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#### **FORM 13**

Schedule 1 of the Planning and Environment Regulations 1998

# AD274309F 30/11/2004 \$90 173

# APPLICATION BY RESPONSIBLE AUTHORITY FOR MAKING OF A RECORDING OF AN AGREEMENT

s. 181 (1)

Planning and Environment' Act 1987

Lodged at the Land Titles Office by:

O V.T. WICTORIA

Name:

**BEST HOOPER** 

Phone:

9670 8951

Address:

563 Little Lonsdale Street, Melbourne

Ref:

DS:FS

Customer Code: 0485 U

The Authority having made an Agreement requires a recording to be made in the Register for the land.

Land:

Certificate of Title Volume 10038 Folio 007, being land at 210 High

Street, Windsor

**Authority:** 

**CITY OF STONNINGTON** 

Section and Act under which Agreement made:

Section 173 Planning and Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

Position Held:

Dated:

PHEN SABBATUCCI Senoral Manager Planning & Development

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F:\Frances\Doi

DATED the

27 day of July

2004

# STONNINGTON CITY COUNCIL

- and -

**DENTOW PTY LTD** (ACN 006 466 271)

# **SECTION 173 AGREEMENT**



**BEST HOOPER** 

Solicitors
563 Little Lonsdale Street
MELBOURNE
Ref: DS:FS:0420.0103

Tel: 9670 8951 Fax: 9670 2954 AD274309P
30/11/2004 \$90 173

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THIS AGREEMENT is made the

2004

**BETWEEN:** 

STONNINGTON CITY COUNCIL of Greville Street Prahran in the State of Victoria ("the Responsible Authority") of the first part

- and -



DENTOW PTY LTD (ACN 006 466 271) of registered office, 953 Nepean Highway, Moorabbin in the State of Victoria ("the Owner") of second part

#### RECITALS

- Council is the Responsible Authority pursuant to the Act for the Planning Scheme. A.
- The Owner is or is entitled to be the registered proprietor of the Subject Land. B.
- On 1 August 2002 Council issued Planning Permit No. 1477/00 (Planning Permit) C. allowing the construction of a four storey building comprising offices and residences and associated car parking in accordance with the plans to be endorsed under condition 1 of the Planning Permit.
- Condition 8 of the Planning Permit requires the Owner to enter into this Agreement D. to provide for the matters set out in condition 8. Copies of the Planning Permit and plans endorsed under it are attached to this Agreement and marked 'A'.
- As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. E. W266306L, in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land. A copy of the Mortgagee's consent is attached to this Agreement and marked "B".
- F. The parties enter into this Agreement:
  - to give effect to the requirements of the Planning Permit; and F.1
  - to achieve and advance the objectives of planning in Victoria and the F.2 objectives of the Planning Scheme in respect of the Subject Land.

#### THE PARTIES AGREE



#### 1. **DEFINITIONS**

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Act means the Planning and Environment Act 1987.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

Car Park 6 means the car parking space so identified at south-east corner of the ground floor on the endorsed plans.

Car Stacker means the car stacker so identified within Car Park 6.

Council means Stonnington City Council as the Responsible Authority for the Planning Scheme.

Endorsed Plans means the plans endorsed by Council under condition 1 of the Planning Permit.

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.

party or parties means the Owner and Council under this Agreement as appropriate.

Planning Scheme means the Stonnington Planning Scheme and any other planning scheme that applies to the Subject Land.

Soho Unit means that unit comprising part ground and part first floor shown at the north-east corner of the ground and first floors on the endorsed plans and marked "G.02" and "1.01" respectively.

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Subject Land means the land situated at 210 High Street, Windsor being the land referred to in Certificate of Title Volume 10038 Folio 007 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

#### 2. INTERPRETATION

In this Agreement unless the context admits otherwise:



- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to each other gender.
- 2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- 2.6 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

# 3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees and acknowledge that:





# 3.1 Car Space 6

Car Space 6 and the car stacker must only be used exclusively in association with the Soho Unit.

