



SMEC INTERNAL REF: 3002793

Clause 4.6 Variation  
Request

# Wollondilly Community, Cultural and Civic Precinct

Client Reference No. 3002793  
Prepared for: Wollondilly Shire Council  
21 July 2023

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# 1. Introduction

This report seeks an exemption to the height of building development standard prescribed by clause 4.3 of the *Wollondilly Local Environment Plan 2011 (WLEP 2011)*. This document should be read in conjunction with the Statement of Environmental Effects prepared for the construction of the four storey Government Services Building (GSB) with one level of basement car parking, new public library (the Library), new public plaza (the Village Green) and associated civic laneways and landscaping for the Wollondilly Community Cultural and Civic Precinct (WCCCP). The site is in the Picton Town Centre and is formed by a single lot (Lot 70 DP1279596) with street frontage to 60 Menangle Steet, Picton within the Wollondilly Local Government Area (LGA) (the Site). This objection must be considered in conjunction with the complete set of Architectural Plans prepared by William Ross Architects (refer to Appendix A).

This exemption is sought pursuant to clause 4.6 of the *WLEP 2011* and seeks to vary the height of building development standard which applies to the land. Two maximum building heights of 16m and 9m apply to the Site under clause 4.3 of the *WLEP 2011*. The numeric variation to the height control is detailed below:

- Over the 16m portion of the Site, the proposed building envelope (to roof height) has a maximum height of 16m above natural ground level, however, the lift overrun and pitched roof stairwell results in a maximum height of 18.5m, resulting in a maximum non-compliance of 2.5m or 15.6%.
- Over the 9m portion of the Site, the proposed building envelope (to roof height) has a maximum height of 9m above ground level, however, the lift overrun results in a maximum height of 10m, resulting in a maximum non-compliance of 1m or 11.1%.

This request reflects Planning Circular PS 20-002 (5 May 2020) which modifies the long-standing assumed concurrence requirements for variations to development standards. This Planning Circular states that “only a full council can assume the Secretary’s concurrence where the variation to a numerical standard is greater than 10%”. The Western Sydney Region Planning Panel is able to make this determination on behalf of the Council. Thus, referral to the Department of Planning and Environment is not required.

This request has been prepared in accordance with the Guideline for Varying Development Standards: A Guide (Department of Planning and Infrastructure, 2011) and has incorporated the relevant principles identified in the following Land and Environment Court judgements:

- • Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7
- • Four2Five Pty Ltd v Ashfield Council [2015] NSW CA 248
- • Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90
- • Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 109
- • Whebe v Pittwater Council [2007] NSW LEC 827

## 2. Development Standard

Pursuant to clause 4.6 of the *WLEP 2011*, this objection seeks to vary the building height standard stipulated in clause 4.3 which states:

- (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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The relevant Height of Buildings Map of the *WLEP 2011* is reproduced in Figure 2-1 below showing the outline of the Site. This provides a maximum height of 16m for the north eastern portion of the Site, and height of 9m for the remainder of the Site.



Figure 2-1 | Height of Buildings Map from *WLEP 2011* (Source: NSW ePlanning Spatial Viewer)

### The Proposed Variation

The proposal seeks the following variation from the permitted building heights under clause 4.3 of the *WLEP 2011*:

- Over the 16m portion of the Site (shown in yellow) the proposed building envelope (to roof height) has a maximum height of 18m, resulting in a maximum non-compliance of 2m or 15.6%.

- Over the 9m portion of the Site, the proposed building envelope (shown in green) has a maximum height of 10m, resulting in a maximum non-compliance of 1m or 11.1%.

Elevation plans provided for the proposal show the building height planes through the Site (Figure 2-2 and Figure 2-3). It is noted that the highest portion of the buildings contain the lift overruns. The largest area of height exceedance is located on the GSB and comprises the lift overrun and pitched roof housing stair access to the roof for the purpose of maintenance. The skylight located on the roof of the GSB will be slightly raised and on an angle to ensure rainwater and debris doesn't collect. Structures resulting in height exceedance will be concealed using bladed aluminium screening.

