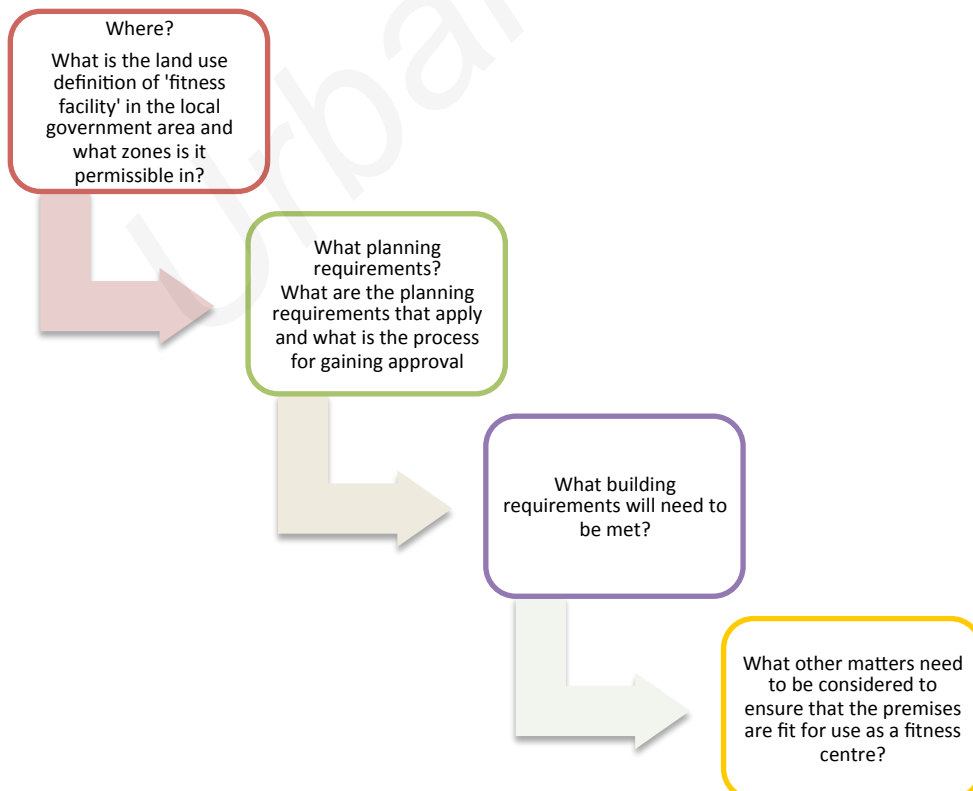
This part provides a practical guide to the steps to follow when seeking to establish a fitness business. It looks at the steps to follow and matters to take into consideration when:

1. Starting a new fitness facility in new or converted premises;
2. Taking over or altering an existing fitness facility;
3. Starting a small fitness business from home; and
4. Conducting a fitness business in a park or other public place.

It is important to bear in mind that this paper provides general guidance only. Operators need to seek advice from their local consent authority (usually the local council) based on the specific circumstances of the locality and their proposal. As such, in many sections of this report, we offer some basic questions that should be asked of your local consent authority. Similarly, obtaining the advice of a building professional on technical matters is highly recommended.

3.2 STARTING A NEW FITNESS FACILITY

If you are seeking to establish a new fitness facility you may already have an idea of where you would like to conduct it and what sort of premises would be suitable for the activities you have in mind. You may wish to purpose build new premises to suit your requirements or adapt an existing building. The key considerations will be:



3.2.1 IDENTIFYING A SUITABLE LOCATION FOR A FITNESS FACILITY

There are two ways of identifying a suitable site for a new fitness facility:

- You may already have a specific site in mind and need to determine if the use you propose is allowed there; or
- You may have a general idea of where you would like to establish a facility and need guidance about the areas where your proposed facility would be allowed.

As outlined in Part 2, all states and territories in Australia work under a framework of land use zoning which regulates the uses land may be put to and the general form of development. Refer to the planning and building section of the website of the local council or territory for the area you are interested in. You will need to refer to the zoning maps and land use tables within the planning scheme for the relevant area. These have different names in each state and territory, for example in NSW, they are referred to as “Local Environment Plans” and in Victoria and Queensland they are generally known as “Planning Schemes”, while in South Australia they are “Development Plans”. In some cases, specific land might be under a state authority. As an example, Sydney Olympic Park is covered by the Sydney Olympic Park Authority. These authorities generally produce plans quite similar to local planning schemes.

When looking for a location for a fitness facility, it will need to be within a ‘zone’ under the local planning scheme where use for a fitness facility is permissible. To determine this, you will need to identify the planning term used to describe your activity or the more general group of uses that your proposal falls within. For a fitness facility this can change from state to state, and sometimes there are differences between local government areas within the state. For example, in NSW a common definition is “recreation facilities (indoor)”, in Queensland “indoor sport and recreation”⁹, South Australia “indoor recreation centre” and in Victoria “indoor recreation facility”¹⁰. See Table 1 in Part 2 (Page 11) for a summary of the main terms used to cover fitness facilities.

Your local planning scheme will usually refer to zoning maps which show what specific land is zoned for. For example, areas can be zoned for low density residential, mixed use, neighbourhood centre, major centre, industrial and so forth. Zoning maps are usually accompanied by land use or zoning tables (or the equivalent). These set out the uses within a given zone that are permissible without approval, permissible with approval or prohibited. Different jurisdictions have different names for these categories (see Table 1 in Part 2 for a listing of the main categories used). Once you have identified the land use definition, you can then see in which zones that use is allowable. The steps to follow to determine if a site is suitable are set out in Box 2 below.

It is important to note that just because a fitness facility is permitted in a certain zone with planning consent, it does not necessarily mean that the council is obliged to approve the use. Your proposal will generally be assessed on its merits and the impacts. Similarly not all existing premises within that zone will be suitable for a fitness facility and capable of meeting building requirements. Therefore, if you are planning to adapt existing premises, it is advisable to investigate the building requirements, as well as the planning requirements, before committing. The key considerations in building requirements are outlined in Section 3.2.3.

⁹ P.64 <http://www.dlg.qld.gov.au/resources/policy/state-planning/qpp-2.0.pdf>.

¹⁰ p.17 <http://planningschemes.dpcd.vic.gov.au/aavpp/74.pdf>.

BOX 2: STARTING A NEW FITNESS FACILITY WHERE?

A If you have an Identified site or location

If you have an idea where you would like to locate your facility, you need to check if it is allowed under planning regulations by taking the following steps:

- Step 1** Confirm the planning term used to describe the type of facility you are proposing (eg recreation centre (indoor)).
- See standard terms in Table 1 (on page 11) – often there will be a standard term across the state and territory but sometimes this varies with LGA.
 - The planning terms are usually set out in the local planning scheme.
 - If uncertain check with the consent authority (usually the local council).
- Step 2** Check the local planning scheme (or equivalent - see Table 1) to determine the land use zoning in your preferred location. To do this you will probably need to find the location on the zoning maps which accompany the planning scheme.
- Step 3** Check if your proposed facility will be permissible by checking the zoning tables in your local planning scheme for the type of use you are proposing (by looking for the planning term you identified in Step 1).
- Some uses will be permissible without a development application but this will generally not apply when establishing a new fitness centre even if it is in an existing building. (Note Brisbane is a notable exception to this.)
 - Some uses will be permissible subject to meeting certain requirements and/or with the approval of the consent authority (usually the local Council).
 - Some uses will be prohibited. These will either be expressly identified or anything that is not expressly permitted.
- Step 4** If you have found that your proposal is permissible, consult a town planner or your consent authority to determine what controls are in place in this zone and whether you will be able to satisfy them. If your proposal is prohibited, the most straightforward approach would be to look for a new site after checking the local planning scheme for suitable locations (see alternative process below.)

B If you only have a broad idea of where you would like to locate your facility

- Step 1** As above.
- Step 2** Check the local planning scheme (or equivalent - see Table 1) to determine which land use zones allow fitness facilities of the type you are seeking to operate.
- Step 3** Locate a suitable site in an appropriate zone.
- Step 4** Consult your consent authority to determine what controls are in place in this zone and whether you will be able to satisfy them.

3.2.2 WHAT PLANNING REQUIREMENTS NEED TO BE MET?

Generally an application for planning approval will be required to establish a new facility whether it is in new or converted premises¹¹. Planning approvals will generally consider the following:

- the nature of the proposed use and whether it is permissible in the identified location;
- the intensity of the use including, for example, the anticipated number of patrons and employees;
- any social impacts arising from the development, such as loss of affordable housing or community benefits from improved local facilities;
- any increase in infrastructure required to support the use;
- the impact of the proposal on traffic and parking in the area;
- noise emissions either from the activities to be conducted, from patrons coming and going, or from services such as air-conditioning;
- the hours of operation of the fitness facility - a business plan of proposed times of classes may be required to determine impacts; and
- environmental impacts such as emissions, impacts on sensitive environments or critical habitat.

