



LEETON
SHIRE COUNCIL

EXTRAORDINARY COUNCIL MEETING
AGENDA

4 NOVEMBER 2021
7.00PM

TO BE HELD IN THE
COUNCIL CHAMBERS AND ONLINE
23-25 CHELMSFORD PLACE
LEETON NSW 2705

Authorised for release: Jackie Kruger General Manager

LEETON SHIRE COUNCIL

AGENDA

EXTRAORDINARY COUNCIL MEETING

04 November 2021

7.00PM

1. CIVIC PRAYER
2. ACKNOWLEDGEMENT OF COUNTRY
3. APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS
4. DISCLOSURES OF INTERESTS
5. PUBLIC REPRESENTATIONS
6. MAYORAL MINUTES
7. REPORTS TO COUNCIL
 - GENERAL MANAGER'S MATTERS
 - 7.1 ROXY REDEVELOPMENT WORKS CONTRACT4
 - ACTIVATION MATTERS
 - 7.2 PUBLIC EXHIBITION OF VOLUNTARY PLANNING AGREEMENT FOR YANCO SOLAR FARM23
8. NOTICES OF MOTIONS
9. COUNCILLOR ACTIVITY REPORTS
10. CONFIDENTIAL MATTERS
11. CONCLUSION OF THE MEETING

Council meetings are now video recorded. Members of the public are advised that their voice and/or image may form part of that recording.

PUBLIC REPRESENTATION

If any member of the public wishes to formally address the Council in relation to a matter in this agenda they are to register to speak for a maximum of three (3) minutes by 12 noon the day of the meeting.

Contact Kate Weston – 6953 0903

ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

A GUIDING CHECKLIST FOR COUNCILLORS,
OFFICERS AND COMMUNITY COMMITTEES

ETHICAL DECISION MAKING

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Could your possible conflict of interest lead to private gain or loss at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

CONFLICT OF INTEREST

- A conflict of interest is a clash between private interest and public duty. There are two types of conflict: Pecuniary – regulated by the Local Government Act and Division of Local Government and, Non-pecuniary – regulated by Codes of Conduct and policy. ICAC, Ombudsman, Division of Local Government (advice only).

THE TEST FOR CONFLICT OF INTEREST

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest

IDENTIFYING PROBLEMS

- 1st Do I have private interest affected by a matter I am officially involved in?
- 2nd Is my official role one of influence or perceived influence over the matter?
- 3rd Do my private interest conflict with my official role?

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

AGENCY ADVICE

Officers of the following agencies are available during office hours to discuss the obligations placed on Councillors, Officers and Community Committee members by various pieces of legislation, regulation and Codes.

Contact	Phone	Email	Website
Leeton Shire Council	6953 0911	council@leeton.nsw.gov.au	www.leeton.nsw.gov.au
ICAC	8281 5999 Toll Free 1800 463 909	icac@icac.nsw.gov.au	www.icac.nsw.gov.au
Office of Local Government	4428 4100	olg@olg.nsw.gov.au	www.olg.nsw.gov.au
NSW Ombudsman	9286 1000 Toll Free 1800 451 524	nswombo@ombo.nsw.gov.au	www.ombo.nsw.gov.au

GENERAL MANAGER'S MATTERS

ITEM 7.1 ROXY REDEVELOPMENT WORKS CONTRACT

RECORD NUMBER	21/420
RELATED FILE NUMBER	
AUTHOR/S	General Manager
APPROVER/S	General Manager

SUMMARY/PURPOSE

The purpose of this report is for Council to consider the pricing submitted for the redevelopment of the Roxy Theatre by the Lloyd Group and to determine how contracting and fundraising should proceed.

RECOMMENDATION

THAT Council:

1. Endorses, in principle, proceeding with the full Roxy redevelopment build at a contracted value of \$7,967,783.
 2. Agrees to enter into a contract with Lloyd Group for \$5,004,833 for Separable Portion 1, with approved provision for a contract extension of \$2,962,950 for SP2 to be confirmed no later than 01 May 2022.
 3. Agrees to actively seek federal government partnership funding of \$3M to close the funding gap for delivery of the build and, if federal support or other grants or donations are not forthcoming by 30 April 2022, Council agrees to fund the remainder of the project with a further loan of up to \$3M over a period of not more than 30 years, and delegates the exercising of that provision of extension to the General Manager.
 4. Authorises the General Manager to let a tender, if required, for up to \$321,000 for retractable seating after consultation with the Roxy Redevelopment Committee and the Council about the choice of seating options, and noting the tender cannot be let during the 2021 Council elections caretaker period.
 5. Requests the General Manager to bring back a progress / update report to Council in February 2022 on both the build and the establishment of and operational relationship with RIPA (Roxy Institute of Performing Arts).
-
-

REPORT

(a) Background

After extensive community consultation and engagement with heritage, theatre and regulatory experts since 2016, Council has endorsed the redevelopment of the Roxy Theatre with a view to delivering a multi-functional, contemporary, accessible, safe and compliant space that will serve as:

1. The Shire's main **town hall**, with better access and functionality
2. The Shire's **theatre**, that better meets the needs of modern day performers and audience and will meet the requirements of touring shows
3. The Shire's **cinema**, that attracts first release movies and is efficient to run
4. The Shire's anchor **Art Deco tourism attraction** that brings in increased visitation
5. A **CBD place activation** hub - a hive of activity, including conferences
6. Home to the Roxy Institute of Performing Arts (**RIPA**), a regional outpost for artistic excellence and the NSW regional project partner with the National Institute of Dramatic Arts (NIDA), amongst others, with a focus on youth.

Attachment 1 provides evidence of the extent of local and other support for the Roxy Redevelopment Project, as well as partnership commitment from NIDA valued at \$1.2M over two years for RIPA.

The Roxy Redevelopment project is shovel ready, with full design plans, development approval and, following a tender process, market derived costings.

At an Extraordinary Council Meeting on 22 October 2021, Council resolved as follows:

THAT Council:

1. *Formally rejects all tenders received for the Roxy Redevelopment and associated works, RFT LSC 2021-122.*
2. *Does not invite fresh tenders, as all tenders received complied with the requirements and provided confidence that the project outcomes can be successfully delivered.*
3. *Determines to enter into negotiations with Llyod, the preferred tenderer, for the full project with the option of a two-staged project, if required.*

Requests the General Manager to bring back a report to Council no later than 4 November 2021 to enable Council to make a final determination on the Roxy works contract.

The Lloyd Group has now submitted its revised price, with the full build being \$7,967,783 (down from \$9,431,060).

The full cost of the Roxy Redevelopment is:

Build (Lloyd Group)	\$ 7,967,783
Consultants / Other	\$ 1,247,113
Seating (Retractable & Roxy II)	\$ 321,000
<u>Contingency (5.8%)</u>	<u>\$ 461,054</u>
TOTAL	\$ 9,996,950

The available funds are:

Create NSW	\$3,945,000
Murray Darling Fund	\$999,999
Council (already approved)	\$2,089,000
TOTAL	\$7,033,999

The current funding shortfall is \$2,962,951.