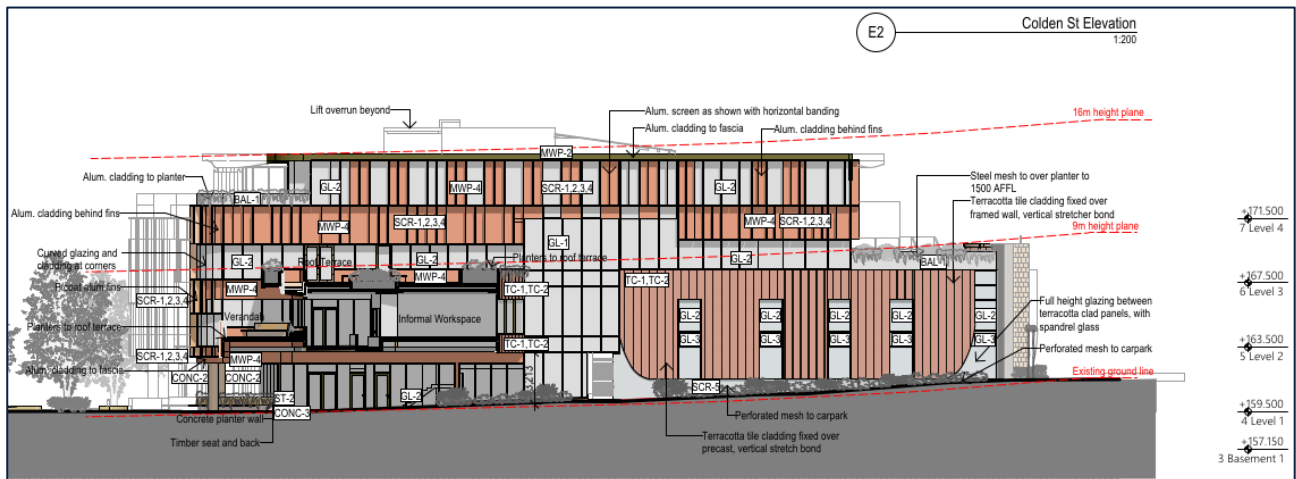


Figure 2-2 | East West Link elevation of GSB showing 16m height plane exceedance

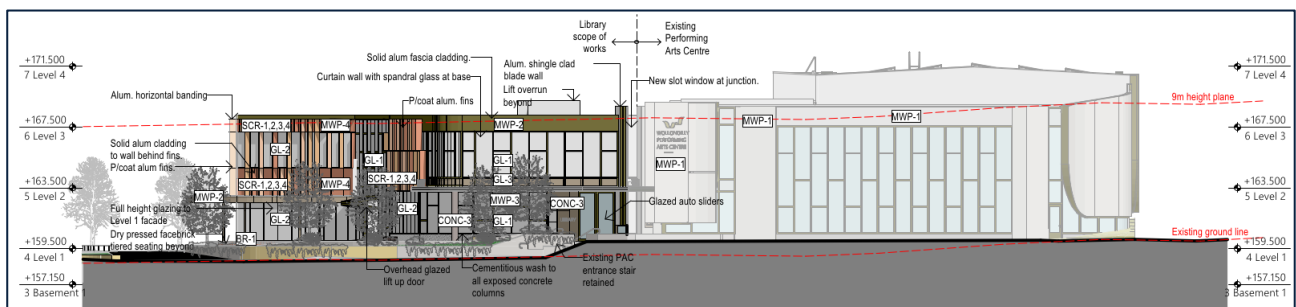
