

CLAUSE 4.6

Height of Building

**Cromer High School,
120 South Creek Road,
Cromer**

RESPONSIBLE FOR THIS REPORT:

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1 Clause 4.6 exception for Height of Building

1.1 Overview

Clause 4.6 of the Warringah LEP 2011 is applicable to the proposal and provides a mechanism for an exception to a development standard. The proposal contravenes LEP Clause 4.3 height of buildings which prescribes an 11m standard and an exception is sought.

The exception relates to the height of the four proposed lighting structures. They are each approximately 18.5m in height as illustrated within Figure A and as described below:

- The pole (main lighting structure) is 18m from the ground level to the top.
- The cross arm (horizontal bar) is at 18m (at the top of the pole). The lamps are mounted to the cross arm and are approx. 500mm above the cross arm.

Therefore, the total height of the proposed lighting is 18.5m above ground level.

The proposed lighting structures exceed the standard by up to approximately 7.5m above the ground level (existing) and represents a 68% exception to the height of buildings standard.

It is noted that the lightening antenna is 1.2m above the pole height, however, as per the definition of building height, antenna is excluded from the calculation.

Figures A and B below illustrate the nature and extent of the proposed building height and the proposed locations of the structures on the land.

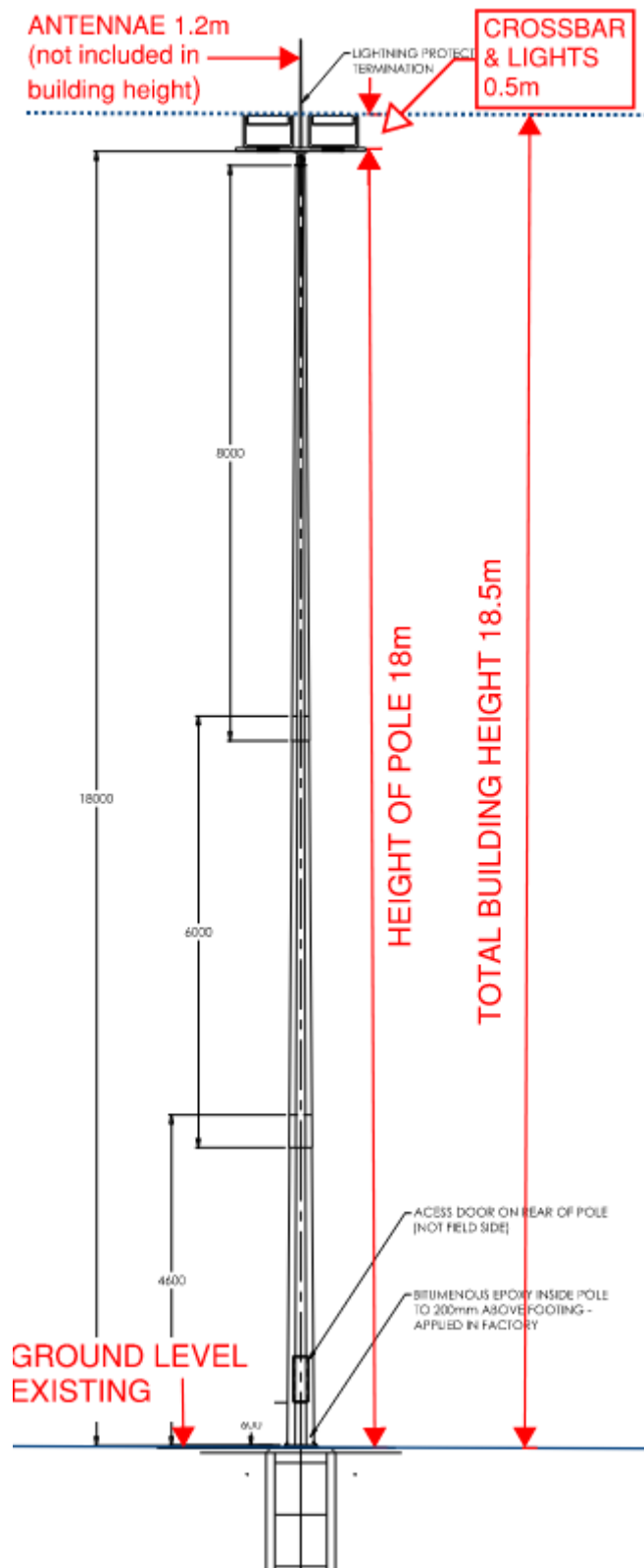


Figure A – elevation of the proposed lighting structure

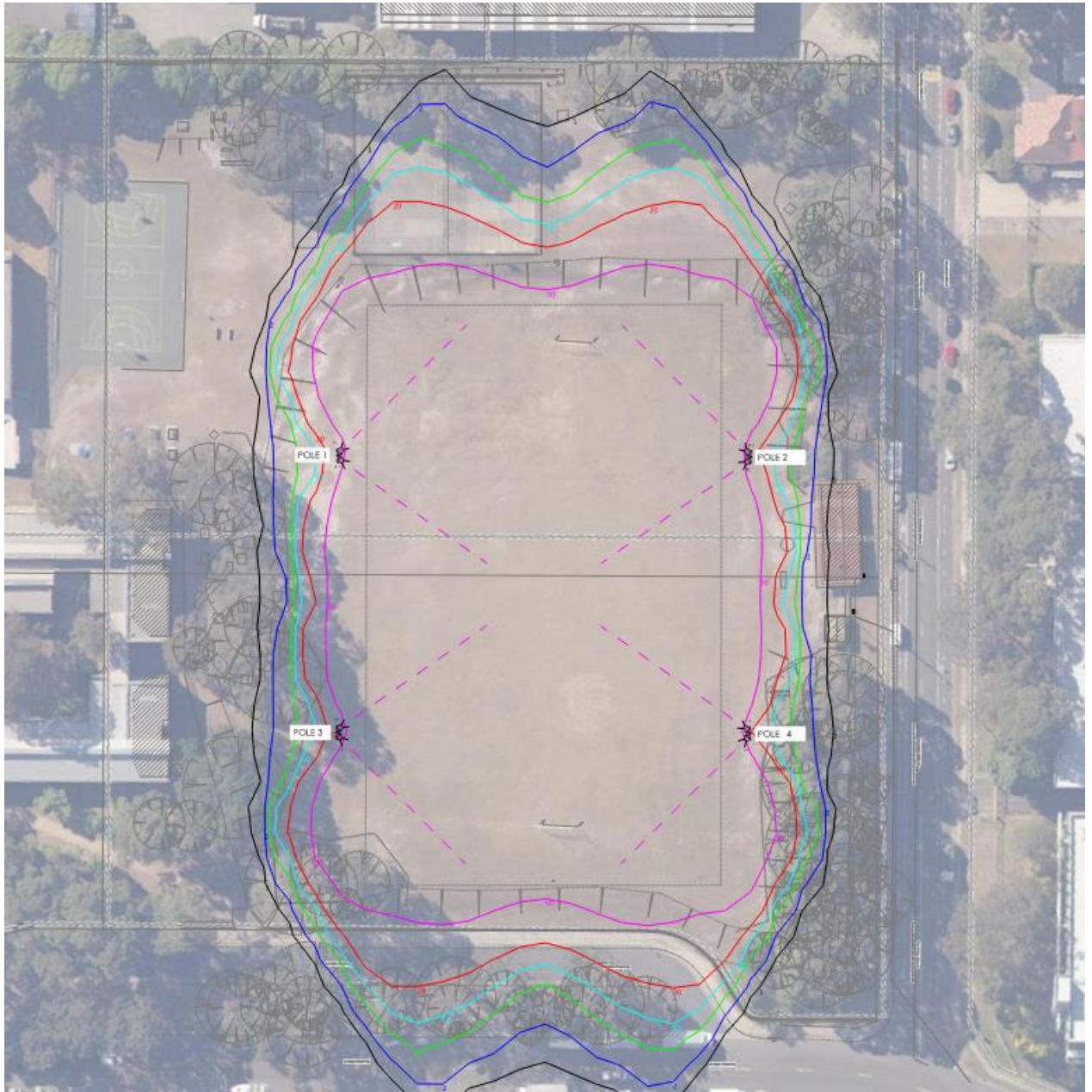


Figure B – locations of the proposed lighting structures

2 Site Analysis

2.1 Site and location description

The site is commonly known as Cromer High School and is located at 120 South Creek Road, Cromer and legally described as Lots 624 and 626 in Deposited Plan 752038.

The site has a long-established function as a secondary school and incorporates various school buildings, recreational areas, bus bays car parking areas, and the subject sportsfield.