Where new building work or alterations to the form of an existing building are involved, additional matters will be assessed including:

- the height and scale of the building and compliance with any relevant standards;
- the compatibility of the new development with neighbouring properties and the general streetscape (particularly, but not exclusively, if it is a heritage area);
- provision for open space and landscaping;
- technical requirements such as sewerage and storm-water connection details;
- any overshadowing, overlooking or loss of views resulting from the development; and
- energy efficiency measures and steps taken to improve the environmental efficiency of the building.

Likely requirements for a planning application are detailed in Attachment 2. Your local council's website will usually include guidelines and checklists to assist applicants to understand and meet requirements. Incomplete applications will be returned to applicants. You may wish to engage a planning professional to assist you with your application.

3.2.3 WHAT BUILDING REQUIREMENTS NEED TO BE MET?

As outlined in Part 2, the main code or set of rules that govern building in Australia is the Building Code of Australia or BCA. The BCA classifies buildings according to the purpose for which they are to be used. If the use of premises changes over time, so may the building's classification. Where a building is used for more than one purpose, it may have several classifications.

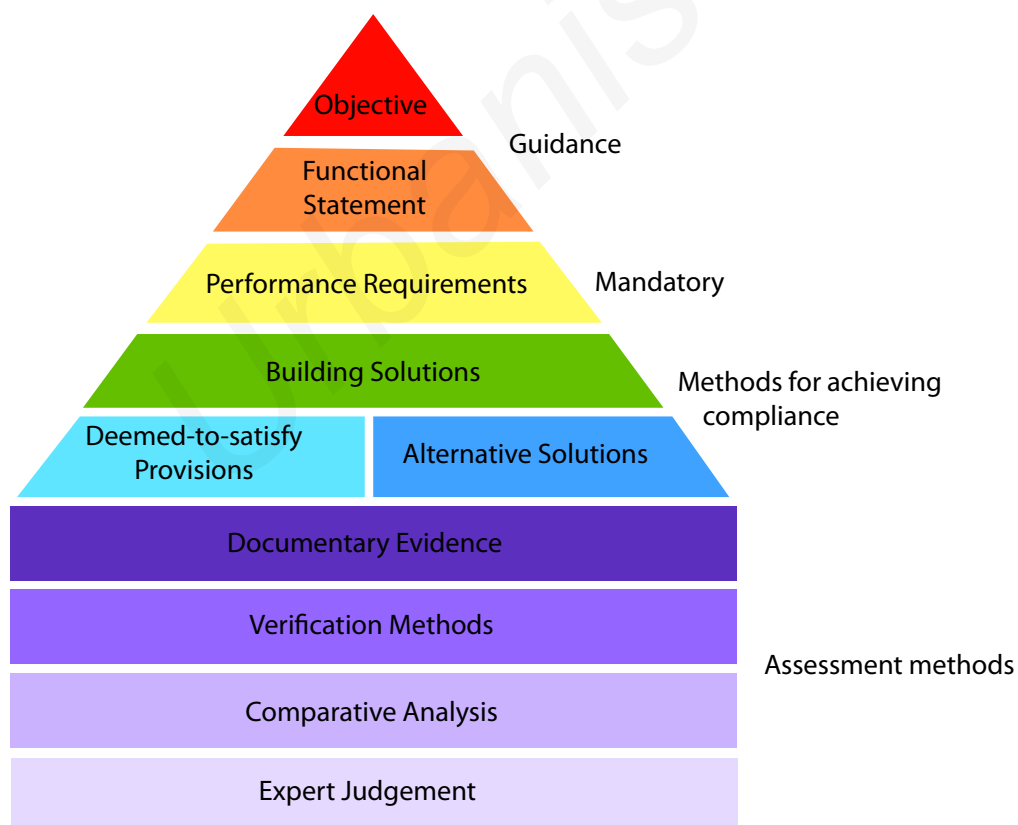
¹¹ The most notable exception to this at this stage is Brisbane City Council where fitness facilities in converted premises are allowed in centres as self-assessable development. This means that if you meet all the acceptable outcomes of the Centres or Mixed Use Code, you do not require planning approval. However, the Draft New City Plan for Brisbane restricts operating hours under these provisions to 6 am to 7 pm thus limiting the applicability of the self assessment. See <http://www.brisbane.qld.gov.au/planning-building/current-planning-projects/brisbanes-new-city-plan/planning-scheme-eplan/index.htm> for more information.

If a building or part of a building is used for a fitness facility it will usually be classified as a 9b assembly building under the BCA. If a fitness facility is located in a dedicated building, and no other uses are within the built structure, the whole building would be classified as Class 9b. However, if a fitness facility is to be located in a converted floor of an office building for example, this would change the classification of that part of the building from Class 5 to 9b. Approval would be required for the change and the relevant requirements for Class 9b buildings would need to be met.

The BCA sets performance objectives that inform functional requirements of certain aspects of buildings. The BCA provides for two broad types of building solutions. The building can comply with “deemed-to-satisfy” provisions such as rules specified within the BCA or Australian Standards or, alternatively, an applicant can seek to meet the “acceptable solution” provisions that meet the performance objectives. The “acceptable solution” must be verified by a qualified building certifier through a number of methods (see Illustration 1 below). The “acceptable solution” approach may be applied for the conversion of an existing building to a fitness facility because the more precise “deemed-to-satisfy” provisions can be difficult to satisfy when adapting a building.

ILLUSTRATION 1

ELEMENTS OF THE BUILDING CODE OF AUSTRALIA AND ASSESSMENT METHODS TO ENSURE THE MANDATORY PERFORMANCE REQUIREMENTS ARE MET



Source: Australian Building Codes Board

http://www.abcb.gov.au/education-events-resources/NCC-awareness-resource-kits/~/_media/Files/Download%20Documents/Education%20and%20Training/Resource%20Kits/Module_Five_Disability_Access_Presentation.ashx

The main issues covered in the BCA include:

- the fire resistance of building elements and fire escape;
- services and equipment required, such as fire safety equipment (eg sprinklers, fire alarms);
- functional performance criteria (such as being able to get a stretcher in a lift);
- the structural integrity of a building;
- access for people with disabilities;
- health and amenity standards such as the number of toilets/showers required and waterproofing of wet areas;
- room height requirements;
- facility capacity limits;
- light and ventilation controls; and
- energy and acoustic performance.

In general, the BCA sets out what standards a building must meet and where standards vary according to the class of building. The BCA is designed to be used by building professionals with the expertise to know what requirements are applicable in any given situation.

New Premises

If you are starting a new fitness facility in purpose built premises, you will need to meet all the relevant requirements of the BCA. When commissioning a purpose built fitness facility, meeting the BCA requirements is not generally problematic as your design professionals will use the code requirements as part of the building design process.

If you are negotiating with a developer or landlord for space within a development for a fitness facility, it is recommended that consult an accredited building certifier to ensure the building meets the specifications for Class 9b before you commit.

Adapting an existing building

When adapting an existing building to a fitness facility, designers are more likely to rely on the “acceptable solution” approach (mentioned above) to meet performance objectives, as they may have difficulty satisfying the “deemed-to-satisfy” provisions of the BCA.

If you are a fitness operator looking for premises, it is important to be aware of the specific requirements for 9b class compared to other types of buildings, as it can be costly or sometimes impractical to modify a building to meet those standards. Some of the key considerations when searching for a property are listed below and in Attachment 3. They include requirements for:

- Sanitary facilities including showers – generally higher provision required than for other classes of buildings and these can be difficult/costly to retrofit;
- Ventilation to provide a comfortable environment for patrons as natural ventilation or existing systems may not cope with the demands of higher levels of physical activity;
- Fire egress including maximum distance to exits for 9b buildings;
- Disabled access including on-grade and internal access (which may involve the addition of lifts and/or ramps, wider corridors) and accessible toilets; and
- Acoustic performance.

If you find premises that you believe will meet the requirements, it is advisable to engage the services of a building certifier to verify or assist in providing requirements for compliance and indicative costs.

In most jurisdictions, there is a choice of gaining building approval through your local council or through a private accredited certifier. One advantage of employing the services of a private accredited certifier is that you can engage their services prior to making a commitment on the lease or purchase of the building. This gives you an opportunity to assess a building's suitability for conversion to a fitness facility and likely upgrade requirements and costs involved prior to making a financial commitment. The local council building department will also be able to give you information about building requirements, but will be less able to assist in relation to specific measures to meet them or their likely costs.

3.2.4 FITNESS FOR PURPOSE

Regardless of the planning and building controls in place, it is important to ensure that premises are maintained in a condition that is fit for the purpose that they are being used. This includes ensuring safe access to the premises, as well as appropriate fit-out and maintenance of the interior.

Not all aspects which render premises fit for purpose are covered by our current regulatory regimes or those in place at the time of construction. This is particularly true for the type of high intensity use that frequently takes place in fitness premises. Fittings and finishes that may be suitable for general use may not provide sufficient protection against the risk of injury that emerges where, for example, a group of sweaty and competitive people are hurtling around on polished floors enclosed by wall to wall mirrors and plate glass windows.