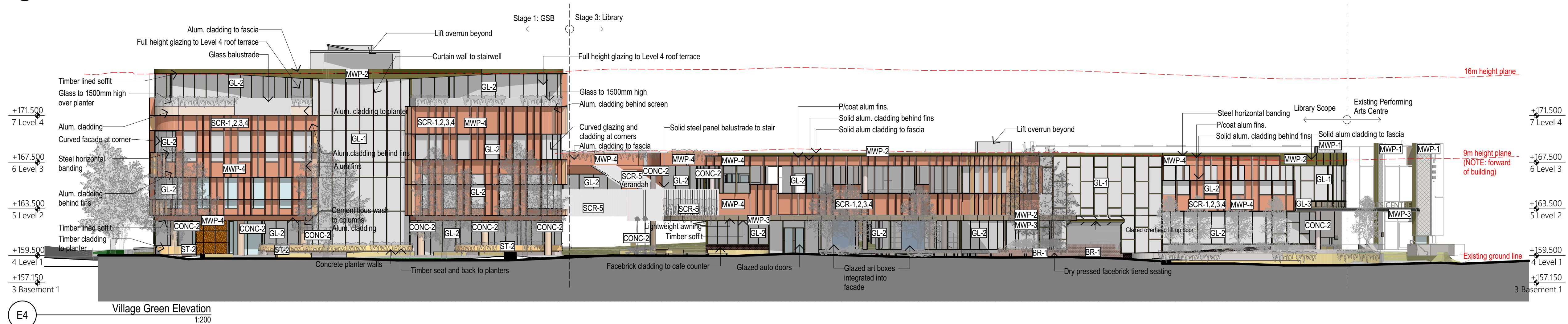
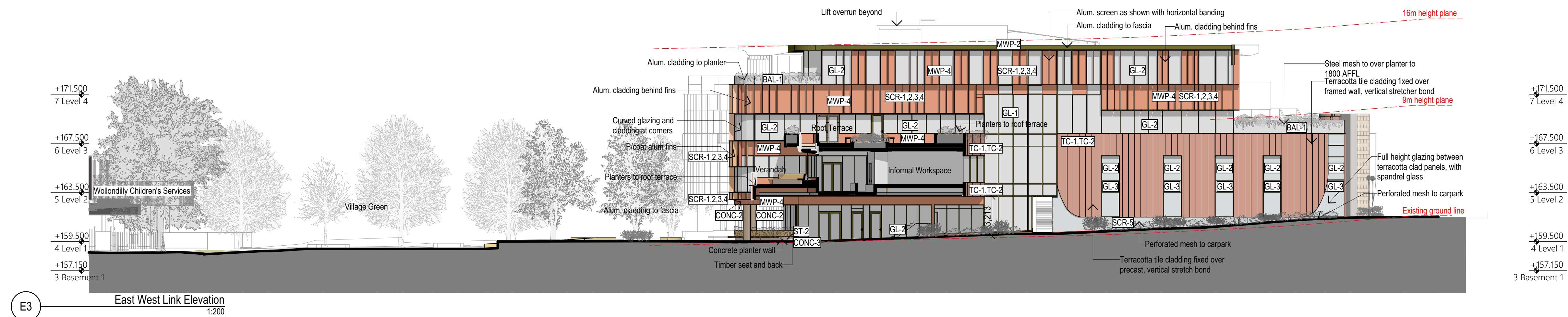
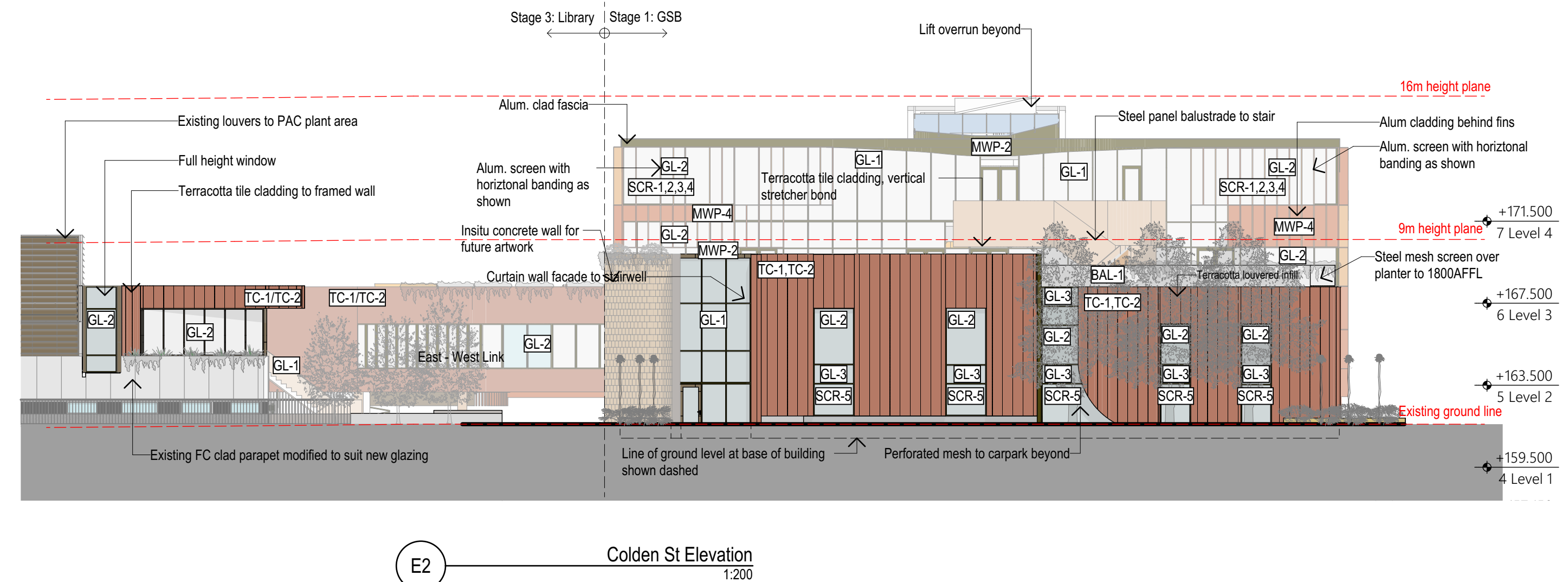
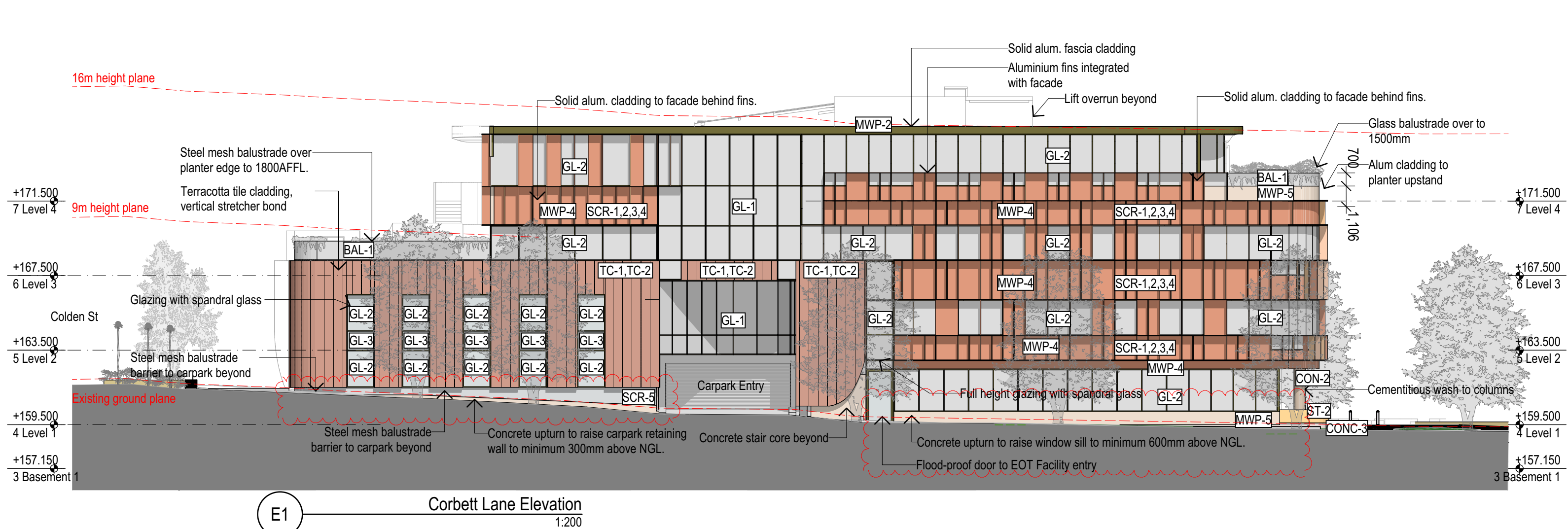


