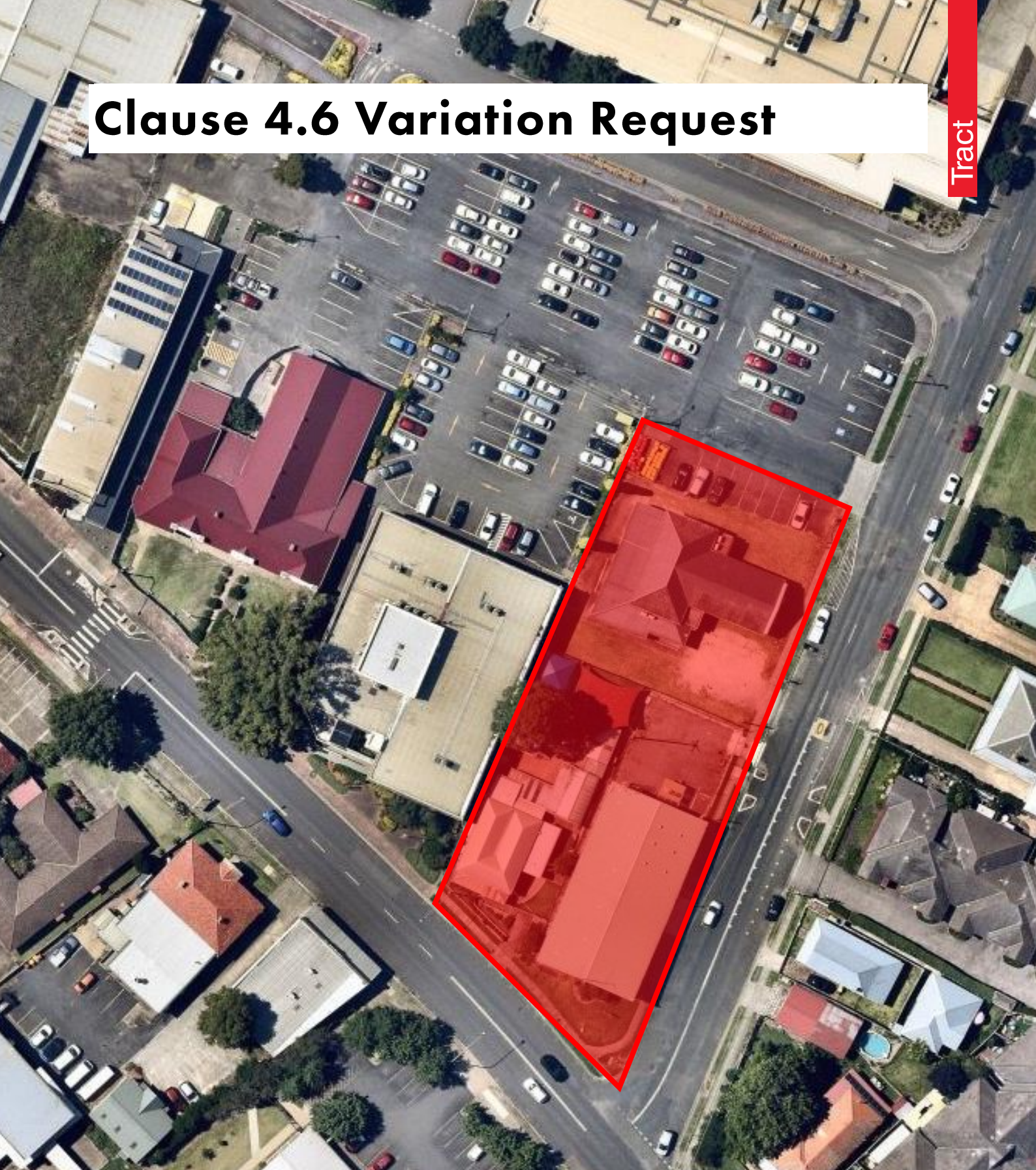


Clause 4.6 Variation Request

Tract



Performing Arts Centre (Building E1)

Height of Buildings (Clause 4.3) - Wollondilly Local Environmental Plan 2011

Prepared on behalf of Williams Ross Architects for Wollondilly Shire Council

Quality Assurance

Clause 4.6 Variation Request

Performing Arts Centre (Building E1)

Height of Buildings (Clause 4.3) - Wollondilly Local Environmental Plan 2011

Project Number

320-0230-00-P03

Revisions

Issue	Date	Description	Prepared By	Reviewed By	Project Principal
00	19/04/2021	Final for Submission	Ian Mundy	Leonard Slabbert	Leonard Slabbert

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Clause 4.6 Variation Request

1 Introduction

This report is a formal written request for a Height of Building (HOB) variation and has been prepared for Williams Ross Architects (WRA) by Tract on behalf of Wollondilly Shire Council (as the Applicant).

This height of building variation request has been prepared in accordance with Clause 4.6 of the Wollondilly *Local Environmental Plan 2011* (WLEP 2011).

It supports the development application for the demolition of existing buildings and the Wollondilly Performing Arts Centre (PAC) construction, also known as Building E1. The proposed development is located across the lots legally registered as Lot A/DP153067 (4 Colden Street, Picton), Lot B/DP158722 (2 Colden Street, Picton) and Lot A/DP158722 (66 Menangle Street, Picton).

The Site is within a B2 Local Centre zone under the *Wollondilly Shire Local Environmental Plan 2011* (WLEP 2011).

The B2 Local Centre zoning permits developments for 'Community facilities', 'Entertainment facilities', and 'Function centres'.

The proposal involves works relating to an 'entertainment facility' and 'community facility' which is defined in the WLEP 2011 as:

- *entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.*
- *community facility means a building or place—
(a) owned or controlled by a public authority or non-profit community organisation, and
(b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

This Clause 4.6 variation application is submitted as Appendix N and forms part of the Statement Environmental Effects prepared for the Wollondilly PAC development application (DA) lodged with Wollondilly Shire Council.

