

3.1 DA/426/2012 - Proposed mixed use development comprising a residential flat building containing 109 units, a public library with ancillary cafe and an art gallery at The Entrance

TRIM REFERENCE: DA/426/2012 - D03309410

MANAGER: Lin Armstrong, Director Development and Building

AUTHOR: Peter Fryar; Manager Development Assessment

SUMMARY

A development application has been received for a mixed use development comprising a 109 unit residential flat building, public library, cafe and art gallery on the site. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Due to the value of this application (\$28M) it will be determined by the Hunter and Central Coast Joint Regional Planning Panel (JRPP) at it's meeting to be held on 2 May 2013.

Applicant	A, S & K Chehab
Owner	Mr A Chehab, Mr K Chehab and Mr S Chehab
Application No	DA/426/2012
Description of Land	2A, 2, 4 and 6 Bayview Avenue, The Entrance, Lot 11 DP 502613, Lot 2 DP 205929, Lot E DP 403890, and Lot C DP 343781
Proposed Development	Mixed use development comprising a residential flat building containing 109 units, a public library with ancillary cafe and an art gallery
Site Area	2594m ²
Zoning	2(d) High Density Residential
Existing Use	Vacant site
Estimated Value	\$28 million

RECOMMENDATIONS

- 1 That Council receive the report on DA/426/2012 - Proposed mixed use development comprising a residential flat building containing 109 units, a public library with ancillary cafe and an art gallery at The Entrance.**
- 2 That Council determine whether it wishes to make a submission to the Hunter Central Coast Joint Regional Planning Panel regarding the Application.**

Attached is the report being forwarded to the Hunter and Central Coast Joint Regional Planning Panel meeting to be held at Council on 2 May 2013.

3.1 DA/426/2012 - Proposed mixed use development comprising a residential flat building containing 109 units, a public library with ancillary cafe and an art gallery at The Entrance (contd)

ATTACHMENTS

- | | | |
|----------|------------------------------------|-----------|
| 1 | Copy of Report to JRPP | D03315392 |
| 2 | Draft Reasons for Refusal | D03313065 |
| 3 | Draft Voluntary Planning Agreement | D03313483 |
| 4 | Development Plans | D03313502 |

Assessment Report and Recommendation

WYONG SHIRE COUNCIL

Hunter and Central Coast Joint Regional Planning Panel

Development and Building
Department

DA 426/2012 - Proposed Mixed Use Development Comprising a Residential Flat Building Containing 109 Units, a Public Library with Ancillary Cafe and An Art Gallery at The Entrance

DA/426/2012 Author: Peter Fryar

SUMMARY

A development application has been received for a mixed use development comprising a 109 unit residential flat building, public library, ancillary cafe and art gallery on the site. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment (EP&A) Act 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

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RECOMMENDATION

- 1 ***That the Hunter Central Coast Joint Regional Planning Panel refuse the application subject to appropriate reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.***

- 2 ***That those who made written submissions be advised of the Hunter Central Coast Joint Regional Planning Panel's decision.***

PRECIS

- The proposal is to construct a residential flat building comprising of 109 units, public library, ancillary café, art gallery and associated parking.
- Twenty four (24) submissions were received in response to notification of the proposal.
- The proposal was recommended for refusal by Central Coast Design Review Panel (CCDRP) based on the lack of compliance with the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65).
- Correspondence was forwarded to the applicant raising concerns with a number of aspects of the proposal, however, no formal response or amended plans or information to address the concerns raised has ever been received.
- The application is recommended for refusal on design grounds and due to insufficient information.
- Most recently the applicant was given a further opportunity to withdraw the DA. In response, the applicant agreed to have the matter determined by the JRPP.

INTRODUCTION

The Site

The site is located on the north-eastern corner of Bayview Avenue and Ambler Parade. The site includes four separate allotments of land, generally rectangular in shape, located to the east of The Entrance town centre. The site is vacant having been partly excavated (with existing structures demolished) under an earlier consent. Surrounding the site to the north and east are existing residential flat buildings of varying heights. To the west of the site is The Entrance Road and associated commercial development and to the south of the site is the Council owned car park servicing the retail and commercial activities along The Entrance Road. The site has a primary frontage of approximately 58m to Bayview Avenue and a secondary frontage of approximately 40 metres to Ambler Parade.



Above: Aerial view of site

The Proposed Development

The proposed development comprises a mixed use building for community, educational/cultural and residential purposes, including the construction of a “residential flat building” of 14 and 16 storeys, containing 109 apartments, above a ground floor level comprising space for a new public library and café (to be dedicated to Council); and, an art gallery. Basement car parking over three levels is proposed including 178 car spaces, 15 of which are to be dedicated to Council.

The building has a maximum height of approximately 53m, (measured from existing ground level to the height of the uppermost ceiling), and a Floor Space Ratio (FSR) of approximately 5.8:1. The main pedestrian entry to the building is from Bayview Avenue. (the Southern elevation). Vehicular access to the basement of the building is proposed via Ambler Parade. Other functions within the basement include storage for the library and art gallery, lift cores and lobbies, plant rooms, garbage rooms, a loading dock and a bike rack. The ground floor contains a “cold-shell space” for the purposes of a library (to be fitted out by Council at a later time) with associated areas including the library entry, library administration space and an ancillary café to be dedicated to Council. The ground floor also contains a separate entry to the apartments above and an art gallery exhibition space.

The upper levels of the building contain the proposed residential apartments and are setback from the edge of the ground floor footprint below, forming a podium to the building. The upper part of the building is articulated to read as two distinct towers, the western side being 14 storeys in height. Typically, each level contains 7-8 units with the exception of the upper-most three levels containing larger units over two levels.

The DA is accompanied by a Draft Voluntary Planning Agreement (VPA) made in accordance with Section 93F of the EP& A Act, to formalise the dedication of the proposed library floor space within the building to Council in lieu of the payment of monetary developer contributions pursuant to Section 94.

Materials of construction have been chosen to provide contrast between the podium and upper section of the building with the upper part mainly zinc coloured metal panels (used to define the two distinct building sections) and glazing whereas the podium materials are more varied to provide finer grain detail and provide articulation at street level. Floor to ceiling glazing is proposed to maximise the visual connectivity and the base of the building will be clad in sandstone colour stone and divided horizontally at the rear by the use of louvers in front of the library.

The site is currently vacant and has been partly excavated in accordance with a current consent applying to the land (DA/133/2003) for 48 residential dwellings over eight storeys with two levels of basement parking. The site is closely located to the town centre and is not subject to flooding, bushfire, mine subsidence or other hazards.



Above: Perspectives of the proposed development

Summary

During the assessment of the application, a number of issues were raised in relation to the proposed design of the development and supporting documentation. The issues raised in relation to the proposal included:

- SEPP 65 matters
- Plan details and design
- Visual Analysis
- Basix Certificate
- Geotechnical Report
- Non-compliance with Wyong DCP 2005 Chapters 60 (The Entrance) and 64 (Multiple Dwelling Residential Development) including setbacks, site coverage, height and density, communal open space, and privacy.
- Non-compliance with The Entrance Peninsula Planning Strategy and associated Planning Controls for The Entrance Peninsula in relation to height.
- Traffic and transport issues
- Waste management issues
- Tree protection
- BCA fire safety concerns with implications for development design and layout.
- Issues raised in submissions.

Amended plans and information to address the above concerns have not been submitted for consideration in relation to the proposal. The proposal is not supported due to a number of unresolved matters and insufficient information.

VARIATIONS TO POLICIES

Clause	4.2 – Landuse Precincts – Precinct 3
Standard	Height
DCP Chapter 60 and 64	DCP Chapter 60 and 64
Departure basis	53 metres (max 24 metres (8 storeys) permitted).

Clause	2.4
Standard	Floor Space Ratio
DCP Chapter 60 and 64	DCP Chapter 60 and 64
Departure basis	5.8:1 (max 1.69:1 for the 2(d) zone with site bonus permitted)

Clause	5.3.3
Standard	Setbacks
DCP Chapter 64	DCP Chapter 64
Departure basis	Levels 1-4 – 6m required (0m-15.6m proposed) Levels 5-8 – 9m required (4.3m-15.6m proposed) Levels 9+ - 12 m required (4.3m -15.6m proposed)

Clause	4.3
Standard	Site coverage
DCP Chapter 64	DCP Chapter 64
Departure basis	12.5% proposed (min 25% required)

Clause	9.2.1
Standard	Communal Open Space
DCP 64	DCP 64
Departure basis	400m ² approx proposed (10m ² /dwlg or min 1090m ² required)

HISTORY

- Development Consent (DA/133/2003) was granted on 25 August 2003 for construction of a residential flat building comprising 48 units over 9 storeys and 82 parking spaces on the site. The applicant received advice that this consent has been commenced.
- The Entrance Peninsula Planning Strategy was adopted by Council at its Ordinary Meeting held on 8 July 2009.
- 14 December 2011 Council adopts The Entrance Town Centre Masterplan which includes the subject site.
- At a meeting on 27 June 2012, the SEPP 65 Central Coast Design Review Panel recommended that Council refuse the development application based on the ten (10) Quality Design Principles of SEPP No 65 – Design Quality of Residential Flat Development.
- The applicant was given the opportunity to address the issues raised in correspondence dated 17 July 2012 including the issues raised by the CCDRP although no response has been received to date.

PERMISSIBILITY

The subject site is zoned 2(d) High Density Residential Zone under the Wyong Local Environmental Plan (WLEP) 1991. “Residential Flat Buildings” are permissible with development consent. Also proposed within the development is a public library and a café (to be dedicated to Council), and an art gallery. The library could be defined as a ‘community facility’ (if dedicated to Council) and an art gallery could be defined as an ‘education establishment’, and as such would be permissible within the 2(d) zone. Under WLEP 1991, the relevant definitions of “residential flat building”, an “educational establishment” and “community facilities” are as follows:

“residential flat building means a building containing 3 or more dwellings.

education establishment means a building or place used for education (such as teaching) and includes:

- (a) a school, and
- (b) a tertiary institution, being a university, college of advanced education, teachers’ college, technical college or other tertiary college providing a formal education, and
- (c) an art gallery or museum, not used to sell the items it displays, whether or not it provides accommodation for staff and students and whether or not it is operated for the purpose of gain.

community facility means a building or place owned or controlled by a public authority or a body of persons which may provide for the physical, social, cultural or intellectual development or welfare of the local community, but does not include a building or place elsewhere specifically defined in this clause.

However, the café would be defined under WLEP 1991 as a ‘restaurant’ and would not be permissible within the zone. A restaurant is defined under WLEP 1991 as:

“restaurant means a building or place, the principal purpose of which is the provision of food to people for consumption on the premises or via a drive-through facility, or both.”

The application has failed to adequately argued how the café would function as ancillary to the library use on the site. As such, it is considered that the café component (based on information provided) would be prohibited under the provisions of WLEP 1991.

Clause 10 of the WLEP 1991 states that Council must not grant consent to the carrying out of a development...”unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.”

The objectives of the Zone No 2 (d) High Density Residential Zone are:

“(a) to allow for high density residential development in suitable locations, and

(b) to provide for other uses which:

(i) are compatible with the residential environment and afford services to residents at a local level, and

(ii) are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential use, and

(c) *to provide home-based employment where such will not:*

- (i) *involve exposure to view from any public place of any unsightly matter, or any raw material, equipment, machinery, product or stored finished goods, or*
- (ii) *have a material adverse impact on residents”.*

Insufficient information has been provided in respect of the proposal in order to demonstrate that the proposed mixed use development is compatible with the objectives for the 2(d) zone as outlined above.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 71 – Coastal Protection
- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index – Basix) 2004
- State Environmental Planning Policy 65 - Design Quality of Residential Flat Development
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005 - Development Controls for Wyong Shire
 - Chapter 50 - Advertising signs
 - Chapter 60 -The Entrance
 - Chapter 61 - Parking and Access
 - Chapter 64 - Multiple Dwelling Residential
 - Chapter 67 - Engineering Requirements for Developments
 - Chapter 69 - Controls for Site Waste Management
 - Chapter 70 - Notification of Development Proposals
 - Chapter 112 - Public Art
- Landscape Policy and Guidelines
- Waste Management Guidelines
- The Entrance Peninsular Planning Strategy

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to Ecologically Sustainable Development principles. However, as the proposal is not supported, no further consideration in this regard has been made.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. However, as the proposal is not supported, no further consideration in this regard has been made.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv))**State Environmental Planning Policy (State and Regional Development) 2011 and Schedule 4A of the Act**

On the basis of the estimated capital investment value of the proposed project under the provisions of State Environmental Planning Policy (State and Regional Development) 2011 and Schedule 4A of the EP & A Act 1979, the application needs to be determined by a Joint Regional Planning Panel being the Hunter and Central Coast Joint Regional Planning Panel.

State Environmental Planning Policy 55 - Remediation of Land

A consideration of past landuses on the site would suggest that the site is not defined as contaminated land within the meaning of Part 7A of the Act. Accordingly, no remediation works are necessary.

State Environmental Planning Policy 71 – Coastal Protection

State Environmental Planning Policy No.71 – Coastal Protection applies to the development. The site is located within the coastal protection zone under the SEPP and in accordance with Clause 7, the proposal has been assessed within the context of the matters for consideration outlined under Clause 8 and under Part 4 and found to be satisfactory, However, the application is not supported on other grounds and is recommended for refusal.

State Environmental Planning Policy 65 – - Design Quality of Residential Flat Development

The provisions of SEPP 65 – Design Quality of Residential Flat Development (SEPP 65) applies to the proposal. The SEPP contains principles against which residential flat development are to be assessed. The Central Coast Design Review Panel, which has been established under the provisions of SEPP 65 considered the development application on 27 June 2012. Having regard for the ten (10) design principles of SEPP 65, a number of significant concerns were raised by the Panel. The minutes of the Design Review Panel refer to elements of the design and supporting documentation are as follows:

SEPP 65 Panel's Comments are as follows:

“A very strong case must be made, based on detailed analysis and investigation, for any development of such a large scale on a site as important as this. The site is in a central urban location at The Entrance, adjacent to a public place, opposite a potential iconic site and is of a proposed height well-above current controls. Such an investigation must start outside the site and consider a much broader context not only covering the urban fabric but also the social implications, visual impact and effect on the public realm.