#### 4. FURTHER OBLIGATIONS OF THE OWNERS

# 4.1 Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

#### 4.2 Further actions

The Owner further covenants and agrees that:

- 4.1.2 the Owners will do all things necessary to give effect to this Agreement;
- 4.2.2 the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to enable Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

#### 5. COSTS

The Owner must pay Council's reasonable costs in relation to the preparation and execution of this Agreement and all costs associated with the registration of this Agreement.

## 6. AGREEMENT UNDER SECTION 173 OF THE ACT

Council and the Owner agrees that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed for specified purposes.

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# 7. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

# 8. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

- 8.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 8.2 execute a deed agreeing to be bound by the terms of this Agreement.

#### 9. GENERAL MATTERS

#### 9.1 Notices

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 9.1.1 by delivering it personally to that party;
- 9.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 9.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

#### 9.2 Service of Notice

A notice or other communication is deemed served:

- 9.2.1 if delivered, on the next following business day;
- 9.2.2 if posted, on the expiration of 7 business days after the date of posting; or



9.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

#### 9.3 No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

#### 9.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

#### 9.5 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

#### 9.6 Disputes

- 9.6.1. If there is a dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute must be referred to the Victorian Civil and Administrative Tribunal ("Tribunal") for resolution to the extent permitted by the Act.
- 9.6.2. If there is a dispute concerning any matter which is not referrable to the Tribunal under the Act, that dispute must be referred for arbitration by an Arbitrator agreed upon in writing by the parties or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia or his nominee, for arbitration.

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- 9.6.3. Where provision is made in this Agreement that any matter be done to the satisfaction of the Responsible Authority or any of its officers and a dispute arises in relation to such provision, the dispute must be referred to the Tribunal in accordance with Section 149(1)(b) of the Act.
- 9.6.4. The parties must be entitled to legal representation for the purposes of any arbitration or referral referred to in Clauses 9.6(2) and 9.6(3) above. Unless the Arbitrator, Chairman, nominee or the Tribunal otherwise directs, each party must bear its own costs.

### 10. COMMENCEMENT OF AGREEMENT

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

# 11. ENDING OF AGREEMENT

- 11.1 This Agreement may be ended with the consent of the parties.
- 11.2 As soon as reasonably practicable after the Agreement has ended, Council must, at the request and at the cost of the Owner, make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the register and confirm the cancellation in writing to the Owner.

SIGNED, SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement.

Signed Sealed and Delivered by Stephen Sabbatucci on behalf of City of Stonnington pursuant to the power delegated to him by an Instrument of Delegation dated the 4th day of August 1997 in the presence of:

rchael OS

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WITNESS

THE COMMON SEAL of DENTOW PTY LIMITED (ACN 006 466 271) was affixed in the presence of authorised persons:



Director

Panagiota Tsokas

Frank Tsokas

of 44 Helene Street, Bulleen, Victoria 3105

of 44 Helene Street, Bulleen, Victoria 3105

Director/Company Secretary

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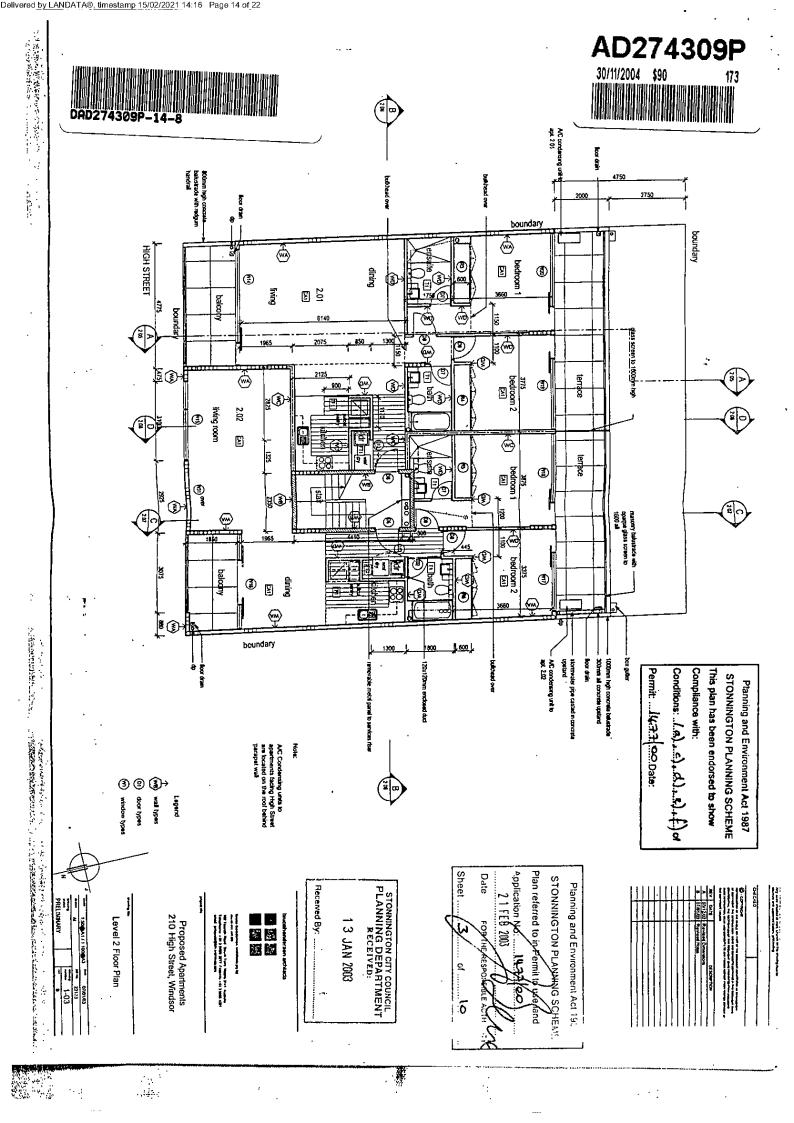
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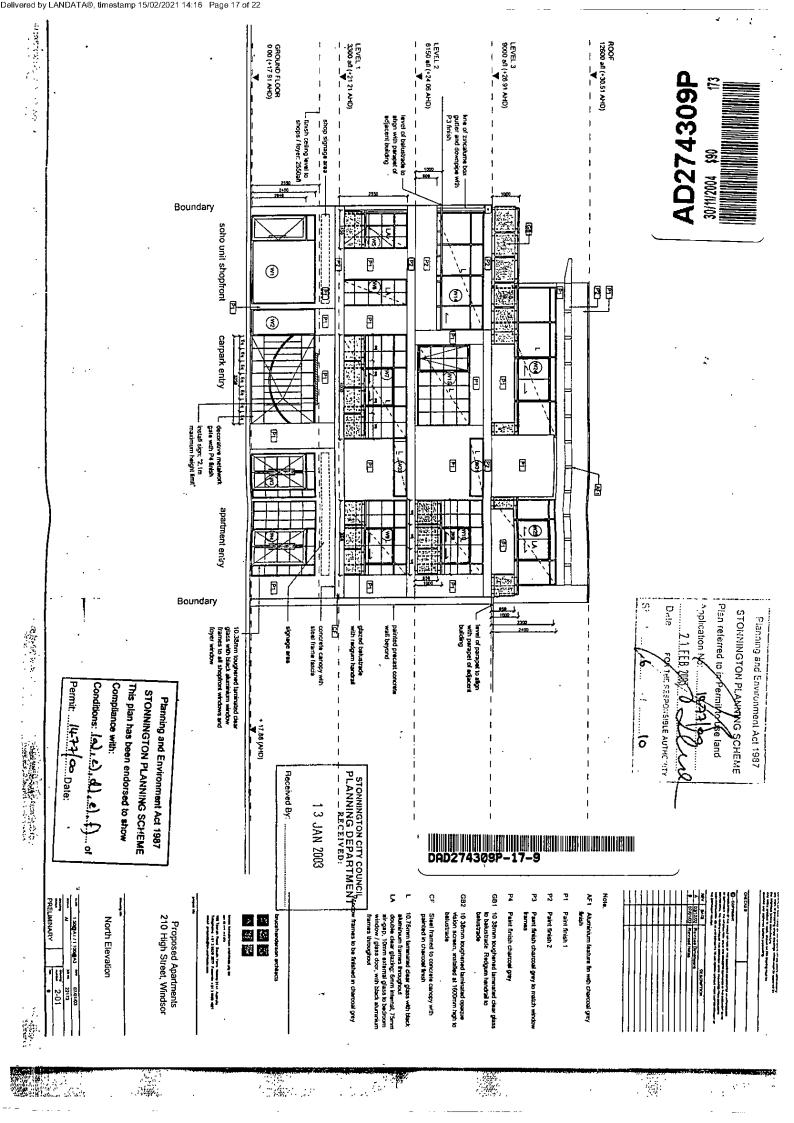
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AD274309P 15VEL 1 3300 aft (+21.21 AHD) ROOF 12600 att (+30 51 AHD) LEVEL 3 9000 afi (+26.91 AHD) GROUND FLOOR 0 00 (+17.91 AHD) 6150 aff (+24 06 AHD) 30/11/2004 \$90 precast concrete joint profiles rendered precasi concrete panels 99 boundary (1) 2 3 99 8 **(3)** P (3 1 7 5 Ì 3 Permit: 1477 O Date: —redgum handrail to masonry balustrade Conditions: ..l.el ..s) , al ..el ..f) of Compliance with: This plan has been endorsed to show STONNINGTON PLANNING SCHEME 1000 Planning and Environment Act 1987 boundary の高級機能を開発を行うした。 ر: 13. P'an referred to ip Permit Application No STONNINGTON PLANNING SCHEME Planning and Environment Act 1987 2 1 FEB 7003 STONNINGTON CITY COUNCIL PLANNING DEPARTMENT RECEIVED: Received By: brook benderem mythisem pip 10 den met od 170 Tagli Turnis fland Special Turnis deppth (114 Junistic Tallegeren - 17 Junis (177 Junistic oli ) Turkis dill' metal propositioni systemic men South Elevation 13 JAN 2003 ?<u>`</u>. ō dsd land