Figure 2-3 | Menangle Street elevation of Library showing 9m height plane





#### EXTERNAL FINISHES SCHEDULE

	<b>BR-1</b> Face brickwork Bowral Bricks 76 230Wx76H x 110D Colour: Renovation Getrudis Brown
	<b>CONC-1</b> Concrete Insitu Base Colour: Warm colour concrete and warm aggregate mix
	<b>CONC-2</b> Concrete columns Cementitious Wash

	<b>CONC-3</b> Concrete retaining walls Colour: White oxide and warm aggregate mix
	<b>TC-1</b> Terracotta Tile Facade 200mmH vertical stretcher bond Colour: Rojo R25-25 (70%)
	<b>TC-2</b> Terracotta Tile Facade 200mmH vertical stretcher bond Colour: Rojo R25-19 (30%)

	<b>SCR-1</b> Facade Screen-Vertical Aluminium extrusion 450x50mm Dulux Duratec Custom Powdercoat Colour to match Terracotta
	<b>SCR-2</b> Facade Screen-Vertical Aluminium extrusion 450x50mm Dulux Duratec Custom Powdercoat Colour to match Terracotta
	<b>SCR-3</b> Facade Screen-Vertical Aluminium extrusion 450x50mm Dulux Duratec Custom Powdercoat Colour to match Terracotta

	<b>SCR-4</b> Facade Screen-Horizontal Aluminium extrusion 450x50mm 3000mm Length Dulux Duratec Custom Powdercoat Colour to match MWP-4
	<b>SCR-5</b> Facade Screen - Carport Powdercoated perforated mesh Dulux electro Bronze medium
	<b>MWP-1</b> Colorbond Shingle Wall Cladding Interlocking Shingles (Folded Edges) Patter: Diagonal (45 deg), offset 20mm Colour: Colorbond Surfmat Matt Colorbond Galactic Metallic

	<b>MWP-2</b> Solid Aluminium sheet cladding or Trims Colour: Dulux electro powdercoat medium bronze, to match window frames
	<b>MWP-3</b> Solid Aluminium sheet cladding or Trims Colour: Dulux Duratec monument matt
	<b>MWP-4</b> Solid Aluminium sheet cladding or Trims Colour: Dulux Duratec custom powdercoat colour to match terracotta