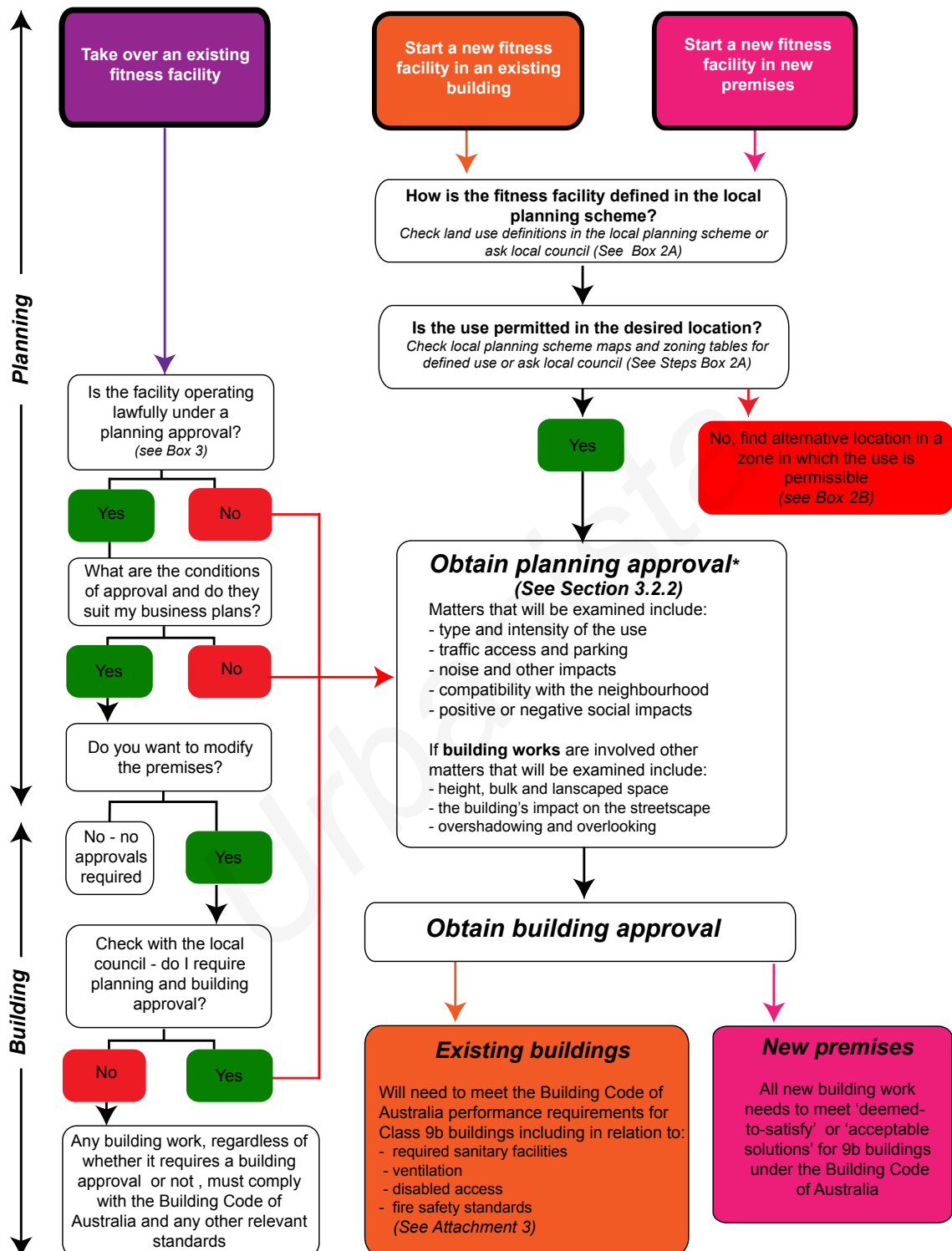
Aspects to consider in particular will include provision of safety glass/mirrors, non-slip floor finishes, secure storage of loose/free weights and careful positioning of machines. It is critical to avoid obstructions to the safe use of premises particularly in the vicinity of access ways and high-intensity exercise areas. These may represent trip or injury hazards, as well as blocking fire egress. It is also important to avoid overcrowding and to ensure adequate ventilation.

Risks associated with poorly maintained finishes may also be amplified where premises are used for high intensity activities. Similarly, on-going and prompt cleaning of the premises during operating hours is important for risk minimisation.

It is recommended that operators undertake regular safety audits and ensure that maintenance matters are dealt with promptly, that all safety matters (accidents, injuries, identified risks) are logged and reviewed and that the property is maintained to a high standard at all times.

Beyond any formal health, building or planning requirements, maintaining the premises in a manner that is fit for purpose may have implications for the validity of your insurance policy, compliance with Occupational Health and Safety requirements and your general duty of care under the law. In the absence of any formal requirements to address the aspects outlined above, it would be useful if an industry code of best practice or guidance materials were developed though, of course, this will only be effective if proprietors are aware of and adhere to the recommended standards of practice.

**CHART 2: TAKING OVER OR STARTING A FITNESS FACILITY:
MEETING PLANNING AND BUILDING REQUIREMENTS**



* There are a limited number of jurisdictions that allow change of use without planning approval subject to conditions.
NOTE: If you are looking at setting up a home fitness business then refer to Section 3.4

3.3 TAKING OVER OR ALTERING AN EXISTING FITNESS FACILITY

3.3.1 CONFIRMING COMPLIANCE WITH PLANNING AND BUILDING REQUIREMENTS

If you are proposing to take over an existing fitness facility and continue to use the premises in much the same way, you will not require any additional approvals provided the centre is currently operating legally. Before you proceed, however, it is advisable to confirm the legality of the current operation and refer to the conditions of approval under which the current use has been approved. In particular, you should check whether the conditions of planning and building approval are currently being complied with and whether they are suitable for the type of operation you intend to run.

To answer these questions you will need to refer to the original development application and conditions of planning and building approval. These should be available from your local council, if the current operator has not provided the documentation. If you are told that the current use did not need approval, this is very unlikely and should be confirmed with your local consent authority (usually the local council).

If the existing use is lawful and the conditions of approval are sufficient to cover the type of fitness operation you are proposing to run, you will not need any further approval. However if the type of use approved or the conditions of the approval do not suit the type of business you wish to run, you will need to seek a new or amended approval. This may be the case even if all you wish to do is to use the premises more intensively or change the operating hours.

It is possible that, since the fitness centre was established, the planning controls may have changed and no longer allow this type of use. In these cases, an existing legally operating land use, frequently referred to as a “non-conforming use”, will usually be able to continue to operate as it will be deemed to have “existing use rights”. However, it may be more difficult to expand the premises or alter terms of operation.

In relation to building requirements, it is important that the premises continue to meet the requirements that were in place at the time of approval. It may be that the existing operator has not continued to meet the operative building standards either intentionally or because of ignorance. Sometimes operators do not realise that changes they are making inadvertently compromise building standards. This is perhaps most common in the case of fire safety standards where fire egress can be obstructed by the placement of machines, fire doors padlocked to prevent access by non-paying visitors, or where fire doors are propped open to aid ventilation.

While building standards may have changed since the fitness centre was originally approved, in general if you are not making any significant changes, you will not be required to meet the new standards. There are sometimes exceptions to this where existing operations are compelled to meet new standards (eg to include wired-in smoke detectors) and usually in these cases there will be a time specified for compliance. However, bear in mind that if you are making changes to the physical structure, you may be required to bring the premises partly or fully up to current standards as a condition of approval.

BOX 3: TAKING OVER OR ALTERING AN EXISTING FITNESS FACILITY

Step 1 Confirm the current facility is operating lawfully, that is, that it has all necessary approvals and it is operating within the terms of those approvals. To do this:

- i. Refer to any current planning and building approvals applying to the site. Ask the current operator or local consent authority for a copy of documentation.
- ii. Check that the type of “use” covered by the planning approval is what is currently operating and that it suits your intended operation. The planning approval may refer to the use of the premises under the planning term ascribed to it in the local planning scheme eg in NSW this would be Recreational Facility (indoor). See Table 1 for a summary of the terms used.

Step 2 Check that the conditions of the planning approval are being met and are suitable for the operation you are intending to run.

The questions to ask here include:

- Q Is the use you propose within the description of the use that is approved to operate?
- Q Are the approved hours of operation suitable?
- Q Are there any restrictions on the intensity or type of use, such as the number of patrons and/or employees or the type of activities that can take place and, if so, are they suitable for your proposed business?
- Q Are there any restrictions eg on noise emissions, including the amplification of music, or the use of machines and can you continue to meet these?

Step 3 Check that the conditions of the building approval are being met. In particular, make sure that changes have not been made to the premises that will affect its compliance with building standards eg machines or other structures obstructing fire egress, mirrors affixed to walls without meeting standards for adherence, unlawful additions or alterations, exercise classes conducted in a part of the premises which does not meet the required Australian Standard for glazing in “high-impact” areas.