Once a design strategy is developed it would be expected that the proposed development be the subject of a Pre-DA meeting (with the Council Planners and the Design Review SEPP 65 Panel) undertaken to determine if the broad direction being proposed is reasonable and will produce a high quality outcome. However there is little evidence of this having occurred and as a result, the proposal is deeply flawed on several levels.

The inclusion of a public library and commercial gallery may be desirable but would need to be fully justified contextually, be appropriate for this site and located within the building envelope in such a way as to maximise its public address, presentation and accessibility. It is questioned whether the inclusion of these facilities as proposed would genuinely serve the needs of the community and be of sufficient public benefit to support what presents as a substantial over-development (as detailed in this report).

The proposed development will be in conflict with, and will directly undermine the objectives of Council's draft DCP (chapter 115, Iconic development sites). The Panel does not support the current proposal due to a number of major concerns, in particular the height, scale, poor presentation at street level and internal planning and amenity.

Context

- **No evidence of a formal site/context analysis was submitted – as a minimum, a full site and context analysis should include:**
 - **A formal urban design/landscape analysis with a set of architectural diagrams explaining the design (preferably at pre DA or Masterplan, DA stage), and how it responds to the findings of the analysis (as set out on pages 39-43 of the Residential Flat Design Code).**
 - **The set of diagrams should be to an appropriate scale and include site and context plans, sections and streetscape elevations showing the proposal and existing, and approved and likely future surrounding building envelopes, to ensure that the proposal is sympathetic to its surroundings and the desired future character of its locale.**
 - **The site analysis should also include an evaluation of existing trees for protection and retention.**
- **A contextual massing model and analysis is necessary (as outlined in the Residential Flat Design Code (RFDC)) for such a large and important site.**
- **A view catchment analysis is required that includes photomontages with views from various strategic locations in the public domain (including from the water, the foreshore and North Entrance) including approved and submitted building envelopes and indicative building envelopes for other development sites in the locality.**

Scale

The height and bulk are excessive and would not be in accordance with the contextual objectives of The Entrance Peninsula Planning Strategy. Moreover, as a result of its large rectangular footprint the visual bulk is exaggerated, exacerbating the problems of height and built form (see next point).

Built Form

- **The bulk of the proposed building is exaggerated by the excessive length of balconies, which need vertical modulation as the lack of variation produces a monotonous composition. This modulation may include variation to balcony depths, balustrade treatments and balance of solid to void to relieve the**

horizontality and provide better façade designs (in accordance with the RFDC page 89, better façade design practice).

- *The proposed podium would have an undesirable visual impact as its projects two storeys around the perimeter of the site. This would have a negative visual and amenity impact (including overshadowing) on the streetscape (including Ambler Parade) and Bayview Mall, adjoining properties, especially the residential flat building to the east on Bayview Avenue.*
- *The facades of the podium including the design of the awnings and entry frame would need substantial refinement and resolution to improve presentation to the streets (e.g. deletion of vertical elements between horizontal components and being at a height that provides weather protection).*
- *On the basis of equitable provision, the proposal does not comply with the RFDC's requirements of building separation; above nine storeys a 24m separation between habitable rooms/balconies. This is a problem both between the development site and adjacent sites and within the development between apartments within the tower.*

Density

The numerical density proposed would present as a substantial over development. The FSR proposed exceeds the current controls (current control 1.5:1 and the proposed is 5.8:1) would not be justified by the present development or the inclusion of public facilities. It is also considered that provision of a public library should not diminish the developer's obligation to provide a Section 94 Contribution.

Resource, Energy and Water Efficiency

A major building of this kind must include the following as a minimum:

- *convenient bicycle parking / storage space*
 - *passive and active solar design (including solar hot water and PV)*
 - *efficient energy and water systems*
 - *non-toxic materials and finishes with low embodied energy / water content*
 - *generous deep soil zones for gardens on natural ground*
 - *capture and re-use of grey and rainwater*
 - *biologically active forms of storm water management*
- *The applicant is also to comply with the State legislated environmental sustainability framework BASIX, and adopt and apply other rating and performance tools as useful to the needs of this proposal.*

Landscape

- *The documentation provided is totally inadequate for a development of this size and type. In particular, there is insufficient information in terms of changes in level, materials, surface treatments and access to open space areas.*
- *The open space along the northern side of the building is not a useful area and has a poor relationship to the building. There is no ground floor access to this space which is on the northern side and therefore potentially could be designed as a pleasant, sunny outdoor open space.*

As it is, this space has an undefined role and is a lost opportunity. The podium along its boundary is unattractive and results in a mostly blank wall to this space.

- **The communal paved areas at podium roof level needs to be designed to provide a better resolution in terms of how the spaces are used and furnished. Interior community rooms should ideally be directly linked to these outdoor communal areas (at present they are on the 13th and 15th floor and at least one of these is completely un-useable).**
- **A design proposal needs to be put forward that incorporates the laneway (making it more pedestrian friendly), provide street trees and landscape treatment and a stronger link to Bayview Mall.**

Amenity

- **Daylight access to some habitable rooms (mostly bedrooms and some kitchens) via light slots is completely inadequate. Provision of primary daylight access to habitable rooms via light wells or lights slots is discouraged by the RFDC.**
- **Natural cross-ventilation is not available for an unacceptably high proportion of the apartments in the design.**
- **Further resolution is required of the public spaces within the podium at ground floor level to provide better and more attractive connections to the public domain. These spaces require refinement in term of planning and should provide public amenities including toilets.**

Safety & Security

- **It would be expected that any redesign would comply with the CPTED provisions as a minimum.**

Social Dimensions

- **No comment at this stage.**

Aesthetics

- **As there are fundamental urban design and architectural design issues with the subject proposal no further comment is made apart from the previous ones under built form. “**

State Environmental Planning Policy (Building Sustainability Index: Basix) 2004

State Environmental Planning Policy (Building Sustainability Index: Basix) 2004 applies to the development and in accordance with the SEPP, a Basix Certificate (multi dwelling) has been obtained for the development. However, the BASIX Certificate submitted with the development application is dated 31 January 2012. To be valid, BASIX Certificates must be lodged with Council within 3 months of being issued. As the development application was lodged on 25 May 2012, it is requested that an up-to-date BASIX Certificate is submitted. The BASIX Certificate would also need to reflect any design changes that may be made to the proposal. It is also noted that the commitments shown on the BASIX Certificate accompanying the development application have not been transcribed on the architectural

drawings. Ordinarily, the plans would be amended to reflect compliance prior to the determination of the development application. However, as the proposal is not supported due to a number of unresolved matters, no further consideration could be made regarding this matter.

Wyong Local Environmental Plan 1991

Clause 10 - Zoning

The subject site is zoned 2(d) High Density Residential Zone under the WLEP 1991. "Residential Flat Buildings, Educational Establishments and Community Facilities" are all permissible with development consent within the 2(d) zone. However, a café (restaurant) is not a permitted use within the 2(d) zone and its relationship to other permitted uses has not been adequately identified. Additionally, inadequate information has been submitted in relation to the proposal in order to demonstrate that it is compatible with the 2(d) zone objectives.

Clause 15 - Acid Sulphate Soils

Clause 15 requires special assessment to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified as Class 5 on Council's Acid Sulphate Planning Map. In this regard, there are no works proposed as part of the development that are likely to lower the water table in any adjacent 1, 2, 3 or 4 land to any point below 1 metre AHD.

Clause 28 – Tree Management

Clause 28 requires development consent for the removal of any tree or native vegetation. Information has been requested in order to identify the extent of potential impact the proposal has on some trees adjoining the site. The information has not been submitted therefore no further assessment of this matter could be undertaken and the application is recommended for refusal.

Clause 29 - Services

The proposed development can be serviced from the existing water main and sewerage infrastructure. However, the application is not supported on other grounds and is recommended for refusal.

Wyong Shire Development Control Plan 2005

Wyong Council DCP 2005 Chapter 14 - Tree Management

The proposal has the potential to adversely impact upon trees that have been assessed under DCP Chapter 14 'Tree Management'. A stand of Melaleuca trees is located on the adjoining site (No's 11-13 Ocean Parade) and given the extent of excavation and construction proposed within close proximity to these trees, preparation of an Arborist Report was requested in accordance with Development Control Plan 2005 Chapter 14 – Tree Management. Specifically, the report was required to assess the likely impact of the proposed development on these trees and recommendations to facilitate their long term protection and longevity. However, as the report was not submitted no further assessment of this matter could be made and the proposal is not supported due to unresolved design issues and insufficient information.

Wyong Council DCP 2005 Chapter 64 - Multiple Dwelling Residential and Chapter 60 – The Entrance

Assessment of the proposal has been undertaken having regard for Wyong Development Control Plan 2005 and in particular, the controls included in Chapter 60 – The Entrance and Chapter 64 – Multiple Dwelling Residential Development. As a result, the following areas of non-compliance have been identified:

- Site coverage – The proposal does not comply with objectives or numerical requirements of Section 4.3 of DCP 2005 Chapter 64 in terms of providing soft landscaping and appropriate separation between buildings.
- Setbacks – The variations identified in the Statement of Environmental Effects (SEE) are noted and will be further considered in the assessment of the application. However, further information is requested in relation to the impact that the library wall and elevated communal open space would have on the adjoining property, located to the east of the site, given the reduced setbacks. This should include, as a minimum, consideration of visual and acoustic privacy as outlined in Section 9.4 of the DCP 2005 Chapter 64.
- Height and Density – The variations in relation to height and FSR identified in the SEE are substantial and will be further considered in the assessment of the application and within the context of the visual analysis, which is to be submitted.
- Communal Open Space - The proposed development fails to comply with the objectives and numerical requirements contained in section 9.4 of DCP 2005 Chapter 64. The two areas of common open space, being the garden terrace on the eastern side of the building on level 1 and the area within the rear setback do not provide the minimum 1090 m² of communal open space required by the DCP. The usability of the area within the rear setback is also questioned as there is no direct access to this ground level area from within the building.
- Privacy – Section 9.4 of the DCP 2005 Chapter 64 deals with privacy, both internally and externally to the development. Concerns in relation to visual and acoustic privacy between the proposed development and the adjoining property to the east have been previously discussed. However, concerns are also raised in relation to visual privacy between units within the development. Examples of this include the living and dining room windows of units (3-12) 01, 1304 and 1402 and the kitchen windows of units (3-12) 02, 1305 and 1403 respectively; and the proposed balustrading/screening between the continuous balconies.

Additionally, storage areas have not been nominated on the plans for dwellings nor has a common drying area or wash bay. Correspondence was forwarded to the applicant requesting satisfactory resolution of the above concerns, however, no response was received. As amended plans or information have not been submitted no further assessment of these concerns could be made and the proposal is not supported due to unresolved design issues and insufficient information.

Wyong Council DCP 2005 Chapter 67-Engineering Requirements

Wyong Council DCP 2005 Chapter 67-Engineering Requirements outlines the minimum standards and guidelines for the engineering works required for developments. Council's Development Engineer has reviewed the application in relation to compliance with relevant aspects of DCP Chapter 67 – Engineering Requirements. However, as the proposal is not supported, no further assessment in this regard has been made.

Wyong Council DCP 2005 Chapter 69 – Controls For Site Waste Management

In accordance with the requirements of DCP Chapter 69, a Waste Management Plan was submitted with the application. However, a number of concerns were raised in relation to the waste servicing arrangement for the proposal. There is not adequate provision for the removal of residential and commercial waste and servicing of the site using individual waste bins will create traffic congestion in Ambler Parade as the road is too narrow to accommodate overtaking of heavy vehicles. Insufficient information has been submitted with the application to address these concerns despite a formal request being made. In this regard, further assessment of these concerns could not be made and the proposal is recommended for refusal.

Landscape Policy and Guidelines

Council's Landscape Policy and Guidelines requires the landscape design for the development to be a Category 2 development that requires the expertise of an approved Landscape consultant. A landscape plan accompanied the application that complies with the requirements of the Landscape Policy. However, the application is recommended for refusal on other grounds.

The Entrance Peninsular Planning Strategy and Planning Controls for The Entrance Peninsula

Assessment of the proposal has been made in relation to The Entrance Peninsular Planning Strategy and Planning Controls for The Entrance Peninsula. The proposal fails to comply with The Entrance Peninsula Planning Strategy (TEPPS) and Planning Controls for The Entrance Peninsula (PCTEP) recommendations for this site in relation height of the building (being 53 metres) and floor space ratio (being 5.8:1).

The Entrance Town Centre Masterplan (TETCM)

The TEPPS and PCTEP recommend a maximum height of 8 storeys / 24 metres on sites greater than 1800 square metres respectively and a maximum FSR of 1.5:1.

Although it is noted that the proposal complies with the TEPPS and PCTEP recommendations for this site in relation to use and complies with The Entrance Town Centre Masterplan recommendations in relation to use. The Masterplan is silent in relation to height and FSR, deferring to the TEPPS. The proposal complies with PCTEP recommendations in relation to coastal design.

As the proposed development does not comply with The Entrance Peninsula Planning Strategy and associated Planning Controls for The Entrance Peninsula which recommends a maximum height of 24 metres for the subject site, further justification in support of the variation was requested. However, no response was received. As amended plans or information have not been submitted no further assessment of these concerns could be made and the proposal is not supported due to unresolved design issues and insufficient information.

The TETCM follows the preparation of TEPPs which was adopted on 8 July 2009. TETCM was initially placed on public exhibition between 2 November 2011 and 30 November 2011. The Masterplan was finally adopted by Council at its Ordinary Meeting held on 14 December 2011.

The Masterplan contains a series of diagrams referred to as a “birds eye view” of The Entrance, which present an image for future development of The Entrance and North Entrance. Depicted on the subject site is a building of similar form to the subject proposal. The future height controls to apply to the land under the DLEP 2012 do not reflect the image identified in the Masterplan.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

The relationship to the regional and local context and setting.

Locality and Streetscape

The site is located in close proximity to the town centre. The proposal includes a number of variations to numeric built form controls under Wyong DCP and the applicant has argued that despite these technical non-compliances, the proposal is considered to be satisfactory given the ‘town centre’ context of the site and its ability to satisfy Council criteria used when determining ‘Iconic Development Site’ status. However, it is noted that the site has not been made an ‘iconic site’. Additionally, the SEPP 65 Design Review Panel raised concerns regarding the adequacy of the proposal to demonstrate impacts in respect of local context and setting. In this regards the Panel requested a visual analysis be submitted for the proposal as follows:

“Given the proposed height of the development, a view catchment analysis should be provided that includes photomontages with views from various strategic locations in the public domain (e.g. from the water, Memorial Park, the Waterfront Mall, The Entrance Road (Main Street), The Entrance Bridge and The Entrance North foreshore area), including approved building envelopes and indicative building envelopes for other development sites in the locality.”