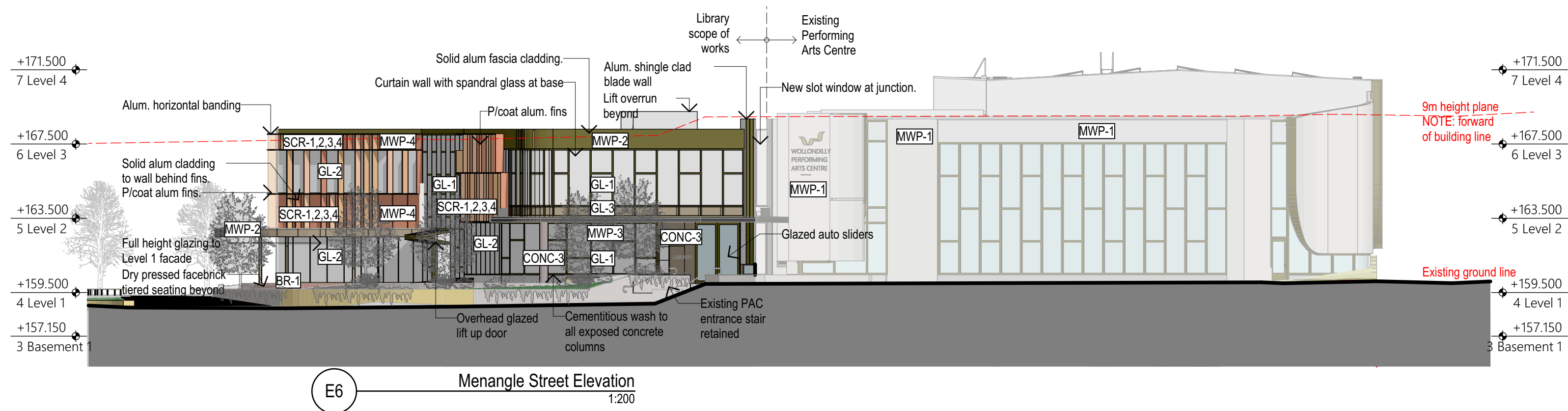
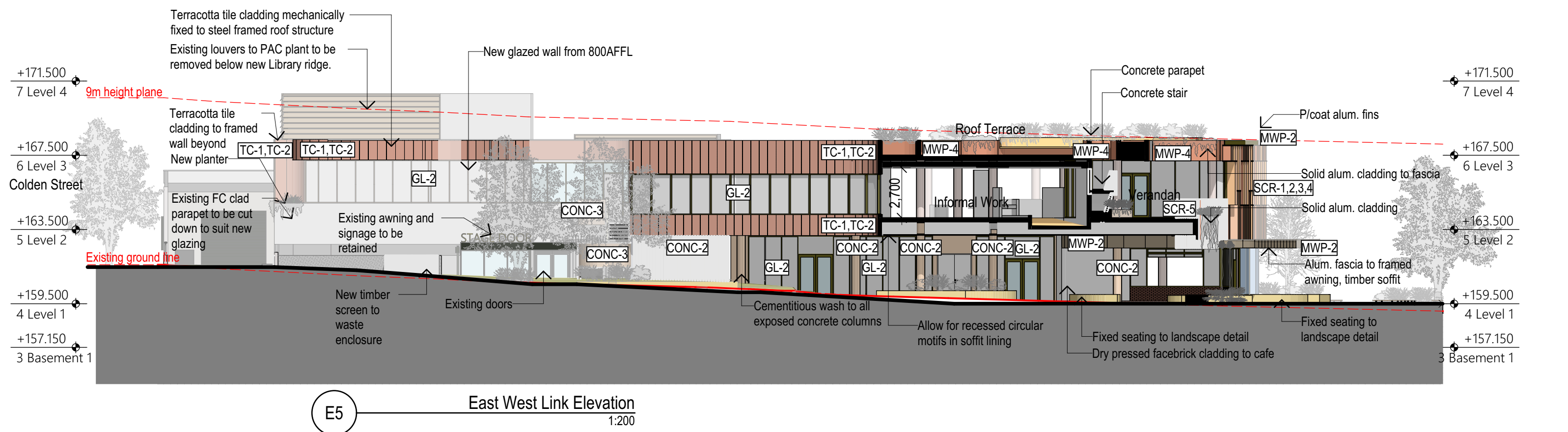
	<b>MWP-5</b> Metal Wall Panel Planter Colour: Dulux Duratec custom powdercoat colour to match terracotta
	<b>ST-1</b> Timber look Soffit System: Sculptform Click On battens Colour: Wood finish: Blackbutt
	<b>ST-2</b> Solid Timber Planter seating Hardwood timber planks Oiled finish

	<b>BAL-2</b> Balustrade picket System: Sculptform Click On Screen Colour: Powdercoated aluminium
	<b>BAL-1</b> Balustrade Glass

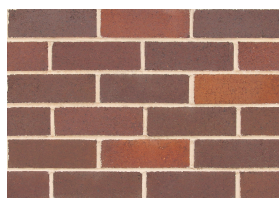

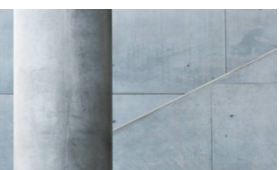
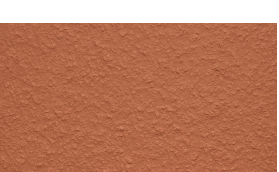









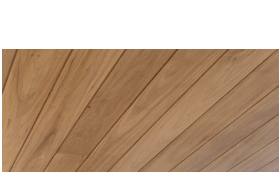
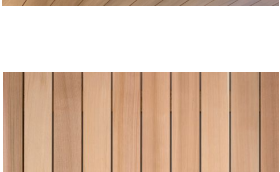