The project forms part of the Wollondilly Community, Cultural and Civic Precinct (WCCCP) which includes the following key projects as Stage 1 (Buildings A to E1):

Stage 1

- New Children's Service Centre and associated play space area (Building A)
- **New Wollondilly Performing Arts Centre (Building E1)**
- Shire Hall – Refurbishment and north-west extension (part of Building C)

Stage 2

- New Government Services Centre (Building D)

Stage 3

- Shire Hall - Refurbishment and north-east extension (Building C)
- Village Green

Stage 4

- New Library and Learning Hub (Building E2); and
- Community, Arts, Exhibition and Workshop spaces (Building B)

Figure 1 below provides an aerial perspective on the entire proposed WCCCP.

The following Figure 2 highlights the existing site of the proposed development and the extent of the works related to delivering the Wollondilly PAC (Building E1) as part of Stage 1 of the WCCCP.



Figure 1. Aerial Perspective and Staging of the Projects within the WCCCP (Source: WRA, WCCCP Master Plan Report, 2020)

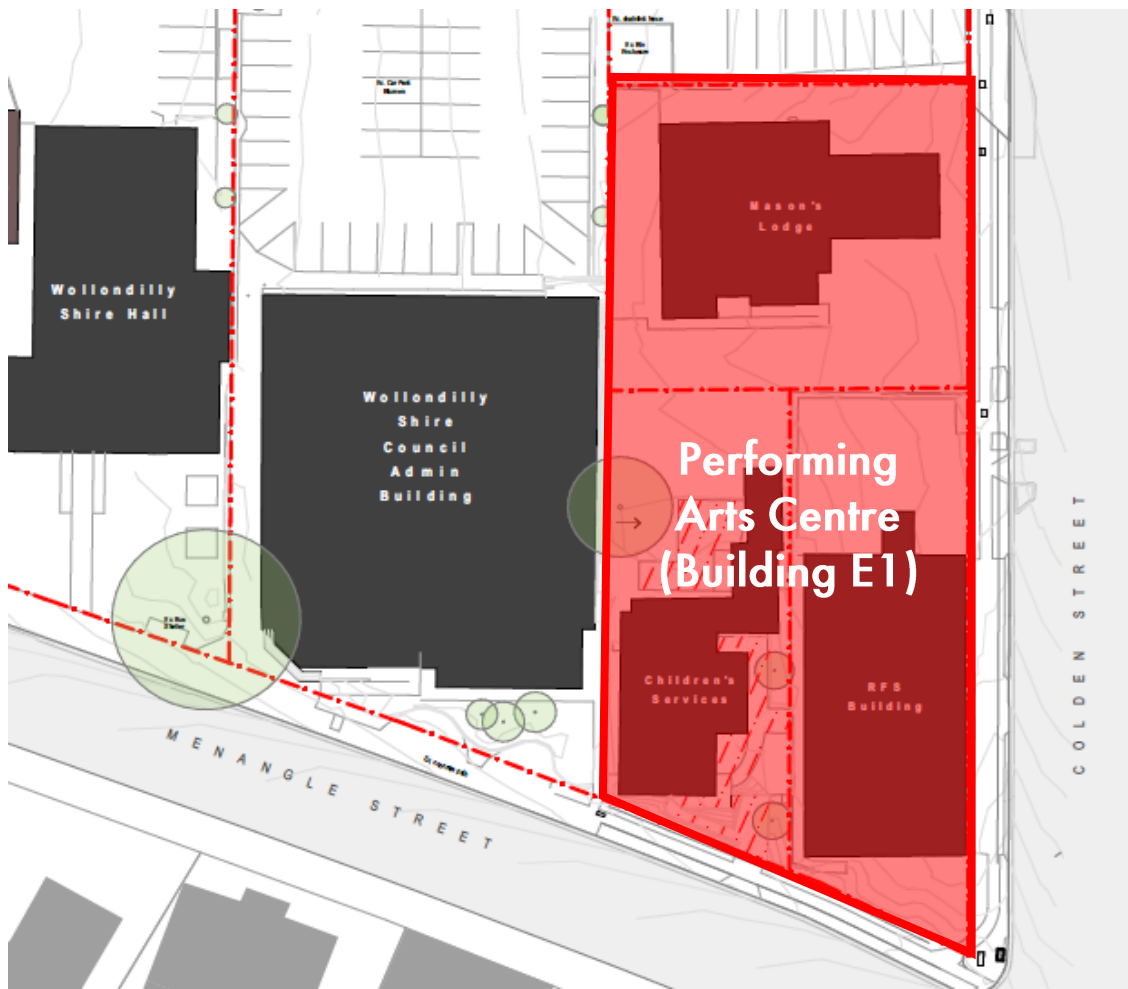


Figure 2. Proposed Development Site: Wollondilly PAC – Building E1 (Source: WRA, 2021)

1.1 Objectives of Clause 4.6 and the proposed development

The primary objectives as per Clause 4.6 of the Wollondilly *Local Environmental Plan 2011* are recognised as the following:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

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

This Clause 4.6 request seeks to vary the proposed development from the 'Height of Buildings' development standard applicable to the site (Clause 4.3 of the *Wollondilly Shire Local Environmental Plan 2011*).

The current 'Height of Buildings' development standard that applies to the site is 9.0m.

The maximum variation from the proposed development standard that the proposed development is seeking is 11.8m, which varies from the 9.0m HOB development standard by 2.8m. The breach of building height relates to the following operational requirements of the Wollondilly PAC:

- The building's roof accommodates the slope of the site and keeps a profile in alignment with the original architectural vision of the building;
- Natural lighting;
- Internal acoustic design requirements;
- Stage and roof equipment requirements; and
- Rooftop Solar photovoltaic design requirements.