The requested visual analysis of the proposed development was not submitted therefore no further assessment of this matter could be undertaken. The proposal is not supported due to unresolved design issues and insufficient information.

The proposal has failed to adequately address the potential for adverse impact on the character and amenity of the locality and streetscape and concerns raised regarding the architectural design, character, form and appearance of the proposal have not been addressed.

Scale, form, character, density, and design

Council’s Urban Designer has reviewed the proposal and provides the following comments in relation to urban design issues:

“Aesthetically, the bulk of the building is not broken as straight long lines are carried out vertically and horizontally in almost all facades, emphasising the great dimensions of the building.

The building does not address Ambler Parade and it actually intimidates pedestrians due to its scale and lengthy fixed glazed/awning covered walls. From podium to upper storeys, the vertical element (so called vertical blades) extends the building verticality even more when observed by pedestrians along the narrow street. Maybe this effect would be less accentuated if this element was removed from ground to podium floors.

The horizontal louvers along the library wall prevents the building from communicating with the road and emphasising the building scale.

The building does to a certain degree address Bayview Avenue but due to the larger width of the road and also by facing an open carpark area, the bulk of the building does not confine the pedestrian. If the building had been setback from the street, a more desirable public/private relationship could have been created utilising the café/promenade atmosphere.

Material and external finishes are well defined and present a pleasant composition up to podium level. Unfortunately, a curtain wall is not the most ideal material especially when dealing with electricity costs and achieving “best practice”, energy efficiency. The units with western and southern orientations will be deprived of natural thermal comfort, especially due to the fact that the number of units per floor does not allow for wiser layout distribution preventing cross ventilation.”

Privacy and overlooking

Concerns have been raised in relation to visual and acoustic privacy between the proposed development and the adjoining property to the east due to the elevated communal open space. This potential privacy impact on the adjoining property is particularly exacerbated by the reduced setback proposed to this boundary. However, concerns have also been raised in relation to visual privacy between units within the development. Examples of this include the living and dining room windows of units (3-12) 01, 1304 and 1402 and the kitchen windows of units (3-12) 02, 1305 and 1403 respectively; and the proposed balustrading/screening between the continuous balconies. Information and/or amended plans to satisfactorily address these concerns have not been submitted by the applicant, although requested. As no response was received, further assessment of these concerns could not be made and the proposal is not supported due to unresolved design issues and insufficient information and is recommended for refusal.

Solar access and over shadowing

Shadow diagrams have been prepared for the development at intervals of 9:00am, midday and 3:00pm, on 21 June, and 21 December. The diagrams indicate the scenario mid-winter on the shortest day of the year as well as mid-summer on the longest day of the year in order to ascertain shadowing impacts from the development throughout the year. The shadow diagrams for the winter solstice do not illustrate the full extent of the shadow cast from the proposed building and new shadow diagrams for the winter solstice should be provided.

The access, transport and traffic management measures.

Vehicular access to the basement is proposed via Ambler Parade. The basement parking accommodates 178 spaces over three levels.

The following Traffic and Transport concerns have been raised with the applicant by Council's Traffic Engineer:

- “The frontage of the building within Bayview Avenue has pedestrian access to the cafe, library and art gallery and will require a footpath with a minimum width of 3.5 metres. The grade of the existing footpath and carriageway has approximately 1 metre of fall which will have an impact on how a new full width footpath will be constructed. Given maximum wheelchair grades and the proposed at grade pedestrian access into the building, it is requested that a detailed plan showing the proposed footpath treatment and grades at each access point is provided.

- Vehicular ramps, aisle widths, clearances etc are to be in accordance with AS 2890. However, concern has been raised regarding the adequacy of the internal carpark ramps in relation to the width for two-way traffic flows. Confirmation was requested to ensure that the vehicular ramps, aisle widths and clearances can comply with AS 2890.
- The plans identify 15 carparking spaces allocated to the café and library, although access appears to be restricted by a security gate. Clarification was requested in relation to how these spaces are to be accessible to the public.
- Pedestrian safety in Ambler Parade needs to be addressed. This lane is extremely narrow with no designated footpaths beyond the development site. It will be attractive for pedestrians leaving the site to access the northern end of the town centre to walk along Ambler Parade. Safe pedestrian access along Ambler Parade for its full length must be provided as part of this development. A full width footpath in Ambler Parade, from Bayview Avenue to Ocean Parade, is required to address this concern. Additionally, a concrete footpath, minimum width of 3.5 metres, is required in Bayview Avenue, for the full frontage of the development.
- The delivery area within the basement carpark appears inadequate for the proposed uses. In this regard a part time loading zone may be required on the Bayview Avenue frontage of the development. The provision of any parking restrictions on Bayview Avenue will require the concurrence of the Local Traffic Committee.
- The Traffic Report accompanying the application indicates that 177 car parking spaces will be provided, however only 2 spaces are dedicated to Library staff. This appears inadequate and should be re-examined based on the actual number of staff required for the size of the facility proposed.”

The applicant has failed to respond to the above matters raised.

The impact on the public domain (recreation, public open space, pedestrian links).

The development will create a high demand for pedestrian movements across the southern end of Ambler Parade to the existing pedestrian mall. The applicant was requested to provide a suitable pedestrian facility (designed in accordance with As 17423.10 -Pedestrian Control and Protection) at this location to address this issue. The frontage of the building within Bayview Parade will have pedestrian access to the Cafe, Library and Art Gallery. The grade of the existing footpath and carriageway has approximately 1.0 metre of fall which will have an impact on how a new full width footpath will be constructed given maximum wheelchair grades and the proposed at grade pedestrian access into the building. The applicants architect was requested to provide a detailed plan to show the proposed footpath treatment and grades to each access point.

However, to date no response has been received to satisfactorily address the concerns raised. As a consequence of this no further assessment of these concerns could be made and the proposal is not supported due to unresolved design issues and insufficient information and is recommended for refusal.

The impact on utilities supply.

There is no adverse impact upon utilities supply as a consequence of the proposal however, the application is not supported on other grounds.

The effect on heritage significance.

The site is not heritage listed and there are no heritage listed properties within the immediate vicinity of the site that would be potentially impacted by the proposal.

Any effect on other land resources.

There are no unreasonable or significant adverse impacts on other land resources associated with the proposal. The development will not have any adverse impact upon conserving and using valuable land resources such as mineral and extractive resources, agricultural land or any water supply catchment.

Any impact on the conservation of water.

Not applicable

Any effect on the conservation of soils or acid sulphate soils.**Acid Sulphate Soils**

The issue of acid sulphate soils has been discussed earlier in the report.

Contamination

The issue of contaminated soils has been discussed earlier in the report.

Earthworks

The development proposes three levels of basement parking which will necessitate an excavation of approximately 8 metres depth. This excavation has the potential to intercept ground water and possibly localised aquifers. The applicant should address the Management of Groundwater and demonstrate that there will be no adverse impact on surrounding or adjacent properties and infrastructure. In order to address this issue, a Groundwater/Geotechnical Report prepared by a suitably qualified and experienced geotechnical and /or hydro geological consultant was requested to be submitted for review for the development.

Depending on the findings of the geotechnical assessment, aquifer interference requires approval under the Water Management Act 2000 and this approval would need to be sought as part of the development assessment process as 'integrated development' under Section 91 of the Environmental Planning and Assessment Act, 1979 or separately to the development assessment process.

Any effect on quality of air and microclimate conditions.

There are no unreasonable or significant adverse impacts upon the air quality and microclimate conditions associated with the completed development. There is minimal potential for any air pollution, odour, fumes or other air quality impacts associated with the completed development on the site. During construction potential air quality impacts would be addressed under conditions, however, the application is not supported on other grounds.

Any effect on the flora and fauna.

Although the site is vacant, there are potential flora impacts on the existing stand of Melaleuca trees is located on the adjoining site (No's 11-13 Ocean Parade) considering the extent of excavation and construction proposed. Insufficient information has been submitted to address this concern.

The provision of waste facilities.

Concerns have been raised regarding the waste management arrangements for the proposal. Council's requirements for waste collection and storage are included within Development Control Plan 2005 Chapter 69. The proposed garbage bin storage area within the upper basement makes provision for 37 x 240 litre individual bins rather than bulk bin storage. Individual 240 litre bins with pickup from Ambler Parade is not acceptable for this size of development. Therefore details were requested to be provided demonstrating that adequate storage is provided on the site for bulk bins and that the number and size of bins can be safely serviced either within the site or from Ambler Parade. Additionally, the proposal would need to demonstrate adequate servicing arrangements if waste servicing is to occur from Ambler Parade. There should be no incline where bulk bins would need to be wheeled up and down between the basement and street. As trucks already service waste bins in Ambler Parade, access to the laneway may be possible. However, of concern is the obstruction that waste trucks stopping in Ambler Parade would cause as they may not allow for other vehicles to adequately and safely manoeuvre around them, causing possible traffic problems. This is particularly the case for vehicles requiring access to the basement of this building. Additional storage area is also required to be made available for accommodation of recycling and green waste bins.

Information to satisfactorily address the above concerns was requested from the applicant. However, no response has been received. The proposal is not supported due to unresolved design issues and insufficient information on this aspect.

Whether the development will be energy efficient.

A Basix Certificate is required for the development to ensure that the minimum efficiencies are achieved for water, thermal comfort and energy initiatives. However, the BASIX Certificate submitted with the development application is dated 31 January 2012. To be valid, BASIX Certificates must be lodged with Council within 3 months of being issued. As the development application was lodged on 25 May 2012, it was requested that an up to date BASIX Certificate is submitted. The BASIX Certificate would also need to reflect any design changes that may be made to the proposal. It is also noted that the commitments shown on the BASIX Certificate accompanying the development application have not been transcribed on the architectural drawings. The plans would need to be amended to reflect compliance.

Whether the development will cause noise and vibration.

It is not anticipated that there will be any significant or unreasonable noise and vibration associated with the completed development. However, there will be noise generated during construction. This can be controlled by suitable restrictions on the construction hours.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

There are no matters related to natural hazards associated with the development of the site that require further consideration or discussion. The application is not supported on other grounds and is recommended for refusal.

Any risks from technological hazards.

There is no likely risk to people, property or the environment from any industrial and technological hazards related to the development. There is no evidence of the site being contaminated, no flammable or hazardous goods storage and the development will need to comply with the BCA fire safety requirements. The application is not supported on other grounds and is recommended for refusal.

Whether the development provides safety, security and crime prevention.

The principles for Crime Prevention Through Environmental Design (CPTED) have been considered under the design of the proposed new development however, as the application is not supported on other grounds, no further discussion is undertaken.

Any social impact in the locality.

There are no matters related to social impact associated with the development of the site that require further consideration or discussion.

Any economic impact in the locality.

There are no matters related to economic impact associated with the development of the site that require further consideration or discussion.

Any impact of site design and internal design.

There were concerns raised in relation to the internal layout at the ground floor of the proposal. Further consideration needs to be given to a common foyer to maximise the street address and presentation of the development as well as to improve the accessibility to the proposed art gallery and library.

A common area would also provide more flexibility in relation to how the spaces could be utilised and maximise opportunities for permanent or temporary links between the library and art gallery.

There were also concerns raised in relation to the compliance with the deemed to satisfy provisions of the Building Code of Australia (BCA) and whilst it is acknowledged that alternate solutions may be employed to achieve compliance, a number of these aspects influence the design and layout of the building.

In regard to matters to be considered under the BCA, the following comments are made:

- The building is required to be provided with a Fire Control Centre in accordance with the provisions of Clause E1.8 and Specification E1.8 of BCA 2012 Volume 1 as the building has an effective height of more than 25m. It appears from the architectural drawings accompanying the development application that a Fire Control Centre has not been proposed and this has the potential to impact the internal design of the building.
- The accessible carparking space on basement level 1 does not appear to comply with the requirements of Clause D3.5 of BCA 2012, Volume 1 in terms of the number of accessible spaces provided.
- As the building contains more than 10 sole occupancy units, a closet pan and a washbasin in a compartment or room at or near ground level and accessible to employees without entering a sole occupancy unit is required in accordance with the requirements of Clause F2.1 of BCA 2012, Volume 1.

- Sanitary facilities are required for the café, library and art gallery in accordance with the requirements of Table F2.3 and Table F2.4(a) of BCA 2012, Volume 1. It is noted from the architectural drawings provided that the proposed building does not comply with the subject requirements. If the sanitary facilities are to be provided under a separate development application for the tenancy fit out then this should be provided as a separate notation on the development application plans.
- The upper and lower floor level of the gallery each accommodates more than 50 people when calculated in accordance with D1.13 of BCA 2012, Volume 1 and therefore is required to be serviced by 2 exits. In accordance with the requirements of Clause D1.7, the doorway from the upper floor level of the gallery is not permitted to open directly into the fire isolated stairway (fire stair 1). Similarly, a minimum of 2 exits are required from the library.
- The exit travel distances from the library and ground floor art gallery do not comply with the provisions of Clause D1.4(c)(i) BCA 2012 Volume 1.

Any impacts of construction activities (construction site management, protection measures).

Conditions could be imposed to address any concerns in relation to construction management.

Any cumulative impacts.

There are no matters related to cumulative impact associated with the development of the site that require further consideration or discussion.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

Whether the proposal fits in the locality. Whether the site attributes are conducive to development.

Insufficient information has been submitted with the proposal to satisfactorily demonstrate that the proposal in its current form fits in the locality and is suitable for the site. Information and amended plans were requested in order to address a number of matters in relation to the proposal, however, no response has been received.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

Any submission from the public.