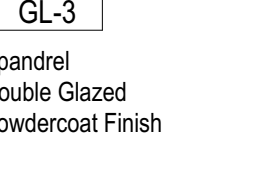
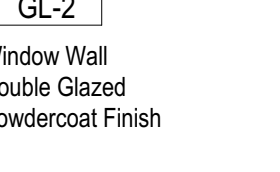
#### GLAZING

	<b>GL-1</b> Curtain Wall Double Glazed Powdercoat Finish
	<b>GL-3</b> Spandrel Double Glazed Powdercoat Finish
	<b>GL-2</b> Window Wall Double Glazed Powdercoat Finish





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### 3. Justification for Proposed Variation

This variation to the maximum permitted building height is sought under the provisions of clause 4.6 of the *WLEP 2011* which aims to provide flexibility in the application of development standards. The objectives of clause 4.6 are as follows:

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#### 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.*

#### **Comment:**

The flexible application of the height development standard is appropriate in this instance as it results in an improvement to urban form. By flexibly applying the height standard, the proposal improves the urban form of the development by reducing the extent of the building footprint. The flexible application of the height control enables:

- The GSB is to be provided with larger setbacks, in particular from Colden Street, than what is required under the DCP controls. Large roof terrace areas on each level of the building will be provided
- An overall improvement to building massing as the bulk of the building can be placed in a location that has the least impact on heritage, overshadowing, bulk and scale.
- Ease of maintenance and reduced on-going maintenance costs of rooftop infrastructure on the GSB and Library, including solar panels, will be enabled as a result of access via the stairwell.
- Equitable access to all levels of the GSB building, which is required to provide equitable access to all areas.

The additional 2.5m building height sought beyond the 16m control and additional 1m building height sought beyond the 9m control allows for the lift overrun which is located centrally within the roof area such as that the shadow cast by the additional height is negligible and does not impact on the nearby residential properties and complies with the overshadowing requirements for the Village Green specified by the DCP. The architectural appearance of both the Library and GSB provides improved articulation and modulation of building bulk, and positively interacts with and enhances nearby the nearby heritage Wollondilly Shire Hall (the Shire Hall) building.

The proposal will enhance the usability of public spaces throughout the WCCCP and Picton Town Centre, through introducing a landmark public administration building, high quality public plaza and new library. The proposal presents a positive outcome for the Picton Central Business District (CBD) and will provide Council with modern, functional and fit-for-purpose customer service centres, offices, commercial lettable areas and a new community library. In this instance, applying flexibility to the height of building development standard facilitates a better outcome, achieving the objectives of clause 4.6.

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#### 4.6 Exceptions to development standards (cont.)

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

#### **Comment:**

The Height of Building development standard is not excluded from the function of this clause and therefore can be considered under clause 4.6 of the *WLEP 2011*.

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#### 4.6 Exceptions to development standards (cont.)

- (3) *(Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (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.*

#### Comment:

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, the Chief Judge of the Land and Environment Court, Preston J, developed the five point test for consideration of a SEPP 1 objection. The applicability of the *Wehbe* test to a request to vary development standards under Clause 4.6 of the Standard Instrument has been confirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7.

As required by clause 4.6(3)(a), the *Wehbe* test provides that compliance with a development standard can be demonstrated as being ‘unreasonable or unnecessary’ in any of the following five ways:

1. The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In accordance with the first test above, it is argued that compliance with the numeric height of building standard is unnecessary in the circumstance of this development, as the objectives of the clause can still be achieved. The following discussion addresses each objective of the development standards of clause 4.3 and demonstrates how the proposal satisfies the objectives, notwithstanding the numeric non-compliance:

#### 4.3 Height of buildings

- (1) *The objectives of clause 4.3 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,*

The site is within the Picton CBD and provides an opportunity to activate the area between Colden Street, Menangle Street and Corbett Lane as identified in the Wollondilly 2040 Local Strategic Planning Statement as Wollondilly’s main civic, cultural and administration centre. The proposal will strengthen the town centre of Picton by replacing the existing Council administration office building with a new modern building and providing new community services and making major public domain improvements. The urban CBD environment of the Site is readily able to accommodate the scale and bulk of the development and ensures that the proposal integrates with the character of Picton’s town centre and surrounding streetscape.

As noted, the GSB provides an increased setback from Colden Street of 6m and 1.8m from Corbett Lane, compared to the 0m setback allowed under the DCP. A setback of 4m and 2m awning is provided from Menangle Street for the Library building. Whilst not stipulated under the DCP, the Library façade provides a generous setback to the Shire Hall along the proposed civic laneway which also provides a view corridor from Menangle Street through to the Village Green. The GSB provides a setback upper floor (Level 4) to reduce dominance over the Village Green and includes a recessed ground

floor façade to provide a better interaction with the public realm. The overall design of the Library and GSB includes materials and architectural elements that positively relate to nearby heritage items.