Council's General Manager has been in contact with Sussan Ley's office (Federal Member for Farrer) who has indicated strongly that Minister Ley will support Council's efforts to secure the balance of the funds (estimated at rounded up figure of \$3M). However, there is no ability to make any immediate financial commitment to Council. A meeting is being scheduled with the Mayor and Minister Ley in November to discuss the project, where the Mayor will seek a solid commitment from the Commonwealth.

The Create NSW and Murray Darling Economic Development Fund grants have to be acquitted by 30 June 2022 and the Lloyd Group has indicated that they will work with Council to the best of their ability to ensure these grant funds are expended by the due date

(b) Discussion

In making its decision on how to proceed with the Roxy Redevelopment Project, Council needs to consider:

1. Build Deliverables and Build Funding Options
2. Ongoing Operational Costs

BUILD COSTS

The full project will deliver the following:

SEPARABLE PORTION 1 (Value \$5,004,833)

- Flat floor
- New stage floor
- New roof
- New heating / cooling
- Fire protection services
- Electrical upgrade
- Painted auditorium
- New plumbing / amenities
- Lift to stage and dressing area
- New dressing and waiting rooms
- New loading dock
- New kitchen

SEPARABLE PORTION 2 (Value \$2,962,950)

- Theatre equipment (lights, sound etc)
- Roxy II Theatre plus projection
- Foyer / Bar Area

There is currently a \$2,962,951 shortfall in funding for the full build. Staff are continuing to pursue grant funding to close the funding gap. The Lloyd Group has agreed to proceed with two separable portions (SP) to allow Council more time to

try to secure grant funds, with the contract for SP2 only needing to be confirmed by 01 May 2022. They have also agreed to hold their quoted price for SP2.

In the event Council resolves to only proceed with SP 1, Council will have to at least commit to enabling works which are quoted at \$500,000 plus and with no fixed price on offer from the Lloyd Group. If this occurs, the Roxy 11 Theatrette will have to be developed in the supper room at an additional cost of (estimated) \$200,000.

Attachment 5 to this report sets out for Council the various funding options and the implications of those options on Council's restrictions and General Fund.

ONGOING OPERATIONAL COSTS

A review of the last 5 years of operations has shown Council's actual contribution towards Roxy operations to range between \$161,771 and \$174,877 net of grants, depreciation and one offs such as Henry V. Depreciation for the current building in 2020/21 was \$64,163.

Council has always maintained the view that the new Roxy should not attract greater operational costs to Council above what has been funded to date, excluding depreciation and any interest payments.

Council is also advancing plans to establish RIPA as an independent body to operate the Roxy. While not the subject of this report, it is being proposed that an annual operations allocation be made of at least \$200,000 (CPI adjusted) to RIPA which they would need to leverage to access other external grant funds and philanthropic donations to run the theatre and RIPA operations. These ideas need to be further developed, but all parties are fully aware that the annual contribution needs to remain within the ballpark of the current operational spend.

If the full build is delivered, depreciation would increase to \$270,000 per annum (an increase of \$206,000 pa) and annual interest on a \$4.1m loan would commence at around \$114K in year one and repayments (principal and Interest) would range between \$270,000 and \$202,000 over 20 or 30 years respectively, depending on what funding mix Council decides to apply to the project.

(c) Options

1. Accept the build price from Lloyd Group and proceed to contract for SP1, but with financial provision voted for the SP2 contract to be exercised by the General Manager in the event additional federal or other grant or sponsorship money is not secured by 30 April 2022. **This is the preferred option.**

It should be noted that to achieve this price the following items have been value managed out:

- Proscenium Arch
- Lift to balcony
- Upstairs toilet
- Fit out of manager's office
- Decorative brickwork at rear
- Simplified plant room grate
- No change to upstairs seating
- Savings on prelims

2. Accept the build prices from Llyod Group for SP1 (noting the value management listed in point 1), the enabling works and theatre in the supper room. There will be sufficient funding left in SP1 to achieve the mechanical services. This option means that SP2 will be delivered at a future date, under a new tender / contract.
3. Seek new pricing to achieve fire compliance, disabled access and work, health and safety only for the existing Roxy Theatre space. Seek advice from existing funders as to whether they are willing to support Council to fund any of these elements from their funding allocation given the change in project scope. This is a risk as both Create NSW and the Murray Darling Economic Development Fund have provided support on the strength of the vision for the 'new' Roxy. Achieving full fire, safety and disabled access compliance is estimated to cost at least \$ 2,532,000 to \$3,000,000.

IMPLICATIONS TO BE ADDRESSED

(a) Financial

Confirmed funding to date:

Funding Source	\$,000
Create NSW	3,945
Murray Darling Economic Development Program	1,000
Leeton Shire Council *	2,089
Total Available	7,034
* Breakdown of Council contribution	
2021 /22 Budgeted loan	1,131
2021 /22 Budgeted water services	400
2021 /22 Budgeted road works	55
July 2021 Resolution Section 94 contribution	503
Total	2,089

The total project build cost is \$7,967,783. In regards the funding shortfall of \$2,962,950, every effort will be made to secure grant funding or donations as the first priority. If this was not successful, and Council is required to fund the shortfall via a loan, the additional interest payable would be \$82,963 in year one @2.8% over 20 years.

It is recommended that Council takes advantage of the low interest rates currently on offer in favour of using cash restrictions. This means Council can retain the cash it holds for future purposes that offer more short term benefits. The Roxy is deemed to be a most suitable candidate for an intergenerational loan.

The borrowings will impact the General Fund through increased interest and depreciation but, by funding the shortfall as a loan, it spreads the cash affect over the term of the loan, reflecting the intergenerational nature of the investment.

Attachment 5 provides a full analysis of all options presented in this report.

(b) Policy

Leeton Shire Council Procurement Policy
Community Engagement Strategy
Borrowing and Use of Loan Funds
Section 94a Fixed Levy Plan

(c) Legislative/Statutory

Local Government (General) Regulation 2005 - Reg 393B

Regulation 393B deems that Council enters a caretaker period of 4 weeks preceding the date of an ordinary election. Council therefore cannot make decisions greater than \$1 50K or 1% of Councils' rates revenue whichever is greater. The contract for Stage 1 and 2 of the Roxy Development is more than this amount.

(d) Risk

Could be reputational risk to Council if the DA approved project and outpost of artistic excellence do not proceed as there has been extensive community engagement and expectation built. There has also been significant community support for the project, with Create NSW and NIDA also showing commitment to the project and vision for the facility. If the project loses momentum and contract milestones cannot be met, the funders may withdraw.

Could be reputational and financial risk to Council if project does not proceed in any form as fire compliance, disability access and WHS gaps must still be addressed at the Roxy, regardless.

There will be increased financial burden on Council's General Fund if additional loans need to be secured - there may be opportunity to borrow internally which at least sees interest payment re-invested in Council. It is noted that delaying Separable Portion 2 could significantly increase the cost of that element of the build.

Project risks are being and will be managed through the Project Control Group which meets at least monthly, or more frequently if required. The building committee will meet weekly once the build commences. Council has a project manager who will visit the site daily to observe and document progress.

Could be reputational risk if the heritage value of the Roxy is compromised. To avoid this, Council has bought to land next door to reduce the impact on the theatre itself. Further a conservation management plan has been developed and builders have been sourced that are vastly experienced at working with heritage buildings.

