

# Wollongong Local Planning Panel Assessment Report | 6 October 2021

<b>WLPPA No.</b>	Item No. 2
<b>DA No.</b>	DA-2021/651
<b>Proposal</b>	Two flood lights and maintenance works to existing cycleway
<b>Property</b>	Kully Bay Recreation Area, Northcliffe Drive & King Street, Warrawong
<b>Applicant</b>	Mr Nathaniel Murray
<b>Responsible Team</b>	Development Assessment and Certification - City Centre Team (CB)
<b>Lodged</b>	7 June 2021
<b>Prior WLPP meeting</b>	Nil

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

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

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the *Environmental Planning and Assessment Act 1979*. Under Schedule 2 (3) of the Local Planning Panels Direction of 30 June 2020, as the development contravenes a development standard imposed by an environmental planning instrument by more than 10%.

#### Proposal

This proposal is for maintenance works of the existing cycleway network and the erection of two flood lights in the Kully Bay Recreation Area.

#### Permissibility

The site is zoned RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management, SP3 Tourist and W1 Natural Waterways pursuant to the Wollongong Local Environmental Plan 2009. The proposal is categorised as a recreation area and is permissible in these zones with development consent.

#### Consultation

The proposal was notified in accordance with Council's Notification Policy and did not receive any submissions.

#### Main Issues

The main issues identified during the assessment process:

- Flood light height of 26m exceeds the maximum 9 metre LEP height limit

#### RECOMMENDATION

It is recommended that DA-2021/651 be approved, subject to conditions provided at Attachment 6.

## 1 APPLICATION OVERVIEW

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### 1.1 PLANNING CONTROLS

#### State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP (Infrastructure) 2007
- SEPP (Coastal Management) 2018

#### Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

#### Development Control Plans:

- Wollongong Development Control Plan 2009

#### Other policies

- Wollongong City Wide Development Contributions Plan
- Wollongong Community Participation Plan 2019

### 1.2 DETAILED DESCRIPTION OF PROPOSAL

The Kully Bay Recreation area includes a cycleway network and AFL oval with two existing flood lights. The following works are proposed:

#### Cycleway

- Maintenance works of the existing cycleway that do not entail extension or widening of the pavement surface i.e. no change to the impervious area.
- Existing paving is concrete or brick
- Maintenance works include path levelling, repairing cracks and pot-holes, and removing overgrown vegetation from the pathway

#### Flood Lights

- Erection of two new flood lights to supplement two existing flood lights adjacent to the AFL oval.
- Design details include:
  - Height of 26m
  - 150mm diameter steel post and light mount
  - 5 x 1200W light fittings mounted to lighting rail with light shield (590mm x 4.5m)
  - Lights secured by concrete footing, bolted connections and screw piles.
- Minimal earthworks for service connection

No signage, alterations to street access or parking is proposed.

### 1.3 BACKGROUND

Historical development approvals for the land are not considered relevant to the current application.

No pre-lodgement meeting was held for this application.

#### Customer service actions

There are no outstanding customer service requests of relevance to the development.

## 1.4 SITE DESCRIPTION

The site is located at Kully Bay Recreation Area, Northcliffe Drive & King Street, Warrawong and the title references are Lot 1 DP 536405, Lot 1 DP 654264, Lot 1 DP 1007487, Lots 1,2 & 3 DP 1154074, Lot 2 DP 558943, Lots 4 & 5 DP 215273, Lots 4,5,6 & 7 DP 241845, Lot 8 DP 218305, and Lots 21 & 22 DP 1031766. Collectively, the subject site is zoned RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management, SP3 Tourist and W1 Natural Waterways. The new flood lights will be located in Lot 1 DP 1154074 on RE1 Public Recreation zoned land.

The site is irregular in shape, with an approximate area of 318,774m<sup>2</sup>, and is relatively flat rising up to 3m AHD. Kully Bay Recreation Area is bounded to the south and west by Lake Illawarra, to the north by Northcliffe Drive and to the east by King Street. The land is owned by Property NSW, a public authority. See Attachments 1 & 2.

Adjoining development is as follows:

- North: Northcliffe Drive, low density residential housing and the old Bunnings commercial area. The closest residences to the flood lights are 174 to 192 Northcliff Drive, Warrawong.
- East: King Street, Darcy Wentworth Park and commercial strip development for a range of businesses including Harvey Norman and Service NSW
- South: Lake Illawarra and low density residential development at Primbee
- West: Illawarra Rowing Club and Lake Illawarra

The locality is characterised by mixed commercial, recreation and residential development including the nearby Warrawong Plaza Shopping Mall located directly north east of the park.

### Property constraints

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

- Acid sulphate soils: Class 1,2 & 3. The proposal was reviewed by Council's Environment Officer who supported the works, subject to a recommended condition.
- Flooding: The site is identified as being located within a Flood Risk Precinct Classification Under Review. Council's Development Engineer has reviewed the proposal and supports the application, subject to recommended flood conditions.
- Coastal Hazard(s): The site is impacted by coastal geotechnical hazard, and ocean inundation 2010, 2050 & 2100. The flood light location is impacted by ocean inundation 2100 only. Coastal hazard risk was assessed by Council's Development Engineer who provided a satisfactory referral, subject to recommended flood conditions.
- Threatened Species – Green and Golden Bell Frog. This threatened species has been recorded in close proximity to the recreation area, with the closest site near the intersection of Kemblawarra Road and King Street. Standard conditions for Green and Golden Bell Frog management recommended.
- Environmentally Sensitive Land – Natural Resources. Part of the recreation area is identified as being affected by ESL – Natural Resources. However, this does not include the flood lights location and pavement area will not be increased, nor is tree removal required for the works. The proposal was reviewed by Council's Environment Officer who held no concerns regarding the impact upon ESL – Natural Resources Land.

There are no restrictions on the respective property titles.

## 1.5 SUBMISSIONS

The application was notified between 10 and 24 June 2021 in accordance with Council's Community Participation Plan 2019. No submissions were received following the notification.

## **1.6 CONSULTATION**

### **1.6.1 INTERNAL CONSULTATION**

Council's Development Engineer and Environment Officer have reviewed the application and given satisfactory referrals. Conditions of consent are recommended and included in this consent.

### **1.6.2 EXTERNAL CONSULTATION**

As the land is owned by a public authority, the proposed draft conditions of consent were reviewed and approved by Property NSW in accordance with the provisions of Section 4.33 of the Environmental Planning and Assessment Act 1979.

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

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

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

The Act does not relate to the proposed works.

#### **Water Management Act 2000**

The site is waterfront land with direct access to Lake Illawarra.

The *Water Management Act 2000* requires the issue of an approval for the carrying out of certain activities on waterfront land. The purpose of an approval is to ensure that controlled activities are carried out in a way which avoids or minimises negative impacts on waterfront land and other water users. Clause 41 of Schedule 4 of the Water Management (General) Regulation 2018 provides an exemption for a public authority in relation to all controlled activities that it carries out in, on or under waterfront land. As Property NSW is a public authority, there is no requirement for controlled activity approval for this development in accordance with the provisions of the Act.

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

#### **2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND**

Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. Minor earthworks are proposed and the proposal does not comprise a change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7.

#### **2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007**

Clause 101 relates to development on land with a frontage to a classified road. The site has frontage to Northcliffe Drive and King Street which are both classified roads. Clause 101(2) states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
  - (i) the design of the vehicular access to the land, or
  - (ii) the emission of smoke or dust from the development, or
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The above matters have been considered. In relation to (a), vehicular access is unchanged by the proposed works. In relation to (b), the development will not have an adverse impact on the safety, efficiency and ongoing operation of the classified road as sight lines are not affected, minimal pollutant emissions are anticipated and site use is not intensified. In relation to (c), the development is not of a type that is sensitive to traffic noise or vehicle emissions.

Standard condition is recommended for an RMS road occupancy licence if works are required within the road reserve of Northcliffe Drive or King Street.

## 2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

### Clause 10 Development on certain land within coastal wetlands and littoral rainforests area

The site is identified as being located within coastal wetlands. However, no works are proposed within the coastal wetlands. It is considered that subject to recommended conditions of consent, there are sufficient measures in place to protect the coastal wetland.

### Clause 11 Development on land in proximity to coastal wetlands or littoral rainforest

The site is identified as being located in proximity to coastal wetlands. The proposal has been assessed against the requirements of this Clause, and the proposal is not considered likely to have an adverse impact on the biophysical, hydrological or ecological coastal wetland environment or on surface or ground water flows.

### Clause 13 Development on land within the Coastal Environment Area

The site is identified as being located within the coastal environment area. The proposal has been assessed against the requirements of this Clause, and the proposal is not considered likely to have an adverse impact on the biophysical, hydrological or ecological environments, natural coastal processes, water quality, or marine and terrestrial habitats.

### Clause 14 Development on land within the Coastal Use Area

The site is identified as being located within the coastal use area. The proposal has been assessed against the requirements of this Clause, and the proposal is not considered likely to have an adverse impact on the biophysical, hydrological or ecological environments, natural coastal processes, water quality, public open space, Aboriginal cultural heritage, cultural and built environment heritage, or the use of the surf zone.

### Clause 15 Development in coastal zone generally – development not to increase risk of coastal hazards

The proposed development is considered minor in nature and appropriate for the site, and therefore unlikely to increase the risk of coastal hazards on the site or surrounding area.