The variation in height request is also required due to the natural slope of the ground level at the site, which drops down significantly from Corbett Lane towards Menangle Street. The maximum height of the building (calculated at the highest point from ground level) is 11.8m.

These matters are discussed further in this Clause 4.6 Variation request.

1.2 Overview of this Clause 4.6 Variation

The development standard has not been expressly excluded from the operation of Clause 4.6 of the WLEP 2011.

This application has been prepared as per the NSW Department of Planning, Industry and Environment's (DPIE) guideline 'Varying development standards: A Guide', dated August 2011, Planning Circulars, and other relevant principles and decisions established in the New South Wales Land and Environment Court and New South Wales Court of Appeal.

This Clause 4.6 variation application also notes the recent review of Clause 4.6 of the Standard Instrument Local Environmental Plan (LEP) by the Department of Planning, Industry and Environment (DPIE).

We understand that the intent of the proposed revised Clause 4.6 is to ensure that a consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria in order to vary a development standard, as stated by DPIE in their Explanation of Intended Effect (EIE) available on the planning portal:

- *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.*

As per the above listed criteria, Sections 3 and 4 of this Clause 4.6 variation request explains how the flexibility of the development standard is justified for the proposed development with regards to the objectives of the zone for the proposed development, environment, social and economic outcomes, and the public interest.

This Clause 4.6 request also provides in later sections of this report other matters that the consent authority requires to be addressed to be satisfied with when exercising their approval authority in applying the discretion afforded by Clause 4.6 and the assumed concurrence of the Secretary.

2 The Environmental Planning Instrument, Zoning and Objectives

2.1 What is the Environmental Planning Instrument (EPI) that applies to the site?

The *Wollondilly Shire Local Environmental Plan 2011* (WLEP 2011) applies to the site known as Lot A/DP153067 (4 Colden Street, Picton), Lot B/DP158722 (2 Colden Street, Picton) and Lot A/DP158722 (66 Menangle Street, Picton).

2.2 What is the zoning that applies to the site?

The site is within a B2 Local Centre zone under the WLEP 2011. The B2 Local Centre zoning permits developments for 'Community facilities', 'Entertainment facilities', and 'Function centres'.

Refer to Figure 2 below for a copy of the land zone map as per the WLEP 2011.

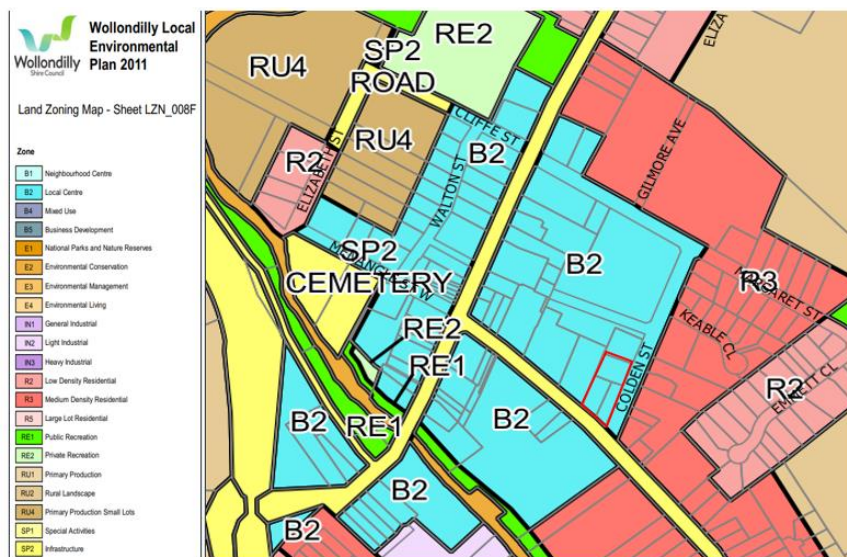


Figure 3. Land Zoning Map Extract (Source: WLEP 2011)

2.3 What are the objectives of the zone?

The B2 Local Centre zoning under the WLEP 2011 prescribes the following land use objectives and requirements:

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for appropriate residential development in the form of shop top housing to support the vitality of the local area.

The proposed development encourages additional employment opportunities, entertainment, and community facilities in an accessible location within the Picton Town Centre as part of the Wollondilly Community, Cultural and Civic Precinct (WCCCP). The proposed development of the Wollondilly PAC includes landscaping, active transport (bicycle parking), and accessibility upgrades that will encourage walking and cycling within the site.

3 Variation of the Proposed Development Standard

3.1 What is the development standard being varied?

The WLEP 2011 development standard being varied is the 'height of buildings' standard.

3.2 What are the objectives of the development standard being varied?

An extract of the development standard objectives prescribed with the WLEP 2011 under Clause 4.3(1) are outlined as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to minimise the impact of new development on neighbouring properties and the streetscape with regard to bulk, overshadowing, privacy and views,
- (b) to maintain a size and scale of development that is compatible with the existing and emerging character of the locality,
- (c) to ensure that the height of buildings is compatible with the landscape and environmental constraints of the land.

The proposal should ensure that the objectives of the development standard is maintained.

3.3 What are the numeric value of the development standard and the variation proposed?

Under the WLEP 2011, the numerical value of the height of building development standard applicable to the site is 9.0m.



Figure 4. Maximum Height of Buildings Map Extract (Source: WLEP 2011)

The total height of the proposed development is calculated at 11.8 metres (the top of the building roof ridgeline at the highest point of the building in relation to natural ground level).

The Wollondilly PAC breaches the 9.0m height of building development standard by 2.8m (or an estimated 31.11%).

It highlights a level of non-compliance with the Height of Building development standard with the proposed development of the Wollondilly PAC proposing a maximum building height of 11.8m (a 2.8-metre breach of the Height of Building standard).