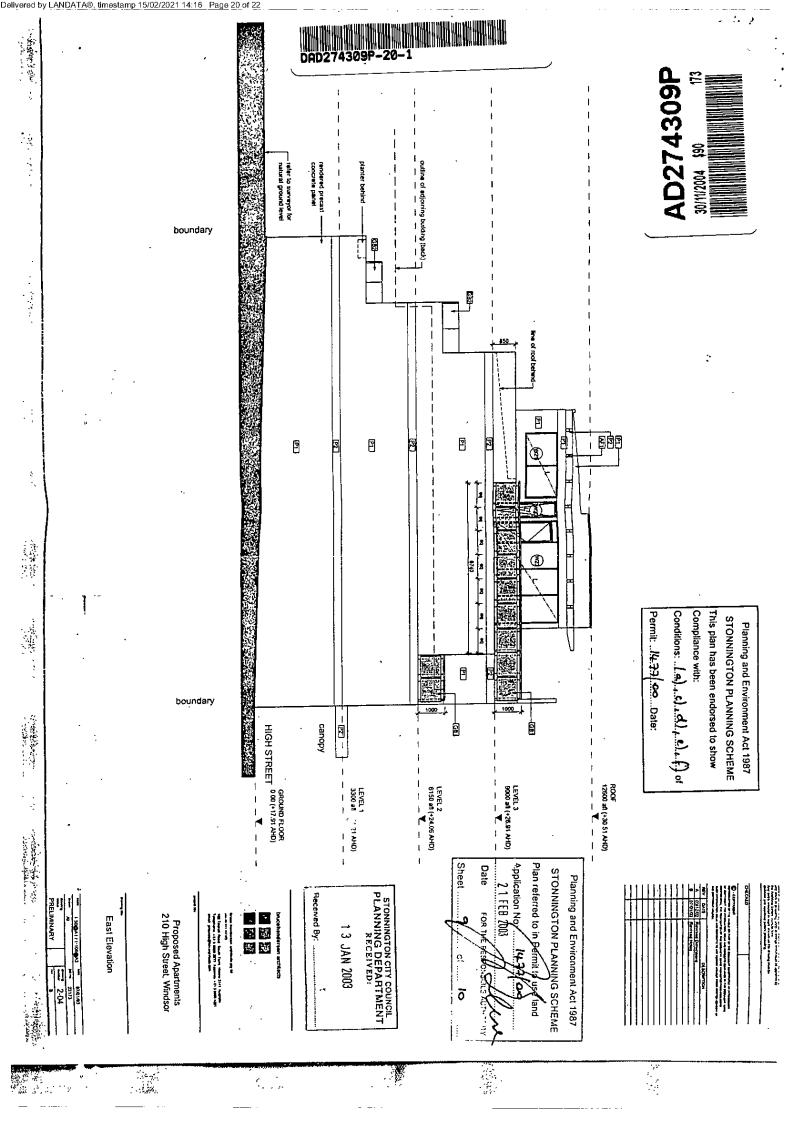
Proposed Apartments 210 High Street, Windsor