### Clause 16 Development in coastal zone generally – coastal management programs to be considered

#### *Wollongong Coastal Zone Management Plan*

A review of Council's associated CZMP mapping identifies that the site is impacted by coastal geotechnical risk, and ocean inundation 2010, 2050 and 2100. The flood light area is impacted by ocean inundation 2100 only. The proposal was reviewed by Council's Development Engineer who provided a satisfactory referral, subject to recommended flooding conditions. Minimal adverse impact on the coastal environment is anticipated from the proposed development. Minimal impacts on the development are expected because of coastal processes.

The proposal is therefore considered satisfactory regarding the aims, objectives and matters outlined for consideration in the SEPP, including the Wollongong CZMP.

## 2.1.3 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

### Clause 1.4 Definitions

The LEP defines as recreation area as:

“**Recreation area** means a place used for outdoor recreation that is normally open to the public, and includes—

- (a) a children’s playground, or
- (b) an area used for community sporting activities, or
- (c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).”

The *Environmental Planning and Assessment Act 1979* defines as building as:

“**Building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.”

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

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

The zoning map identifies the land as being zoned RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management, SP3 Tourist and W1 Natural Waterways. The flood lights will be located on RE1 Public Recreation zoned land.

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

The objectives of the **RE1 Public Recreation** zone are as follows:

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

The proposal is satisfactory with regard to the above objectives.

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

#### *Permitted with consent*

*Aquaculture; Boat sheds; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Helipads; Information and education facilities; Kiosks; Markets; **Recreation areas**; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures*

The objectives of the **RE2 Private Recreation** zone are as follows:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposal is satisfactory with regard to the above objectives.

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

*Permitted with consent*

*Animal boarding or training establishments; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Community facilities; Entertainment facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Function centres; Kiosks; Markets; **Recreation areas**; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures*

The objectives of the **E2 Environmental Conservation** zone are as follows:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To retain and enhance the visual and scenic qualities of the Illawarra Escarpment.
- To maintain the quality of the water supply for Sydney and the Illawarra by protecting land forming part of the Sydney drinking water catchment (within the meaning of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011) to enable the management and appropriate use of the land by Water NSW.

The proposal is satisfactory with regard to the above objectives.

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

*Permitted with consent*

*Environmental facilities; Environment protection works; Extensive agriculture; Oyster aquaculture; **Recreation areas***

The objectives of the **E3 Environmental Management** zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

The proposal is satisfactory with regard to the above objectives.

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

*Permitted with consent*

*Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Farm stay accommodation; Forestry; Home-based child care; Home businesses; Home industries; Oyster aquaculture; Pond-based aquaculture; **Recreation areas**; Roads; Secondary dwellings; Tank-based aquaculture*

The objectives of the **SP3 Tourist** zone are as follows:

- To provide for a variety of tourist-oriented development and related uses.

The proposal is satisfactory with regard to the above objective.

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

*Permitted with consent*

*Advertising structures; Amusement centres; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Charter and tourism*

*boating facilities; Centre-based child care facilities; Community facilities; Entertainment facilities; Food and drink premises; Function centres; Information and education facilities; Kiosks; Marinas; Markets; Moorings pens; Moorings; Neighbourhood shops; **Recreation areas**; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Tourist and visitor accommodation; Water recreation structures*

The objectives of the **W1 Natural Waterways** zone are as follows:

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.

The proposal is satisfactory with regard to the above objective.

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

*Permitted with consent*

*Aquaculture; Environmental facilities; Environmental protection works; Moorings pens; Moorings; **Recreation areas**; Water recreation structures*

The proposal is categorised as ancillary for use as a recreation area (defined above) and is permissible in the above zones with development consent.

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

##### Clause 4.3 Height of buildings

As a structure, the flood lights meets the definition of a building as defined by the *Environmental Planning and Assessment Act 1979* and as detailed in Clause 1.4 Definitions.

The proposed flood light height of 26 metres exceeds the maximum of 9m permitted for the site as recorded on the Height of Buildings Map. This represents a 189% departure from the development standard. Refer to Clause 4.6 Exceptions to development standard for detailed discussion.

##### Clause 4.4 Floor space ratio

The proposal does not comprise any additional gross floor area.

##### Clause 4.6 Exceptions to development standards

The development departure in relation to Clause 4.3 is dealt with in the table below:

<b>WLEP 2009 clause 4.6 proposed development departure assessment</b>	
Development departure	Clause 4.3 height
Is the planning control in question a development standard	Yes
<b>4.6 (3) Written request submitted by applicant contains a justification:</b>	
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted at attachment 4.



(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	There sufficient planning grounds to justify contravening the 9m height limit are outlined in the applicant's Clause 4.6 Statement.
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's request has adequately addressed the matters required to be addressed by subclause (3).</p> <p>In summary the applicant argues that strict compliance with the objectives is both unreasonable and unnecessary because the underlying objectives of Clause 4.3 are achieved as detailed below:</p> <ul style="list-style-type: none"> <li>• Nearby buildings and public areas will not be adversely affected by overshadowing, reduced sky views or overall built form and scale.</li> <li>• The proposal does not increase gross floor area</li> <li>• The height of buildings control was not designed specifically for flood lights. However, the development is captured by Clause 4.3 as the Act's definition of a building is quite broad to include all structures</li> <li>• The flood lights match the height of the existing two flood lights facing the AFL oval which are closer to Northcliffe Drive.</li> <li>• The flood lights cannot perform operationally at a lower height. Height is contingent upon the size of the playing field and the use for AFL football. The game entails elevated ball play and a lower light would excessively concentrate light in player's eyes</li> <li>• The proposed flood lights must match the height of the two existing flood lights to provide effective illumination of the playing surface. Currently, there is only one-sided illumination of the playing surface.</li> <li>• An analysis of glare and obtrusiveness of the proposed development demonstrates compliance with AS 4282:2019 <i>Outdoor Lighting Obtrusive Effects</i>.</li> <li>• The impacts of the flood lights are comparable to the two nearby 26m high flood lights taking into account the large site scale and distance from the street and neighbouring properties</li> <li>• The flood lights are captured by the broad definition of a building while there is no floor space or bulk and scale impacts</li> <li>• The proposal achieves the objectives of Clause 4.3 Height of Buildings and the objectives of the RE1 Public Recreation zone</li> <li>• No impact on the natural environment is posed by the development as detailed in an Ecological Statement prepared by Lesryk Environmental Pty Ltd, dated 26 May 2021</li> <li>• The proposal satisfies all other planning controls, including Chapter D5 Griffins Bay, which promotes use of the AFL oval site as a sportsground.</li> </ul>

	<ul style="list-style-type: none"> <li>The light poles are considered essential for the use of a contemporary sportsground and will enhance the recreational use.</li> </ul>
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>The objective of clause 4.3 are as follows—</p> <p><i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i></p> <p><i>(b) to permit building heights that encourage high quality urban form,</i></p> <p><i>(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.</i></p> <p>It is considered that strict application of the 9m height limit is unnecessary due to the minimal impacts posed by the development for neighbouring properties and public areas. Views are not compromised by the additional height as bulk and scale is reduced by the large scale setting and comparable in effect to the two nearby flood lights. There are no overshadowing impacts for neighbours with the closest affected residences at Northcliffe Drive being approximately 175 metres from the development. There are sufficient environmental planning grounds to justify the height increase. The flood lights are non-operational at a lower height for the effective illumination of the AFL playing field.</p> <p>The objectives for development within the various zonings are outlined above. The proposal is consistent with the above objectives as it satisfies the public interest and approval of the development will not set an undesirable precedent for future development given the unusual set of circumstances presented by this particular proposal. Impacts upon the public space, in terms of overshadowing, view loss and visual amenity are considered to be negligible.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p>
(b) the concurrence of the Secretary has been obtained	Local Planning Panel can assume the Secretary's concurrence as the consent authority

## Part 5 Miscellaneous provisions

### Clause 5.21 Flood planning

The site is identified as being located within a Flood Risk Precinct Classification Under Review. The low scale development is non-habitable and as such the risks posed by flooding are considered to be minimal. Council's Development Engineer has reviewed the proposal and supports the application, subject to recommended flood conditions.

## Part 7 Local provisions – general

### Clause 7.2 Natural Resource Sensitivity – Biodiversity

Part of the recreation area is identified as being affected by ESL – Natural Resources. However, this does not include the flood lights location and the pavement area of the cycleway will not be increased, nor is tree removal required for the works. As such, minimal adverse environmental impacts are

anticipated. The proposal was reviewed by Council's Environment Officer who held no concerns regarding the impact upon ESL – Natural Resources Land.

#### Clause 7.4 Riparian Lands

The site contains category 3 riparian corridors where minor maintenance works for the existing cycleway will be undertaken within 10 metres of the watercourse. These works are not considered to contribute to significant sedimentation or have an adverse impact upon bank stability, water quality or native vegetation. Vegetation removal is restricted to the pavement surface. The proposal was reviewed by Council's Environment Officer who held no concerns regarding impacts upon riparian land as a result of the development.

#### Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 1, 2 & 3 acid sulphate soils. The flood lights will be located on Class 1 acid sulphate soils. Council's Environment Officer has reviewed the proposal and provided a satisfactory referral, subject to a recommended condition for an Acid Sulphate Soil Management Plan.