The school campus is bounded by 4 streets including South Creek Road and Alvins Road (to the south), Inman Road (to the east), South Creek Road and Thew Parade to the west.

The subject land (comprising the sportsfield within the school) is located on the northern side of South Creek Road and Alvins Road, bounded by Inman Road to the east with pedestrian entry to the sportsfield via Inman Road. It has an approximate area of 1.2 ha (Six Maps). Pedestrian access is also obtained, via various access points from the surrounding open school property.

The property is located within an established industrial precinct and adjoins the public open space corridor of land to the south of the site, which contains Cromer Park soccer fields, and that links to Dee Why Park and Lagoon which is located approximately 850m to the south east.

The property contains an existing sportsfield and amenities building, the amenities building is currently in a state of disrepair. The perimeter of the property is fenced.

The sportsfield has a boundary interface to Inman Road of approximately 160m, Alvins Road of approximately 90m and South Creek Road of approximately 50m.

Large mature canopy trees are a feature of the perimeter of the site. They are contained within the property and the adjoining streets. They visually screen the site and add to the amenity of the location. The proposal will not impact on any established trees as further addressed within Section 4 of this report.

Figures below depict the character of the property, the location, and its development context.



Figure 1 – Location of the site within its wider context (courtesy Google Maps)



Figure 2 – the site, its context, and the adjoining roadways



Figure 3 – Alvins Road adjoins the southern side of the sportsfield. It functions as a Bus pick-up and set-down area during regular school days and provides a source of car parking for the field after hours



Figure 4 – Alvins Road landscape character to the south of the site looking west



Figure 5 – existing land and streetscape character as viewed from Alvins Road looking north



Figure 6– existing treed character of the site looking south west from opposite side of Inman Road



Figure 7 – existing amenities building looking south on Inman Road



Figure 8 – existing treed streetscape character of the site looking north east on Inman Road



Figure 9 – existing built form character of the site to the east comprising the historical ‘Roche Site’ that is under redevelopment



Figure 10 – similar sportsfield lighting within Cromer Park is visible from the adjacent roadways on land to the south



Figure 11 – similar sportsfield lighting within Cromer Park to the south is visible from the subject site



Figure 12 – Stands of large mature canopy trees are a feature of the location and visually screen the site and the proposed lighting structures from various vantage points.

3 Key statutory considerations

3.1.1 Objectives of clause 4.6

The objectives of clause 4.6 are as follows:

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

3.1.2 Objectives of Clause 4.3 Height of Building

The objectives of Clause 4.3 Height of Building are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

3.1.3 Key definitions

'ground level (existing) means the existing level of a site at any point'.

'building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like'.

3.1.4 Objectives of the SP2 Infrastructure Zone

The objectives of the SP2 Infrastructure zone are:

'To provide for infrastructure and related uses.

To prevent development that is not compatible with or that may detract from the provision of infrastructure'.

4 Assessment

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

4.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1st *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.

The objectives of the height standard are addressed within section 3.4.1 below. In summary, the proposed height exception does not threaten the proposal's ability:

- to achieve a height and scale that is compatible with the surrounding and nearby development which includes similar sportsfield lighting on the Cromer Park playing fields directly to the south and mix of industrial and infrastructure related buildings.
- to achieve development that is compatible with its setting including the built form and treed character on the site to the benefit of the sportsfield users.
- to achieve a development that is compatible with the scenic character of the land and the local area including the adjoining roadways, industrial development and nearby public land to the south zoned RE1 Public Recreation.
- to achieve a presentation that is not visually intrusive, that does not result in inappropriate view disruption, and satisfies privacy, and solar access controls.

4.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

The environmental planning grounds in support of the exception are summarised as follows and described in further detail below.

- Ground 1 – Slimline, utilitarian structures that are compatible with surrounding industrial and sportsfield land.
- Ground 2 – Large, visually dominant, mature canopy trees screen the proposed structures.
- Ground 3 – Public benefit through increased utilisation of existing infrastructure
- Ground 4 – State Environmental Planning Policy (Transport and Infrastructure) 2021 - Chapter 3 'Educational establishments and child care facilities' permits structures up to 20m high under complying development which the proposal complies with.
- Ground 5 - No adverse amenity impacts relating to the proposed building height exception.
- Ground 6 – the proposal is of good design and satisfies the objectives of the Environmental Planning and Assessment Act

4.2.1 *Ground 1 – Slimline, utilitarian structures that are compatible with surrounding industrial and sportsfield setting*

The proposed lighting involves slimline structures with a utilitarian function, compatible with the visual character of the structures within the location.