Step 4 You will either need to **comply with the current conditions or seek a new or amended approval.**

Step 5 If you are proposing **minor alterations** to the premises, these may not require approval. However bear in mind that, in relation to fitness facilities, the cases where this will be possible will be very limited. The type of changes that may be permissible without planning approval may include changing a sign for another of the same dimensions or replacing like materials with like. For further explanation of the kind of matters that may or may not require approval see 3.3.2. Significant alterations will usually require approval.

3.3.2 MAKING ALTERATIONS

Some alterations to a building do not require a planning or building permit. Typically this can include replacing or maintaining surface finishes such as flooring or wall finishes. The general rule is to replace like to like in terms of the fire performance of the material. Minor works such as changing signage or adding a satellite dish may be classified as “exempt” development and not require approval (see Part 2). In a few jurisdictions, minor internal alterations may also be “exempt” development (eg Australian Capital Territory¹²). However, all “exempt” development needs to comply with the relevant building standards, regardless of whether it actually requires an approval and it is the responsibility of the operator to ensure this.

Some jurisdictions have introduced streamlined approval processes for internal alterations, such as the “complying development” framework in NSW (which is proposed to be extended to apply to fitness facilities sometime in the future¹³). Under the NSW system, alterations can be specified and certified as complying by an accredited building certifier, then assessed through a quick 10-day approval process. Similar types of regulatory reforms are being implemented in other jurisdictions. Check with your local council if alterations can be undertaken using this method, and then appoint a building expert or private certifier to help you with the process.

For more significant alterations, particularly where changes to the external appearance of a building and/or the footprint of the building or premises are involved, planning and building approval will generally be required. See section 3.2.2 and Attachment 2 for information about what might be required for a development application. Remember that if you are making changes to the physical structure, you may be required to bring the premises partly or fully up to current building standards as a condition of approval.

3.3.3 FITNESS FOR PURPOSE

As outlined under 3.2.4, even if your fitness facility is complying with the relevant planning and building standards, it is important that you ensure that the premises are fit for the purposes you are operating them. Provision of safety glass/mirrors, non-slip floor finishes, secure storage of loose/free weights and careful positioning of machines are some of the things to keep in mind, as is avoiding overcrowding. It is advisable to conduct regular safety audits of the premises, as well as maintaining and reviewing a log of all safety matters (accidents, injuries, identified risks) and maintaining the property to a high standard at all times.

¹² http://www.actpla.act.gov.au/topics/design_build/da_assessment/exempt_work/process/internal_alterations

¹³ Discussion with NSW Planning Industrial & Commercial State Environmental Planning Policy Team on 8 March, 2013 via the NSW Department of Planning & Infrastructure Information Centre.

3.4 STARTING A FITNESS BUSINESS FROM HOME

If you are seeking to establish a fitness business from your home, before you start operating it will be important to confirm if you need planning approval and, whether or not you do, to ascertain the requirements you will need to meet.

The planning requirements for home businesses vary depending on the state or territory in which you live, the particular zone in which your home is located, and the specific circumstances of the business you propose.

Once you have determined what land use planning zone your home is located in under the local planning scheme (or equivalent – see Table 1 on page 11), you will need to find out if a home business of the type you propose is permitted. Across Australia there are three main planning terms that are applied to home-based businesses. These are “home occupation”, “home business” and “home activity”. These are the terms to look for in your local planning scheme to determine if you will be able to operate a business from home and if approval is required before you commence.

In many jurisdictions, a “home activity” or “home occupation” is permitted without requiring planning approval provided it meets certain conditions. These conditions are broadly categorised as:

- The resident/s of the property being employed in the business;
- Limits on numbers of people that can be employed in the business besides resident/s (some jurisdictions do not allow non-residents to be employed, others allow one or two);
- Limits on the floor space that the business activity can occupy; and
- Conditions which ensure that the impact on local amenity is minimised by the home fitness business such as limitations on the hours of operation, parking and signage.

In most cases, where the conditions are met for home activity or home occupation (or home business in the case of Brisbane LGA), and where it is permitted in the particular zone (or self-assessable in the case of Brisbane LGA), the use does not require approval. However, as this may vary between local government areas, it is important to confirm with your local council if your proposal is permitted within the zone you are living and the conditions under which you are required to operate.

Some jurisdictions have different classifications depending on whether non-residents are employed in the business. In these circumstances, the home business may be permissible with consent but a planning application will need to be lodged. The significant exception, and there may be others, to this is Brisbane City Council where home business is self-assessable (does not require consent as long as it meets all the conditions of the Home Business Code).

Table 2 below shows which states or territories have consistent definitions and conditions associated with running home businesses. Where there is not consistency, examples are given from two local government areas within the state. The table should be used as a guide only and each home-based fitness operator should check with the local council if their business is permissible in the zone in which they live and the conditions attached.

As discussed under 3.2.4, regardless of the planning and building requirements, it is important that you ensure that the part of your home where you are providing fitness services is suitable and safe

for the purpose. Provision of safety glass/mirrors, non-slip floor finishes, secure storage of loose/free weights and careful positioning of machines, are some of the things to keep in mind. It is advisable to undertake a safety audit of the premises, including access ways, and ensure that they are maintained in good order, free of domestic or other clutter. It is good practice to maintain a log of any safety matters (accidents, injuries, identified risks) and ensure that any identified risks are addressed promptly.

BOX 4: STARTING A FITNESS BUSINESS IN YOUR HOME

Can I run a small fitness business from my home and what approvals do I need to do so?

Step 1. What land use zone is my home located in?

Look at your local planning scheme or equivalent to see what land use zone your home is located in eg Residential (b), Residential 2 Zone and Mixed Use zone.

Step 2. Is a small fitness business permissible in that zone?

Once you know what zone your home is located in, you can check the local planning scheme to see if a “home occupation”, “home business” or a “home activity” is allowed in that zone.

Most areas have land use zoning tables which show what uses are permissible without or with approval and those that are prohibited.

Usually home occupations (or the equivalent) will be permissible in residential zones. Sometimes they may not be permitted in commercial or mixed use zones. If you are not confident using the zoning tables, contact your local council for help.

Step 3. Is approval required before I start operating?

The zoning tables will usually indicate if a use requires approval or not. Often a home business of this type will not require consent though it may if you employ non-residents in the business or if there is an impact on the neighbourhood eg noise or traffic.

Step 4. If approval is not required, what requirements do I need to satisfy?

Even if approval is not required, it is likely there will be conditions placed on running a fitness business from home, e.g. the number of non-residents you can employ, if any, and the floor space the business can occupy. See Table 2 below for the main conditions applying in each state and territory. If you do not meet the conditions, you may be able to apply for planning consent.

Step 5. If approval is required, what steps do I need to follow?

Usually the application for a home business will be reasonably straight forward to prepare. The relevant planning application forms can be obtained from your local council. If you need assistance ask your local council or, if the application is complex, you may wish to engage an urban planner to assist you (in which case it should be a small job and charged accordingly).

CHART 3: STARTING A FITNESS BUSINESS FROM HOME

Can I run a small fitness business from my home?