Clause 7.5(5) provides an exemption for development consent requirements for a public authority carrying out maintenance works or minor works on land affected by acid sulphate soils. However, the erection of the flood lights is not considered to be routine maintenance work; nor minor works as development costs exceed \$20,000. Accordingly, the provisions of Clause 7.5 applies to the proposed development.

#### Clause 7.7 Foreshore Building Line

A portion of Lot 3 DP 1154074, about 30 metres by 490 metres in area, is located within the Foreshore Building Line. Only maintenance of the cycleway network is proposed at this location. These works do not entail widening or lengthening the existing pathway and will enhance public access to the foreshore. It is considered that the works will not impact on natural foreshore processes or affect the significance and amenity of the area.

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

There are changes proposed to several SEPPs including:

Draft Environment SEPP (consolidating the seven existing SEPPs)  
Draft Housing SEPP,  
Draft Design & Place SEPP  
Draft Remediation of Land SEPP

In relation to the subject DA, it is considered the draft SEPPs are of limited relevance at this point in time as the site is either not within the relevant areas or not captured due to the nature of the proposed development.

### **2.2.1 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN**

The estimated cost of works is \$300,000; a section 94A levy would normally be applicable as the estimated cost is greater than the threshold figure of \$100,000. However, as the proponent is the Crown (Property NSW), Section 15(i) Exemptions of the Plan applies whereby Council may allow for exemptions (either partial or full) where an application is for or on behalf of the NSW Government for public infrastructure. The flood lights and cycleway network are ancillary to the use as a recreation area, which is considered public infrastructure. As such, and as Property NSW did not agree to draft conditions which imposed a s.94 Contribution (pursuant to s.4.33(1)(b) of the EP & A act 1979), a section 94A levy does not apply.

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

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

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

92 What additional matters must a consent authority take into consideration in determining a development application?

Not applicable.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

226 Prescribed persons: section 4.32

The owner is Property NSW and as such the proposed development is a Crown development for the purposes of the Environmental Planning & Assessment Act 1979 and Regulation 2000.

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

There are not expected to be adverse environmental impacts on either the natural or built environments or any adverse social or economic impacts in the locality.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls. Contravention of the building height development standard was accompanied with a satisfactory Written Request and is supported in this instance
- No submissions were received following notification.
- Internal referrals are satisfactory subject to appropriate conditions of consent

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

Does the proposal fit in the locality?

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

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

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

The proposal was notified in accordance with Council's Notification Policy and did not receive any submissions.

**2.8 SECTION 4.15(1)(E) THE PUBLIC INTEREST**

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area is satisfactory with regard to the applicable planning controls. No submissions were received

following notification and internal and external referrals are satisfactory, subject to appropriate conditions of consent. The proposal is considered to be in the public interest.

### **3 CONCLUSION**

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

The site is zoned RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management, SP3 Tourist and W1 Natural Waterways R2 Low Density Residential where recreation areas are a permitted land use with development consent pursuant to the WLEP 2009.

The proposed development aligns with the objectives of the zones and the design of the development is appropriate regarding the controls outlined in these instruments, with the exception of the WLEP contravention of the development standard for building height which is supported by Council in this instance.

Referrals are all satisfactory and no submissions were received.

Overall, it is considered that the proposed development is appropriately designed given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

### **4 RECOMMENDATION**

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It is recommended that the development application be approved subject to appropriate conditions of consent.

### **5 ATTACHMENTS**

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- 1 Aerial photograph
- 2 Zoning Map
- 3 Plans
- 4 Written request for the contravention of development standard
- 5 WDCP Assessment
- 6 Draft conditions of consent

**Attachment 1 – Aerial Photograph Map**





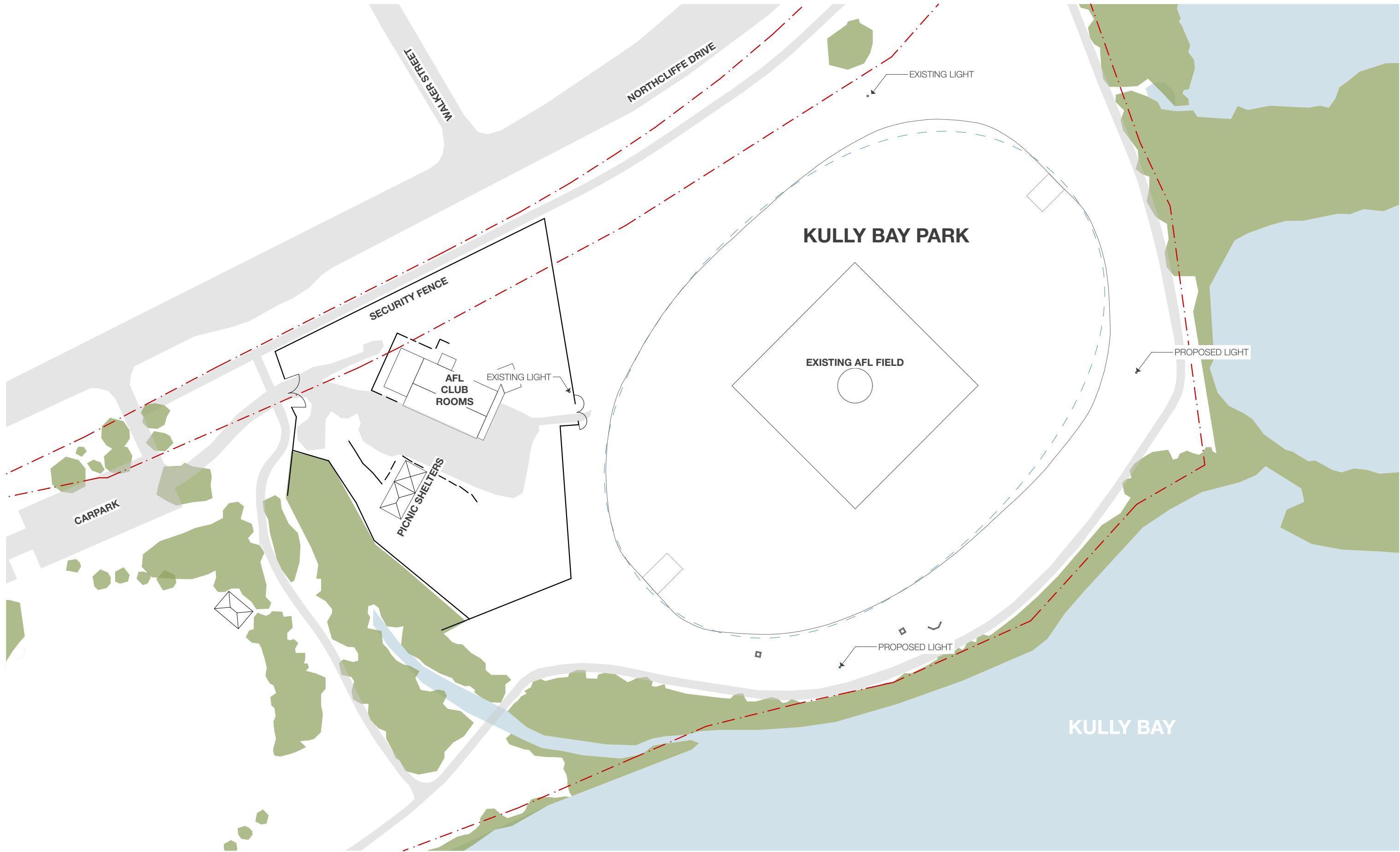
Attachment 2 – Zoning Map





- Site Plan Key**
- 1. Carpark
  - 2. Pedestrian bridge
  - 3. AFL Grounds
  - 4. AFL Clubrooms
  - 5. Rowing Club
  - 6. Kurra Bay kids playground
  - 7. Market Ground
  - 8. Market Ground amenities
  - 9. Jetty
  - 10. The Illawarra yacht club





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DRAWING TITLE

# PROPOSED AFL FIELD SITE PLAN

PROJECT DETAILS

BIKE PATH UPGRADE & AFL FIELD LIGHTING FOR JLL

Kully Bay Park, Northcliff Drive, Warrawong, NSW 2502

NOTE: SITE BACKGROUND IMAGE SORCED FROM NSW SITE SIXMAPS. ALL INFORMATION REPRESENTED ON PLAN IS SOURCED FROM THIS SITE.. SITE SURVEY REQUIRED