CONSULTATION

(a) External

On awarding development approval for the Roxy Redevelopment Project on 7 June 2021, the Chairman of the Joint Regional Planning Panel wrote that the JRPP "commends Leeton Shire Council for its vision and wisdom in initiating and professionally progressing this outstanding project. The manner by which Council has engaged the community in planning and progressing this important heritage restoration and community project has been commendable."

NIDA has confirmed in an email that RIPA is its NSW Partner.

Community and local business support for the Roxy and RIPA vision was collected when the Building Better Regions Fund application was made for \$2.7M (the funding shortfall at the time). There was a petition supported by 62 local not-for-profit groups, 27 support letters from local businesses, 38 support letters from regional and national arts and economic development bodies and accomplished artists, and support letters from indigenous and cultural and linguistically diverse representatives from the Leeton community. **Attachment 1 refers.**

Other consulted include:

- Donald Cant Watts Corke (Project Management and Quantity Surveyor)
- Roxy Design Team
- Lloyd Group
- Local Contractors

(b) Internal

Group Manager Corporate
Group Manager Operations
Manager Finance
Roxy Project Director (Voluntary)
LSC Roxy Project Manager
Process and Project Performance Coordinator

LINK/S TO THE DELIVERY PROGRAM/OPERATIONAL PLAN (DPOP)

Under the Key Priority Area Outcome Two: AN ACTIVE AND ENRICHED COMMUNITY within Council's adopted Delivery Program/Operational Plan – 7 - A community that enjoys arts and culture - 7 a - Provide a local theatre for performing and cinematic arts and event - Continue refurbishment of the Roxy Theatre both internally and externally.

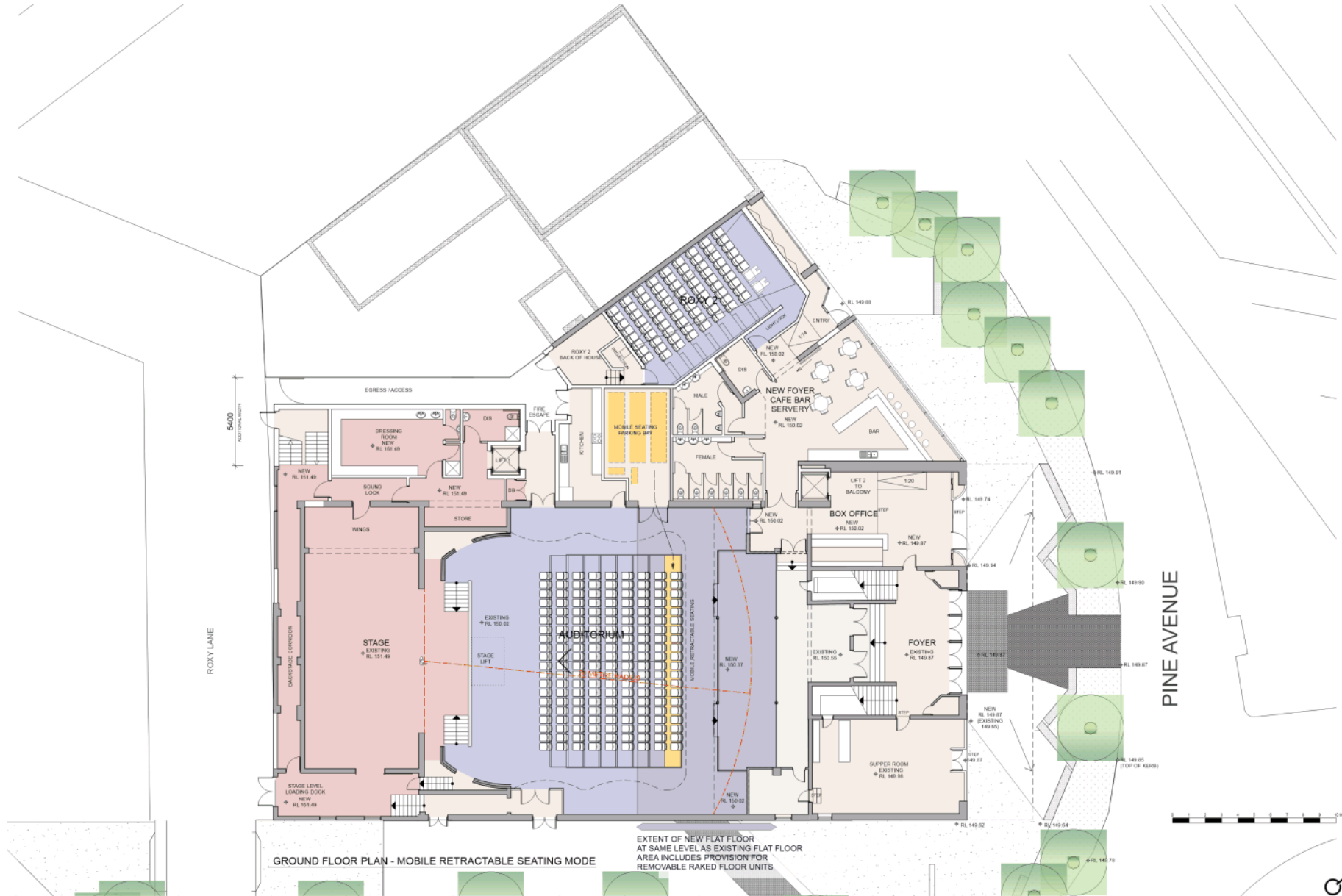
ATTACHMENTS

- 1 ➡ Letters of Support for Roxy and RIPA - Attached separately
- 2 ↓ Roxy Masterplan Drawings
- 3 ↓ 3D Drawing of Roxy Redevelopment