Questions to ask your local council

See Section 3.4 for further details

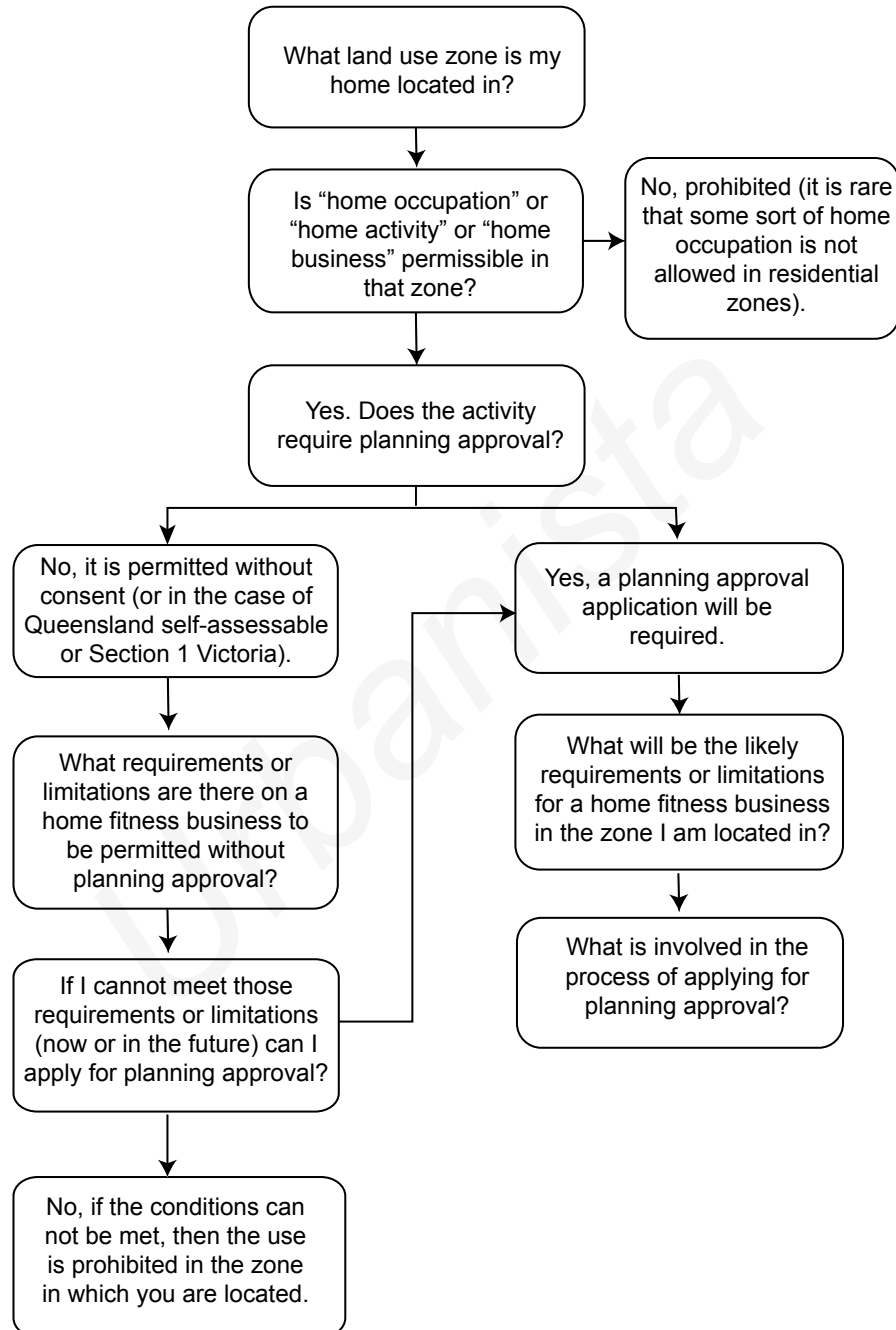


TABLE 2: STARTING A FITNESS BUSINESS FROM HOME

Jurisdiction	Planning definition	Key conditions that apply in respect to fitness operations (other conditions may apply):	How does it apply in most residential zones
New South Wales State-wide (standard LEP definitions)	Home occupation ¹⁴	<ul style="list-style-type: none"> Where home occupation is permitted Where only the resident(s) are employed Does not interfere with the amenity in the neighbourhood (including traffic) 	Generally permitted without consent in residential zones where all conditions are met.
	Home business ¹⁵	<ul style="list-style-type: none"> Where up to two others are employed other than the resident(s) Does not interfere with the amenity in the neighbourhood (including traffic) No display of goods and sale of goods 	Development application required
Queensland Varies with LGA Example 1: Brisbane LGA ¹⁶	Home business	<ul style="list-style-type: none"> No more than 1 additional employee other than the resident/s Does not impact on the amenity of neighbouring properties, occupies a maximum of 50 m² within the property or a maximum of 30% of floorspace whichever is less Limit on operating hours from 8 am to 6 pm Monday to Saturday 	Permitted without consent if it meets all the acceptable solution in the home-based business code or Code assessable if it does not meet code and requires a development application
Queensland Example 2: Redcliffe City Planning Scheme ¹⁷)	Home business	<ul style="list-style-type: none"> Does not allow any home businesses without consent 	Will require development application. Code assessed if only resident/s operating the business. Impact assessed if others are working in the business.
South Australia (Adelaide LGA ¹⁸)	Home activity	<ul style="list-style-type: none"> Occupies 30 m² of floorspace or less No more than 1 other (non-resident) person works at the premises at any one time No products or goods for sale are sold from the premises No vehicles greater than 3 tonne capacity are associated with the business No detrimental effect on the locality 	Generally permitted without consent. If it does not meet conditions it may be prohibited

¹⁴ NSW Standard LEP Template – Dictionary<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+155a+2006+cd+0+N>.¹⁵ NSW Standard LEP Template – Dictionary<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+155a+2006+cd+0+N>¹⁶ Based on the Brisbane City Council Draft City Plan that is currently being prepared and exhibited<http://www.brisbane.qld.gov.au/planning-building/current-planning-projects/brisbanes-new-city-plan/planning-scheme-eplan/index.htm>.¹⁷ <http://www.moretonbay.qld.gov.au/subsite.aspx?id=10431>.¹⁸ <http://www.adelaidecitycouncil.com/assets/acc/Development/planning-building/docs/DIGS/ACC-DIGS-Home-Activity.pdf>.

Jurisdiction	Planning definition	Key conditions that apply in respect to fitness operations (other conditions may apply):	How does it apply in most residential zones
Tasmania Varies with LGA Example: Hobart ¹⁹) Check with your local planning authority in other jurisdictions	Home occupation	<ul style="list-style-type: none"> • Use is in a zone where home occupation is permitted • The home occupation occupies no more than 30 m² of floor space • Does not employ any person other than resident/s • Maintains residential character and appearance • Only a small sign indicating business location (0.2 m square) • No mechanical motors greater than 1 Kilowatt operated 	Permitted without consent where all conditions are met. If conditions are not met it may either be prohibited or development application may be required.
Victoria ²⁰ State-wide (applies consistently across Victoria)	Home occupation	<ul style="list-style-type: none"> • Must be the principal place of residence of business operator • Can only employ 1 person not residing at the property • Occupation cannot occupy 50 m² or one-third of the gross floor area, whichever is the lesser • Must not adversely affect the amenity of the neighbourhood including appearance of any building, parking of motor vehicles and the hours of operation. 	Development without consent if it meets conditions. If does not meet conditions a planning permit will be required.
Western Australia Varies with LGA Example 1: Perth LGA ²¹	Home occupation	<ul style="list-style-type: none"> • Definition is carrying on of any business conducted in a dwelling or within the boundaries of the lot upon which a dwelling is constructed but does not include the sale or hire of any goods 	In some areas permitted without consent, in others it is a "contemplated use" (which is similar to a discretionary use, the more broadly used term in Western Australia).
Western Australia Example 2: City of Vincent ²²)	Home occupation	<ul style="list-style-type: none"> • Only resident/s employed • No sale or display of goods and not detrimental to local amenity • Not detrimental to appearance of dwelling or ancillary building • Occupies no greater than 20 m² • No signage greater than 0.2 m² • In the opinion of council is compatible with principal land use • Will not require substantially increased parking needs or create traffic 	Permitted in residential, residential/commercial zones if it meets all conditions. Development application required in Local or District Centre or Commercial Zone.

¹⁹ Based on the current City of Hobart Planning Scheme Use Definitions.

²⁰ http://planningschemes.dpcd.vic.gov.au/aavpp/52_11.pdf.

²¹ http://www.cityofperth.wa.gov.au/CPS2/pdf/cover_for_web.pdf.

²² City of Vincent Town Planning Scheme

http://www.vincent.wa.gov.au/Services/Planning/Town_Planning_Scheme_Zoning_Information.

Jurisdiction	Planning definition	Key conditions that apply in respect to fitness operations (other conditions may also apply):	How does it apply in most residential zones
ACT (applies consistently across the ACT)	Home occupation ²³	Limits on: <ul style="list-style-type: none"> • Parking • Onsite storage • Structures coupled with a maximum allocation of 40 m² (including storage) for the business 	Permitted without consent if it meets the conditions
	Home business	If above not satisfied, may be classed as a home business	Individually assessed - development application will be merit assessed
Northern Territory ²⁴		<ul style="list-style-type: none"> • Home occupations must not detract from the residential amenity of the locality • The occupation or profession is carried out only by persons residing in the dwelling • The home occupation floor area does not exceed 30 m² • Use does not increase demand of load on public utility in the area • No goods visible from the outside and only one vehicle for the home occupation uses is kept on site 	Generally permitted without planning consent if it meets the conditions. If not, it may be prohibited or planning application required.

²³ <http://www.legislation.act.gov.au/ni/2008-27/copy/90346/pdf/2008-27.pdf>.

²⁴ http://lands.nt.gov.au/data/assets/pdf_file/0016/25252/NTPS_final.pdf (Clause 7.10.7).

3.5 CONDUCTING A FITNESS BUSINESS IN A PUBLIC PLACE

3.5.1 INTRODUCTION

If you would like to conduct a fitness business in a public space such as a park you will need to ensure that you meet the requirements of the public authority responsible for the public space. Increasingly, responsible authorities are requiring those intending to use a public space to carry out fitness activities or to provide fitness instruction for a financial benefit to apply for a licence or permit, pay an associated fee and meet requirements for the use of public space. At the time of writing, the Australian Capital Territory was the only state or territory that did not have some form of permit system in place.

In the case of a local park, the responsible authority will usually be the local council. Sometimes major public spaces are under state care or have a special governing body responsible for maintaining and managing the park, such as the Centennial Park Trust in Sydney. National and state parks are also managed by the state, frequently by the National Parks and Wildlife Service. If you are unsure who is responsible for the space you are interested in operating in, your local council should be able to advise you.