The proposed lighting structures are characteristic within the site's context noting the industrial zoning of the land to the east, west and north, along with the sportsfields to the south, which already contain similar lighting structures.

4.2.2 *Ground 2 – Large, visually dominant, mature canopy trees screen the proposed structures*

Large mature canopy trees are a feature of the site and the location. They visually screen the site and the 4 proposed lighting structures from various vantage points. They have the effect of limiting the visual catchment of the proposed lighting structures.

The large mature canopy trees are visually dominant. The vegetated and treed edge to the site and its interface with the 3 adjacent streets will limit, and visually filter, the views of the proposed lighting structures from adjoining and nearby land

4.2.3 *Ground 3 - Public benefit through increased utilisation of existing infrastructure*

The proposed lighting will enable the land to be used for sporting purposes for an extended period of time after daylight hours up until 10pm.

The proposed lighting structures will add to the utility of the sportsfield, that is currently underutilised, by extending its hours of use, for which there is established community need, resulting in community benefits. In these ways the proposed lighting structures will optimise use of existing infrastructure.

4.2.4 Ground 4 – State Environmental Planning Policy (Transport and Infrastructure) 2021 permits structures up to 20m high on the land under complying development which the proposal complies with

Under LEP Clause 4.3 Height of Buildings there is an 11m height limit applicable to the land. The application is made under Part 4 of the Act and the LEP; an exception to the development standard is required.

It is noted that State Environmental Planning Policy (Transport and Infrastructure) 2021 permits structures up to 22m high under complying development (Schedule 6, Chapter 3 - Section 2). The policy is an important planning instrument relating to the land under which future development may (and is likely) to be assessed. It therefore bears consideration in terms of the potential future built form character and the height of buildings upon the site. The proposed structures being 18.5 metres building height are under 20 metres.

4.2.5 Ground 5 - Appropriate amenity outcomes are achieved

Appropriate amenity outcomes are achieved noting that the proposed building height exception:

- results in appropriate shading impact.
- does not result in inappropriate view sharing impacts.
- results in appropriate visual presentation to surrounding land.
- does not result in inappropriate privacy impacts.

4.2.6 Ground 6 – The proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

(c) to promote the orderly and economic use and development of land; and

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will optimise use of existing infrastructure.

The proposed lighting structures will add to the utility of the sportsfield, that is currently underutilised, by extending its hours of use, for which there is established community need,

resulting in community benefits. In these ways the proposed lighting structures will promote the orderly and economic use and development of land.

In response to (g), the proposal results in a development that will promote good design and amenity of the built environment.

The proposed development will not detract from the site's landscaped setting including the large established canopy trees that are located near the perimeter of the subject site.

The proposed development will not inappropriately detract from the site's established streetscape alignment and treed interface with adjoining land.

4.3 4.6 (4)(a)(ii) - the public interest

4.3.1 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings development standard which are repeated and responded to below:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

In response:

The objective seeks for the height and scale of the proposal to respond to its context, by *being compatible with surrounding and nearby development*, which in this case, comprises a mix of buildings and structures (including lighting structures on the adjacent Cromer Park sportsfields (figures 2, 9, 10 and 11), rather than just adhere to the numerical standard, which typically, does not relate to the specific heights of buildings in a location.

The property is located within an established industrial precinct and adjoins the public open space corridor of land to the south of the site, which contains Cromer Park soccer fields, and that links to Dee Why Park and Lagoon which is located approximately 850m to the south east.

The proposed lighting structures are characteristic within the site's local context. The proposal achieves a form and scale on the site that is harmonious with development within the local area noting that there is a mix of building types, of various heights, forms, and purposes, noting:

- Similar lighting structures on the adjoining land to the south.
- Generous boundary setbacks are proposed, and the majority of these areas are densely treed.
- The treed landscaped setting of the site is maintained.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Relevant to *visual impact*, Objective (b) of the building height development standard states:

'(b) to minimise ... visual impact'

In response:

- The proposed lighting structures are tall and narrow. Due to their 'slim-line' form, they will not be visually intrusive when viewed from adjoining land.
- The vegetated treed edge to the site and its interface with the 3 adjacent streets limits the visual catchment of the proposed lighting structures and 'filters' the views of the structures from adjoining and nearby land. The trees are of greater visual scale and density than the proposed structures and will visually screen the proposed lighting structures from various vantage points
- The proposed lighting structures are characteristic within the site's context and their height and form will not be inappropriate.

