

VOLUNTARY PLANNING AGREEMENT

A Voluntary Planning Agreement, ("**VPA**"), in accordance with Section 93F of the NSW Environmental Planning and Assessment Act 1979, ("**the Act**"), between the parties hereinafter mentioned.

Wyong Shire Council (ABN 47 054 613 735)

and

Chehab Group Pty Ltd (ACN 144 520 829)

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Planning Agreement

DATE _____

PARTIES

Wyong Shire Council (ABN 47 054 613 735) of 2 Hely Street, Wyong, NSW 2259, ("**the Council**");

and

Chehab Group Pty Ltd (ACN 144 520 829) of 10 Lancaster Street, Ingleburn, NSW, ("**the Developer**").

Background

- A. The Developer has lodged a Development Application with the Council, (DAXxxx/xxxx), to develop the site at 2A-6 Bayview Avenue, The Entrance, (Lot 11 DP502613; Lot 2 DP205929; Lot E DP403890 and Lot C DP343781), for mixed use, (community, retail and residential purposes), including the construction of a "*residential flat building*"¹ of 14 and 16 storeys, containing 109 apartments, above a ground floor level accommodating space for a new public library and café; and, an Art Gallery. Basement parking consisting 178 spaces over three levels is proposed, with 15 spaces, bus space, and a storage room reserved for library purposes, ("**the Development**").

This VPA includes an agreement between the parties, that subject to the grant of consent to the Development, the developer provides public benefits, (including the dedication of land), in-lieu of developer contributions under s.94 and 94A of the Act.

Summary

- B. Subject to the Operative Provisions of this VPA:
1. The Developer undertakes to:
 - a) dedicate to Council, (in stratum), part of the ground floor of the Development, immediately following the issue of the first *Occupation Certificate*² for the Development, comprising an unimproved *cold-shell space* of no less than 1,450sq.m, for the purposes of a new public library and cafe, plus 15 associated car spaces and a storage room at basement level, as shown indicatively at **Schedule 1**.
 - b) make all reasonable efforts to complete works to achieve the release of the first Occupation Certificate for the Development within 18 months of commencement of construction.
 - c) provide Monetary Contribution prior to the issue of the first Occupation Certificate for the Development, to a value calculated as follows:

¹ Wyong Shire Local Environmental Plan 1991

² Environmental Planning and Assessment Act 1979

Monetary Contribution = (Section 94 Contribution that would otherwise apply to the Development) – (Market value of the space/land to be dedicated).

These undertakings shall be referred to as the ("**Developer Contribution**"), as provided at **Schedule 2**, which includes the nature and timing of the Developer Contribution, and other undertakings, by the Developer, under this Agreement.

2. Council undertakes to:
 - a) agree to accept the Developer Contribution as outlined at **Schedule 2** in lieu of the application of s94 of the Act on the Development;

Operative Provisions

1. Planning Agreement under the Act

- 1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the NSW Environmental Planning and Assessment Act 1979.

2 Application of this Agreement

This Agreement applies to land described as 2A-6 Bayview Avenue, The Entrance, being Lot 11 DP502613; Lot 2 DP205929; Lot E DP403890 and Lot C DP343781.

3 Operation of this Agreement

- 3.1 The provisions of this Agreement are conditional upon, and shall not take effect unless or until Development Consent has been granted to (DAXxxx/xxxx), pursuant to the provisions of the Act, and being generally consistent with the Development as proposed on lodgement of the Development Application with Council.

4 Definitions and Interpretation

- 4.1 Refer to **Schedule 3**.

5 Application of Section 94 and Section 94A of the Act to the Development

- 5.1 The agreement excludes the application of s94 and s94A of the Act to the Development.
- 5.2 Council agrees to accept the Developer Contribution, as outlined at **Schedule 2**, in lieu of the application of s94, and that the monetary value of the Developer Contribution will not exceed an amount which would be required had s94 apply.