DATE OF ISSUE  
31/5/21

PROJECT NUMBER  
**21030**

PRINT SIZE  
A3 LANDSCAPE

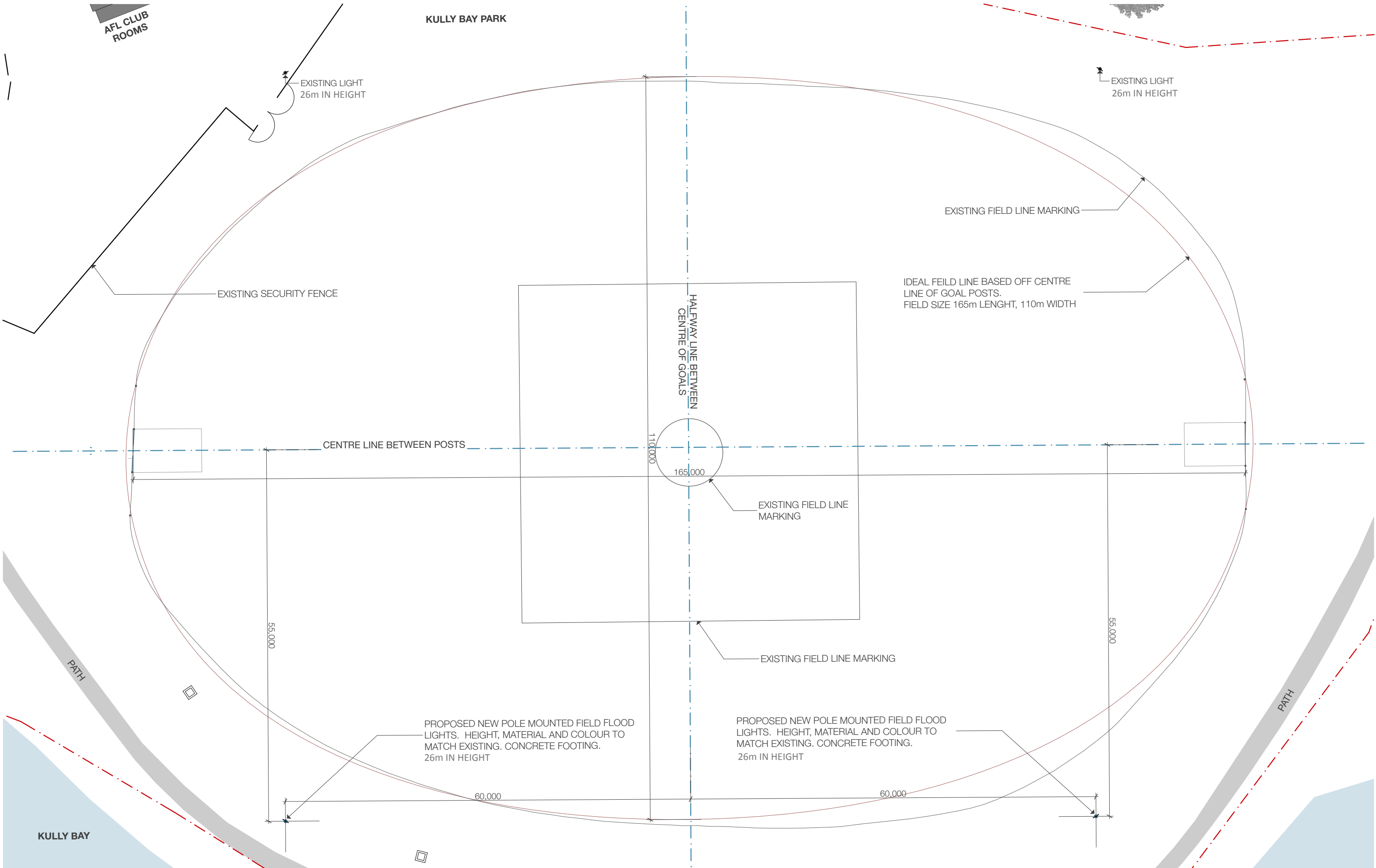
DRAWING NUMBER  
**A03**

PROJECT STATUS  
FOR APPROVAL

REVISION STATUS  
**A2**

1:1000



0mm	10,000	20,000	30,000	40,000	50,000
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NOTE: DETAILED SURVEY REQUIRED TO BE  
UNDERTAKING FOR GROUND MARKING  
AND FENCE & GATE LOCATION



#### Site Plan Key

-  Extent of existing shared concrete path route requiring maintenance & upgrade. Work includes levelling joints in path, repairing cracks and pot-holes. Even soil surface level adjacent to shared path where adjacent ground level is lower. Remove vegetation overgrowing path or through, cracks/joints in path. Ensure all broken and cracked areas are removed and made good. Level out where necessary. Where large sections need to be replaced, refer to details. All works to recommendations of Ausroads Guide to road design, Part 6A: Pedestrian & Cyclist Paths, in terms of path structural make up, finishes, level changes, cross falls and joints.
-  Extent of paved shared area requiring maintenance & upgrade. Replacing/making good concrete inserts where level changes, settling and or pot-holes or cracks have occurred.



Example of concrete shared path

#### Proposed shared path maintenance



Paved boardwalk shared zone

#### Proposed shared paved zone maintenance.



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DRAWING TITLE

## PROPOSED BIKE PATH MAINTENANCE PLAN

PROJECT DETAILS

BIKE PATH UPGRADE & AFL FIELD LIGHTING FOR JLL  
Kully Bay Park, Northcliff Drive, Warrawong, NSW 2502

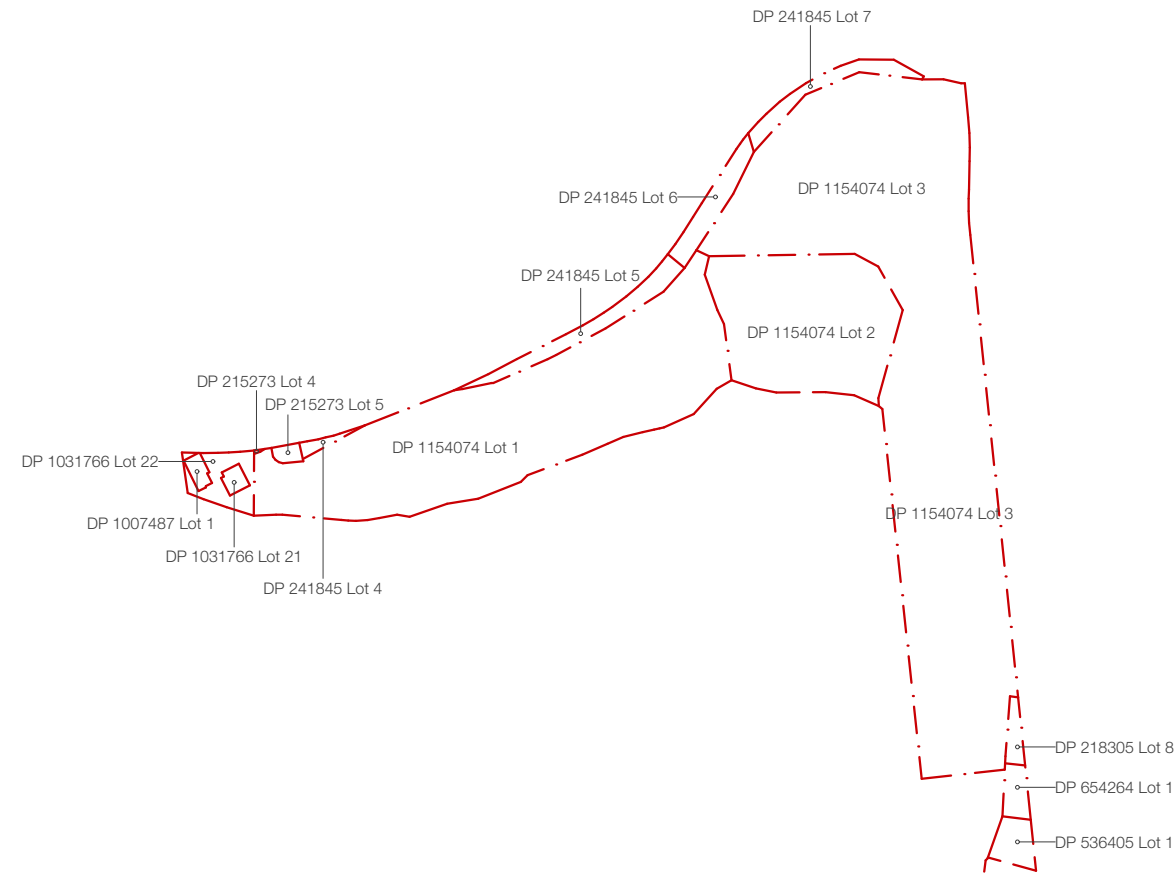
NOTE: SITE BACKGROUND IMAGE SORCED FROM NSW SITE SIXMAPS. ALL INFORMATION REPRESENTED ON PLAN IS SOURCED FROM THIS SITE. SITE SURVEY REQUIRED FOR EXACT LOCATIONS