4↓ Roxy Staging Drawings

5↓ Roxy Redevelopment Scenarios

6 LLOYD Summary Cost Breakdown - **Confidential**



GROUND FLOOR PLAN - MOBILE RETRACTABLE SEATING MODE

EXTENT OF NEW FLAT FLOOR
 AT SAME LEVEL AS EXISTING FLAT FLOOR
 AREA INCLUDES PROVISION FOR
 REMOVABLE RAKED FLOOR UNITS

Project: ROXY Theatre Upgrade & Additions - MASTERPLAN

Project No: 19-009

Title: GROUND FLOOR PLAN - MOBILE RETRACTABLE SEATING MODE

Status: Proposal

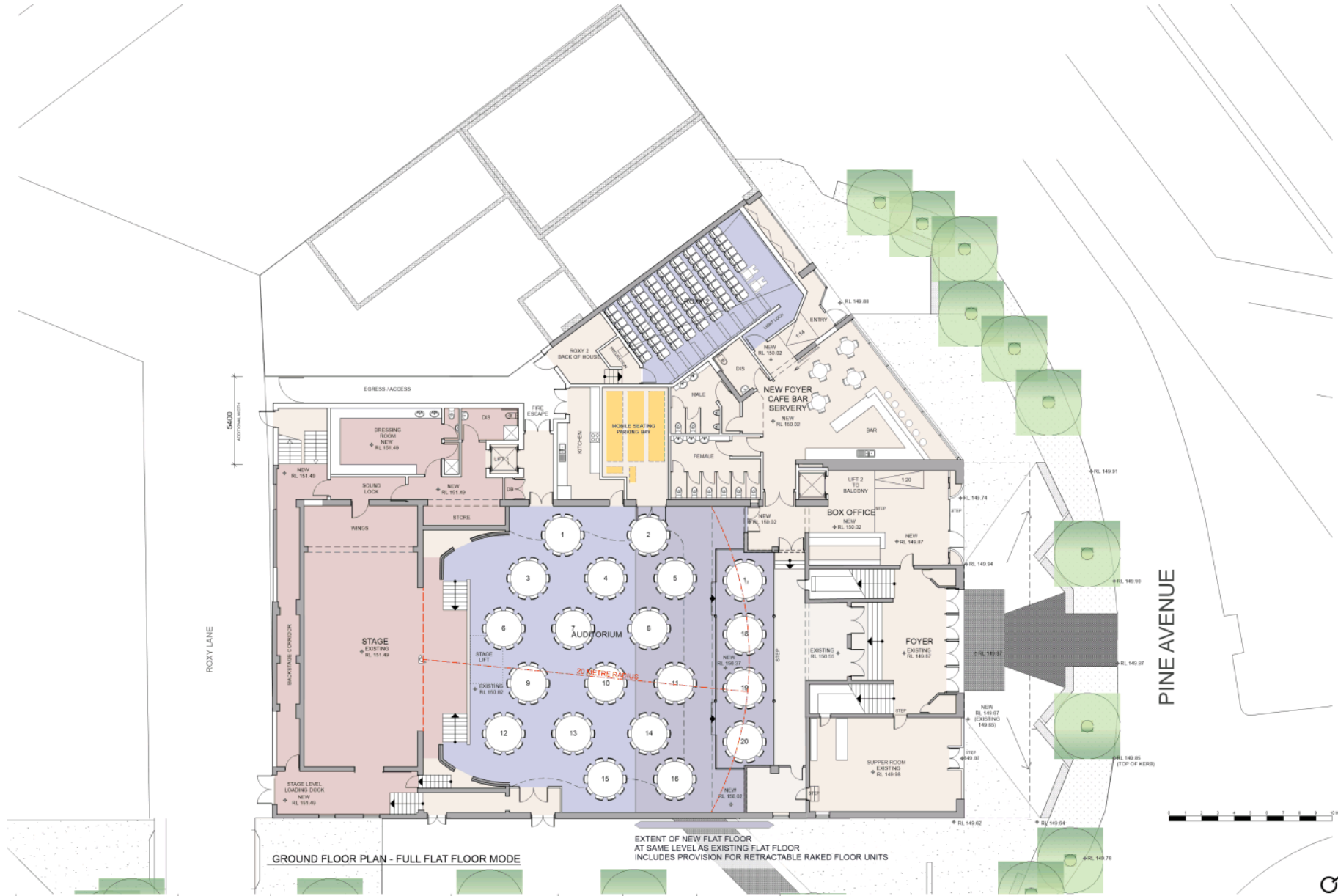
Drawn: PWO

Date: 25-05-2020 Scale: 1:100 @ A1 Revision: 01

WBA
 Wilmans Group Architects
 51 Leander Street Carlton 3023
 Telephone 61 3 9339 6700 Fax 61 3 9339 6500
 Email info@wilmanstgroup.com.au

Drawing No.

ma01



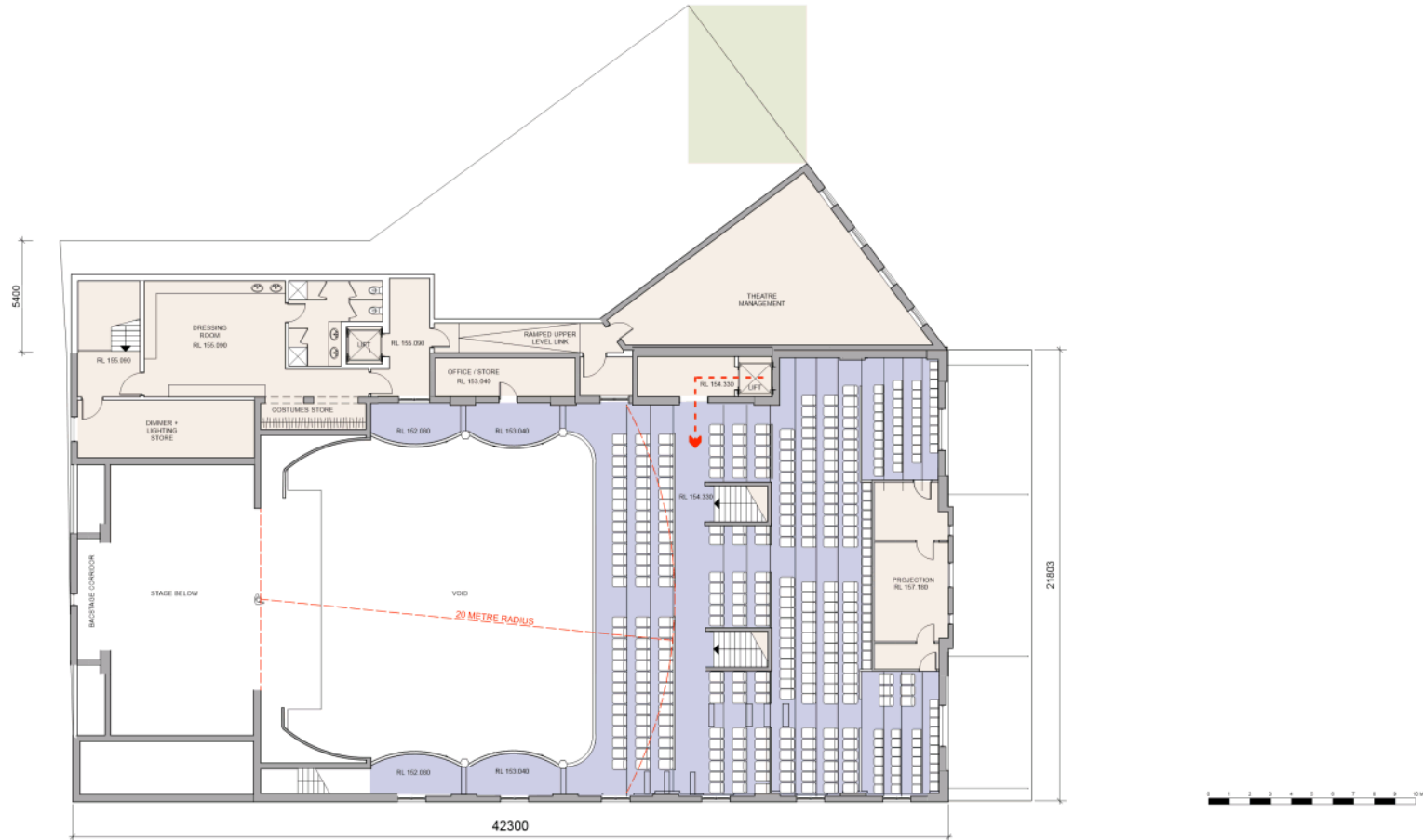
GROUND FLOOR PLAN - FULL FLAT FLOOR MODE