6 Methodology for Valuing Developer Contribution

- 6.1 The value of the building space to be dedicated to Council shall be determined in accordance with Schedule 4 of this Agreement.
- 6.2 Within 2 months from a point in time when where the exchange of contracts for the sale of at least 40% of the total number of apartments in the Development has occurred, a Valuation, in accordance with Sub-Clause 6.1, shall commence.
- Upon the completion of the Valuation, Council will calculate the amount of the s94 levy, based on the s94 Contribution Plan applicable at the time, for the Development.

- 6.3 The Monetary Contribution, as identified at **Schedule 2**, is calculated as follows:

(Section 94 Contribution that would otherwise apply to the Development) – (Market value of the space/land to be dedicated).

7 Indexation of monetary contributions

- 7.1 The Final Monetary Contribution identified at Clause 6.3 and **Schedule 2** is to be indexed from the time Council calculates the levy in accordance with Clause 6.2 to the point of payment, in accordance with the following formula:

$$C \times \frac{CPI2}{CPI1}$$

Where:

- C* The value of the Monetary Contribution in accordance with Clause 6.2 of this agreement
- CPI2* The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
- CPI1* The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time the Monetary Contribution in accordance with Clause 6.2 is made.

8 Timing

- 8.1 The timing of the provision of the Developer Contribution, and other undertakings of the Developer, is provided at **Schedule 2**.

9 Registration of this Agreement

- 9.1 The Developer agrees to pay all costs incurred by Council associated with the Registration of this Agreement under Section 93H of the Act.

10 Suspension and Termination Provisions

- 10.1 Subject to the substantial commencement of *the Development*, should the Council at any time or for whatever reason no longer require the completion of any items identified in **Schedule 2** no further monetary contribution may be imposed on the Developer.
- 10.2 Should for whatever reason, the developer not deliver the dedication of the building space as per this agreement, immediately following the issue of the first Occupation Certificate, then monetary contributions under Section 94 of the Act will apply.

11 Dispute Resolution

- 11.1 If a dispute or difference (hereinafter called a "dispute") between the Parties hereto arises in connection with the provisions of this agreement or the subject matter thereof, then either Party shall deliver by hand or send by certified mail to the other party a Notice of Dispute in writing adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute, the Parties hereto shall continue to observe and perform the terms of this agreement.
- 11.2 Within 14 days of service of a Notice of Dispute, the Parties shall confer at least once to attempt to resolve a dispute or to agree on methods of resolving the dispute by other means. If a dispute has not been resolved within 28 days of service of the Notice of Dispute, that dispute shall be and is hereby referred to the arbitration. In that event, the dispute shall be and is hereby referred to the arbitration of a single arbitrator to be appointed by the President for the time being of the Institute of Arbitrators and Mediators Australia (NSW Chapter) and the arbitration shall be conducted in accordance with the Commercial Arbitration Act 1984 (NSW).

12 Enforcement

- 12.1 This Agreement may be enforced by the issuance of notices by Council pursuant to Clause 13 or/and by the commencement of proceedings in the Courts of New South Wales.

13 Notices

13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- a. delivered or posted to that party at its address set out below.
- b. Faxed to that Party at its fax number set out below.
- c. Emailed to that Party at its email address set out below.

Council

Wyong Shire Council

Attention: The General Manager

Address: 2 Hely Street, Wyong, NSW 2259

Fax No: (02) 4350 2098

Email: wsc@wyong.nsw.gov.au

Developer

Chehab Group Pty Ltd

Attention: Mr Alfred Chehab,

Address: 10 Lancaster Street, Ingleburn, NSW.

Fax No:

Email:

13.2 If a party gives the other Party three business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by the other party if it is delivered, posted or faxed to the latest address or fax number.

13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- a. If it is delivered, when it is left at the relevant address
- b. If it is sent by post, two business days after it is posted
- c. If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error-free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 Approvals and Consent

14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any condition as determined by the Party. A Party is

not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Assignment and Dealings

- 15.1 The Developer agrees that they will not Deal, transfer or mortgage their interest in the Land prior to the registration of this Agreement as agreed at Clause 9.
- 15.2 The Developer agrees that they will not lodge any caveat or other instrument upon the title of the Land which may prohibit or hinder registration of this Agreement.