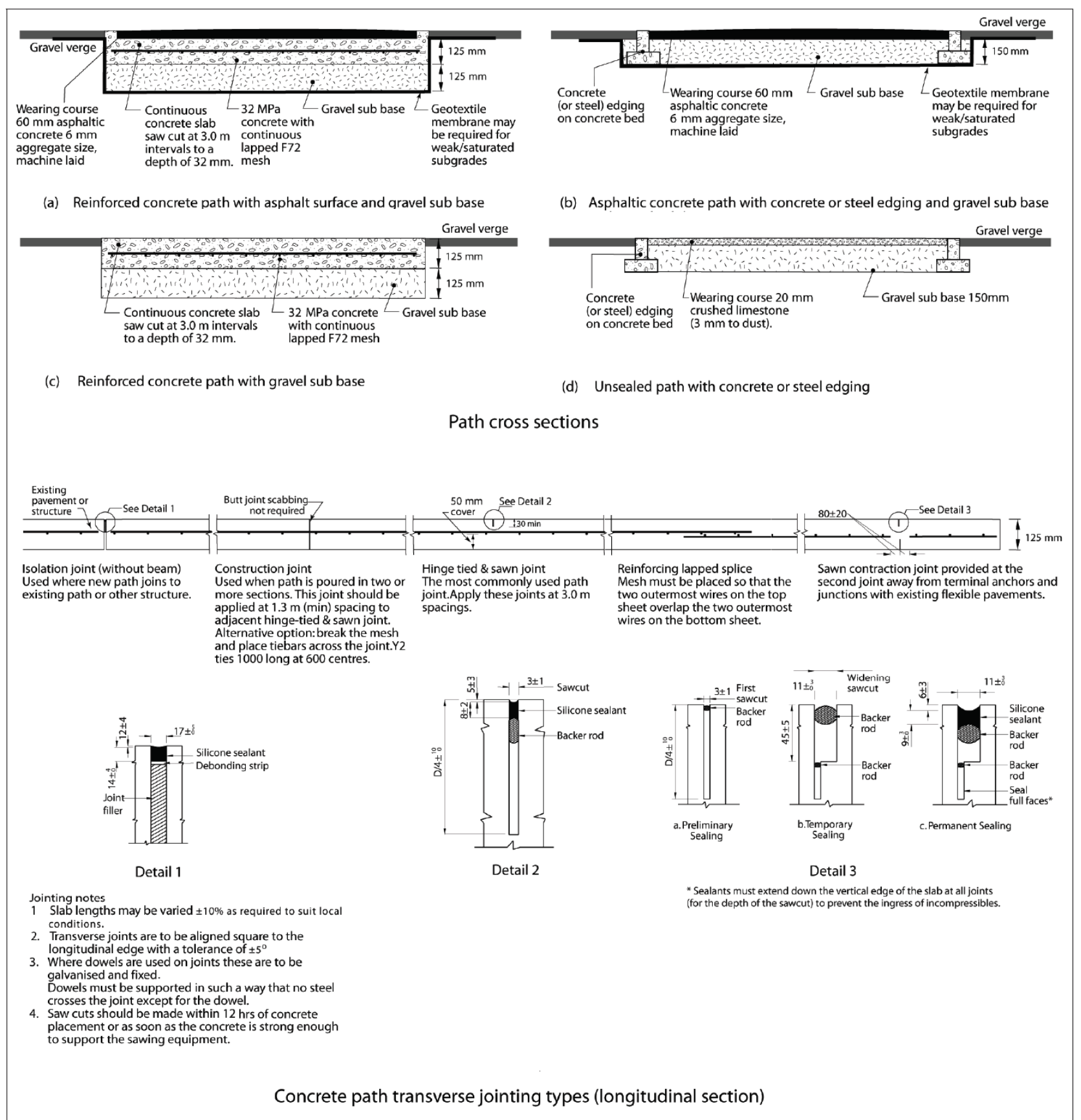
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DATE OF ISSUE 31/5/21	PRINT SIZE A3 LANDSCAPE	PROJECT STATUS FOR APPROVAL
PROJECT NUMBER 21030	DRAWING NUMBER A05	REVISION STATUS A3
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	150	200
	250	



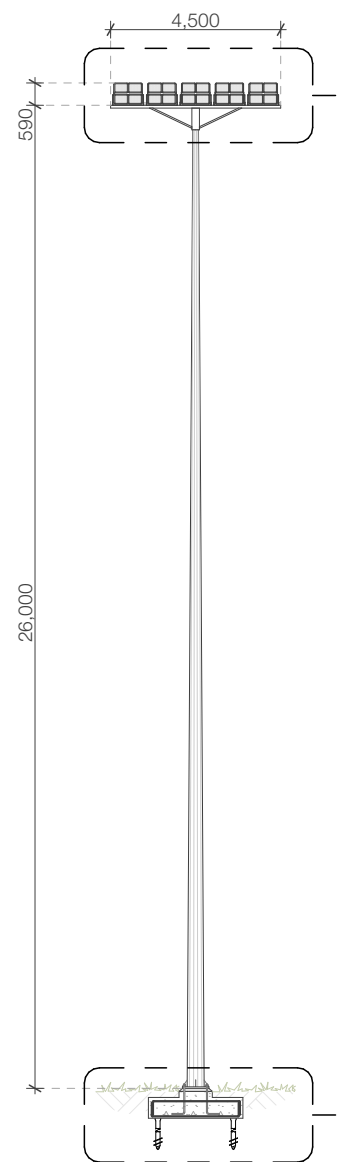


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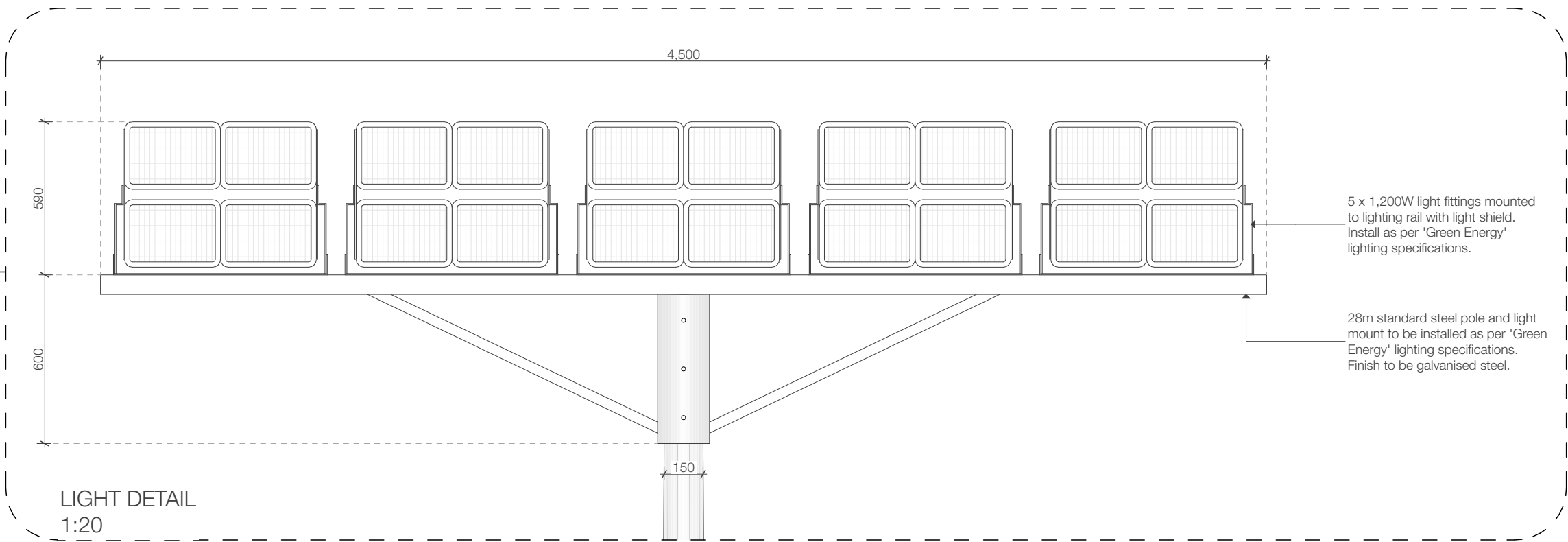


Source: Adapted from RTA (2005).

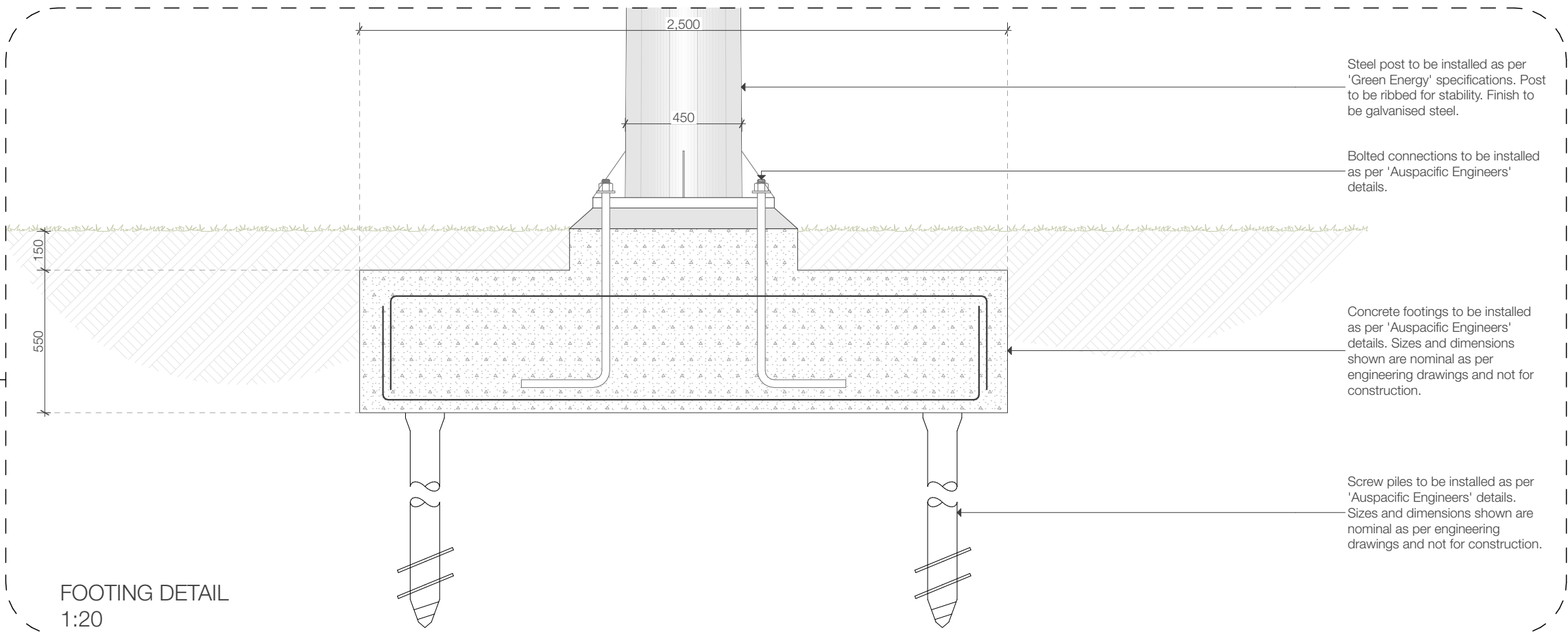
Figure C12 1: Details of bicycle path pavements