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with twenty-five (25) objections were received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

Doc. No	Summary of Issues	Response
D03036156	<ul style="list-style-type: none"> Object as adjoining site owner and concerns for overshadowing, visual impact and traffic load as a result of the number of units and height required to accommodate 109 units and other facilities. 	Noted. The application is recommended for refusal.
D03036869	<ul style="list-style-type: none"> Object as adjoining site owner and raise concern regarding impacts of stormwater disposal, adequacy of narrow width Ambler Parade to service 109 units, potential damage to foundations during construction and damage to roadway from heavy trucks. 	Noted. The application is recommended for refusal.
D03036873	<ul style="list-style-type: none"> Object as proposal out of character for area, overbearing and unsuitable for town centre. Impact on traffic flow in narrow streets surrounding site. Impact of parking and congestion on streets. Adequacy of water and sewer infrastructure. Viability of café for site. Density 109 units too great. Library is a sweetener. 	Noted. The application is recommended for refusal.
D03039653	<ul style="list-style-type: none"> Object as adjoining site owner and raise concern regarding signed 'licence' type agreement between Council and developer regarding library and art gallery before DA determined. Should be after or is a sweetener to approve DA. Current DA does not identify site as 'iconic' and current height allowed is 24 metres not 53 metres proposed. Floor space for this site is 1.69:1 not 5.8:1 proposed. Overshadowing impact excessive to entire of the Council car park site located to the south. Adequacy of stormwater line to cope with additional impacts from proposal as after heavy rain already overflows. Impact of proposal on Ambler Parade Adequacy of one way lane to cope. Will developer contribute to repairs to lane? Currently on The Entrance Precinct Plan Ambler Parade is shown as a mall type pedestrian walkway. Other than during construction no new jobs would be created. Request information regarding current library rent and what Section 94 contribution figure would equate to. 	Noted. The application is recommended for refusal.
D03039680	<ul style="list-style-type: none"> Objection. Adequacy of stormwater disposal arrangements through easement as current 675mm pipe diameter overloaded and not coping. Pipe surcharges and backs up flooding garages and basement adjoining easement. The subject site does not currently drain through this pipe but towards pit at Ambler Parade. Also discrepancy in details on stormwater plans as pits in differing locations. 	Noted. The application is recommended for refusal.
D03039681	<ul style="list-style-type: none"> Objection as subterranean water flows and springs in area. Excavation and construction of 3 level basement may interfere with ground water flows. These should be dealt with and not simply diverted to an adjoining site. 	A groundwater and geotechnical report was requested but never furnished for the proposal.

Doc. No	Summary of Issues	Response
D03039688	<ul style="list-style-type: none"> • Objection as size and density of proposal will set a precedent for similar development creating ghetto living. • Excessive height will create shadowing across sunny Bayview Mall. • FSR results in fat tall building with shadowing and privacy impacts. • To fit 109 units results in need for internal light and air shafts and dense ghetto style apartments. Contrary to open beachside apartments living. • The Entrance Plan of Management identified Ambler Parade as an integral walking link but proposal will create significant traffic impacts for 178 cars parking in basement plus deliveries and visitors. 	Noted. The application is recommended for refusal.
D03041493	<ul style="list-style-type: none"> • Object to building height, out of character and contrary to controls. • Recent plans show Ambler Parade as a pedestrian mall. Ambler Parade will need to be reconstructed and developer should pay for this if consent granted. 	Noted. The application is recommended for refusal.
D03042224	<ul style="list-style-type: none"> • Object as adjoining site owner to the rear and raise concern regarding privacy and overlooking and view loss. • Proposal relies solely on Ambler Parade for access which is narrow and poor state of repair and would create increased traffic and noise impacts to neighbourhood. • Concern proposal will set a precedent for other large buildings. • Ground water management issues as site is upslope and already experience water flowing into garages after heavy rain. Impacts of basement on worsening this. 	Noted. The application is recommended for refusal.
D03043486	<ul style="list-style-type: none"> • Objection due to shadowing impacts, and building too big for land and privacy impacts from balconies overlooking the adjoining ground floor unit. 	Noted. The application is recommended for refusal.
D03043516	<ul style="list-style-type: none"> • Object regarding magnitude of building more than doubling earlier approval for 48 units to 109 units. • Substantial noise impacts from 200 occupants. Increased vehicular traffic noise and Ambler Parade not in an adequate condition to cope. • Disbursement of basement car park fumes not detailed. • Underground water from adjoining site currently enters garages due to excavation on site. • Laneway cannot accommodate additional bins lining roadway as blocks access. • Prefer cash for Section 94 than in-kind works. Infrastructure surrounding site is inadequate. Request refusal of application. 	Noted. The application is recommended for refusal.

Doc. No	Summary of Issues	Response
D03044788	<ul style="list-style-type: none"> • Development does not visually integrate with site context as too tall. • Assessment of impacts does not consider cumulative impacts other planned developments like the Horizon development with access from Ocean Parade opposite Ambler Parade. • Understand that size of proposal is offset by provision of a library and that Council therefore supports. Library and art gallery better incorporated into Iconic Lakeside Plaza site with better access to buses and taxis and better traffic flow. • Object as separation distances for proposal only satisfied as adjoining building is setback from its rear boundary thus building separation provided only within adjoining site boundaries. • Height of 53 metres exceeds numeric control of maximum of 24 metres. • Proposal introduces retail, civic and commercial activities into a residential zone. • Site coverage does not comply. • Real privacy impacts with adjoining developments not addressed. Units oriented towards north thus worsening the potential for privacy impacts and creating focal point for development on the adjoining site. • Proposal create view entitlements that would hinder development on other sites. • Proposal does not acknowledge inadequacy and shortfalls of Ambler Parade for access. There are regular instances when narrow laneway currently blocked by delivery vehicles, garbage trucks and illegal parking plus drivers ignoring the one-way rule. • No information to address ground water which will be impacted by basement parking levels. • Confusion with changes to maximum height limits for buildings as ever changing creating uncertainty. • Inadequate provision of garbage facilities, and details for waste collection arrangements. • Object if boundary wall is not of solid construction and contains louvers for ventilation of parking area. 	Noted. The application is recommended for refusal.
D03046163	<ul style="list-style-type: none"> • Objection. Height contrary to current DCP provisions. • Question whether community benefit offsets the large commercial gain for inclusion of additional units in height. • Proposal contrary to principles in recently adopted MasterPlan. • Lack of architectural merit and visual impact. • Concern regarding construction materials, zincalume is NOT recommended in close proximity to ocean spray / salt laden air. • Concern regarding relatively small size of the units is more appropriate for holiday units than permanent occupancy. • Relatively 'cheap' construction and increased density results in community view that these units may become 'community housing' by stealth. • VPA – there is concerns about the probity of Council, as the consent authority, entering into a (unpublished / secret) 'voluntary planning agreement' under which Council receives a significant benefit (library + carparking + art display space) - seemingly as Sec 94 contributions and / or in exchange for approving a development which is clearly well in excess of current. • Undesirable precedent it sets for high rise not in public interest. 	Noted. The application is recommended for refusal.

Doc. No	Summary of Issues	Response
D03046402	<ul style="list-style-type: none"> • Existing road infrastructure in vicinity of site inadequate to accommodate increased traffic proposed. • Lack of privacy to all rear units adjoining site. • Council misled public by advising that maximum height limit is 8 storey devaluing adjoining properties. • Health impacts of fumes from basement parking. • Increased noise pollution. • Disruption to natural water flow. • Aesthetic concerns regarding high density block consuming views. • Precedent for similar developments to occur. 	Noted. The application is recommended for refusal.
D03046404	<ul style="list-style-type: none"> • The proposal is far too large, too high relative to its immediate neighbours; inappropriate population density, for the immediate area and the wider region. • Detrimental impact on the immediate neighbours and the wider district. Massive privacy issues for the neighbours plus noise, parking and traffic issues for the neighbours and the area in general. • Proposal cannot be considered in isolation from other existing and proposed development. • Gross overdevelopment and it is out of character, not possible to visually integrate. • Public facilities such as an Arts Centre & Library are only going to create further issues (congestion/parking). • Overshadowing, privacy and precedent impacts. Boundaries non compliance as rely on other buildings generous setbacks to achieve adequate separation distances. • Proposal create view entitlements that would hinder development on other sites. • Proposal does not acknowledge inadequacy and shortfalls of Ambler Parade for access. Ambler Parade inadequate for access. • Proposal introduces retail, civic and commercial activities into a residential zone, groundwater impacts, devalue properties. 	Noted. The application is recommended for refusal.

Doc. No	Summary of Issues	Response
D03046634 D03046403	<ul style="list-style-type: none"> • The Entrance Peninsula Community Precinct objection. Concerns regarding lack of community dialogue and not keeping the community informed regarding Council and developer negotiations. • Concerns the development has not embraced the 5 key urban design principles identified in the Masterplan. The site is not iconic but is very important in the town centre. The Masterplan envisaged this site is part of "Town Square: The Civic Heart". • No consideration given to the treatment of Bayview Avenue. Where a public domain development is proposed in the Masterplan that envisages a civic square in front of the building. Developer needs to consider work in Bayview under Masterplan and necessary reconstruction of Ambler Parade for development. • Understand there is a depression in building but that should not mean allowing development at any cost. • TEPCP believe that the proposed library and art gallery are in lieu of Section 94 contributions and as such there does not appear to be any compensation for the proposed building height. There should be a trade off for more height in the form of other benefits the proposal would provide (eg. open spaces etc). There appears to be no trade off made in the building footprint to compensate for the additional height proposed. Request what footprint concessions were achieved in negotiations with the developer to achieve the outcome proposed. • TEPCP lodged an objection to this DA on the grounds of the size of the development, height v footprint. • The community was under the impression that any increase in height would be offset by more open space: The Entrance Peninsula Planning Strategy stated 8 stories for this site. • The size of the proposal has more than doubled from the previous consent. • Concerns about vehicle access from Ambler Parade. Garbage trucks? 	Noted. The application is recommended for refusal.
D03048634	<ul style="list-style-type: none"> • Objection as height of building does not integrate with the surrounding area. • Proposal will set a major precedent which will significantly impact on The Entrance precinct. • Insufficient time has been given to consider all aspects of the proposal. • Potential increase traffic impacts within the area. Parking congestion and traffic chaos. • Proposal places retail, civic and commercial activities into a residential zone. • Library and art gallery better placed in Lakeside Shopping Centre development. Council's strategic plan in 2000 provided the basis for many investment decisions but now height controls ignored and negative impact on investments. • Already a large number of unsold units in the area which is impacting on real estate. • Need to consider traffic impacts before changing strategic plans for The Entrance. • Height and size of development will negatively impact on the visual image of The Entrance. 	Noted. The application is recommended for refusal.

<p>D03051164 D03056201</p>	<ul style="list-style-type: none"> • Privacy impacts as the entire northern façade of the proposal will include balconies whilst the adjoining Peninsular building requires resident to open bedroom and bathroom windows for ventilation. The proposal does not include measure to mitigate the privacy impacts. • SEE relies on the draft Iconic Site DCP to justify the overdevelopment however, the site is not listed as an iconic site and ‘gross over development does not represent iconic.’ Even if the site is listed as iconic this does not enable an effective doubling of building height and a 340% variation to FSR requirements to be justified. • The neighbouring Short Street carpark site is identified as a high value site, however, the proposal will saturate the residential unit market for an extended period, sterilising the site for the foreseeable future. • View loss and overshadowing impacts to the Short Street carpark iconic site. If the iconic site is developed with a height compliant building it will be completely overshadowed during winter months by the proposal. • The Traffic Impact Assessment for the proposal states that the one way nature of Ambler Parade is unsuitable and that all access should be provided from elsewhere. It is therefore unclear why the proponent persisted with the inadequate access from the laneway. Agree that the access is unsuitable to service an additional 109 units on top of existing deliveries to local businesses. Cumulative impact on the use of the laneway lead to traffic issues. Impact of additional traffic on the set of one-way roads surrounding the site needed to be assessed. Issue of garbage removal not resolved. Must be from basement not congesting laneway. Proposal does not consider parking impacts once redevelopment of adjoining car park removes available parking from the area. • Proposal does not comply with rear setback hindering future development potential of the open space within the adjoining Peninsular building due to required building separation distances. Strict enforcement of setbacks is required. • Impact on the health of the trees on the adjoining Peninsular building site resulting from basement construction. Loss of trees will exacerbate privacy and visual impacts of proposal. • Impact to groundwater flows caused by basement construction. A geotechnical report is warranted. • Clarification of legal rights to drain via downstream properties. • VPA seeks to offset S94 monetary contributions through dedication of a cold shell library, café and art gallery to Council. However, there is no net public benefit in the dedication of these assets because the value of these assets will offset normal monetary contributions that apply under Section 94A of the Act. Also means that needed contributions for roads, drainage and open space do not occur despite the proposal increasing population pressure on these assets. • The VPA requires the developer to pay monetary contributions towards community infrastructure if there is any shortfall between the normal contributions rates and the value of the library, cafe and gallery. Paid at OC not CC with the risk that developer may physically commence works but not complete them until market conditions improve thereby postponing contributions. • Council needs to be aware of the public perception that the dedication of community facilities will influence Council’s final determination. Perception that developer will achieve substantial economic advantages with no public benefit. <p>Continued...</p>	<p>Noted. The application is recommended for refusal.</p>
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	<p>Continued...</p> <ul style="list-style-type: none"> • Café use not permissible, not a community facility and not ancillary to one. Café can be operated separately to the library and art gallery and the fact that it will be held under Council ownership does not change this. • A more extensive notification of the proposal was warranted given the scale of the development and its impacts. • The application requires a substantial amount of additional information to clearly understand the impacts of the proposal on the road network, servicing and amenity of adjoining development. 	
<p>D03051175</p>	<ul style="list-style-type: none"> • The size of the proposed development is completely out of character for The Entrance and, if approved, would create an unacceptable precedent. • Amber Parade is not designed to take the traffic flow this development will create. It is narrow one way lane not designed for providing access to an additional 109 units and their visitors. • Exhaust fumes from four levels of parking appear to be dispersed directly onto my properties. • There are no solutions proposed for clearing ground water or assessment of how ground water will impact my properties. Ground water issues already exist in the Peninsular property created by the excavation work already carried out on the Bayview site. • Garbage collection arrangements are not addressed in the DA. This is a significant issue when you have 109 units and I would not want lines of bins in Amber Parade with the resulting noise from their collection. • Loss of privacy for both my units and particularly the one in Bayview Avenue. • Loss of sunlight to adjoining Bayview units. • Building is way too large for the site, the immediate surrounds and The Entrance in general. We do not want The Entrance to lose its traditional appeal as a coastal town and become a concrete jungle with large shadows, wind tunnels and a lack of open space. 	<p>Noted. The application is recommended for refusal.</p>