EXTENT OF NEW FLAT FLOOR
 AT SAME LEVEL AS EXISTING FLAT FLOOR
 INCLUDES PROVISION FOR RETRACTABLE RAKED FLOOR UNITS

Project: ROXY Theatre Upgrade & Additions - MASTERPLAN | Project No: 19-009 | Title: GROUND FLOOR PLAN - FULL FLAT FLOOR MODE | Status: Proposal | Drawn: PWO | Date: 25-05-2020 | Scale: 1:100 @ A1 | Revision: 01

WBA
 Wilmans Group Architects
 51 Leander Street Carlton 3023
 Telephone 61 3 9330 9200 Fax 61 3 9330 6503
 Email info@wilmanstgroup.com.au

Drawing No. **ma02**



UPPER LEVEL PLAN - MASTERPLAN

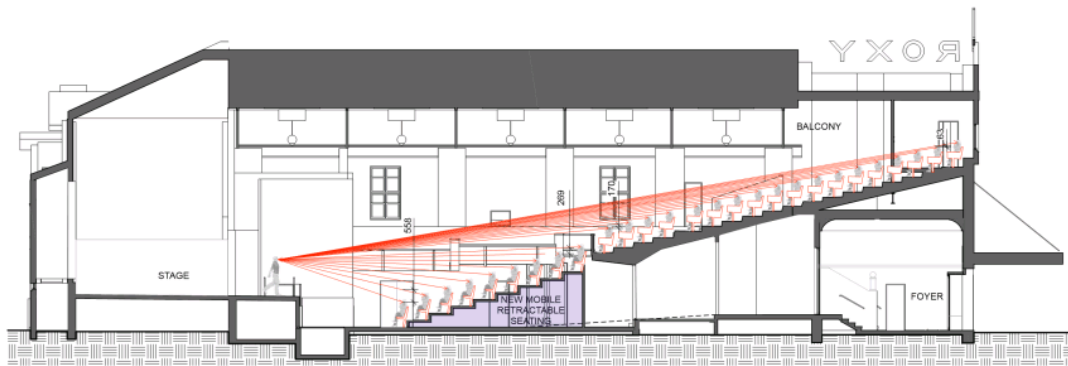
Project: ROXY Theatre Upgrade & Additions - MASTERPLAN | Project No: 19-009 | Title: UPPER FLOOR PLAN | Status: Proposal | Drawn: Pwo | Date: 28-05-2020 | Scale: 1:100 @ A1 | Revision: 01

WBA
 WBA Group Architects
 51 Leeton Street Carlton VIC 3053
 Telephone: 61 3 9350 9332 Fax: 61 3 9350 9333
 Email: info@wbagroup.com.au

Drawing No. **ma04**



1 THEATRE SECTION - CURRENT SIGHTLINES
 (PERFORMER AT FRONT OF STAGE)



2 THEATRE SECTION - IMPROVED SIGHTLINES WITH MOBILE RETRACTABLE SEATING
 (PERFORMER AT FRONT OF STAGE)



Project: ROXY Theatre Upgrade & Additions - STAGE 1 | Project No: 19-009 | Title: Urban Context | Status: Proposal | Drawn: PWO | Date: 18-05-2020 | Scale: N.A. | Revision: 01

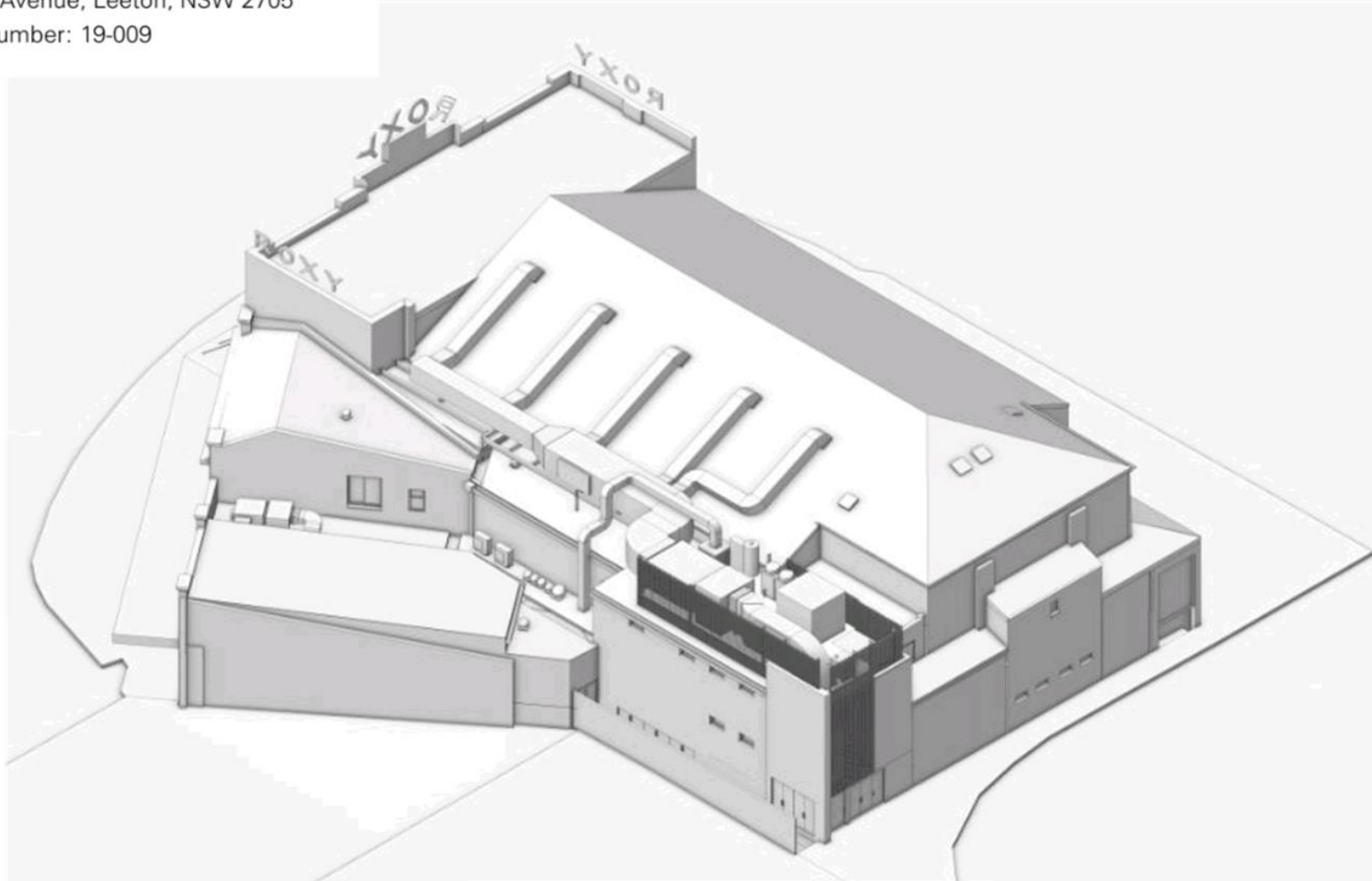
WBA
 WILSON BURNARD ARCHITECTS
 51 Leavelle Street Carlton VIC 3053
 Telephone: 61 3 9350 9100 Fax: 61 3 9350 9000
 Email: info@wilsonburnard.com.au