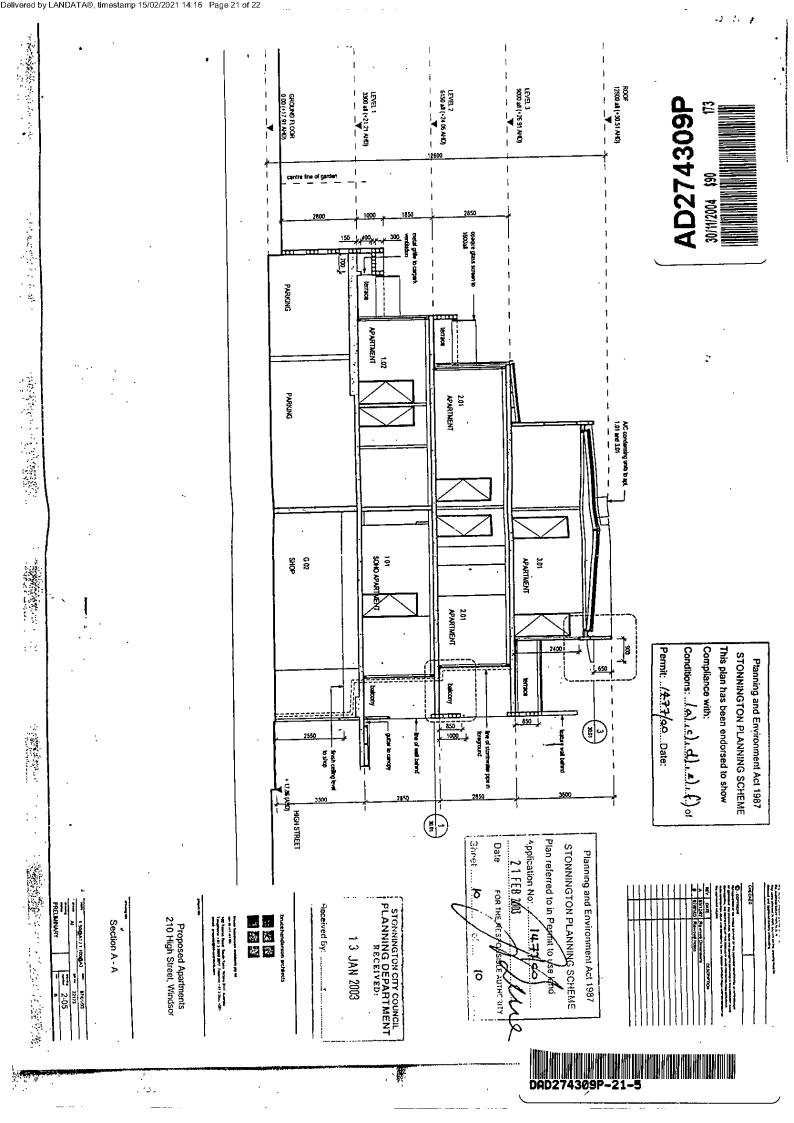
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# Mortgagee's Consent

COMMONWEALTH BANK OF AUSTRALIA as Mortgagee of registered mortgage No. W266306L consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

SIGNED SEALED and DELIVERED in Victoria for and on behalf of COMMONWEALTH BANK

OF AUSTRALIA by its Attorney

GLEWN VINCENT CARNATVA under Power dated 11 December 2000 a certified copy of which is filed in Permanent Order Book No. 277 at Page 016 who certifies that he/size is

SUPERVISOR EXECUTIONS TWO REGIST RAY VICTORIA OF COMMONWEALTH BANK OF AUSTRALIA

in the presence of:

AD274309P