D03052806	<ul style="list-style-type: none"> • Documents pertaining to proposal not available as stated. • Objection as proposal exceeds height restrictions of 24 metres being 53 metres high. • The consequence of Council ignoring its own plans results in uncertainty for purchasers, residents, ratepayers having no valid reference point. • The draft VPA suggests that because Council has a vision for the site as an iconic development site, the proposed height is satisfactory. The extra 8 storeys is agreed in return for a library and café. However, The Entrance already has a library, art gallery and cafes and the proposed development only provides a new premises for these existing facilities. • Objection as significant loss of privacy from overlooking as the proposed height will have unrestricted views directly into living areas and balconies of all apartments on the north-west corner of Atlantis Apartments (1-5 Bayview Ave). All apartments facing north or west will have varying degrees of privacy loss. • Significant overshadowing resulting from excessive height. • Increased traffic noise and congestion resulting in non stop traffic past our building to access the development. • Significant loss of outlook. There is a difference between seeing clear sky above the roofline of a building and looking straight at the façade of a 53 metre high tower. • Devaluation of Atlantis Apartments. • Construction impacts including noise, traffic congestion etc.. • Look forward to a scaled down version of the present development that complies. 	Noted. The application is recommended for refusal.
D03053019 D03053024	<ul style="list-style-type: none"> • Always understood site would be developed but surprised at height above 8 storey allowed. • Concerns include impact on water views and loss of solar access due to huge size of development -devaluing affected apartments. • Adverse impacts on privacy of occupants of Atlantis Apartments. • Volume of vehicle movements during construction around site due to one way narrow streets. Increased traffic impacts from vehicles accessing the basement of the development. • Agree with revitalising The Entrance but fail to see how this development will achieve this. More shops won't help when so many shops are currently vacant. Plus many apartments currently remain vacant. 	Noted. The application is recommended for refusal.
D03054092	<ul style="list-style-type: none"> • Objection to privacy loss, stormwater and drainage impacts, traffic/parking impacts resulting from a building that should not exceed the standard level. Council should be held responsible for any impacts in this regard. Building should be limited to 8 storeys only. 	Noted. The application is recommended for refusal.
D03054251	<ul style="list-style-type: none"> • Resident of Atlantis Apartments thought the adjoining site was limited to 8 storeys when purchased unit but now is 17 levels and will interfere with all aspects of living, as far as view and shade. Site is unsuitable for this height. • No gain or improvements to town centre resulting from the height proposed. It is not needed and should be no higher than previously approved at 8 storeys. 	Noted. The application is recommended for refusal.

<p>D03059412</p>	<ul style="list-style-type: none"> • Support revitalisation of The Entrance but object to development as overdevelopment of the site which is not consistent with the broader strategic vision and masterplan for the town centre. • Object to height of 53 metres when only 24 metres permitted and FSR of 5.8:1 when only 1.69:1 (with bonus) is permitted. These numerical exceedences are not minor variations to produce improved design outcomes but are an overdevelopment of the site. • The justifications for the variances is loosely based on a claim that the proposal is consistent with Council’s Iconic sites criteria and supported by the Town Centre Masterplan adopted Dec 2011. However, the Masterplan is not a statutory document but merely reflects the vision for nominated iconic sites and public domain improvements. • The application also claims public benefit through the provision of the library/café space to be dedicated to Council for the height and FSR variances. However, the VPA clearly states that the market value of the space to be provided will be deducted from the total Section 94 Contributions otherwise due. • Unaware of any transparent process for the selection of this site for acquisition of a library, however the masterplan does nominate a new library in the general area of the site. • Question the legitimacy of the café as ancillary to the library as it could be operated independently of the library and therefore would be prohibited. • Only a rudimentary assessment is made of the impacts of the development to Council’s Short Street carpark which is nominated as an iconic site. • Building height may undermine the iconic sites program. • Precedent set for development within the 2(d) zone. Not appropriate to totally disregard DCP controls for FSR and height particularly as the main justification is the perceived public benefit of the library. • Real possibility of whether the DA can be legally approved. As it is clearly an overdevelopment that cannot be supported on merit grounds. Rather Council should formally resolve to include the site as an Iconic site and include in Ch,115 DCP; formally resolve to prepare a draft LEP to introduce specific provisions for an appropriate development including non-residential uses; Require the current proposal to be modified to comply with the LEP and DCP provisions and vary them only to an extent that can be justified on valid planning grounds. Until this occurs there is no legitimate basis for the extreme height and FSR variations sought. 	<p>Noted. The application is recommended for refusal.</p>
<p>D03081785</p>	<ul style="list-style-type: none"> • Alarmed at the size of the proposed building and concerned regarding the impacts to Amber Parade as narrow, one way lane and traffic congestion and confusion will result. Main street shops and flats use the lane for deliveries and garbage collection. Using Ambler Parade as the only entry and exit to the proposed building is simply untenable. 	<p>Noted. The application is recommended for refusal.</p>

Any submission from public authorities.

There were no submissions from public authorities in relation to the proposal.

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

Insufficient information has been provided to allow for a favourable determination of the application. A number of concerns in relation to the design of the proposal have not been satisfactorily addressed in order to demonstrate that the proposal would be in the community interest.

OTHER MATTERS FOR CONSIDERATION

A draft VPA has been entered into between Council and the Proponent. A copy of the draft VPA is attached to this report. The Draft VPA includes an agreement between the parties that subject to the granting of consent for the development, the developer provides public benefits (including the dedication of land) in lieu of developer contributions under S94 and S94A of the EP&A Act 1979.

CONCLUSION

The application fails to comply with various numerical controls under Council's DCP and is contrary to the principles contained within State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Flat Development, which provides design principles aimed at improving the design of residential flat development. This has resulted in the Central Coast Design Review Panel and an independent Urban Design Consultant providing advice strongly opposing the development. Information was requested to satisfactorily address the identified shortfalls of the proposal, however, as no amended plans or information has been submitted, the application is recommended for refusal.

Attachments:

- 1 Draft Reasons for refusal.
- 2 Draft Voluntary Planning Agreement
- 3 Development Plans

**Proposed Reasons For Refusal - DA/426/2012
2A Bayview Avenue, The Entrance**

- 1 Pursuant to the provisions of Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979, the proposed development fails to adequately address the design quality principles of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, is inconsistent with the Residential Flat Design Code and received a recommendation from the Design Review Panel that the application be refused.
- 2 Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the controls and objectives of Council's Development Control Plan No.64 – Multiple Dwelling Residential in relation to setbacks, site coverage, privacy, communal open space and quality of architectural design.
- 3 Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the controls and objectives of Council's Development Control Plan 69 Controls for Site Waste Management in that waste management arrangements related to the proposal are unsatisfactory.
- 4 Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted with the application to enable an adequate assessment of the impacts of the proposal.
- 5 Pursuant to the provisions of Section 79C(1)(b) Environmental Planning and Assessment Act, 1979, the proposed development is likely to have a detrimental impact on the local context having regard to the scale (bulk, height and mass), form, density and design of the development.
- 6 Pursuant to the provisions of Section 79C(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979, the proposal, given the various areas of non compliance with Council's requirements (eg. setbacks, site coverage and height) and the lack of suitable or usable communal open space is considered as an overdevelopment of the site
- 7 Pursuant to the provisions of Section 79C(1)(d) Environmental Planning and Assessment Act, 1979, the proposed development does not adequately address issues raised in public submissions relating to the height of the proposed buildings, the existing character of the locality and the loss of privacy to adjoining and nearby properties.

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)

Exhibition Draft-17 May 2012

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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 cafe; 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:

ex CPI2
CP/1

Where:

C *The value of the Monetary Contribution in accordance with Clause 6.2 of this agreement*

CP/2 *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.

<u>Council</u>	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

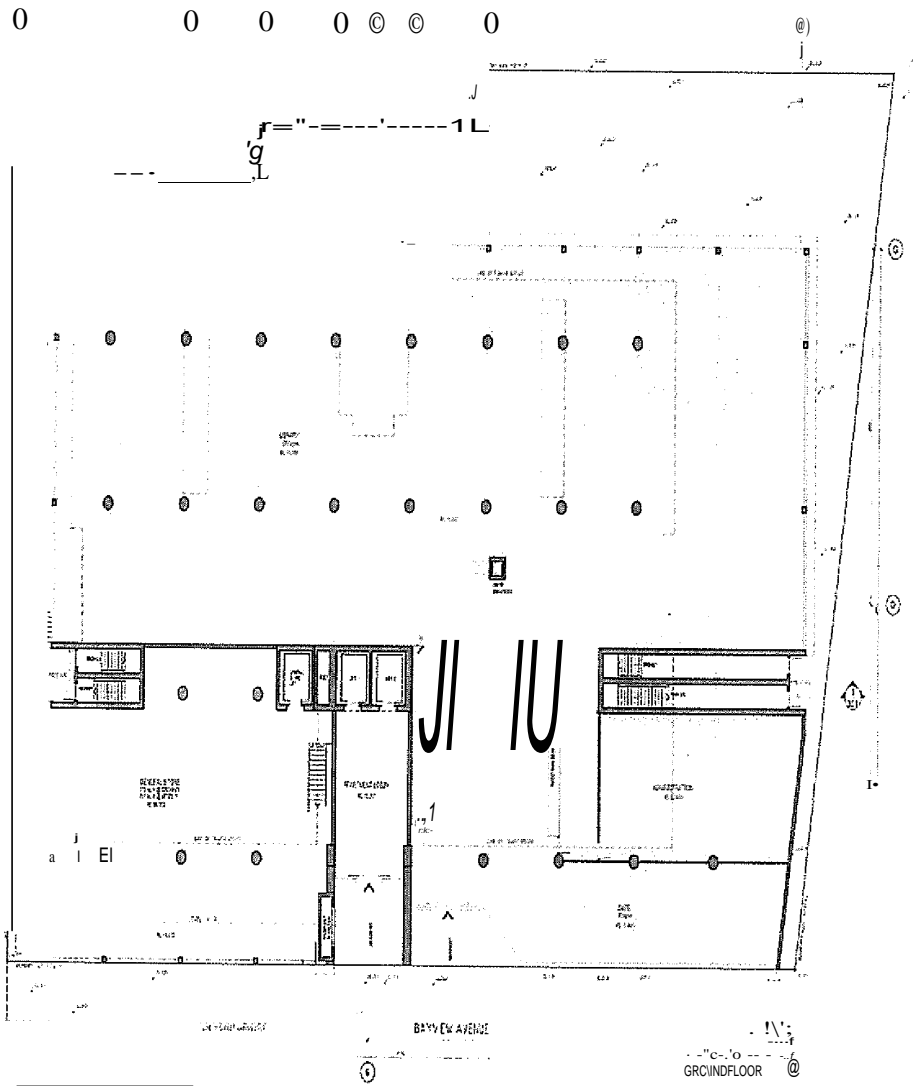
KIERAN CHEHAB.
Name (BLOCK LETTERS)

Name (BLOCK LETTERS)

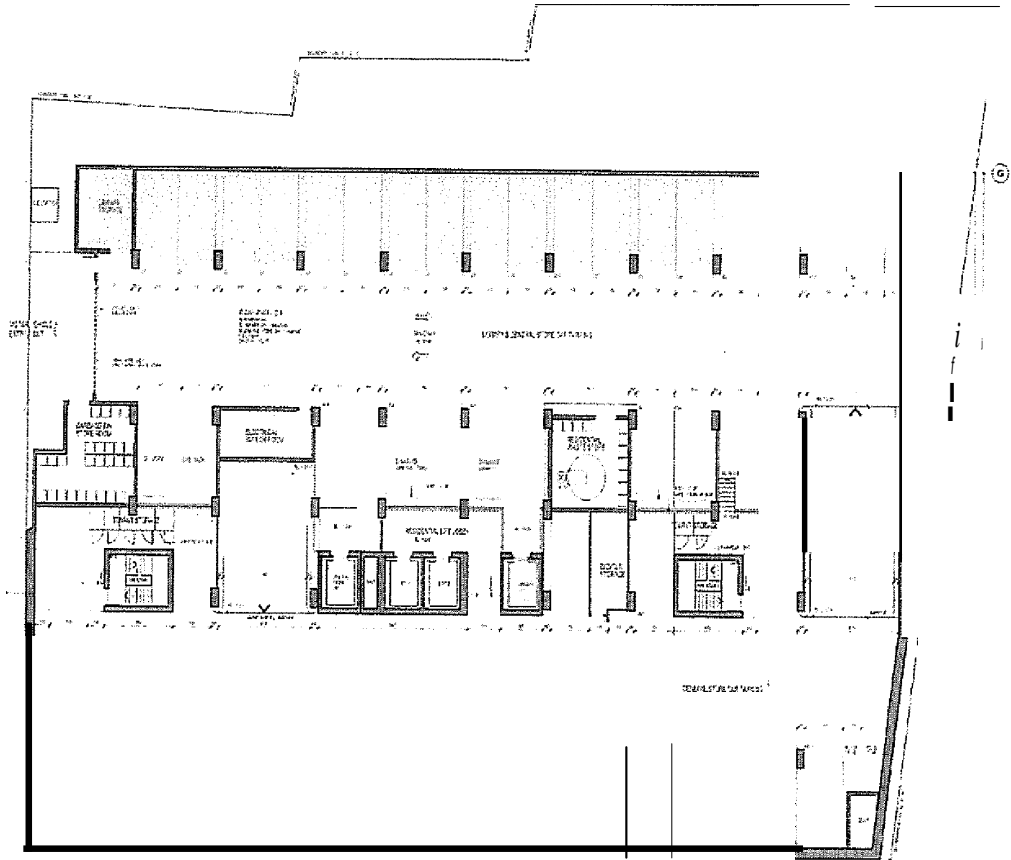
Name (BLOCK LETTERS)

SCHEDULE 1

Ground Floor



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	The Developer shall 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 cafe; 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 *Australian 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.