- The number of viewing locations from which the structures can be seen is limited. From where they can be seen, they present as a 'slim-line' and recessive building form that will not be visually intrusive from these locations. Furthermore, they will be compatible with buildings and structures within the zone and local area.

Relevant to view sharing, Objective (b) of the building height development standard states:

'(b) to minimise ... disruption of views'

In response:

- Water views are not available from nearby properties.
- The proposed building height exception does not result in the disruption of views.
- The proposed height exception will not result in inappropriate view impacts and therefore the proposal will minimise the disruption of view.

Relevant to privacy, Objective (b) of the building height development standard states:

'(b) to minimise ... loss of privacy'

In response:

The proposed lighting structures will not incur adverse privacy impacts on adjoining or nearby properties. Therefore, the proposed height exception will minimise the loss of privacy.

Relevant to overshadowing, Objective (b) states:

'(b) to minimise ... loss of solar access'

In response:

Shading controls do not apply to land within the following zones relevant to the application/site:

- Industrial
- Public Recreation
- Special infrastructure

The proposed lighting structures are tall and narrow. Due to their 'slim-line' form, they will not cast significant or excessive shadows. Furthermore, they are proposed to be located with significant and sufficient separation to nearby residentially zoned land to avoid any inappropriate adverse shading impacts.

The proposed lighting structures will not incur inappropriate shading impacts on adjoining or nearby properties. Therefore, the proposed height exception will minimise the loss of solar access.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposal is assessed as being consistent with objective (c) noting that:

- Large mature canopy trees are a feature of the site and the location. They visually screen the site and the 4 proposed lighting structures from various vantage points. They have the effect of limiting the visual catchment of the proposed lighting structures. They are of greater visual scale than the proposed structures.
- The vegetated and treed edge to the site and its interface with the 3 adjacent streets limits the visual catchment of the proposed lighting structures and 'filters' the views of the structures from adjoining and nearby land.
- The proposed structures are not adjacent to or nearby sensitive bushland or coastal land. Therefore, they will minimise the adverse impact on the scenic quality of these land features.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposal is assessed as being consistent with objective (d) noting that:

- The proposed lighting structures are tall and narrow. They are proposed to be located with significant (and sufficient) separation to nearby residentially zoned land.
- The proposed lighting structures will not be visually obtrusive or jarring, noting:
 - The proposed lighting structures are characteristic within the site's context noting the industrial zoning of the land to the east, west and north, along with the sportsfields to the south, which already contain similar lighting structures.
 - Large mature canopy trees are a feature of the perimeter of the site. They are contained within the property and the adjoining streets. They visually screen the site and add to the amenity of the location. The proposal will not impact on any established trees as further addressed within the accompanying arborist report.

4.4 Objectives of the zone

The property is located within the SP2 Infrastructure zone under the Warringah Local Environmental Plan (WLEP 2011).

Permitted on the land is 'The purpose shown on the Land Zoning Map', which is an Education Establishment, 'including any development that is ordinarily incidental or ancillary to development for that purpose'. The playing field is an established land use upon the site and the proposed lighting is ancillary to the playing field.

The zone objectives are repeated and responded to below:

To provide for infrastructure and related uses.

To prevent development that is not compatible with or that may detract from the provision of infrastructure.

In response -

The proposed sportsfield lighting will provide for infrastructure for an existing sportsfield that is established on the site.

The proposed sportsfield lighting is a form of development that is compatible with, ancillary, and complementary to the provision of infrastructure (educational establishment) on the site and will not detract from this use.

The proposed lighting structures will add to the utility of the sportsfield (that is currently underutilised) by extending its hours of use, for which there is established community need, resulting in community benefits. This will occur outside of regular school operating hours and therefore not detract from the school's operation. In these ways the proposed lighting structures will optimise use of existing infrastructure.

4.5 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

4.6 Conclusion

The exception proposed to the *Height of buildings* development standard has been acknowledged and the circumstances assessed, having regard to the provisions of clause 4.6 and the relevant case law.

In conclusion, Council can be satisfied that this written request has adequately addressed the matters required by cl 4.6(3) and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone, as required by cl 4.6(4).

Therefore, the exception pursuant to clause 4.6 should be granted development consent.