LIGHT POST ELEVATION  
1:200



LIGHT DETAIL  
1:20



FOOTING DETAIL  
1:20



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DRAWING TITLE  
**LIGHT POST ELEVATION**  
PROJECT DETAILS  
BIKE PATH UPGRADE & AFL FIELD LIGHTING FOR JLL  
Kully Bay Park, Northcliff Drive, Warrawong, NSW 2502



1:200

DATE OF ISSUE 26/8/21	PRINT SIZE A3 LANDSCAPE	PROJECT STATUS FOR APPROVAL
PROJECT NUMBER <b>21030</b>	DRAWING NUMBER <b>A07</b>	REVISION STATUS <b>A2</b>
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	6,000	8,000
		10,000



# Clause 4.6 Variation

## Height of Buildings

### Provision of New Lighting to Oval and Maintenance of Existing Cycleways

#### Kully Bay Recreation Area Northcliffe Drive and King Street WARRAWONG

Lot 1	DP 536405
Lot 1	DP 654264
Lot 1	DP 1007487
Lots 1, 2 & 3	DP 1154074
Lot 2	DP 558943
Lots 4 & 5	DP 215273
Lots 4, 5, 6 & 7	DP 241845
Lot 8	DP 218305
Lots 21 & 22	DP 1031766

Prepared by NSW Town Planning  
May 2021  
Ref | Clause 4.6 Height Variation.docx

**Document Control Table**

<b>Document Reference:</b>	Clause 4.6 Height Variation.docx	
<b>Date</b>	<b>Version</b>	<b>Author</b>
31 May 2021	1	N. Murray

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## 1. Introduction

This variation request is made pursuant to Clause 4.6 *Wollongong Local Environmental Plan 2009* and has been prepared in relation to the proposed height of light poles to be erected for the existing AFL oval that forms part of the Kully Bay Recreation Area located along the northern and eastern foreshore of Griffins Bay, bound by Northcliffe Drive and King Street, Warrawong.

Clause 4.6 exists to provide a degree of flexibility to the consent authority in determining whether a variation to a development standard contained within the LEP should be supported.

The objectives of Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3) provides for consent to be granted for development even though the development would contravene a development standard where it is demonstrated:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

And under subclause (4), where:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

In deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

This Objection demonstrates why strict compliance with the development standard for height of buildings is both unreasonable and unnecessary in creating an appropriate outcome for the subject development.

This statement has been prepared in accordance with the '*Department of Planning & Environment's Guideline for Varying Development Standards: A Guide*' (August 2011) and '*Planning Circular PS-18-003: Variations to development standards*' (Issued 21 February 2018), and has ensured consistency with the relevant principles identified in the following Land and Environment Court judgements:

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827 ('Wehbe')
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')



## Clause 4.6 Variation – Height of Buildings

*Provision of New Lighting to Oval and Maintenance of Existing Cycleways* | Kully Bay Recreation Area – Northcliffe Drive and King Street, Warrawong

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4. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
5. Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')
6. Moskovich v Waverley Council [2016] NSWLEC 1015
7. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ('Initial Action')

Chief Justice Preston in *Initial Action* outlined that Clause 4.6(4) establishes the preconditions that a Consent Authority must be satisfied before it can grant a variation to a development standard. This statement has sought to address those preconditions which have been listed below:

1. *(a) addresses why compliance with the development standard is unreasonable or unnecessary in the circumstances; and*
2. *(b) provides sufficient environmental planning grounds to justify contravening the development standard; and*
3. *(c) identifies that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone.*

It is relevant to note that Initial Action also establishes that:

- *in determining whether compliance with the development standard is unreasonable or unnecessary, the consent authority needs to ask itself if the applicants written submission has adequately addressed this matter, not that they themselves considers the compliance unreasonable or unnecessary.*
- *clause 4.6 does not directly or indirectly establish that a neutral or beneficial effect be realised by the proposal variation.*
- *clause 4.6(3)(b) required that there be "sufficient environmental planning grounds to justify contravening the development standard" and the words "better environmental outcome" came from the objectives of clause 4.6. as there is no provision to require compliance with those objectives, the belief that the outcome be a better outcome both for and by development is not a relevant matter for consideration.*

More recently, the Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect (EIE) on the proposed amendments to clause 4.6 of the Standard Instrument LEP from the 31 March until 12 May 2021.

The proposed revised clause 4.6 will ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The proposed revised clause 4.6 gives weight to the relevant planning objectives that have been developed by councils in consultation with communities and ensures variations are considered in that context.

Under the proposed revised clause 4.6, the consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria in order to vary a development standard:

- the proposed development is consistent with the objectives of the relevant development standard and land use zone; **and**
- the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes.

If appropriate, an alternative test may be developed to enable flexibility to be applied in situations where the variation is so minor that it is difficult to demonstrate an improved planning outcome, but the proposed variation is appropriate due to the particular circumstances of the site and the proposal.

The proposed development relies on a clause 4.6 variation in respect of the height of buildings development standard given the light poles are intended to be 26m whereas the maximum building height under WLEP 2009 is 9m. The proposed development would appear to be consistent with the revised clause 4.6 test as well as the 'alternative' test as outlined in the EIE.

## Clause 4.6 Variation – Height of Buildings

*Provision of New Lighting to Oval and Maintenance of Existing Cycleways* | Kully Bay Recreation Area – Northcliffe Drive and King Street, Warrawong

## 2. Development Standard to Which this Variation Applies

This Clause 4.6 Variation applies to Clause 4.3(2) of *Wollongong Local Environmental Plan 2009* which sets a maximum height of buildings controls for land as indicated on the Height of Buildings Map.

For the purposes of this application, the relevant map sheet is Sheet 027, which prescribed a maximum height of buildings for the portion of the Site that is occupied by the AFL oval of 9m (extract reproduced as **Figure 1**).

It is noted that other parts of the land that are subject to the development application have a maximum building height of 20m (the portion of the land zoned SP3 Tourist); however, no works which exceed the height limits of WLEP 2009 are located on those parts of the Site.

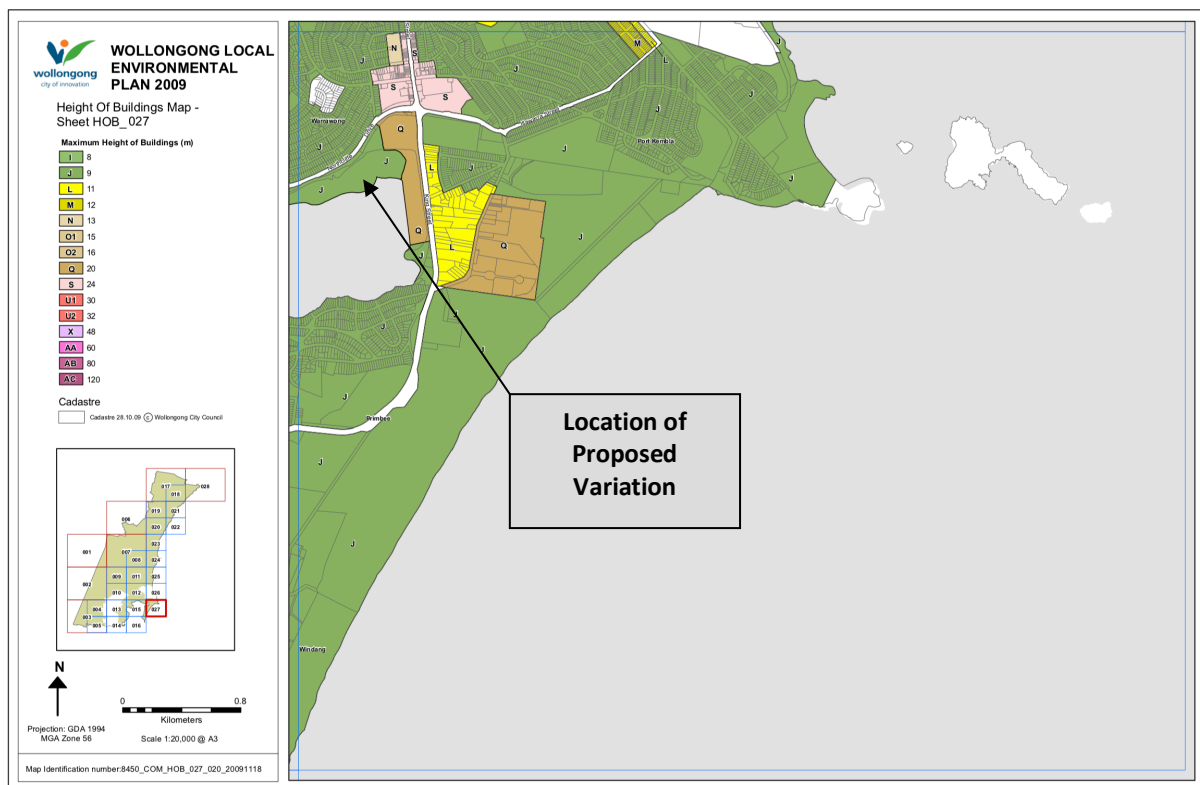


Figure 1. Wollongong Local Environmental Plan 2009 Height of Buildings Map (Source: Wollongong City Council, 2009)

## 3. Variation to the Standard

The proposal departs from the development standard as it seeks approval for the installation of two (2) new light poles for the oval, each at a height of 26m.