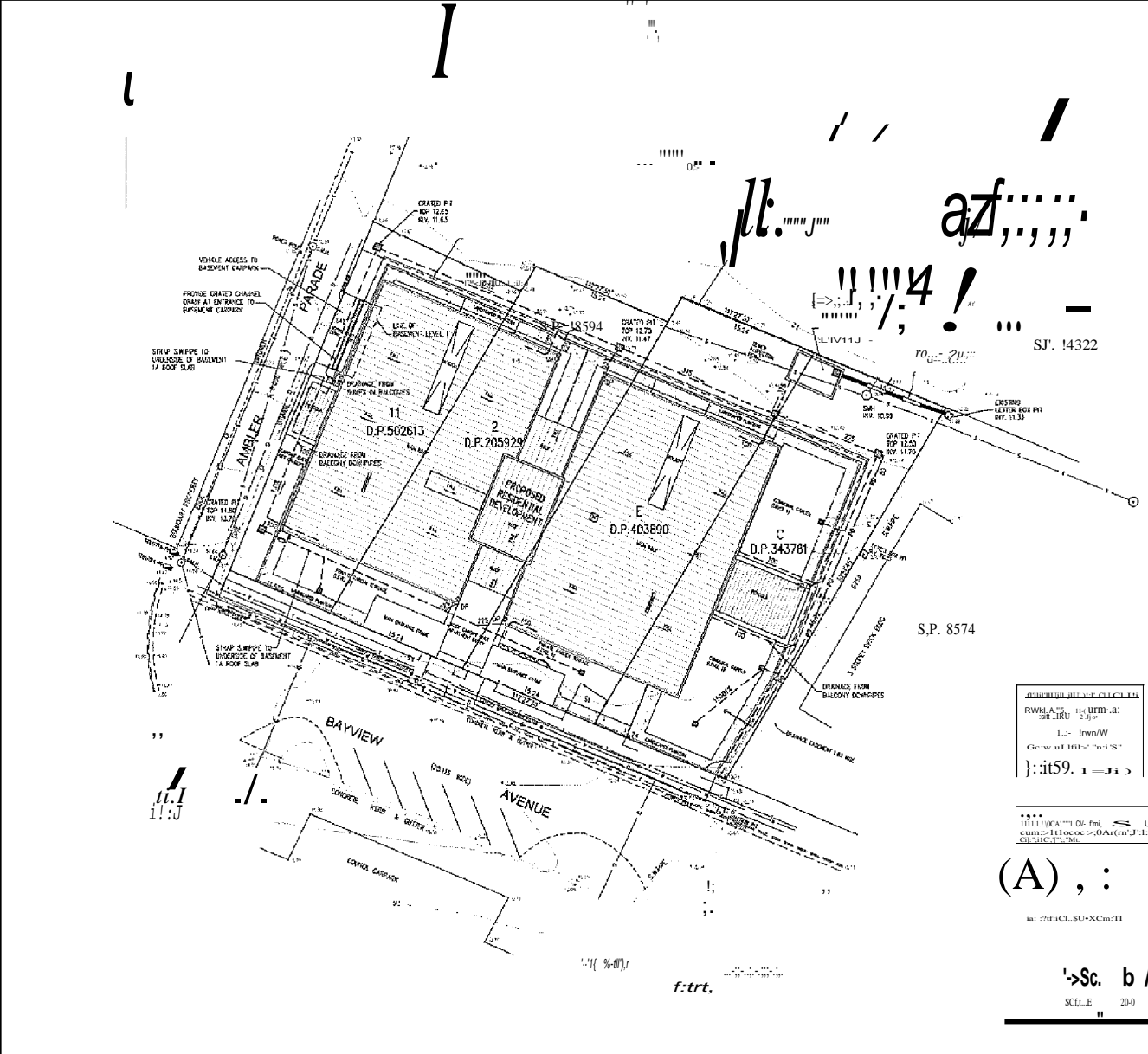
In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

- 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 or 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.
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 894 contribution valuation, Council will not be required to pay the difference.



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 SERVICE INFORMATION SHOWN ON THIS DRAWING HAS BEEN OBTAINED THROUGH
 A DEAL BEFORE YOU GO SEARCH AND IS VALID FOR THE PERIOD OF TIME FROM
 THE DATE OF ISSUE UNLESS OTHERWISE NOTED.
 YOU ARE RESPONSIBLE FOR OBTAINING UP TO DATE PLANS THROUGH AN AGENT TO
 APPLY FOR AND OBTAIN UP TO DATE PLANS THROUGH AN AGENT TO
 GO SEARCH AND TO CONTACT ALL THE RELEVANT AUTHORITIES TO ESTABLISH AND
 CONFIRM THE DETAILED LOCATION AND DEPTH OF ALL UNDERGROUND SERVICES.

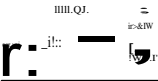
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PLAN OF PROPOSED WORKS ASSOCIATED
 WITH THE DEVELOPMENT OF LOT 11
 D.P. 502613, LOT 2 D.P. 205929,
 LOT F O.P. 403890 & LOT C O.P. 343781
 BAYVIEW AVENUE, THE ENTRANCE

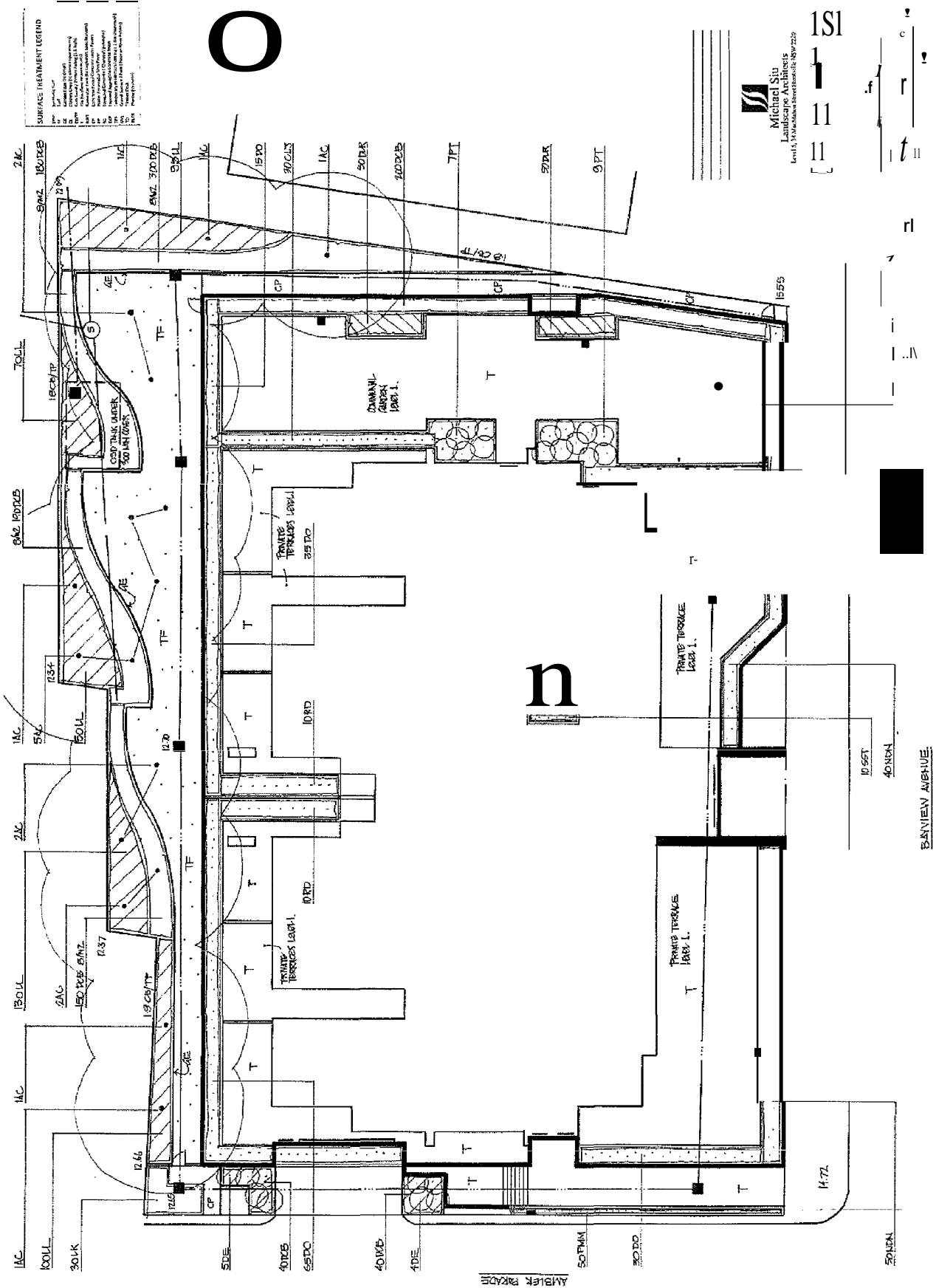
CONCEPT STORMWATER
 MANAGEMENT PLAN



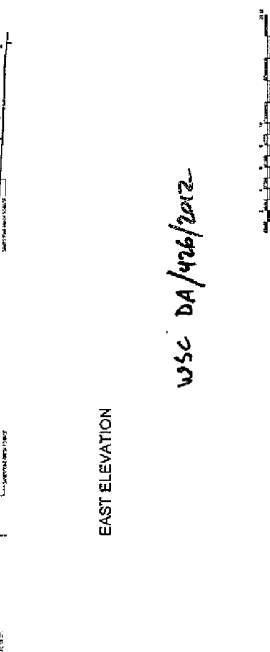
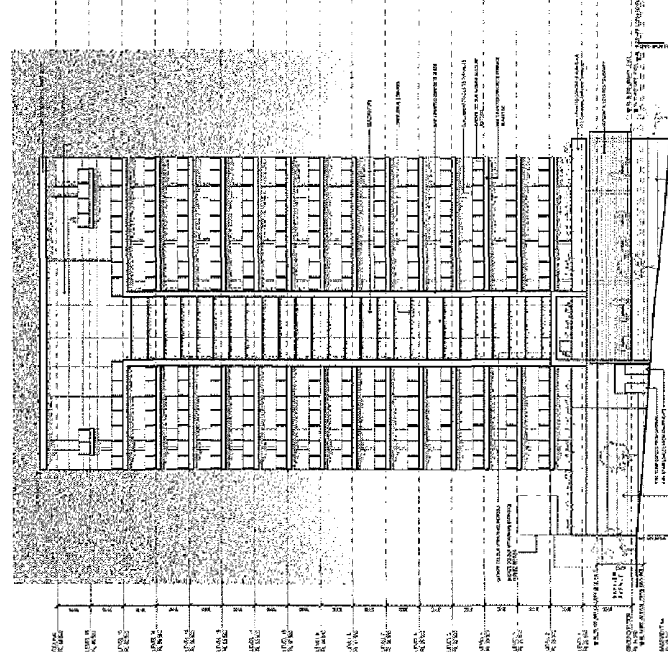
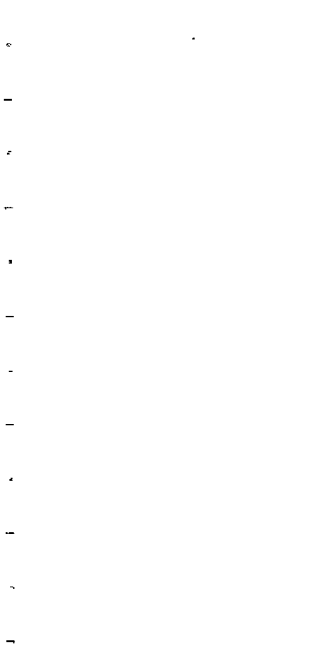
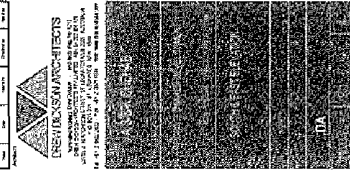
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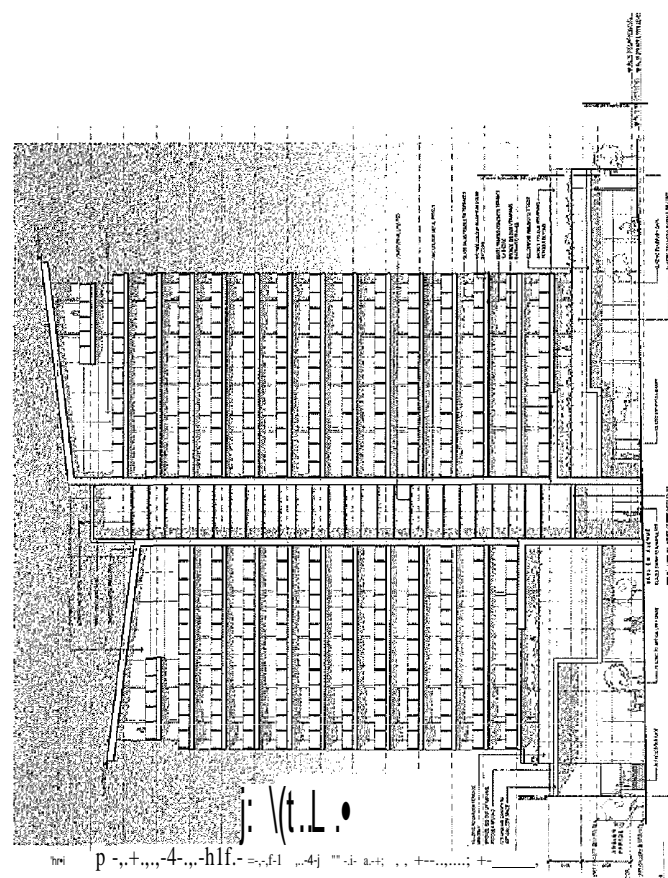


<p>THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF ASSOCIATED ARCHITECTS AND ENGINEERS, INC. AND ARE NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ASSOCIATED ARCHITECTS AND ENGINEERS, INC.</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>11/15/11</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>2</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>3</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>4</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>5</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>6</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>7</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>8</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> <td>9</td> <td>01/10/12</td> <td>ISSUED FOR PERMITTING</td> </tr> <tr> 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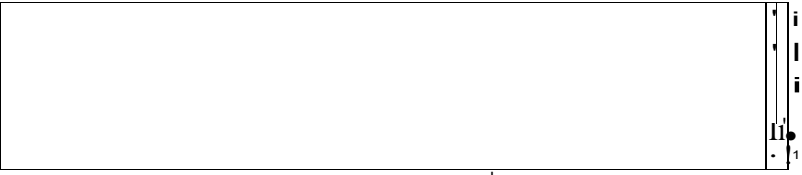
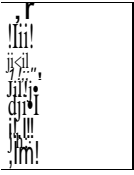