Permits and licensing systems are usually introduced to assist local councils and governing bodies to balance competing interests at play in the use of public space and address issues of concern including:

- ensuring equity in access to open space;
- managing the impact of activities (such as noise) on other organised activities, general users and neighbouring properties;
- protecting park lands, fauna and flora, critical habitat, street furniture etc;
- requiring instructors to meet competency standards and hold sufficient insurance; and
- managing risk exposure to local government and limiting liability.

Nevertheless, sometimes governing bodies are criticised for using licensing systems to raise revenue and that they unnecessarily discourage the active use of public spaces. If you believe the requirements from a particular local authority are too onerous, it is worth exploring options in neighbouring areas.

3.5.2 LEGAL FRAMEWORK

Local government power over activity on public land generally derives from state legislated Local Government Acts and Crown Land Acts. The primary legislative framework that either currently, or has the potential to, regulate outdoor fitness operations in each jurisdiction is set out in Table 3 below. A plan of management for particular parklands (or the equivalent) may have been developed under the enabling legislation to specify desired and allowable uses and other matters.

TABLE 3: REGULATION OVER THE USE OF PUBLIC LANDS

STATE OR TERRITORY	KEY LEGISLATION	USUAL OPERATION
New South Wales	Local Government Act 1993 Section 35 & 46. Requires Plans of Management governing uses Crown Land Act 1989	Provides the mechanism for permit that may be required for use of community/Crown land. Plan of Management for land prescribes permissible uses
South Australia	Local Government Act 1999 ²⁵ governs land owned by council or under its control such as Crown Land.	Local government increasingly introducing permit systems
Victoria	Local Government Act 2009 Section 113 ²⁶ Local Laws Crown Lands (Reserves) Act 1978 Crown Lands Acts Amendment (Lease and Licence terms) Act 2009	A significant percentage of local authorities have policies and permit systems
Queensland	Local Government Act 2012 that enables local laws e.g. Sunshine Coast Regional Council Local Law No. 1 (Administration) 2011	Limited number of councils have taken introduced permit systems to date
ACT	Roads and Public Places Act 1937 Framework currently being reviewed ²⁷	If under 20 participants unlikely to require permit but advised to contact the ACT Public Land Use Team to minimise land use conflicts Larger groups may require a permit
Northern Territory	Local Government Act 2008 e.g. City of Darwin By laws ²⁸	Darwin - Annual permit required with permit fees charged according to number of session and group size
Western Australia	Local Government Act 1995 by-laws eg. City of Vincent Local Government Property Local Law 2008	Several local governments now require permits. Fees for operation vary from nil in Perth through to City of Vincent where substantial fees are required ²⁹
Tasmania	Local Government Act 1993 Section 168 ³⁰	Some use of permit systems eg Hobart City Council ³¹

²⁵ <http://www.adelaidecitycouncil.com/assets/acc/Services/permits-licences/docs/Operating-Guidelines-Fitness-Activity-June-2012.pdf>.

²⁶ http://www.austlii.edu.au/au/legis/vic/consol_act/lga1989182/s113.html.

²⁷ Based on discussion with member of the ACT Public Land Use Team.

²⁸ <http://notes.nt.gov.au/dcm/legislat/legislat.nsf/64117dddb0f0b89f482561cf0017e56f/30eb4da3316d444b692575e6002420d7?OpenDocument>.

²⁹ ABC News (2011), 'Should trainers be charged to use Perth's parks?' see <http://www.abc.net.au/news/2011-07-29/personal-training-in-parks-feature/2816576>.

³⁰ http://www.austlii.edu.au/au/legis/tas/consol_act/lga1993182/s168.html.

³¹ Exercise Class Fee Schedule on Community owned-land
http://www.hobartcity.com.au/Council/Fees_and_Charges/Parks_and_Gardens_and_Bushland_Reserves.

3.5.3 MANAGING EQUITABLE ACCESS

The availability of personal training activities will benefit the local community and so it is in the public interest for councils to encourage these activities. However, if the proliferation of outdoor fitness facility operators is unmanaged, access to open space for others may be constrained or adversely impacted upon.

Permits for outdoor fitness operators is one way councils can manage these issues. Often councils will specify suitable locations and times for outdoor training activities as a condition of the permit issued. Booking systems may be in place to limit the overlapping of activities. In some cases, the types of training that can be conducted at certain community lands will be restricted.

Local councils may exclude certain lands or specified areas (such as around a BBQ, playground or a neighbouring property) from use by professional fitness trainers. Similarly, most local authorities will ensure the primacy of those that have formally hired public open space, such as sporting organisations, or schools using open space for sporting activities. In some rare examples, councils add a premium for permit fees for certain land e.g. Warringah Council charges extra for permits on beaches.

Wollongong Council in NSW has taken a step further by lodging development applications for certain community lands so that commercially operated outdoor fitness operations are a permissible use under the Plans of Management for various sites. Where a fitness facility operator wants to operate from one of the non-approved sites, Wollongong Council will lodge a development application for commercial fitness facilities to operate on the site.

3.5.4 PERMITS AS A MEANS OF LIMITING RISK EXPOSURE

One of the key reasons why regulation of fitness operators using outdoor space emerged was to limit the liability of local government and other responsible authorities for injury or damage resulting from the activities of private trainers.

As a result, some of the requirements that are now enforced include that operators have current:

- Public Liability Insurance usually to the value of between \$10-20 million with some local governments specifying that it must specifically indemnify the council in the insurance policy;
- Professional Indemnity Insurance;
- Recognised qualifications (such as a Certificate III or IV in Fitness);
- Professional registration with Fitness Australia or the relevant peak body; and
- Senior First Aid Certificate.

Other strategies that are employed to reduce the risk and liability include:

- Requiring operators to sign a Deed of Indemnity as part of the permit application process;
- Specifying that playgrounds and other outdoor furnishing are not to be used in a manner contrary to the purpose for which they have been designed; and
- Specifying that as part of the permit, fitness operators are required to examine the area for any potential risk hazards before commencement of any activity and not proceed if a risk is identified. Where a risk is present it must be reported to the local authority.

3.5.5 MANAGING THE IMPACT ON NEIGHBOURING PROPERTIES

Some of the strategies employed to minimise the impact on neighbouring properties include:

- Banning certain practices such as:
 - aggressive and intimidating activities that involve shouting, loud voice calls or instructions
 - the use of amplified music or amplified audio (voice) equipment (e.g. loud hailer)
- Adding conditions to permits such as:
 - limiting outdoor starting and finishing times
 - ensuring any commercial fitness activities operate a certain distance from neighbouring properties

Some local authorities classify the type/scale of activity to ensure the impacts are suitably managed. For example the Sunshine Coast Council allows any permit holder to provide one-on-one fitness training on any Council controlled land, subject to some conditions. Groups of two or more may operate on any council controlled land except for a list of excluded zones due to potential impacts. Boot camp style and noise activities are limited to certain areas.

3.5.6 MANAGING THE IMPACT ON THE ENVIRONMENT AND ASSETS

The following strategies have been used to manage the impact on assets or sensitive environments:

- Excluding outdoor fitness activities from highly sensitive environments, usually through Plans of Management of community land resources;
- Limiting group numbers;
- Conditions of permit allowing cancellation if environmental features or public assets are placed at risk;
- Banning the use of playground equipment or street furnishings in outdoor activities; and
- Banning the use of equipment that may damage the reserve (e.g. logs, tyres, heavy ropes).

3.5.7 SIGNAGE

While many councils prohibit signage to be displayed to accompany outdoor fitness activities, there are some potential benefits in allowing signage. If an operator has the opportunity to advertise their business during any session (allowing five minutes before and five minutes after), council could also insist that the insurance details of the operator, professional accreditation, permit number and other details are also displayed. This would also assist with managing compliance with council permitting schemes and enable the public to identify operators without adequate insurance, qualifications or permission to conduct activities. These signs could be limited to A3 size or similar.

3.5.8 FITNESS FOR PURPOSE

As with fitness activities conducted in your own premises, it is important to ensure that any outdoor space where you are conducting fitness activities is suitable for the purpose you are using it. See section 3.2.4 for some of the matters to keep in mind. Further in public spaces you will need to be alert to the impact of other users and other activities, not only so that you do not adversely impact them, but as they may represent a risk to you, your employees or clients. For example, it is advisable to steer clear of ball games, equestrian areas, off-leash dog zones, work zones and uneven or unstable ground.

BOX 5: CONDUCTING A FITNESS BUSINESS IN A PUBLIC PLACE

Once you have a local area or particular park or public space in mind where you would like to conduct fitness activities or provide instruction, you need to check if a permit or license is required before you start operating.