The Wollondilly PAC's architectural design was discussed extensively with Wollondilly Shire Council officials during the design stage and as part of the pre-development application (pre-DA) process. The 11.8m height of building is necessary for the proposed design of the Wollondilly PAC due to the following requirements:

- The Wollondilly PAC building's roof accommodates the slope of the site within the WCCCP and establishes a profile in alignment with the architectural vision for the building as outlined within the WCCCP Master Plan;
- The design and height of the proposed Wollondilly PAC building supports features that provide natural lighting and ventilation to the facility;
- The design and height of the proposed Wollondilly PAC building supports internal acoustic design requirements;
- The design and height of the building Stage and roof equipment requirements; and
- The design of the roof supports Ecologically Sustainable Development (ESD) features that improve the environmental performance of the building, including accommodating rooftop solar photovoltaic requirements; and
- The building design of the Wollondilly PAC is modern, contemporary, and articulated in a way that is appropriate given the WCCCP context, with the choice of materials and façade chosen by WRA to help mitigate impacts of bulk and scale.

Current HOB	WLEP 2011 HOB	Max Proposed HOB	% Variation
None	9.0m	11.8m (2.8m)	31.11% (estimated)

Table 1. Summary of HOB Development Standard and Proposed Development Variation

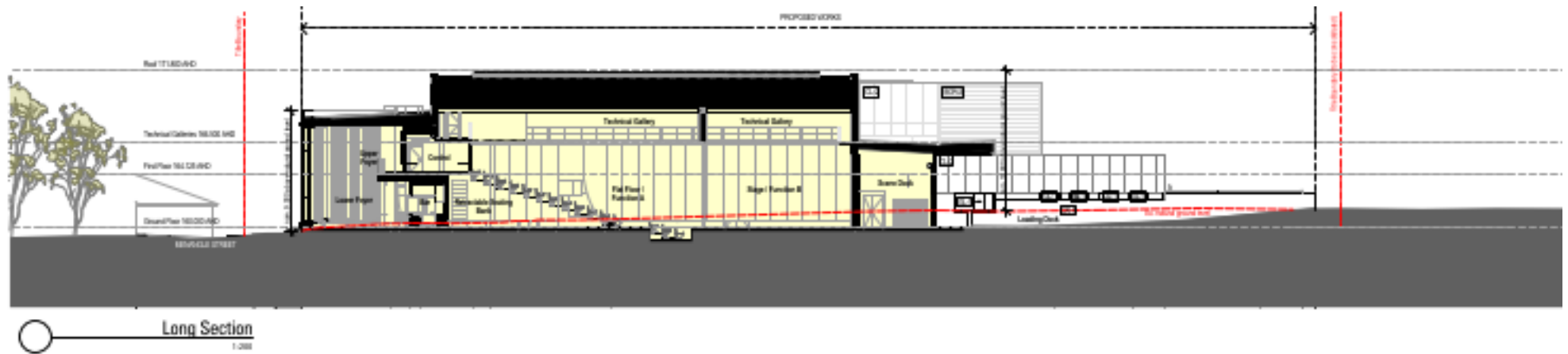


Figure 5. Extract of the Long Section of the Proposed Development – Wollondilly PAC (Source: WRA, 2021)

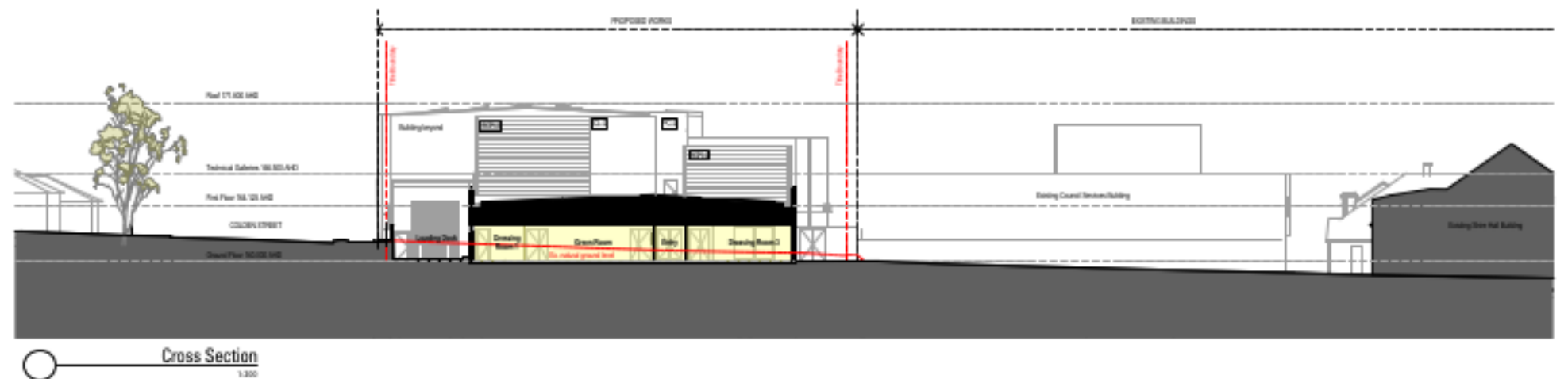


Figure 6. Extract of the Cross Section 1 of the Proposed Development – Wollondilly PAC (Source: WRA, 2021)