The large Camphor laurel tree located out the front of the Shire Hall building will be retained within the landscape design of the development. New public art, seating areas and gathering spaces will contribute to an overall sense of place within the precinct. The planting of new trees along Menangle Street, Colden Street and Corbett Lane will absorb some of the scale of the GSB and Library buildings.

#### 4.3 (1) Height of buildings (cont.)

- (b) *to maintain a size and scale of development that is compatible with the existing and emerging character of the locality*

The development is located within the Picton CBD and is a use that is consistent with the objectives set by the E1 Local Centre zone under the *WLEP 2011*. The size and scale of the development is consistent with the controls listed under the Wollondilly DCP. As noted, both the GSB and Library provide generous setbacks from the public domain and surrounding streets to ensure that the bulk of the buildings are not overly dominating for the area and is sympathetic to the surrounding heritage items. The upper level of the GSB, fronting the Village Green, has been setback to reduce the scale of the building and will provide landscaping elements including cascading vegetation. Overall, the size and scale of the development has been carefully considered for the Site and is in accordance with identified character for the precinct. The development will provide a major civic and cultural precinct within the Picton CBD.

#### 4.3(1) height of buildings (cont.)

- (c) *to ensure that the height of buildings is compatible with the landscape and environmental constraints of the land.*

The height steps down from north to south, following the height transition foreseen by the 16m and 9m height controls. By adopting the setbacks and building massing that were chosen, the development is sympathetic to the heritage character of the Picton Town Centre and the additional building height is required to house lift overruns only. The result of the increased setback of the two storey Library provides an important transition to the Shire Hall and avoids dominating this important heritage feature. The setbacks also provide additional space within the public realm and allows space for gathering and seating.

Despite the variation, the proposal achieves the underlying objectives of the height of building control. In accordance with the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, this demonstrates that numeric compliance with the height control is unnecessary in this circumstance. This addresses the requirements of clause 4.6(3)(a) by confirming that the objectives of the development standard can be achieved, notwithstanding the numeric departure.

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#### Clause 4.6 (3) (cont.)

- (1) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

**Comment:** The proposed height variation is acceptable on the site and has environmental planning merit as follows:

- **Equitable access:** The variations sought the lift overruns is directly attributable to the requirement for a public administration building to have equitable access throughout. There is no option to not provide equitable disabled access throughout the building, and the only alternative design to achieve compliance with the height of buildings development standard would be to reduce the buildings by one storey, which in turn would not meet the desired operational requirements. The deletion of a floor would not be an orderly and economic use of the land pursuant to Object 1.3(c) of the Act.

**Lack of environmental impact:** The design of the development has considered the character, form, scale and materiality of development within the local area. The design is suitable for the Site and includes a podium of cladding, glazing and vertical aluminium fins that allow consistency between each building within the precinct whilst also maintaining a distinctive character for both the GSB and Library, and physically connected PAC. Each level of the GSB contains a landscaped terrace with overhanging vegetation that will further break up the mass and scale of the building. The generous setbacks provided for the Library ensures that the development will not visually dominate when viewed from Menangle Street and increases the distance from the Shire Hall. The development has been designed to minimise the shadow cast on the adjoining development, including the Village Green. It is noted that the additional height created by the lift overruns on both buildings do not result

in additional overshadowing due to their placement in the centre of the roof area. The breach in height is non-discernible from the public of private domain.

- No impact to design: Because of the location of the non-compliant elements being generally centrally located to the roof of each building, the breach and non-compliance is non-discernible from the surrounding public and private domain. It is not anticipated that the non-compliant elements would be visible from any surrounding properties, however in the event that they were visible, the elements would not be discordant with the rest of the building; would not detract from the overall quality of the architecture; and would not be attributable to any amenity impacts to neighbouring properties.
- Heritage: The additional height created by the lift overruns has been managed through their placement in the centre of the roof and concealment with a louvered aluminium screen to ensure the development remains respectful to the heritage character of the area. The selection of sympathetic materials, repeated scale of building forms and landscaping will provide continuity in the streetscape. A Heritage Impact Statement was provided with the proposal and recommendations of the Heritage Advisory Panel can be included as conditions, if required by Council.
- Strategic Location: The development is considered consistent with the desired future character for the Picton Town Centre as expressed by the provisions of the *WLEP 2011*, Wollondilly DCP, and the adopted Picton Place Plan 2021. The Site is within the Picton CBD and provides an opportunity to activate the heart of Picton by providing key community services and the new Village Green. This will strengthen Picton as the main administration and civic hub of the Wollondilly LGA and enhance the civic importance of the precinct.
- Urban Hierarchy: The Picton Place Plan outlines the importance of retaining Picton's historic role within the Wollondilly LGA as an administrative centre. The development will increase community access to cultural resources and allow people build connections through the provision of an extensive public domain. The development will activate the centre of Picton by providing a new Library, Village Green and GSB and will be a clearly identifiable cultural and civic hub in the centre of the CBD.
- Landmark building: The GSB and Library will be a landmark building that delineates a change in urban form and clearly identifies the civic hub of the CBD. The proposal capitalises on the opportunity for a landmark building and presents a quality architectural design with highly durable, contemporary building materials. The additional building height created by the lift overruns is not visible from the public domain ensuring it is not the dominating visual element of each building.