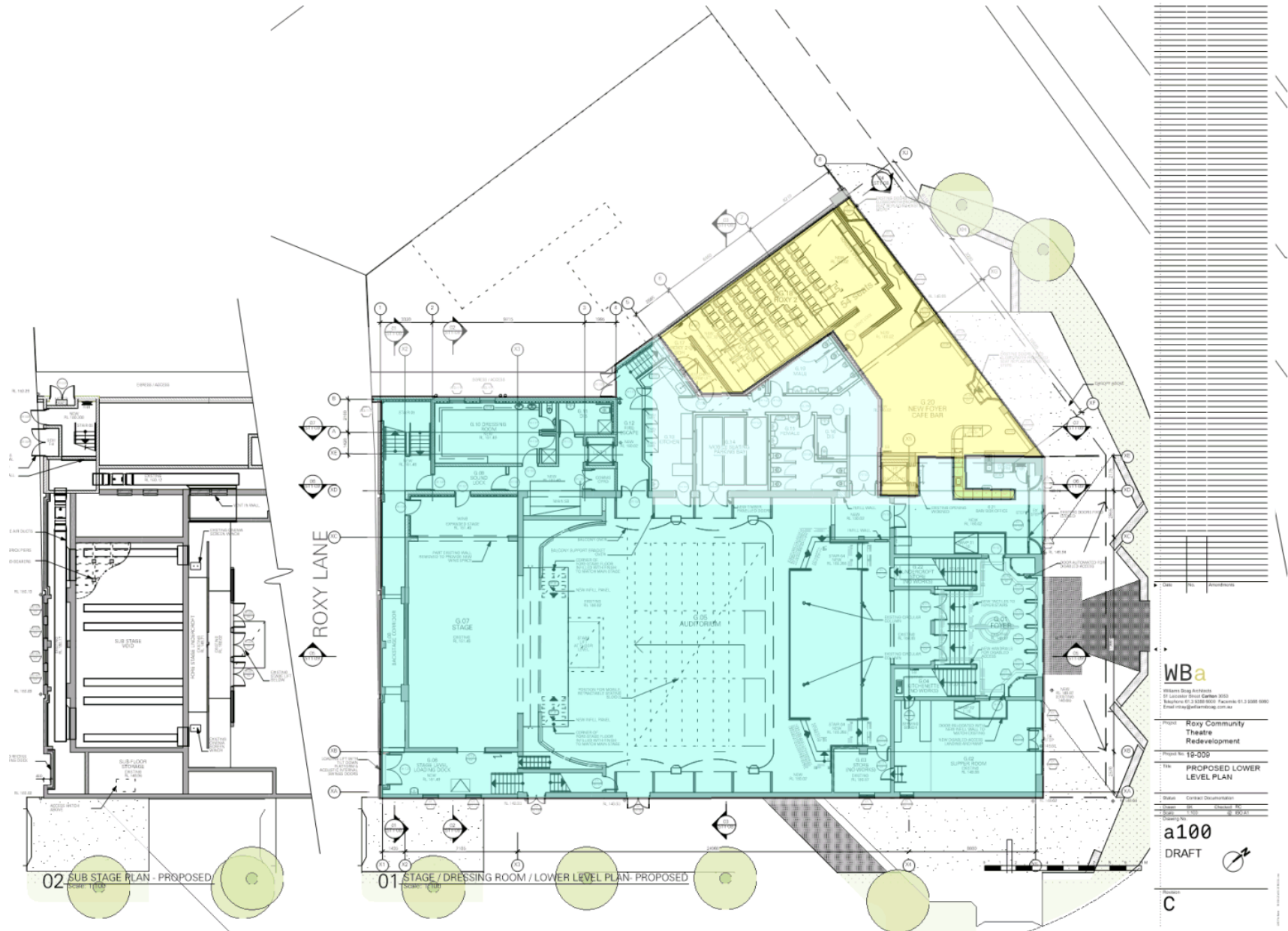
Drawing No. **ma05**

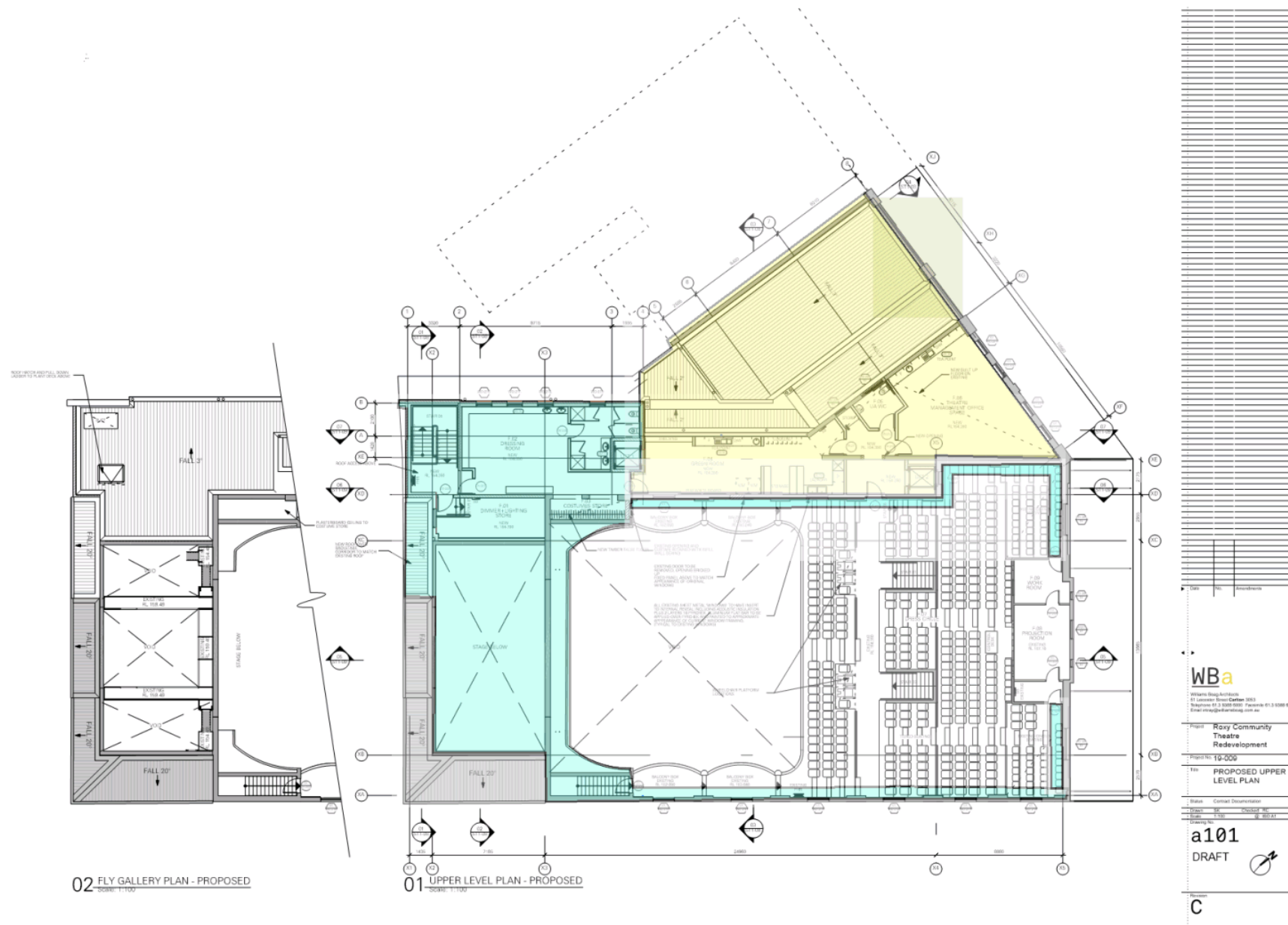
Roxy Community Theatre Redevelopment

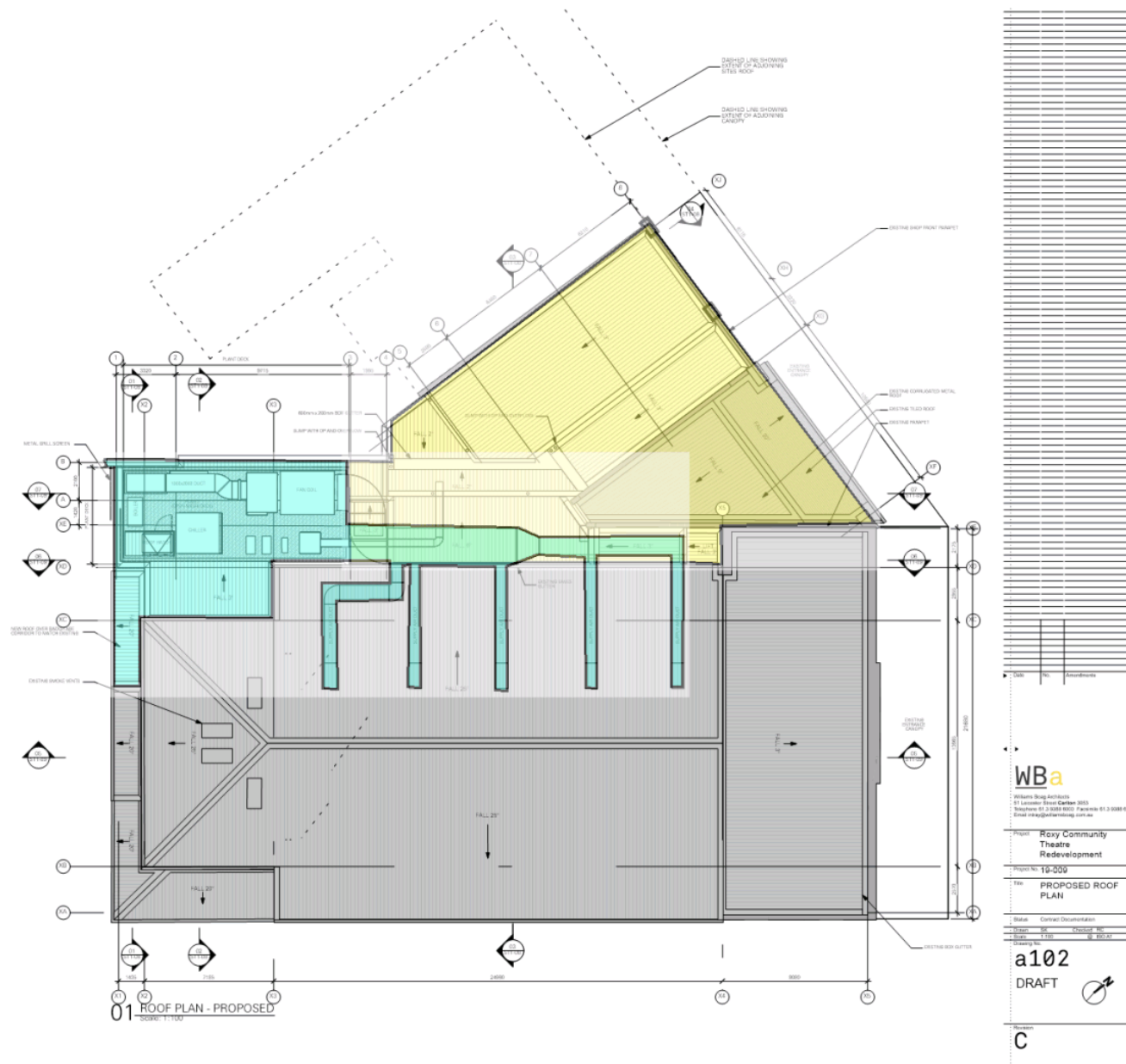
114 Pine Avenue, Leeton, NSW 2705

Project number: 19-009









Roxy Redevelopment Scenarios

WORKS/SCOPE	Option 1.					Option 2		
	Current Position	Single Project	SP1	SP2	Separate Projects			
SP1	7,033,999	5,004,833	5,004,833					
SP2		2,962,950		2,962,950				
Quoted Build Cost	7,033,999	7,967,783	5,004,833	2,962,950				
Proposed Adjustments to Works/Scope								
<i>Enabling costs for SP2 and Supper Room Theatre (estimated)</i>			800,000	-				800,000
Seating (Retractable & Roxy II)		321,000	321,000					321,000
Sub-total	-	321,000	1,121,000	-				1,121,000
Sub-total Proposed inc. Adjustments to Works/Scope	7,033,999	8,288,783	6,125,833	2,962,950				9,088,783
Consultants / Other		1,247,113	1,247,113					1,247,113
Contingency of 5.8%		461,054	289,604	171,450				461,054
Total Proposed Works/Scope	7,033,999	9,996,950	7,662,550	3,134,400				10,796,950
Approved (in accordance with 28 July resolution)	7,033,999	7,033,999	7,033,999					7,033,999