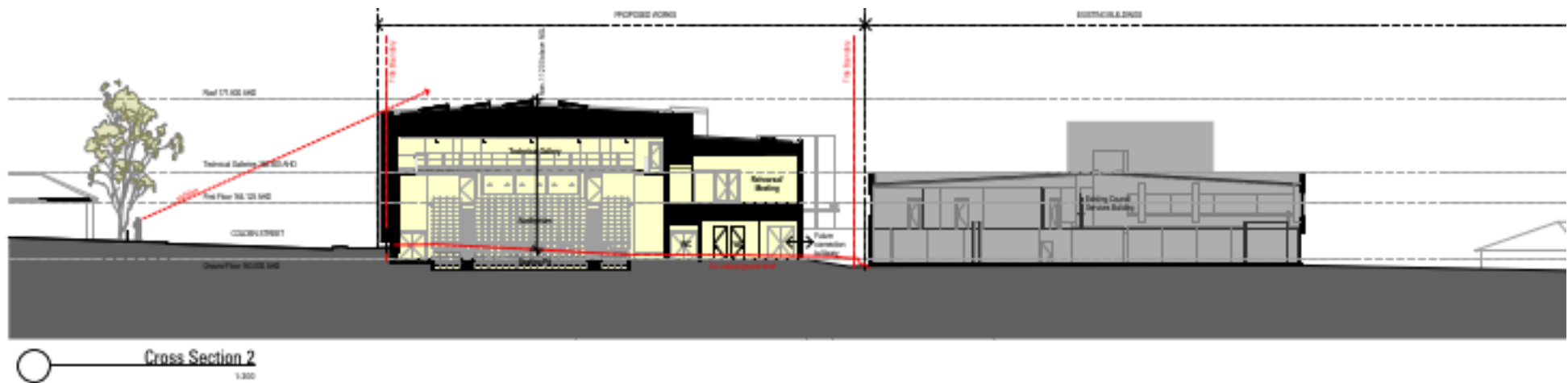


Figure 7. Extract of the Cross Section 2 of the Proposed Development – Wollondilly PAC (Source: WRA, 2021)

4 Assessment of the Proposed Development Standard Variation

4.1 Assessment review

4.1.1 How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90 previously considered how the above question may be answered and in doing so referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The following section responds to the above *Wehbe v Pittwater Council* [2007] NSWLEC decision and its established 'five-part tests' for the assessment of a development standard variation and whether compliance with a proposed development standard is unreasonable or unnecessary.

The table below discusses and demonstrates according to the appropriate tests established under *Wehbe* that compliance with the development standard is unreasonable or unnecessary for the proposed development in this instance.

It is noted that only one (1) of the 'five-part' tests have to be achieved to demonstrate non-compliance with the development standard, not all five (5).

Five-Part Tests under <i>Wehbe</i>	Discussion
<i>Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard</i>	• The site is located within a B2 Local Centre zone which permits for 'Community facilities', 'Entertainment facilities', and 'Function centres'. • Due to the operational requirements for a fit-for-purpose performing arts centre, the proposed Wollondilly PAC building (including internal acoustic design, stage and roof equipment, and rooftop solar photovoltaic requirements) exceeds the 9.0m height of building development standard. • WRA has prepared detailed architectural plans that include shadow diagrams as part of the Statement of Environment Effects report (and Appendix). The architectural plans show some overshadowing impacts, but the proposed breach of height would not significantly impact on the visual quality of the building or the surrounding locality. ◦ The minor overshadowing impacts are primarily towards the south along Menangle Road (9am) and the eastern side along Colden Street (3pm) during the winter solstice. • A Social Health Impact comment by EMM Consulting, and submitted as part of the DA, reviewed the proposed development. It noted that a number of positive impacts associated with the proposed Wollondilly PAC would occur as a result of the facility. • This includes several positive benefits such as:

	◦ That it was found to help improve community connectedness, the creative industries, provide employment opportunities (during construction and operation) and support the local economy; ◦ The development of the Wollondilly PAC would help fulfil an objective established by the Council to improve the arts and cultural assets within the LGA; and ◦ That completion of a modern performing arts centre helps the Council address strategic goals outlined within the Community Strategic Plan, WCCCP Master Plan, and the draft Picton Place Plan/Picton Town Centre. • The proposed development is in alignment with intended vision of the WCCCP and has been designed under the direction of the principles established under the endorsed WCCCP Master Plan and design process established by Wollondilly Shire Council.
<i>Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary:</i>	• As expressed within the architectural plans prepared by WRA, the breach of the development standard is reasonable in relation to the outcome of delivering a modern fit-for-purpose performing arts facility. • Due to the operational requirements for a modern fit-for-purpose performing arts centre (including internal acoustic design, stage and roof equipment, and rooftop solar photovoltaic requirements) compliance with the standard is unnecessary if it hinders the operation of a facility that will support arts and cultural activities within the LGA; • The proposed development and its variation from the HOB standard can be considered appropriate given the context of the WCCCP, the objectives outlined within the WLEP 2011, and principles of the WCCCP Master Plan (2020) and Western Parkland City Liveability Program; and • The Wollondilly PAC building does not result in a detrimental aesthetic impact to the locality. The scale or intensity for building is appropriate for its purpose and as part of Stage of the WCCCP renewal of the Picton Town Centre.
<i>Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required, and therefore, compliance is unreasonable:</i>	• The breach of the height of building development standard allows a built form response consistent with the urban design principles established in the WCCCP Master Plan and allows the proposed Wollondilly PAC to operate as a multifunctional performing arts centre. • Should compliance with the 9.0m HOB development standard be enforced, it may hinder the Wollondilly PAC in operating as a performing arts centre, limiting the building in holding major performances and significant events for the community and the Council's benefit; • It provides positive community benefits that allows the building to provide additional community, arts and cultural services, enables creative and theatrical industries of all sizes and scale, and provides local employment opportunities (both during construction and its operation).
<i>Test 4: The development standard has been virtually abandoned or destroyed by</i>	N/A

<i>the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:</i>	
<i>Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone:</i>	N/A

Table 2. Table Summary of Responses for the Five-Part Tests under Wehbe

4.1.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In support of the proposed development, a Statement of Environment Effects (SEE) report has been prepared to provide a holistic environmental planning and land use assessment. The SEE assesses the various environmental planning considerations and outlines that there are sufficient environmental planning grounds in support of the proposed Wollondilly PAC, which will form part of the renewal of the Picton Town Centre through the WCCCP.