EAST ELEVATION

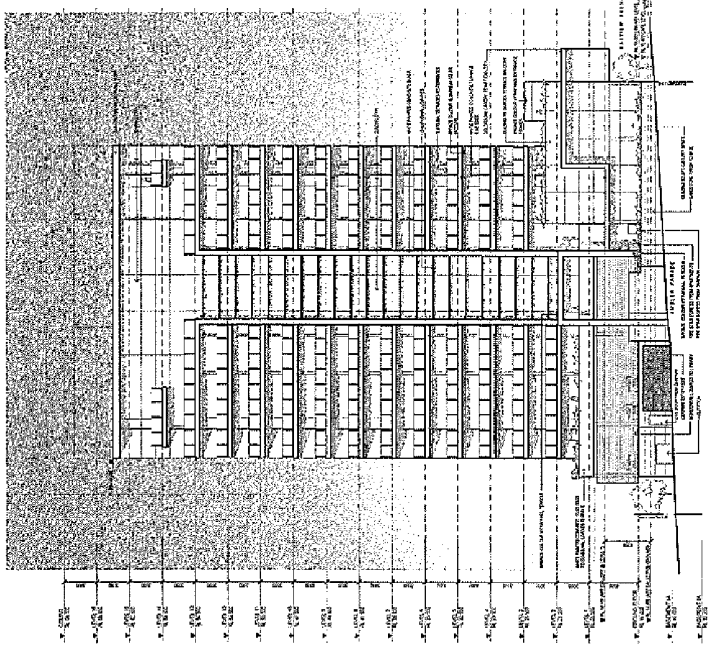
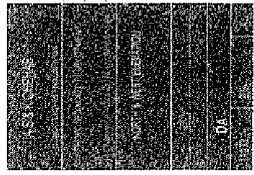
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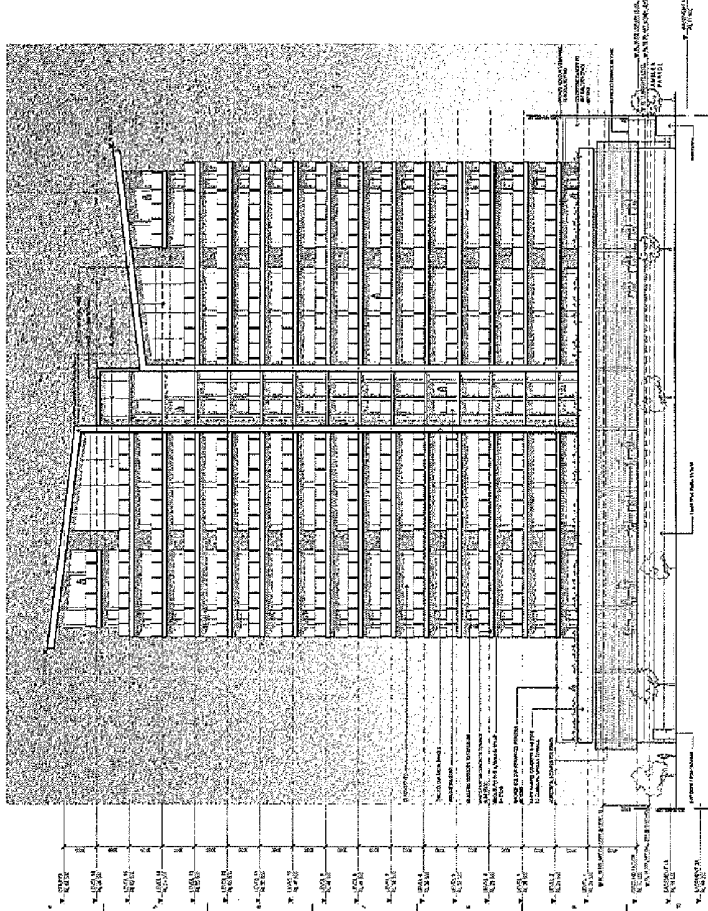


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1000 Market Street, 10th Floor, Philadelphia, PA 19107
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www.pennick.com



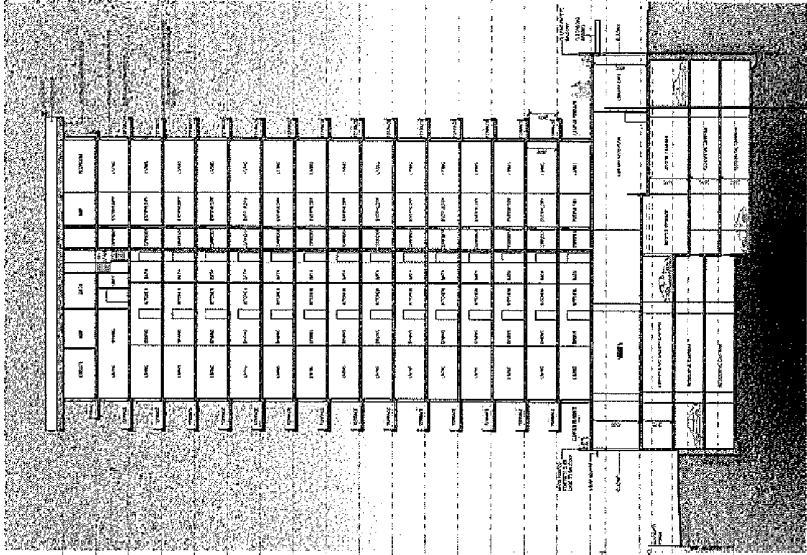
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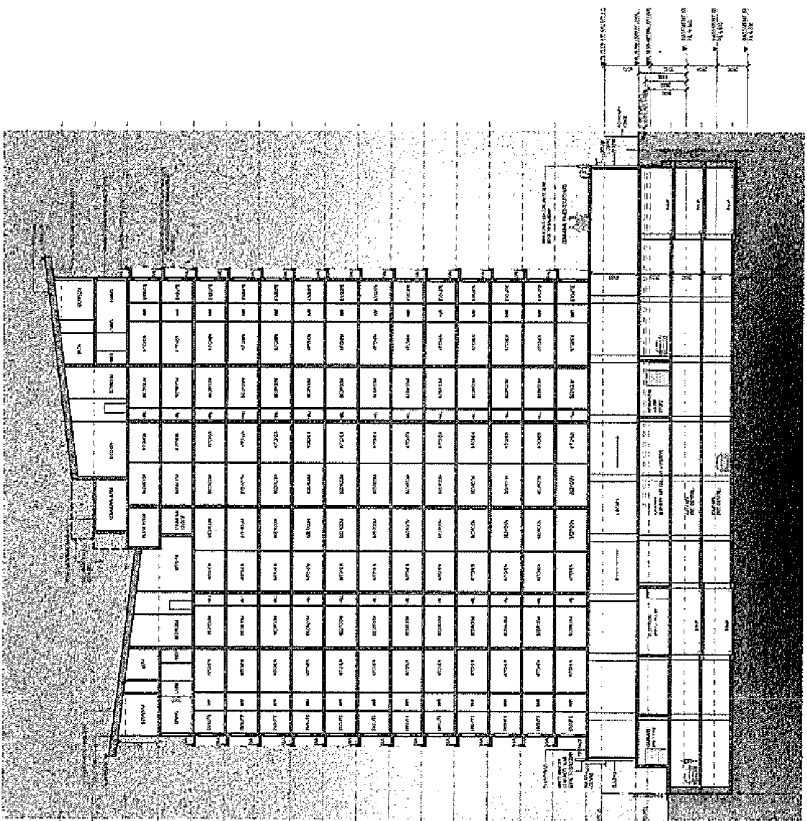


NORTH ELEVATION

<p>RESOURCES ARCHITECTS ARCHITECTURAL CENTER - ANNE ARBOR, MI 48106 PHONE: 734.769.1100 FAX: 734.769.1101 WWW: www.resourcesarchitects.com</p>	<p>DATE: 11/17/11 DRAWING NO.: 11-11-11-01 SHEET NO.: 01 OF 02</p>
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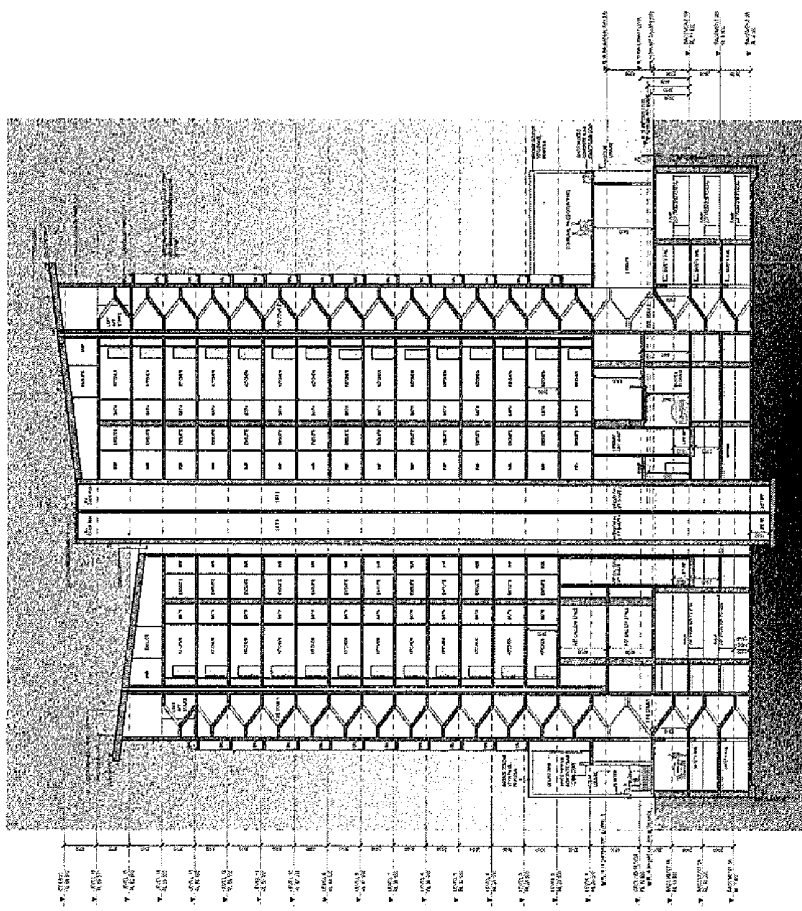
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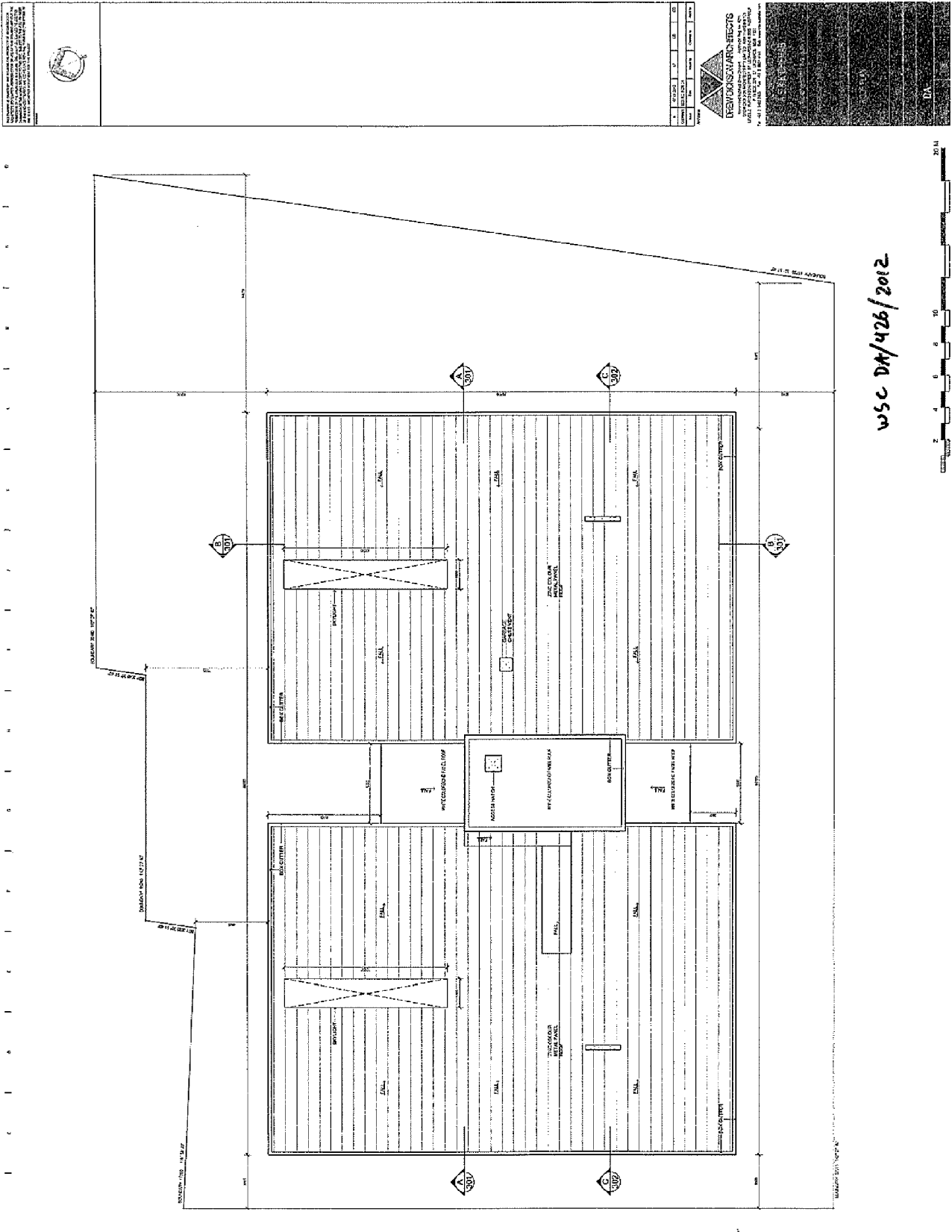
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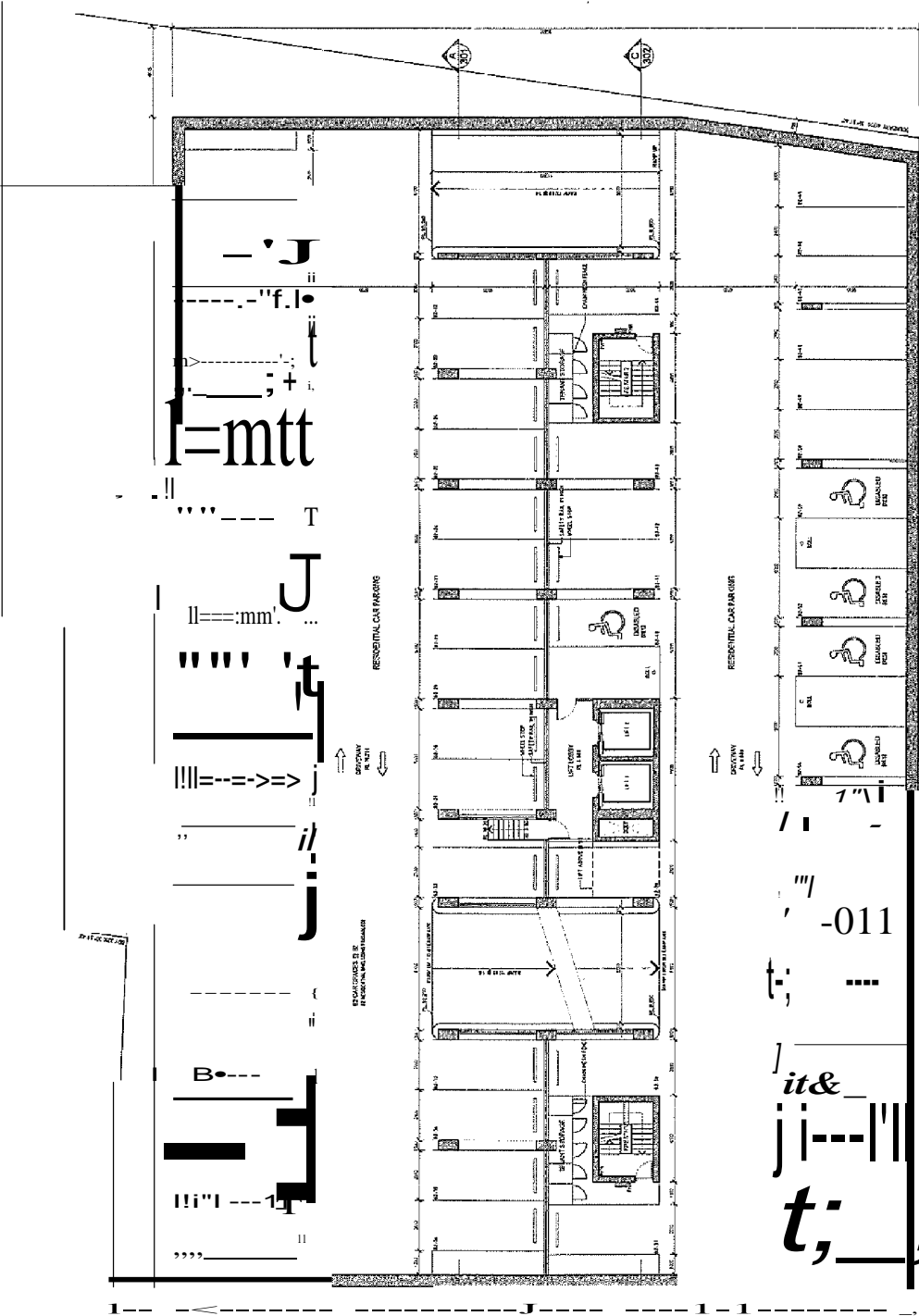
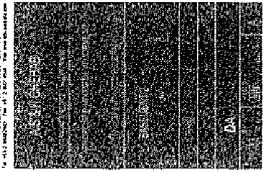
DA