- Step 1** Consult the website or contact centre for the relevant Local Government Area or Territory to ascertain the body responsible for managing the public space you are interested in operating in.
- Step 2** Contact the responsible authority (which may be the local council itself) and confirm if a permit or license is required and if the type of activities you have in mind are likely to be permitted.
- Step 3** Even if no permit or equivalent is required, confirm if there are any other requirements you need to meet such as operating within certain hours, limiting the size of any group activities or holding insurance or qualifications.
- Step 4** Even if no permit or equivalent is required ensure that you conduct your activities appropriately by:
 - Not exposing yourself, your employees or your clients to danger eg by choosing an unsuitable a location close to traffic, waterways, ball games, unstable grounds, construction works etc
 - Not impacting unduly on other park users or neighbouring properties either through noise or by dominating the space
 - Maintaining appropriate professional standards
- Step 5** If a permit is required consult the responsible authority for the requirements that need to be met. Examples of these are given in sections 3.5.3 to 3.5.7 above.
- Step 6** If you find that the terms or cost of a permit or licence in your preferred area is prohibitive for the kind of business you would like to operate, consider another area and/or alert the local authority or Fitness Australia to this.

3.6 POINTS TO REMEMBER

Whatever the type of fitness business you are proposing to operate, it is important to remember that:

- This material is general guidance only.
- Planning and building regulations are continually changing and that the advice here is based on the position at the time of writing.
- Planning and building requirements vary between and within states and territories.
- You need to confirm requirements having regard to the particular circumstances of your proposal.
- Your local council or territory government will be able to help you find out about planning and building requirements and what approvals or permits you need.
- Engage an expert to assist with meeting technical requirements.
- As well as meeting any planning, building and licensing requirements, it will be important to ensure that the premises or location where you are operating is fit for the purpose you are using them.



REFERENCES

WEB SITES

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ATTACHMENTS

ATTACHMENT 1

BUILDING CODE OF AUSTRALIA OUTLINE³²

Building Class

The Building Code of Australia (BCA) classifies buildings by their use. A building may be made up of a number of classes if it has a mixed use.

CLASSES OF BUILDING		
Class 1	Class 1a	A single dwelling or attached dwellings (eg: a terrace, duplex, etc) where each dwelling is separated by a fire wall.
	Class 1b	A boarding house, guest house, hostel or the like with a total area of all floors (not exceeding 12 persons or 300 m ²).
Class 2	A building containing 2 or more dwellings.	
Class 3	A residential building, other than a Class 1 or 2 building, for long term or transient living for a number of unrelated persons such as a large scale boarding house, guest house, hostel, the residential part of a hotel, motel.	
Class 4	A dwelling that is a part of a commercial use (eg: a caretakers flat)	
Class 5	An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.	
Class 6	A shop or other building for the sale of goods by retail or the supply of services direct to the public.	
Class 7	Class 7a	A building which is a car park.
	Class 7b	A storage building or building used for display of goods or produce for sale by wholesale.
Class 8	A laboratory or a building in which a handicraft or process for the production, alteration etc of goods carried on.	
Class 9	A building of a public nature -	
	Class 9a	A health care building, including those parts of the building set aside as a laboratory.
	Class 9b	An assembly building, including a community hall, sports hall, trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class. A fitness facility is generally class 9b.
	Class 9c	An aged care building.
Class 10	A non-habitable building or structure -	
	Class 10a	A non-habitable building eg private garage, carport or shed.
	Class 10b	A structure being a fence, mast, antenna, retaining or free standing wall, swimming pool or the like.

³² **SOURCE: Queensland Building Services Authority Website**

http://www.bsa.qld.gov.au/SiteCollectionDocuments/Builders_Contractors/Fact%20Sheets/BCA%20Classes%20of%20Building.pdf

Shire of Christmas Island website

http://www.shire.gov.cx/Building_and_Planning/Building_Approvals/Building_Codes/Building%20Code%20Guide.pdf

Format

The BCA is divided split into two volumes. Volume One addresses requirements for buildings in Classes 2 to 9 which include fitness facilities under class 9(b) and Volume Two covers buildings of Class 1 and Class 10 buildings and structures, which includes low-density residential, swimming pools and fences.

VOLUME ONE includes administrative provisions, followed by technical provisions.

Each of the technical sections contains:

- **Objectives**– a statement that is considered to reflect community expectations.
- **Functional Statements**– statements of how a building achieves the objective.
- **Performance Requirements** – the level of performance a building solution must meet (ie: the minimum standard).
- **Building Solutions** – the way in which the performance requirements are met. The solution may be one that complies with the deemed-to-satisfy provisions or an alternate solution or a combination of both. The deemed-to-satisfy provisions are the “black and white” solutions and if followed ensure compliance with the performance requirements. Alternate solutions allow for innovative design and use of materials and normally require certification by an expert in the particular field.

The sections are:

Section A – General Provisions

Administrative information including definitions, how buildings are to be classified and the list of guidance documents such as Australian Standards that have been referenced by the BCA as deemed-to-satisfy solutions.

Section B– Structure

Requirements relating to the structural stability of the building including structural resistance against effects such as dampness, termites, water penetration, etc.

Section C – Fire Resistance

Requirements for the fire resistance of the building which are intended to contain the spread of fire from one building or use to another and to ensure that a building maintains structural stability during a fire to allow for occupants to evacuate.

Section D – Access & Egress

Provisions relating to emergency exits including the distance to an emergency exit and provision for access by people with disabilities. These provisions vary depending on the class of building, its size and the number of persons using the building.

Section E - Services & Equipment

Requirements for fire safety equipment (eg: fire hydrants, hose reels, fire extinguishers, smoke detectors, alarms, emergency lighting and signs). The section also addresses the requirements for lifts where applicable.

Section F – Health & Amenity

Requirements for damp and weatherproofing, sanitary facilities, room sizes, natural and artificial light, ventilation and sound insulation.

Section G - Ancillary Provisions

Requirements that affect structures that are ancillary to the main use of the building and requirements for buildings in alpine areas and bush fire prone areas.

Section H – Special Use Buildings

Requirements for specified buildings including theatres and public halls.

Section I – Maintenance

Requirements for the maintenance of equipment in buildings.

VOLUME TWO

Outlines the requirements for Class 1 and 10 buildings such as single dwellings and boarding houses and ancillary buildings to dwellings and additional fixtures such as fencing. It does not relate to fitness facilities.

ATTACHMENT 2

TYPICAL REQUIREMENTS FOR AN APPLICATION FOR PLANNING APPROVAL

Typically, a development application or, in some jurisdictions, a material change of use application³³ will require the following:

1. Locality Plan – Drawn to scale and clearly identifying the boundaries of the site, the buildings on the site, the car parking area, the road frontages and the names of the roads, the rubbish storage area, landscaping, boundaries and land use of adjacent allotments, outline of any adjacent buildings.
2. Site Plan / Floor Plan – Drawn to scale and identifying every area of the building internally – reception, offices, kitchens and lunch rooms, toilets, weights area, cycling area, lounge area, cleaning chemicals and rubbish storage areas, etc. Often an illustration of the layout of the gym or list of equipment on the plans is required.
3. Outline of business practice (i.e. types of classes offered, time of classes) and a description of when the expected peaks of customers are expected and in what numbers.
4. Proposed hours of operation.
5. Proposed number of employees.
6. Expected number of patrons.
7. Car parking and traffic impact report, which needs to refer to the local authority's car parking requirements, and assess any impacts on traffic generation.
8. Arrangements for private waste removal.
9. Acoustic report – this may only be an issue if the proposal seeks to install air-conditioning units which will generate noise in excess of the relevant environmental protection agency or council guidelines or if the proposal seeks to play music for classes and the noise impact externally will be in excess of the relevant EPA or council guidelines. In both cases applicants may need to consider noise attenuation measures such as acoustic screens, sealing of gaps or double-glazing.
10. Statement of Environmental Effects or equivalent may be required.
11. When a building is being modified, particularly the footprint of the building, or significant changes to the façade are proposed, additional requirements may be required as described in the building a fitness facility following.
12. Consent from the property owner as part of the application process.

³³ <http://www.dsip.qld.gov.au/resources/form/idas-spa/idas-form-05-material-change-of-use.pdf>.

In addition to the above, if building construction or alteration is involved, the likely requirements for a planning application will include:

1. Plans, elevations and sections (top-view plans, what the building looks like from each side, and slices through the building);
2. Survey plan;
3. Storm-water details;
4. Shadow diagram (shows how the building shadows either open space around the building or other buildings);
5. Soil and water management plan; and
6. Energy reports.

ATTACHMENT 3

KEY BUILDING CONSIDERATIONS WHEN CONVERTING EXISTING PREMISES

PLEASE NOTE

This guide provides a broad outline of some of the key building matters to bear in mind when considering converting existing premises for use as a fitness facility. This will help you determine if premises are potentially suitable. Some existing premises will not lend themselves to use as a fitness facility as incorporation of these requirements may be difficult or costly.

This attachment provides a brief summary of some of the factors to take into account when assessing potential premises. However once you identify premises you believe are suitable, with or without some modification, it is recommended that you seek the advice of an accredited building certifier to confirm requirements and to assess the likely cost of compliance with these and any other relevant Building Code of Australia requirements.