In summary, these environmental planning grounds include as follows:

- The development complies with the core B2 Local Centre land use and Clause 4.3 Height of Building (HOB) objectives outlined within the WLEP 2011 and forms part of the renewal of the Picton Town Centre as part of the WCCCP;
- While the proposed development of the Wollondilly PAC breaching the proposed HOB development standard, the building has been designed in accordance with the principles of the WCCCP Master Plan (2020) and the Council's application for the Western Parkland City Liveability Program:
 - *Deliver modern fit-for-purpose cultural facilities to meet the needs of a rapidly growing community.*
 - *Develop local capability in Wollondilly for arts, cultural and community activities to reduce reliance on facilities outside the LGA, often a significant barrier to participation due to the travel time and costs.*
 - *Build the cultural base of the Western Parkland City to redress the current imbalance of regional facilities through development of a performance space and other creative arts spaces to retain and attract a larger and more diverse range of performances and creative activities.*
 - *Support local business development through the provision of facilities for meetings, seminars, as well as activity generating performances.*
- The WCCCP Master Plan and design brief for the Wollondilly PAC by WRA utilised specific references and benchmarks when determining design and operational requirements:
 - 'Wollondilly Shire Council Community, Cultural & Civic Precinct Urban Design Report', prepared by e8urban, 2019;

◦ 'Wollondilly Shire Council Community, Cultural & Civic Precinct Development - Community Consultation Document'

◦ 'Wollondilly Shire Council Community, Cultural & Civic Precinct Development - Community Consultation Document'

◦ 'Wollondilly Shire Council Community, Cultural & Civic Precinct Development - Community Consultation Document'

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Project No: 2016
Issue: B
Date: 21/06/21

WCCCP Building E1 - Performing Arts Centre

To:

☒ Andrew Poore, Wollondilly Shire Council

Copy:

☒ Simon Evans, Coffey Projects

☒ Leonard Slabbert, Tract Consultants

Re: Building E – Performing Arts Centre Building Height

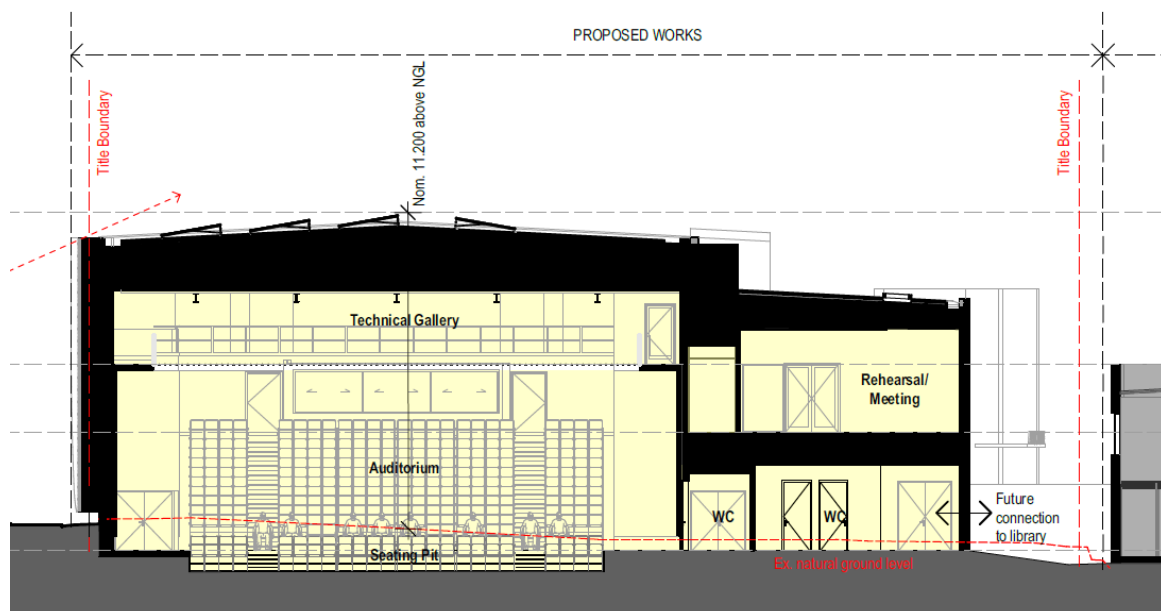
Dear Andrew,

The Performing Arts Centre height is approximately 11.8m to its ridgeline above adjacent natural ground line, being 2.8m over the 9m height limit on the site. The Development Application has been lodged with a Clause 4.6 Variation for this height increase under the 4.6 exemption in the Wollondilly LEP (1b) "to achieve better outcomes for and from development by allowing flexibility in particular circumstances".

The 11.8m height measured to adjacent natural ground is located at the centre of the building, at the ridge line. The ridge line is set back 10m from the Colden Street title boundary.

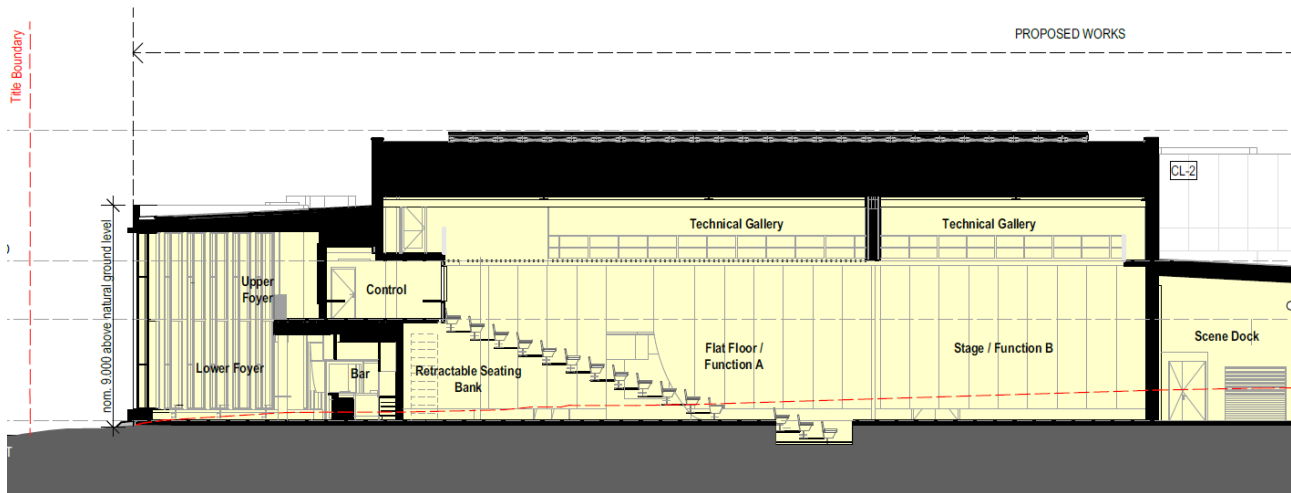
The natural slope of the site means the 11.8m height is the worst case scenario at the Theatre's southern end (set-back between 6 and 14 m from Menangle Street title boundary).