16 Costs

- 16.1 The Developer agrees to pay or reimburse the costs of Council, as follows:

- a) Preparation and execution of this VPA, up to \$5,000.00;
- b) Advertising and exhibition of this VPA in accordance with the Act;
- c) All costs associated with the Registration of the VPA;

within 14 working days after receipt of a tax invoice from Council.

17 Entire Agreement

- 17.1 This agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further Acts

- 18.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

19 Governing Law and Jurisdiction

- 19.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 Joint and Individual Liability and Benefits

- 20.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 No Fetter

- 21.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 Representations and warranties

- 22.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.
- 22.2 The Developer warrants to make all reasonable efforts to complete the works to achieve the issue of the first Occupation Certificate of the Development within 18 Months of commencement of the Development.

23 Severability

- 23.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

24 Waiver

- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver or any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

- 25.1 If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

26 Review of this Agreement

- 26.1 Any modification or variation to of this Agreement will be of no force or effect unless it is in writing and signed by the Parties to this Agreement, in accordance with Section 93G of the Act.

27 EXECUTION OF AGREEMENT

EXECUTED as an agreement in accordance with Section 93F of the NSW Environmental Planning and Assessment Act 1979:

Date:

Executed for and on behalf of Wyong Shire Council:

Signature of General Manager, Wyong Shire Council

Signature of Witness

Name (BLOCK LETTERS)

Name (BLOCK LETTERS)

Executed for an behalf of Chehab Group Pty Ltd in accordance with section 127(1) of the Corporations Act 2001

K. Chehab

Director/company secretary

Director/company secretary

Director/company secretary

KIERAN CHEHAB

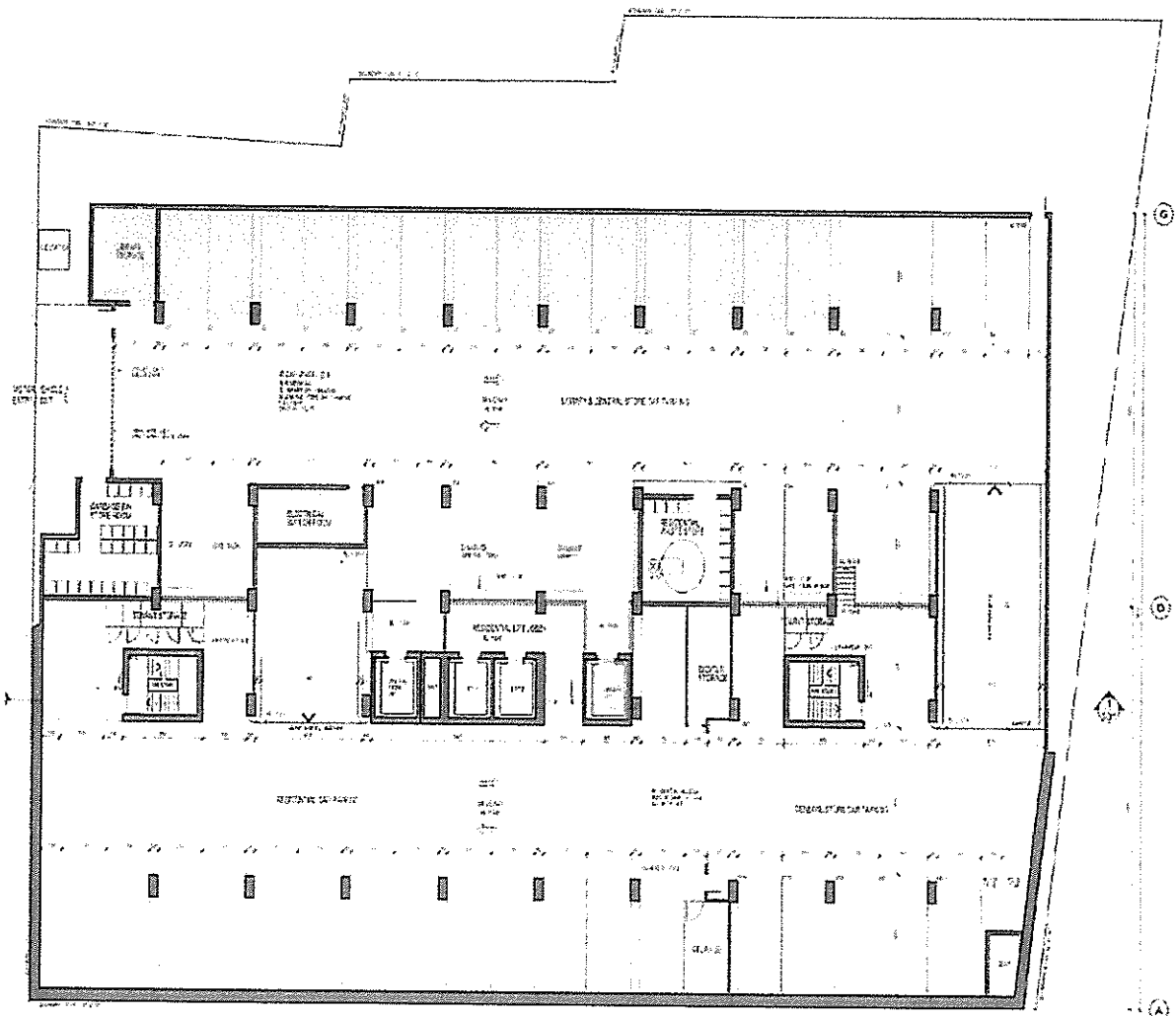
Name (BLOCK LETTERS)