Sanitary Facilities

Conversion of premises (or part thereof) to Class 9b is likely to require increased provision for sanitary facilities including toilets, urinals, hand basins and showers. Requirements for showers in particular are often quite different from other types of buildings. See below the table that indicates the number of sanitary facilities that will be required.

Sanitary Facilities	Indoor fitness facilities must meet the prescribed number of sanitary facilities including showers as outlined by Part F2.3 of the Building Code of Australia and shown below							
	All facilities must comply with wet area requirements Part F.1 such as damp-proofing and waste water requirements							
	Sanitary Facilities Required							
	Class 9b - sport venue	Closet Pans		Urinals		Washbasins		Showers
		Design Occupancy	Number	Design Occupancy	Number	Design Occupancy	Number	
	Male participants	1 to 20	1	1 to 10	1	1 to 10	1	1 per 10 participants
		>20	add 1 per 20	>10	Add 1 per 10	>10	1 per 10	
	Female participants	1 — 10	1 per 10			1 to 10	1	
		> 10	add 1 per 10			>10	1 per 10	
Sanitary facilities must not open directly to a room used for public assembly (includes fitness facility)								

Source: Building Code of Australia Part F2.3

To calculate the number of sanitary facilities required, you will need to estimate the design occupancy of the potential premises. Use the following to make an estimate:

Design Occupancy	3m2 per person in a gymnasium - Table D1.13 Building Code of Australia
	This includes the measured floor area (internal wall to wall) of the building area, where members of the public assemble. It does not include lifts, stairs, ramps, escalators, corridors, hallways, lobbies, storerooms, service ducts, kitchens, offices, clear-ways sanitary compartments, fixed appliances, entertainment equipment and staff areas. This occupancy figure will be used to calculate other building requirements if it cannot be more accurately determined by other means.

Sanitary facilities will need to meet damp proofing and waste water requirements, so adding facilities can be difficult and costly to achieve.

Ventilation

A fitness facility must provide adequate ventilation for the comfort of patrons and this can be a challenge when many people are undertaking intensive physical activity.

Ventilation can be mechanical or natural, but must be able to cope to offer thermally comfortable environments. Mechanical ventilation systems must comply with the Australian Standard 1668.2 “Mechanical Ventilation for Acceptable Indoor Air Quality” (AS 1668.2) and the ASHRAE standard “Thermal Environmental Conditions for Human Occupancy”. Meeting these standards may require significant remodelling of air-conditioning or other air handling systems. This usually involves major duct re-work, penetration of walls and the size of the system may mean there are noise impacts to neighbouring properties. Limits on the noise emitted from air handling units is usually regulated by the environmental protection agency or similar authority in each state and controlled by local council.

Working out the performance of natural ventilation or existing mechanical ventilation is a specialised process. It is advisable that you seek advice from an accredited building professional to ensure the adequacy of what is already in place and/or the likely cost and other impacts of upgrading.

Exits and fire safety

Part D1 Provision for Escape in the Building Code of Australia requires that no point on a floor must be more than 20 metres from an exit or a point from which travel in different directions to 2 exits is available, in which case the maximum distance to one of those exits must not exceed 40 metres. In Class 9b assembly buildings this distance may be increased to 60 metres where it meets very specific fire standards.

Various provisions are also set for the width of emergency exits based on the capacity of the premises. Where the design occupancy is more than 100 patrons, exit door widths must be wider than standard. Similarly, if you are sharing a floor in a building with another use, either the whole floor must comply with the use that has increased fire requirements or the two uses must be fire separated.

Disabled Access

Provisions to ensure equality of access for disabled people have recently been added to the Building Code of Australia. Unless unjustifiable hardship or a negative impact on a State of Local Heritage Place can be proven, these requirements will need to be complied with. If you lease part of a building, some requirements may not apply but check with your local council.

Some potential requirements might be: installation of a lift where the premises are not on ground floor; installation of access ramps; disabled toilets; widening of doorway; and car parking provision for disabled patrons. Other requirements that usually do not have a significant cost impact can include Braille or other signage.

Acoustics

While minimum acoustic performance is required under the Building Code of Australia, the environmental protection agency or authority in each state generally regulates noise emitted from buildings. For example in the fitness industry, amplification of music for classes and noise emissions from air handling units are two key areas of concern.

Acoustics reports may be requested by local authorities and noise attenuation measures such as double-glazing, acoustic screens and sealing of gaps may be required.

General

This is only a snapshot of some key Building Code of Australia requirements that are likely to impact the feasibility of converting existing premises. When changing the use of the building, particularly, when it involves a change of its classification under the BCA, there will be a number of other requirements in addition to these.

ATTACHMENT 4

RECOMMENDATIONS FOR REGULATION OF OUTDOOR FITNESS ACTIVITIES

It is recommended that a uniform set of rules be developed that both encourages the development of outdoor fitness operations in a way that promotes community access to healthy lifestyle choices, while sensibly managing any impacts.

The key objectives should include:

- Permit fees should as much as possible reflect the cost of managing the permit procedures as the outdoor facility operators are, by enlarge, providing a desirable service to local residents;
- Permit procedures should be as streamline and uniform as possible to minimise costs in administration;
- As wide variety of spaces as possible should be provided to ensure maximum access to outdoor fitness training to promote the health of local citizens;
- Appropriate impact mitigations should be implemented through standard permit conditions;
- Any booking system implemented should be efficient and easy to comply with;
- Raise awareness of quality outdoor fitness providers in the area, and highlight their compliance with appropriate operating procedures; and
- Encourage residents to participate in physical activity.

Some key principles could be:

Categorisation of land

A uniform categorisation of land across jurisdictions in terms of its suitability for commercial outdoor fitness facility operations should be implemented.

Environmentally sensitive land – commercial fitness activities prohibited

This should be reserved for land where there is potential damage to natural features, flora and fauna.

Amenity sensitive land - low impact commercial outdoor fitness activities permitted

Outdoor fitness operators that cater to a small number of participants (say five or less participants), or provide a low environmental impact activity (i.e. yoga or pilates with a limit of say ten participants) should be permitted to carry out fitness operations on any council owned or managed land (except for those deemed environmentally sensitive) subject to certain uniform conditions such as:

- Activities not within a certain distance of playgrounds or other public facilities;
- Activities should not interrupt access ways or interfere with other users of the open space;
- Activities should not involve any shouting or use of any devices that produce noise significantly above background levels;
- Where regulated, minimal fees should be set for low impact operators and highly streamlined compliance;

- Activities should be at least 30 metres away from any residence; and
- Limits on the hours of operation.

Minimal compliance cost should be associated with this style of outdoor fitness use, such a small annual fee to review relevant documentation and re-issue a permit. Agreements should be made between neighbouring jurisdictions to recognise the permit.

Impact assessed land – impact commercial outdoor fitness activities permitted

This is where land is specifically identified as being suitable for high impact outdoor fitness activities in that is not environmentally or amenity sensitive. All activities should be allowed with up to eighteen participants as recommended by Fitness Australia. As much space in as many neighbourhoods as possible should be offered. Where space for this type of activity is constrained, a booking system should be considered.

In addition to the permit issued as per the low impact outdoor fitness activities, a premium for permits in these zones could be considered due to: the cost of investigation of suitable sites and the higher likelihood of on-going management; the greater wear and tear on open space resources as a result larger groups and more intense activity; the larger number of participants allowed.

Uniform requirements

A uniform list of conditions for permits should be developed that apply to every commercial outdoor facility operator such as:

- As part of the general permit, applicants should show:
 1. Public Liability Insurance to the value council specifies specifically indemnify the council(s) in the insurance policy;
 2. The operator must hold Professional Indemnity Insurance;
 3. Operators must sign a Deed of Indemnity as part of the permit application process and an undertaking that they will abide by all permit conditions;
 4. The fitness operator must have recognised qualifications (Certificate III or IV in Fitness);
 5. The fitness operator must have current professional registration with Fitness Australia or the relevant peak body; and
 6. The operator must have current Senior First Aid Certificate.
- No operating of outdoor fitness facilities in areas deemed to be environmentally sensitive;
- No public street furniture, playground equipment or similar should be used for outdoor fitness classes unless specifically designed for that purpose;
- All damages must be reported to council;
- Where damages are proven to be caused by the activities on an outdoor fitness, the local authority has the right to recoup costs from the operator;
- Daily time limits for operating an outdoor fitness facility;

- No outdoor fitness operation can operated within a certain distance of residential housing before 8 am and after 6 pm;
- No use of equipment that can is pegged into the ground to barrier off a certain area;
- Each operator must inspect the site before proceeding with any outdoor activity class and must not conduct the class if there are any potential safety issues. Any safety issue must be reported to the local authority;
- No damage to any environmentally sensitive or natural landscape features near an approved location, including the hanging of equipment such as kick-boxing/boxing bags from trees for instance;
- Any booking of community open space by community groups (occasional or regular), schools, sporting clubs etc, has primacy over any permit;
- No amplification of voice, air-horns or similar devices to be used in any zone;
- Erection of a sign only with council consent or in accordance with specified requirements; and
- No soliciting of open space user to participate in outdoor fitness activities.