Funding shortfall	-	2,962,951	628,551	3,134,400				3,762,951

FUNDING Scenarios under 20 year terms and 2.8% interest.	Option 1.					Option 2		
	Current Position	Single Project	SP1	SP2	Separate Projects			
FUNDING								
External Funding Funding	4,944,999	4,944,999	4,944,999	3,134,400				8,079,399
LSC Funding (including loan, Restrictions and Other)	2,089,000	5,051,951	2,717,551	-				2,717,551
Other funding	55,000	55,000	55,000	-				55,000
2021 /22 Budgeted road works	55,000	55,000	55,000					55,000
Restriction Funding Funding	903,000	903,000	903,000	-				903,000
External Restrictions								
Section 94 contribution	503,000	503,000	503,000					503,000
2021 /22 Budgeted water services	400,000	400,000	400,000					400,000
Loan Funding	1,131,000	4,093,951	1,759,551	-				1,759,551
2019/20 Budgeted Loan - project shortfall	631,000	631,000	631,000					631,000
2021 /22 Budgeted loan - 2021/22 Budget	500,000	500,000	500,000					500,000
Additional Loan		2,962,951	628,551	-				628,551
Total Funding	7,033,999	9,996,950	7,662,550	3,134,400				10,796,950
Total Cost	7,033,999	9,996,950	7,662,550	3,134,400				10,796,950
Shortfall	-	-	-	-				-