DREW KASKIN ARCHITECTS
1000 15th Street, Suite 1000, San Francisco, CA 94103
Tel: 415.774.1111 Fax: 415.774.1112
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 TEL: 313-751-1400 FAX: 313-751-1401



CLASSIFICATION

TOTAL RESIDENTIAL UNITS	118
TOTAL CAR SPACES	118
TOTAL BIKE RACKS	118
TOTAL STORAGE	118
TOTAL BIKE RACKS (PER UNIT)	118
TOTAL BIKE RACKS (PER CAR)	118
TOTAL BIKE RACKS (PER STORAGE)	118
TOTAL BIKE RACKS (PER BIKE)	118

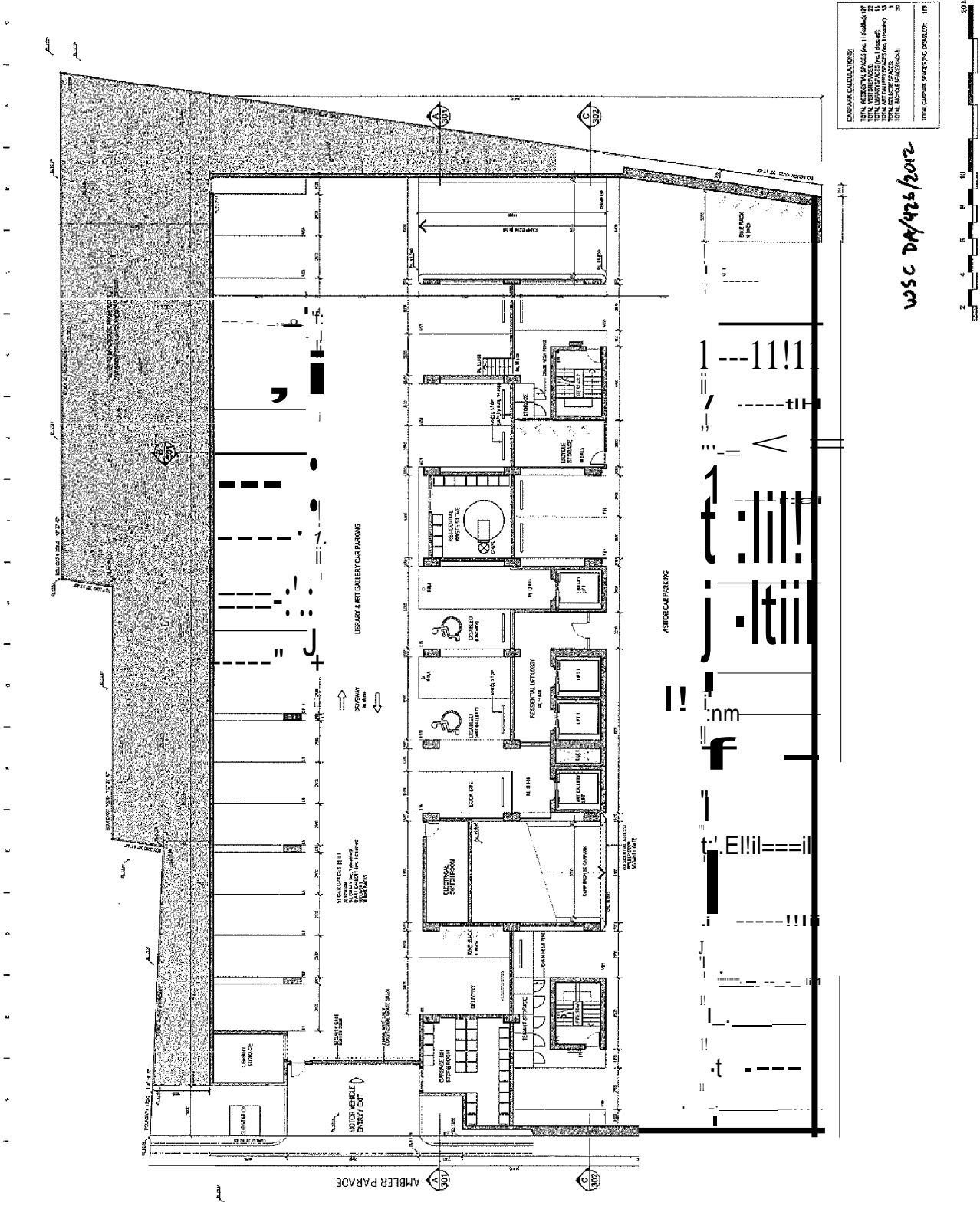
TOTAL CAR SPACES: 118

WOSC DA/1026/2012



	SHEET NO. _____ OF _____ PROJECT NO. _____
	DATE: _____
	DRAWN BY: _____
	CHECKED BY: _____


DESIGN CONSULTANTS
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 1000 WEST 10TH AVENUE, SUITE 1000
 DENVER, CO 80202
 PHONE: 303.733.1111
 FAX: 303.733.1112
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CASEWORK CALCULATIONS:
 TOTAL RECREATIONAL SPACE (Per 11) (6000) 11
 TOTAL OFFICE SPACE (Per 11) (1000) 11
 TOTAL CONFERENCE ROOM (Per 11) (1000) 11
 TOTAL RESTROOM (Per 11) (1000) 11
 TOTAL STAIR (Per 11) (1000) 11
 TOTAL ELEVATOR (Per 11) (1000) 11
 TOTAL CORRIDOR SPACE (Per 11) (1000) 11

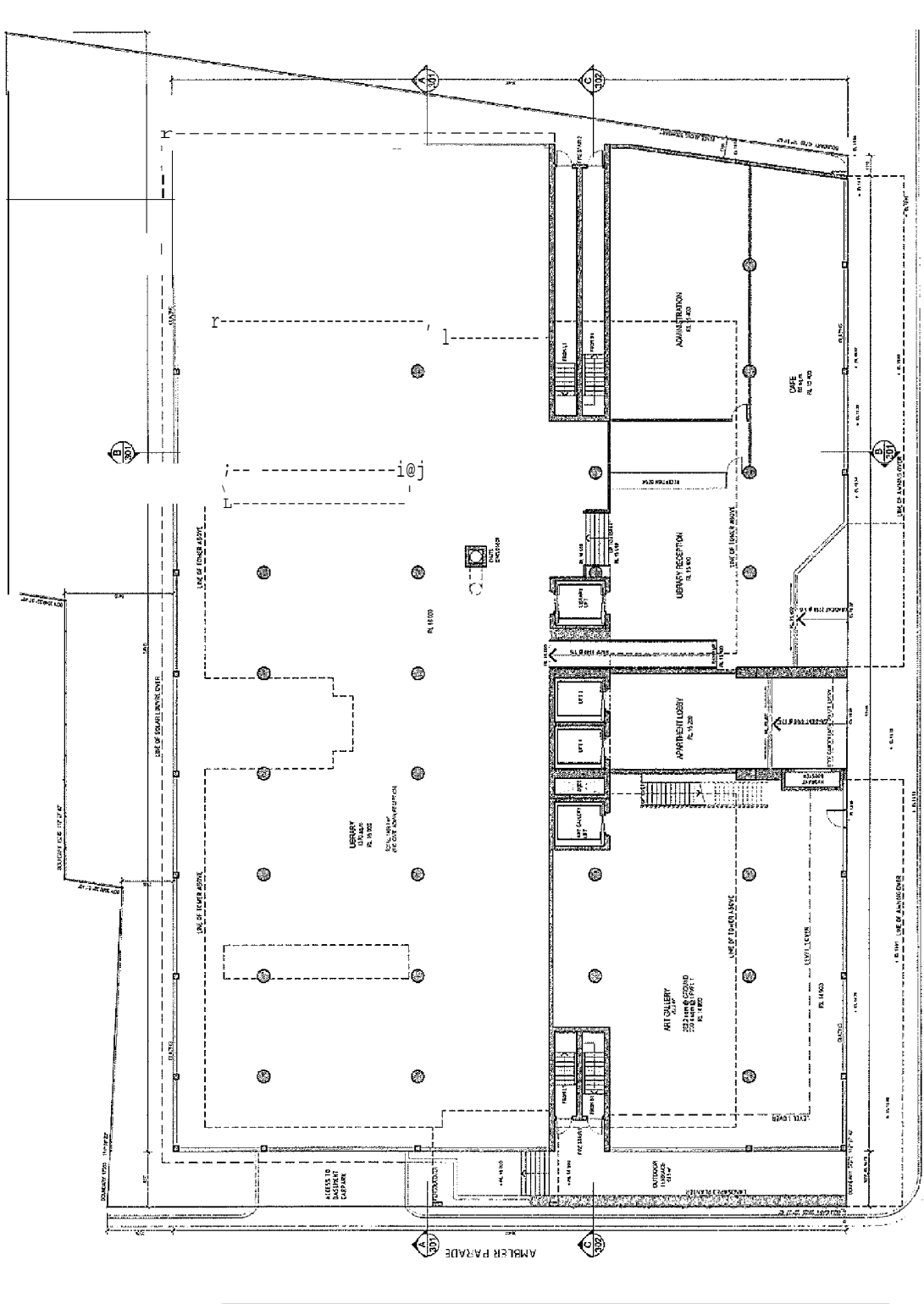
WSC DA/4/26/2012

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NO.	DATE	DESCRIPTION	BY	CHKD.
1	10/20/12	ISSUED FOR PERMIT	W.S.C.	
2	11/15/12	REVISED PER COMMENTS	W.S.C.	
3	12/10/12	REVISED PER COMMENTS	W.S.C.	
4	01/15/13	REVISED PER COMMENTS	W.S.C.	
5	02/10/13	REVISED PER COMMENTS	W.S.C.	
6	03/10/13	REVISED PER COMMENTS	W.S.C.	
7	04/10/13	REVISED PER COMMENTS	W.S.C.	
8	05/10/13	REVISED PER COMMENTS	W.S.C.	
9	06/10/13	REVISED PER COMMENTS	W.S.C.	
10	07/10/13	REVISED PER COMMENTS	W.S.C.	
11	08/10/13	REVISED PER COMMENTS	W.S.C.	
12	09/10/13	REVISED PER COMMENTS	W.S.C.	
13	10/10/13	REVISED PER COMMENTS	W.S.C.	
14	11/10/13	REVISED PER COMMENTS	W.S.C.	
15	12/10/13	REVISED PER COMMENTS	W.S.C.	
16	01/10/14	REVISED PER COMMENTS	W.S.C.	
17	02/10/14	REVISED PER COMMENTS	W.S.C.	
18	03/10/14	REVISED PER COMMENTS	W.S.C.	
19	04/10/14	REVISED PER COMMENTS	W.S.C.	
20	05/10/14	REVISED PER COMMENTS	W.S.C.	

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