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Name (BLOCK LETTERS)

Architectural floor plan of the ground floor of a building. The plan shows a large rectangular main area with a grid of 13 columns (1-13) and 11 rows (A-K). The main area is divided into several sections by dashed lines. The bottom section contains a 'GENERAL STORE' (6,100), a 'RESTAURANT' (6,100), a 'BAR' (6,100), and a 'Cafe' (6,100). The top section contains a 'RESTAURANT' (6,100) and a 'Bar' (6,100). The plan also shows a 'KITCHEN' (6,100) and a 'Bathroom' (6,100). The building is located on 'BAYVIEW AVENUE' and 'ANDLER PARADE'. The plan is labeled 'GROUND FLOOR' and '11'.

Basement 1



SCHEDULE 2

Pursuant to the Agreement, the Developer undertakes as follows:

Item	Developer Contribution/undertaking	Timing of Contribution/undertaking
1	Commence marketing campaign with local and Sydney based real estate agents	Within 2 weeks of grant of Consent for the Development
2	Provide Council with a monthly sales report for the Development.	First report due after 3 Months from the grant of consent for the Development, and to be provided to Council within 2 weeks of the reporting period. To continue on a monthly basis until the exercise of Clause 6.2.
3	A Construction Certificate Application for construction of the works, as described in the Development, shall be submitted to Council or a Principal Certifying Authority, in accordance with Act.	With 12 weeks from the grant of Consent for the Development.
4	Dedicate to Council (in stratum) an area of at least 1,450sq.m of the ground floor of the Development; and 15 car parking spaces and storage at basement level, generally in accordance with Schedule 1 .	Immediately following the issue of the first Occupation Certificate for the Development.
5	Provide a Monetary Contribution to Council, calculated in accordance with Clause 6.3	Immediately following the issue of the first Occupation Certificate for the Development.
6	Tenders for the construction of the works to be called	Within 6 weeks from the exercise of Clause 6.2.
7	The Developer shall take all reasonable steps to ensure that the successful tenderer is appointed and the construction work is commenced	Within 10 weeks of calling tenders.
9	To make all reasonable efforts to complete works to achieve the release of the first Occupation Certificate for the Development.	Within 18 months of commencement of construction

SCHEDULE 3

1. Definitions and Interpretation

In this Agreement, the following definitions apply:

Act means the Environmental planning and Assessment Act 1979 (NSW).