The two sections below are taken from the DA application drawings.



Suite 1, 70 Kerr Street, Fitzroy, Victoria 3065
Tel (03) 9416 3044 email@williamsross.com www.williamsross.com
Directors Christopher Hose, Tammy Beck, Stephen Maxwell
Williams Ross Architects Pty Ltd ACN 005 624 868

Current Cross Section, not to scale



Current Long Section, not to scale

The Clause 4.6 Variation application presents the reasons for the variation request, aligning the variation with the appropriate test measures and Social Impact report.

This memo provides additional technical detail to support the current Clause 4.6 Variation by reviewing the impact on the viability and community benefit of the PAC of reducing the height in two scenarios:

1. Reduce the height by approximately 1m to reduce the amount the building is over the height restriction to 1.8m.
2. Reduce the height of the building to comply with the 9m height restriction

Option 1

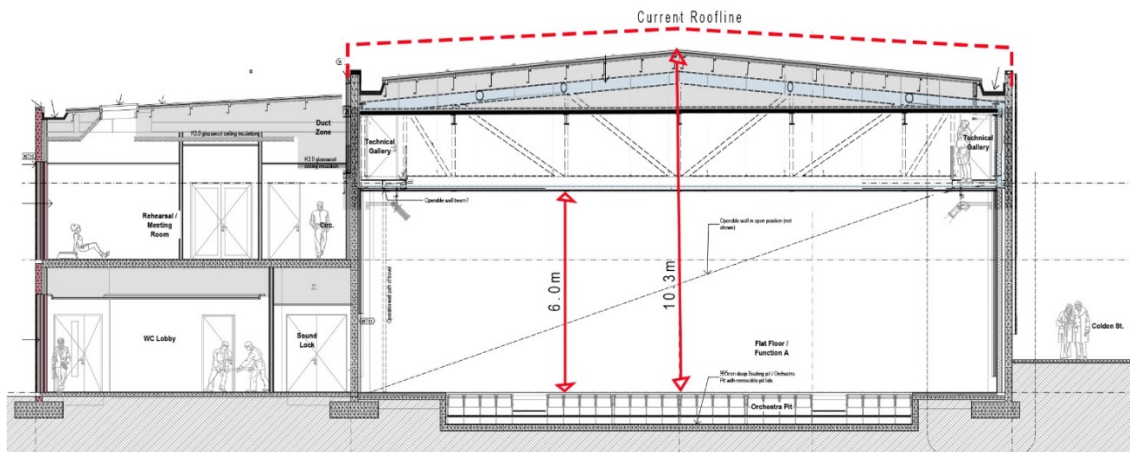
Reduce the height by approximately 1m to result in the building being 1.8m over the height restriction.

This can be done by lowering the main roof trusses so the bottom chord sits under the base of the lighting bridges / cat walks. The truss itself would need to increase in height to allow for the cat walks / lighting bridges to pass through them.

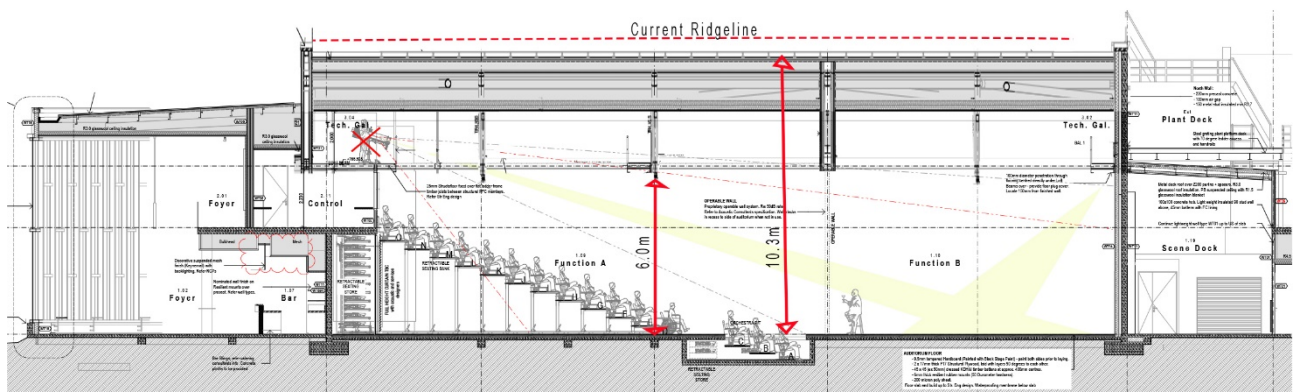
The Tension Wire Grid would be deleted and replaced with a double-sided lighting bridge / cat walk through the centre of the space.

The roof build up over the trusses would still need to be enough to achieve the acoustic requirements to control sound intrusion and breakout. This will reduce working head heights to the technical gallery.

This general arrangement is illustrated below.