## **4. Objectives of the Standard**

The objectives for the height of buildings control under *Wollongong Local Environmental Plan 2009* are:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

The proposal is consistent with the objectives as:

1. there is no related floor space for these structures that any height control is seeking to limit or achieve;
2. the proposal relates to light poles with simplistic urban design that do not result in any impacts on streetscape, setbacks, or other significant design considerations that would otherwise be relevant to a building that has a bulk and scale impact and high visual presence; and
3. the slim nature of the poles, significant setbacks from the property boundaries and other properties results in no impact on views of the sky and/or sunlight.

## **5. Objectives of the Zone**

The Site is zoned RE1 Public Recreation under *Wollongong Local Environmental Plan 2009*. The objectives of Zone RE1 are:

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

The proposal is consistent with the zone objectives in that it does not change the use of the site but provides a key element in support of the use of the oval for AFL activities and other uses requiring lighting, for the benefit of the community, without any environmental impact.

It is noted that other parts of the development site have additional zones; however, the clause 4.6 variation and lighting to which it relates are only located within the RE1 zone.

## **6. Whether the Development Standard is Unreasonable or Unnecessary**

As outlined earlier in this statement, Initial Action Preston CJ establishes that in assessing whether compliance with a development standard is unreasonable or unnecessary, the consent authority needs to specifically assess if the applicants written submission has adequately addressed this matter, not that they themselves consider the compliance unreasonable or unnecessary.

*Wehbe* asserts that compliance with a development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- *“the objectives of the development standard are achieved notwithstanding non- compliance with the standard*
- *the underlying objective or purpose is not relevant to the development*
- *the underlying objective or purpose would be thwarted if compliance with the standard was required*

#### Clause 4.6 Variation – Height of Buildings

*Provision of New Lighting to Oval and Maintenance of Existing Cycleways* | Kully Bay Recreation Area – Northcliffe Drive and King Street, Warrawong

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- *the development standard has been virtually abandoned or destroyed by the Council's decisions in granting development consents that depart from the standard*
- *the Zoning of the land is unreasonable or inappropriate (though this limb is limited) some other way".*

As outlined above, the proposal clearly satisfies the objectives of the height of buildings control provisions. It is submitted that the height of buildings control does not contemplate development of this nature but nevertheless captures such proposals. The clear outcome of the zone is to achieve recreation areas on the land. To restrict lighting of these facilities in manner that is standard practice would be incongruous.

The development does not involve any building work that enlarges any habitable or non-habitable part of building that is capable of being occupied or otherwise entered by any person. It is noted that the oval to which these light poles relate already have two (2) light poles at the same height. The proposed lighting completed the otherwise one-sided illumination of the playing surface.

It is clear from the objectives of the development standard that the intention of the control is to prevent outcomes that affect solar access/sunlight, views of the sky, and to manage overall built form scale and design. These matters are not affected by the proposed light poles.

This clause 4.6 variation relates only to lighting poles but is caught by the definition of 'building' under the *Environmental Planning and Assessment Act 1979* given they can be considered a 'structure'. Relevantly, the definition of 'building' is reproduced as follows:

**building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the *Local Government Act 1993*.

## 7. Environmental Planning Grounds to Justify Contravening the Development Standard

Initial Action lays out a framework to demonstrate that there are 'sufficient' environmental planning grounds to justify contravening the development standard as:

- *"environmental planning grounds" by their nature, being grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (including section 1.3 of the EPA Act); and*
- *"sufficient" in that they are adequate to:*
  - *justify contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.*
  - *demonstrate that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter.*

The variation to the building height development standard is considered justified in this instance as the light poles cannot operationally be positioned at any lower level.

The height is linked to the size and use of the area to be illuminated. At lower heights, the lighting emitted would be directed at a shallower angle into the faces/eyes of users of the field rather than the downward orientation required to illuminate beyond the required area of the playing surface. The orientation of lighting downwards onto the field also minimises the casting of lengthy shadows similar to the sun sitting higher in the sky at different times of the day.

#### **Clause 4.6 Variation – Height of Buildings**

*Provision of New Lighting to Oval and Maintenance of Existing Cycleways* | Kully Bay Recreation Area – Northcliffe Drive and King Street, Warrawong

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The field is used for AFL (home ground of the Kully Bay/Port Kembla Australia Football Club) which involves the ball being elevated to a high degree during gameplay. The light must capture this style of play not just for the ability to see the ball, but for safety of the players not having light in their eyes from a lower positioned source of light.

The height of the proposed two (2) light poles in the subject application also match the height of the existing two (2) light poles that face the oval from the north, and positioned near Northcliffe Drive. If there are poles at different heights the illumination simply won't work as there will be two different sources/heights illuminating the field at the one time. This creates multiple shadow effects and a need to adjust to light intensities and angle of viewing whenever any user of the field faces into a different direction.

An analysis of glare and obtrusiveness of the proposed lighting from the poles at 26m in height has been undertaken to ensure it is compliant with AS 4282:2019 *Outdoor Lighting Obtrusive Effects*. The design passes these requirements and indicates that no amenity or nuisance outcome will occur from the intended height of the lighting.

In addition the following general planning grounds are provided:

- the variation will have no greater impact than the 26m light poles already on the Site, given the large scale size of the site, position of the light poles away from the street and public domain;
- the variation to the standard exists as a the lght poles being captured by the broad definition of a 'building' despite not having any floor area, habitable or even non-habitable spaces, with no bulk and scale impacts to occur;
- the objectives of the height of buildings standard as well as the RE1 zone are achieved;
- no adverse impact that the development standard seeks to avoid is created by the development;
- the other planning controls anticipate the use of this part of the Site for recreation, and specifically a sportsground as outlined in the Griffins Bay Precinct Plan, and include provisions to encourage such uses where they do not result in an adverse amenity outcome. The light poles are an essential element of contemporary sportsgrounds that benefit the community including the AFL Club which uses this ground as a home ground;
- no impact on the environmental qualities of the Site are created by the variation as outlined in an Ecological Statement prepared for the works by Lesryk Environmental Pty Ltd (26 May 2021);
- it is emphasised that *Initial Action* confirms that there is no requirement to demonstrates a neutral or beneficial outcome; however, this outcome is achieved nonetheless; and
- All other controls that apply to the development are satisfied by the proposal.

## **8. The Public Interest**

The proposal variation is not inconsistent with the public interest as the overarching intent of the recreation zone and the height of buildings development standard will be achieved.

The development will not establish any precedent for any development to exceed the height of buildings control given that the outcome would be a unique outcome for this specific set of circumstances.

No discernible changes will be experienced by the public given the existing height poles positioned closer to the road and adjoining properties to the north already exists.

## **9. Other Matters of State or Regional Significance**

No other matters of relevance apply to preclude the variation from being granted.

## **10. Conclusion**

It is considered that the proposed variation to the height of buildings development standard has satisfied the criteria established under Clause 4.6 of *Wollongong Local Environmental Plan 2009*.

Strict compliance with the height of buildings control under Clause 4.3(2) of that instrument is neither reasonable nor necessary to achieve the intended outcomes.

There are sufficient environmental planning grounds to justify contravening the development standard.

No unreasonable environmental impacts are introduced as a result of the proposal.

There is no public or material benefit in maintaining strict compliance with the standard.

It is requested that favourable consideration to the variation is provided.

## **Attachment 5 – WDCP 2009 Assessment**

### **CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development.

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

#### Warrawong

The proposal is considered to be consistent with the existing and desired future character for the locality. The development promotes active and passive recreational use for residents and tourists of the existing Kully Bay Recreation Area.

### **CHAPTER D5 – GRIFFINS BAY**

The site is located within the Griffins Bay Precinct Plan. It is noted that some information contained within this DCP chapter is outdated. For example, Griffins Bay is now known as Kully Bay. Frequent references to the Lake Illawarra Authority, which is now defunct, are no longer of relevance.

Specific controls for flood lighting are not provided. Additionally, the controls largely relate to new development; whereas this application is for the maintenance of an existing cycleway with like for like paving replacement that does not extend the cycleway network.

Notwithstanding these limitations, the flood lights will be located within an area identified as being suitable for a sports playing field. In this regard, the addition of the two new flood lights will enhance the recreational use of the AFL oval.

It is considered that the proposed development satisfies the overall objectives and planning controls of the Chapter as the works will improve public access, safety and use of the recreation area.

### **CHAPTER E6: LANDSCAPING**

The proposal relates to an existing park with established landscaping. The majority of the works relate to cycleway maintenance where vegetation removal is limited to the pavement surface. No tree removal is required for the development. It is considered that an amended landscape plan not required for this minor development.