OPERATING COST WORKINGS		Option 1.	Option 2		
	Current Position	Single Project	SP1	SP2	Separate Projects
INTEREST					
Approved - annual 2.8%	31,668	31,668	31,668	-	31,668
Not Yet Approved - annual 2.8%	-	82,963	17,599	-	17,599
Subtotal Interest	31,668	114,631	49,267	-	49,267
DEPRECIATION					
Current Asset after write off of renewed assets	-	29,856	29,856	-	29,856
New project	211,020	299,909	229,876	94,032	323,909
Subtotal Depreciation	181,164	270,053	200,020	94,032	294,053
ROXY OPERATING COSTS - GENERAL FUND					
Proposed Council Contribution (without depn&interest)	200,000	200,000	200,000	-	200,000
Interest and Depreciation	212,832	384,683	249,288	94,032	343,320
Total contribution (ongoing)	412,832	584,683	449,288	94,032	543,320
Ongoing difference from July Position	-	171,851			130,488
Asset write off (first year only)					
Estimated value of assets written off to the Income Statement	650,051	650,051	650,051	640,000	650,051
Estimated GF Effect Year 1	1,062,883	1,234,734	1,099,339	734,032	1,193,371

CASH EFFECT		Option 1.	Option 2		
	Current Position	Single Project	SP1	SP2	Separate Projects
Estimated Cash Effect (ongoing)	274,537	469,806	315,961	-	315,961
Ongoing difference from July Position	-	195,269	N/A	N/A	41,424

GENERAL FUND Cash Effect (1st year)					
ROXY OPERATING COSTS					
Less Build cost	7,033,999	9,996,950	7,662,550	3,134,400	10,796,950
Add back External Funding & Loan	-	6,075,999	-	6,704,550	-
Add back Water Restriction funds	-	400,000	-	400,000	-
Add back already prior year spent	-	575,000	-	575,000	-
Less Grant money received	-	-	-	-	-
Less Grant money expected following year	-	-	-	-	-
Add back depreciation	-	181,164	-	200,020	-
Less Principal repayment	-	42,869	-	155,176	-
Estimated Cash Effect Year 1	257,537	452,806	298,961	0	298,961

Assumptions and Notes

- Loans are assumed fixed interest
- No return assumed on investment.
- With the renewal of the Roxy it is expected that approximately \$650k will be written off the old assets on completion.
- The purchase of the Café's cannot be separated from the land, so no write off of asset for the Café's is possible in year 1.
- No cost of capital is included for internal funds.
- The cost of separating the project into 2 parts (Enabling costs) beyond the agreed timeframe are estimated at \$800K.

ACTIVATION MATTERS

ITEM 7.2 PUBLIC EXHIBITION OF VOLUNTARY PLANNING AGREEMENT FOR YANCO SOLAR FARM

RECORD NUMBER	21/412
RELATED FILE NUMBER	21/305
AUTHOR/S	Manager Planning, Building and Health
APPROVER/S	Group Manager Shire Activation

SUMMARY/PURPOSE

The purpose of this report is to seek Council approval to commence with the Public Exhibition of the draft Voluntary Planning Agreement (VPA) for the Yanco Solar Farm. Pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*, and the Leeton Community Participation Plan 2019, Council must exhibit a proposed VPA for 28 days prior to entering into a VPA.

RECOMMENDATION

THAT Council:

1. Endorses the public exhibition of the draft Voluntary Planning Agreement (VPA) for the Yanco Solar Farm for a period of 28 days.
 2. That a further report be prepared for Council's consideration should objections be received during the exhibition period.
 3. Authorise the Mayor and General Manager to execute the VPA on Council's behalf in the absence of any objections.
-

REPORT

(a) Background

The Draft Planning Agreement applies to development for the construction and operation of a proposed 60 MW AC (alternating current) photovoltaic solar farm at Yanco, NSW, pursuant to state significant development application SSD-9515.

Draft Planning Agreements must be publicly notified and made available for public inspection before they can be entered into. Attached to this report is a draft VPA which was developed in accordance with condition no. 12 of SSD-9515 for the Yanco Solar Farm project.

(b) Discussion

The objective of the Draft Planning Agreement is to require the payment of a Monetary Contribution by the Developer in respect to the carrying out of the

Development, and to require the Land to be returned to full irrigable farming capacity after the Development has been operating for 30 years.

The Draft Planning Agreement is a planning agreement under s 7.4 of the *Environmental Planning and Assessment Act 1979*. The Draft Planning Agreement is a voluntary agreement under which Monetary Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer.

The Effect of the Draft Planning Agreement is the following:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer
- excludes the application of s 7.11 and s 7.12 of the Act to the Development
- makes provision for the payment of a Monetary Contribution by the Developer to the Council
- requires the Development to cease operating after 30 years of operation
- requires the Land to be rehabilitated with 18 months of the end of the 30-year operational period or whenever the Development ceases to operate
- is to be registered on the title to the Land
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement
- provides two dispute resolution methods for disputes under the agreement, being expert determination or mediation
- provides that the agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Planning agreements are legal documents and may not be easily understood by the public. An explanatory note can help the public understand a planning agreement and facilitate informed discussion. The *Environmental Planning & Assessment Regulation 2000* requires that an explanatory note is provided with the public notice of a planning agreement.

The explanatory note must help the broader community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It should be easy to understand and written in plain English.

The explanatory note must:

- Identify how the agreement promotes the public interest
- Identify whether the agreement conforms with the planning authority's capital works program, if any
- State whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

It should be possible for a person to be able to readily understand the nature of the development proposed and the public benefits to be provided. The explanatory note should indicate timing of delivery and should include maps, diagrams and other material to help explain what is proposed.

An explanatory note must summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact on the public or relevant section of the public.

An explanatory note is attached to the VPA (last four pages of **Attachment 1**) that will be on Public Exhibition.

(c) Options

1. Endorse the public exhibition of the draft VPA for a period of 28 days. In the absence of objections, authorise the Mayor and General manager to execute the VPA on behalf of Leeton Shire Council. **This is the preferred option.**
2. Endorse the public exhibition of the draft VPA for a period of 28 days. Require a further report to be presented to Council for consideration in the event of any submission, for or against, the proposed VPA.

IMPLICATIONS TO BE ADDRESSED

(a) Financial

No adverse financial implications for Leeton Shire Council. The draft VPA will provide an income of \$900K to Council over the next 30 years, excluding CPI increases.

(b) Policy

Leeton Community Participation Plan 2019.

(c) Legislative/Statutory

Environmental Planning and Assessment Act 1979, as amended.
Environmental Planning and Assessment Regulation 2000.

(d) Risk

Nil

CONSULTATION

(a) External

Department of Planning, Industry and Environment
Applicant (Sun Spot 6 Pty Ltd)
Raffael Luigi Ierano
Frank Estates Pty Ltd

(b) Internal

General Manager
Group Manager Activation

LINK/S TO THE DELIVERY PROGRAM/OPERATIONAL PLAN (DPOP)

Under the Key Priority Area Outcome Five: A QUALITY BUILT ENVIRONMENT within Council's adopted Delivery Program/Operational Plan – 17 - A community that enjoys attractive towns and parks - 17 d - Deliver development planning services that signal Leeton is 'open for business' - Receive and assess Development and Subdivision Applications.

ATTACHMENTS

1 ➡ Draft VPA for Yanco Solar Farm - *Attached separately*