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#### Clause 4.6 (cont.)

*(4) Development consent must not be granted for development that contravenes a development standard unless—*

*(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*

#### Comment

The matters required by subclause (3) have been addressed in detail in the above sections of this objection.

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#### Clause 4.6 (4) (cont.)

- (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*

#### Comment:

The above discussion demonstrates that notwithstanding the numeric variation, the proposed development is consistent with the relevant objectives of the height of building development standard which include ensuring 'to maintain a size and scale of development that is compatible with the existing and emerging character of the locality' and 'to ensure that the height of buildings is compatible with the landscape and environmental constraints of the land'.



In relation to the second requirement, being consistency with the zoning objectives; the Site is zoned E1 Local Centre pursuant to the *WLEP 2011* and is consistent with the objectives of this zone as follows:

- ***To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.***

The proposed community and office administration use is a permissible use in the E1 Local Centre zone. The proposal introduces a Village Green that will service the needs of the community and provides key pedestrian links from Menangle Street, Colden Street and Corbett Lane through to the Village Green and beyond into the Picton CBD (Argyle Street).

The proposal will create a clearly identifiable cultural and civic hub in the centre of the CBD. The proposal includes a library, a café to service the needs of community and workers within the site and the local area. The proposed GSB provides a continued use of the Site as a public administration centre and will enhance the activation of the area.

- ***To encourage investment in local commercial development that generates employment opportunities and economic growth.***

The proposal will contribute to the overall activation of the Picton CBD which will contribute to economic growth within the region and solidify Picton as the main administrative and civic hub of the Wollondilly LGA. The proposed GSB provides an area of lettable commercial space which will encourage the uptake of new businesses within the precinct. As noted, a café will also be provided to service the precinct and will provide additional employment opportunities.

- ***To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.***

The proposal is not for residential purposes; therefore, this objective is not relevant.

- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***

The ground floor of the Library provides a variety of services including reading and collection areas, and a café. The ground floor of the GSB will provide the main building entrance and customer service area. Building entrances are located along the main civic pathways to encourage activation of the precinct. The GSB will include lettable commercial space to encourage the uptake of businesses within the precinct.

- ***To support the health and wellbeing of the community by providing employment and services that are close to housing and well supported by public and active transport.***

The proposed development satisfies these objectives by providing a new public administration building for Council, as well as commercial lettable space to encourage employment in the area. The Site is in an accessible location and will incorporate end-of-trip facilities to encourage employees to choose active transport options. There is a public bus stop on Menangle Street that will service the area.

- ***To encourage vibrant local centres by allowing tourist and visitor accommodation and facilities.***

The proposal is not for tourist and visitor accommodation purposes; therefore, this objective is not relevant.

As confirmed in Planning Circular PS 20-002: Variations to development standards (DPIE, May 2020), numeric variations beyond 10% can be considered by an independent planning panel with assumed concurrence of the Secretary. The proposed variation to the height of building development standard does not raise any matter of significance for State or Regional Planning. It has been clearly demonstrated in this application and Clause 4.6 request that the site can readily accommodate the additional height to accommodate the lift overruns.

## 4. Conclusion

The above discussion demonstrates that the variation from the maximum height of building standard of approximately 2m (or 15.6% over the 16m HOB for the GSB) and 1m (or 11.1% over the 9m HOB for the Library) is appropriate in the circumstances of the proposal, subject to the provisions of clause 4.6 of the WLP 2012. This Clause 4.6 variation request is well founded as it demonstrates the following:

- Compliance with the height standard is unreasonable and unnecessary in the circumstances of the proposed development. The increase in height is to accommodate for lift overruns of the GSB and Library. Both buildings comply with the numerical height limit when measured to roof height
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case
- There is a lack of environmental impact resulting from the numeric variation, the proposal is within a strategic location to support additional building height, and the proposed buildings are appropriate for the built form context of the area
- The development remains consistent with the relevant objectives of the E1 Local Centre zone, notwithstanding the numeric variation in accordance with Clause 4.6(4)(a)(ii) of the *WLEP 2011*
- The proposed development improves the overall public urban realm and the availability of public space surrounding the building. This demonstrates that through the flexible application of the building height development standard, a better planning outcome can be achieved on the subject site
- The development is an important cultural, civic and community precinct, and is within the public interest
- There are no matters of State or regional planning significance and no notable public benefits in maintaining the height standard in this case.



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