### **CHAPTER E17 PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION**

No tree removal is required for the development.

### **CHAPTER E18 THREATENED SPECIES**

The Green and Golden Bell Frog is a threatened species that has been recorded in close proximity to the Kully Bay Recreation Area, with the closest site near the intersection of Kemblawarra Road and King Street.

The proposal was accompanied with an Ecological Statement, prepared by Lesryk Environmental Pty Ltd, dated 31 May 2021, that included a fauna survey of the AFL oval and surrounds. No Green and Golden Bell Frogs were recorded.

In these circumstances, standard conditions for Green and Golden Bell Frog management are recommended.

### **CHAPTER E23 RIPARIAN LAND MANAGEMENT**

The site contains category 3 riparian corridors where minor maintenance works for the existing cycleway will be undertaken within 10 metres of the watercourse. These works are not considered to contribute to significant sedimentation or have an adverse impact upon bank stability, water quality or native vegetation. Vegetation removal is restricted to the pavement surface. The proposal was reviewed by Council's Environment Officer who held no concerns regarding impacts upon riparian land as a result of the development.





## **Attachment 6: Draft Conditions of Consent for DA-2021/651**

### **Approved Plans and Specifications**

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Project No 20130 Drawing A02-A3, A03-A2, A04-02, A05-03 and A06-A3 dated 31 May 2021 and A07-A2 dated 26 August 2021 prepared by Lead Architects and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

### **General Matters**

#### **2 Building Work - Compliance with the Building Code of Australia**

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

- 3 The Principal Certifier must ensure the person having the benefit of the Development Consent has complied with section 6.28 (2) of the Environmental Planning and Assessment Act 1979.

#### **4 Light Installation and their Illumination**

- a The proposed sports lighting system shall be installed as per AS 2560. 2.3:2007 – Sports Lighting and shall comply with “control obtrusive lighting” as per AS 4282.
- b Prior to the use/operation of the sports lighting a copy of “Certificate of Compliance” prepared by the suitable qualified contractor shall be submitted to the Council.
- c If Council receives light intrusion complaints from the local residents, then Council will direct to be undertaken suitable modification to the lighting system and may also restrict the use of lighting system on the sports field.

### **Prior to the to the Commencement of Works**

#### **5 Present Plans to Sydney Water**

Approved plans must be submitted online using Sydney Water Tap, available through [www.sydneywater.com.au](http://www.sydneywater.com.au) to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Principal Certifier must ensure that Sydney Water has issued an approval receipt prior to the commencement of works.

Visit [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for further information.

- 6 The depth and location of all services (ie gas, water, sewer, electricity, telephone, traffic lights, etc) must be ascertained and reflected on the supporting documentation.

#### **7 Appointment of Principal Certifier**

Prior to commencement of work, the person having the benefit of the Development Consent must:

- a Appoint a Principal Certifier and notify Council in writing of the appointment irrespective of whether Council or a Registered Certifier is appointed; and
- b notify Council in writing of their intention to commence work (at least two days notice is required).

The Principal Certifier must determine when inspections and compliance certificates are required.

**8 Acid Sulfate Soils Management Strategy**

An Acid Sulfate Soils Management strategy (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifier, prior to the commencement of works. This strategy is required to recommend specific procedures and mitigation measures and shall include a site analysis from a NATA registered laboratory. This strategy shall address the following aspects:

- a Specific mitigative measures to minimise the disturbance of acid sulfate soils as well as measures relating to acid generation and acid neutralisation of the soil;
- b Management of the excavated material;
- c Measures taken to neutralise the acidity; and
- d Run-off control measures.

The recommendations of the strategy shall be completed, prior to the commencement of concrete footing works.

**9 Flood Level Requirements**

The following requirements shall be submitted to the Principal Certifier for approval, prior to the commencement of works:

- a Any portion of the building or structure below RL 3.13 metres AHD should be built from flood compatible materials. Where materials are proposed and not listed in Appendix B of Chapter E13 of the Wollongong DCP 2009, relevant documentation from the manufacturer shall be provided demonstrating that the materials satisfy the definition of 'flood compatible materials' as stated in Chapter E13 of the Wollongong DCP 2009.

**10 Site Filling**

Filling on the site being within the floodplain shall be restricted to within the proposed building footprint and ramped areas immediately adjacent to the garage only. No wholesale filling of the site within the floodplain is permitted.

**11 Sign – Supervisor Contact Details**

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;
- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

**12 Temporary Toilet/Closet Facilities**

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- a a standard flushing toilet; and
- b connected to either:
  - i the Sydney Water Corporation Ltd sewerage system or
  - ii an accredited sewage management facility or
  - iii an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

**13 Structural Engineer's Details**

Structural engineer's details for all structurally designed building works such as reinforced concrete footings, reinforced concrete slabs and structural steelwork must be submitted to the Principal Certifier, prior to the commencement of any works on the site.

**14 Temporary Sediment Fences**

Temporary sediment fences (eg haybales or geotextile fabric) must be installed on the site, prior to the commencement of any excavation, demolition or construction works in accordance with Council's guidelines. Upon completion of the development, sediment fencing is to remain until the site is grassed or alternatively, a two (2) metre strip of turf is provided along the perimeter of the site, particularly lower boundary areas.

**15 Tree Protection**

Prior to commencement of any work on the site, including any demolition, all trees not approved for removal as part of this consent that may be subjected to impacts of this approved development must be protected in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970:2009).

Tree protection zones must be established prior to the commencement of any work associated with this approved development.

No excavation, construction activity, grade changes, storage of materials stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones.

**16 Works in Road Reserve - Minor Works**

Approval, under Section 138 of the Roads Act must be obtained from Wollongong City Council's Development Engineering Team prior to any works commencing or any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of this development.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council's website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all

applications are submitted and fees paid, five (5) days prior to the works within the road reserve are intended to commence. The Applicant is responsible for the restoration of all Council assets within the road reserve which are impacted by the works/occupation. Restoration must be in accordance with the following requirements:

- a All restorations are at the cost of the Applicant and must be undertaken in accordance with Council's standard document, "Specification for work within Council's Road reserve".
- b Any existing damage within the immediate work area or caused as a result of the work/occupation, must also be restored with the final works.

#### 17 **Road Occupancy Licence (ROL) from Transport for NSW (TfNSW)**

Prior to any works commencing from the road reserve of Northcliffe Drive or King Street, the applicant shall obtain a ROL from TfNSW in conjunction with Council's permit under Section 138 of the Roads Act 1993.

The developer shall apply for a ROL from TfNSW Traffic Operations Unit (TOU) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified to prepare Traffic Control Plans. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TOU. Please allow two (2) weeks prior to commencement of work to process the ROL.

Note: An approved ROL does not constitute an approval to commence works until an authorisation letter for the works has been issued by the TfNSW Project Manager.

#### **During Demolition, Excavation or Construction**

#### 18 **Restricted Hours of Construction Work**

The developer must not carry out any work, other than emergency procedures, to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Saturday, without the prior written consent of the Principal Certifier and Council. No work is permitted on public holidays or Sundays.

Allowable construction activity noise levels must be within the limits identified in the NSW EPA Interim Construction Noise Guidelines (ICNG) July 2009. ICNG are also applied for blasting, rock hammer and drilling, external plant and equipment.

<https://www.environment.nsw.gov.au/resources/noise/09265cng.pdf>

Any request to vary these hours shall be submitted to the **Council** in writing detailing:

- a the variation in hours required (length of duration);
- b the reason for that variation (scope of works);
- c the type of work and machinery to be used;
- d method of neighbour notification;
- e supervisor contact number;
- f any proposed measures required to mitigate the impacts of the works.

Note: The developer is advised that other legislation may control the activities for which Council has granted consent, including but not limited to, the Protection of the Environment Operations Act 1997.

**19 Provision of Waste Receptacle**

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.

**20 Flood Compatible Materials – Electrical**

All power service (metering) equipment, power outlets, switches etc. shall be located above RL 3.13 metres AHD. All electrical wiring installed below this level should be suitable for continuous underwater immersion and should contain no fibrous components. Earth leakage circuit breakers shall also be installed. Any equipment installed below or partially below RL 3.13 metres AHD should be capable of disconnection by a single plug and socket assembly.

**21 Open Excavations - Green and Golden Bell Frogs**

Where excavations/trenches are left open during the night, then they shall be closely inspected by the site supervisor for green and golden bell frogs prior to work starting on the proceeding day.

**Note:** The “Have you seen a green and golden bell frog?” brochure produced by the NSW Department of Environment and Climate Change (2008) is available from [www.environment.nsw.gov.au/resources/threatenedspecies/ggbfbro08326.pdf](http://www.environment.nsw.gov.au/resources/threatenedspecies/ggbfbro08326.pdf), <http://www.environment.nsw.gov.au/publications/pubs2008.htm> (look under July), or by telephoning 131 555.

**22 Stop Work - Green and Golden Bell Frogs**

If green and golden bell frogs are found at any time during the demolition, excavation or construction phases of the development, work shall cease immediately and the Wollongong Office of Environment and Heritage shall be contacted (telephone 4224 4156).

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

**23 Hours of Operation for Sports Field Lighting**

Use of sports lighting system is only to occur Monday to Friday during the months March to September to align with the AFL season. No use of the lighting system is permitted to occur after 8pm on any day during this period.