Reduced Height Cross Section, not to scale



Reduced Height Long Section, not to scale

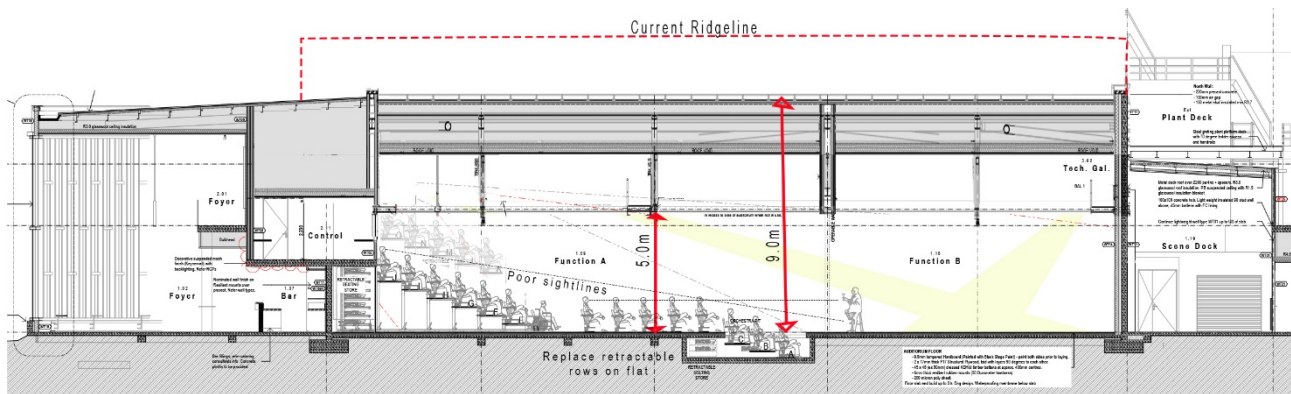
The consequences of lowering the roof by 1m include:

- **Deletion of the Tension Wire Grid (TWG)**
An unobstructed head-height will not be achievable with the lowered roof and lower loft beams so the TWG will need to be removed.
Lighting bridges / catwalks can be fitted with a harness system to compensate, however this is cumbersome operationally, and does not provide the level of safety working at heights as a TWG. Compromised head heights over the technical gallery pose a risk to users.
The loss of the TWG reduces the centres ability to include community members working on the technical level of the theatre, including school and education programs. The ability to train small groups is lost.
- **Lighting and Sightlines**
Lowering of the roof trusses means the rear 'follow-spot' lighting positions cannot operate. These are popular with school performances, awards nights and so forth, reducing the attractiveness of the venue to these user groups.
- **Theatre Formats**
Loss of the TWG will reduce the flexibility of the theatre itself, reducing the range of more contemporary, flat floor theatre productions that can be staged at the venue.
- **Operations**
Loss of the TWG and follow-spot location increases the set-up time for some shows and functions, and may mean a smaller range of shows attracted to the venue.
- **Mechanical Ductwork**
Lowering of the roof trusses may require exposure of mechanical ductwork on the side or roof of the theatre. This will be unsightly, and possibly negates the visual benefit of lowering the roof itself.
- **Reduced Community Benefit**
Loss of the TWG and rear follow-spot position reduces the ability for general community members to work safely at height and gather in groups to be instructed on the technical aspects of theatre production.
We understand WSC has received interest from local high school and vocational training organisations to run educational programs from the new facility, and the loss of the TWG would hinder this opportunity for this community.

Option 2

Reduce the height of the building to comply with the 9m height restriction

To achieve a theatre with a 9m building height in this location the working height of the theatre is reduced to 5m and the space becomes more like a good Rehearsal Studio than professional theatre. The lower ceiling height also results in a loss of 4-5 rows from the retractable seating which would need to be replaced on the flat floor.



Reduced Height Long Section – 9m

The consequences of lowering the roof by 1m include:

- **Deletion of the Tension Wire Grid (TWG)**
The unobstructed head-height will not be achievable with the lowered roof and lower loft beams so the TWG will need to be removed.
Lighting bridges / catwalks can be fitted with a harness system to compensate, however this is cumbersome operationally, and does not provide the level of safety working at heights as a TWG.
The loss of the TWG reduces the centres ability to include community members working on the technical level of the theatre, including school and education programs. The ability to train small groups is lost.
- **Lighting and Sightlines**
Lowering of the roof trusses means the technical gallery and 'follow-spot' lighting positions cannot operate. These are popular with school performances, awards nights and so forth, reducing the attractiveness of the venue to these user groups.
Loss of the follow-spot positions also adds set-up time and cost to functions events.
The rear technical gallery sightlines are further compromised and therefore becomes redundant.
- **Operations**
Loss of the TWG and follow-spot location increases the set-up time for some shows, and may mean a smaller range of shows attracted to the venue.
Loss of the rear technical gallery also adds to set-up times.
- **Theatre Formats**
Loss of the TWG will reduce the flexibility of the theatre itself, reducing the range of more contemporary, flat floor theatre productions that can be staged at the venue.
Loss of the rear technical gallery further reduces flexibility in theatre formats.

- **Mechanical Ductwork**

Lowering of the roof trusses may require exposure of mechanical ductwork on the side or roof of the theatre. This will be unsightly, and possibly negates the visual benefit of lowering the roof itself.

- **Reduced Seating Capacity or Poor Sightlines**

The lowered roof means head height over the rear 4-5 x rows of seats cannot be achieved resulting in a loss of 100-120 seats. These seats could be replaced on the flat floor, however sightlines would be very poor which would limit ticket sales and income.

- **Reduced Community Benefit**

Loss of the TWG, rear follow-spot position and reduced opportunity for technical galleries reduces the ability for general community members to work safely at height and gather in groups to be instructed on the technical aspects of theatre production.

We understand WSC has received interest from local high school and vocational training organisations to run educational programs from the new facility, and the loss of the TWG and technical functionality would hinder this opportunity for this community.