Council means Wyong Shire Council.

Cold-shell space means a commercial or residential building with an unfinished interior and lacking heating, ventilating, and air conditioning, and without lighting, plumbing, ceilings, internal walls, fixtures, fittings or furniture.

Access to basic facilities such as Water, sewer drainage, electrical, and sprinklers, will be provided.

The lift is to be provided by the developer, and once the library space is under Council ownership, will be maintained by Council.

The external library sign, as shown on the DA plans, will be provided by the developer.

Drainage points will be included in the cold shell, provided indicative layouts are provided by the Council prior to detailed construction drawings being prepared. Otherwise connection points will be provided below the slab for connection by Council at a later date.

The location of air conditioning units to service the building in general, and the Council property, will be determined by the mechanical engineering consultant during the tender documentation stage. It is anticipated that air conditioning plant will be located externally, on the outside face of the northern car park wall.

Dealing in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

the Developer means Chehab Group Pty Ltd.

the Development means (DAxxxx/xxxx) for a mixed use, (community, retail and residential purposes, including the construction of a "residential flat building"³ of 14 and 16 storeys, containing 109 apartments, above a ground floor level accommodating space for a new public library and café; and, an Art Gallery. Basement parking over three levels comprising 179 spaces, with 15 spaces, a bus space, and a storage room reserved for library purposes.

Development Consent has the same meaning as in the Act, referred to as "Consent" in this Agreement.

Development Contribution means those items included at **Schedule 2** of this agreement.

GST has the same meaning as in the GST law.

GST Law has the meaning given to that term in *A New Tax system (Goods and Services Tax) Act 1999 (Cth)* and any other Act or Regulation relating to the imposition or administration of the GST.

³ Wyong Shire Local Environmental Plan 1991

Land means 2A-6 Bayview Avenue, The Entrance, (Lot 11 DP502613; Lot 2 DP205929; Lot E DP403890 and Lot C DP343781).

Party means a party to this Agreement, including their successors and assigns.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Year means 12 whole calendar months.

In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

- a. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b. A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c. If the day on which any act, matter of thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e. A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, notated, supplemented or replaced.
- g. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j. A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k. Reference to the word "include" or "including" are to be construed without limitation.
- l. A reference to this Agreement includes the agreement recorded in this Agreement.
- m. A reference to a party to this agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n. Any schedules and attachments form part of this Agreement.

SCHEDULE 4

Valuation Procedure

1. This procedure for valuation applies in respect of a Voluntary Planning Agreement, made in accordance with Section 93F of the NSW Environmental Planning and Assessment Act 1979, between Wyong Shire Council and the Chehab Group Pty Ltd.
2. Either party may invoke this valuation procedure if, after 14 days of the date of the completion of Item 5 below – the determination of the amount of the developer contribution, the parties are unable to agree, or have agreed, upon the developer contribution.
3. The valuation of the developer contribution shall be determined by a valuer. The parties shall seek to agree upon a single valuer to value the developer contribution. Council shall nominate two valuers and the developer shall nominate one valuer. If after 21 days from the date of registration of the Plan of Acquisition, the parties have not agreed to the appointment of a single valuer, then Council shall appoint a valuer from the following list of valuers for the purposes of determining the valuation of the relevant building space:

Valuer 1 – Robertson & Robertson Pty Ltd of Tuggerah

Valuer 2 - MJD Valuers of Gosford
4. Council shall prepare a written brief to the valuer as agreed or as selected by the Council. The Council shall provide a copy of the draft brief to the Developer and will consider, in good faith, incorporating within the brief, any suggestions offered by the developer for the amendment of, or addition to, the brief to the valuer.
5. The valuer shall determine the value of the developer contribution having regard to the provisions of this agreement and in particular Clause(s) 6.2 and 6.3 of this Agreement.
6. The cost of any valuation(s) shall be borne solely by the developer.
7. The valuer shall undertake the determination of value acting as an expert and not as an arbitrator.
8. If market value of developer contribution is greater than normal S94 contribution valuation, Council will not be required to pay the difference.