

AA7451

Memorandum of common provisions Section 91A Transfer of Land Act 1958

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This memorandum contains provisions which are intended for inclusion in instruments and plans to be subsequently lodged for registration.

Provisions:

1. DEFINITIONS

In this MCP, unless the contrary intention appears:

- (a) **"Allowable Encroachment"** means an encroachment which is permitted outside an Approved Building Envelope under clause 3.4 or otherwise permitted by the Building Regulations.
- (b) **"Approved Building Envelope"** means the Building envelopes shown for each Lot on the Building Envelope Plan and has the same meaning as in regulation 5 of the Building Regulations.
- (c) **"Beveridge Joint Venture"** means the owners of the land within the Plan at the time of its registration.
- (d) **"Building"** has the meaning given to it in the Building Act.
- (e) **"Building Act"** means the *Building Act 1993*, as amended from time to time.
- (f) **"Building Envelope Plan"** means the plans which are attached to this MCP and which shows the Approved Building Envelopes and other related matters for the Lots within the Plan.
- (g) **"Building Envelope Profile"** means the profiles which are attached to this MCP and which relate to the Approved Building Envelope for a particular Lot shown in the Building Envelope Plan. The applicable Building Envelope Profile is marked on the Building Envelope Plan.
- (h) **"Building Permit"** means a building permit in terms of the Building Act.
- (i) **"Building Regulations"** means the *Building Regulations 2018*, as amended from time to time, or any subsequent regulations made pursuant to the Building Act which regulate the siting of a Building.
- (j) **"Building to Boundary Zone"** means that part of an Approved Building Envelope for a Lot shown on the Building Envelope Plan and the Building Envelope Profile as square hatched (as indicated in the key to the relevant profile).

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1. The provisions are to be numbered consecutively from number 1.
2. Further pages may be added but each page should be consecutively numbered.
3. To be used for the inclusion of provisions in instruments and plans.

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- (k) **"Carport"** means a domestic carport constructed primarily for the purpose of storage of motor vehicles, trailers, caravans, campervans, boats, golf carts and the like which has a minimum of two sides and not less than one third of its perimeter open.
- (l) **"Control"** includes a restriction in terms of the *Subdivision Act 1988*, any agreement under section 173 of the *Planning and Environment Act 1987* ("**PE Act**"), a provision of an Act (other than the Building Act), a requirement of a referral authority (in terms of the PE Act) or an order of a Court or tribunal, which relates to the siting of a Building.
- (m) **"Conventional Lot"** means a Lot that does not directly abut the Golf Course, but does not include a Corner Lot or a Dual Frontage Lot.
- (n) **"Corner Lot"** means a Lot whose Primary Frontage and Secondary Frontages abut a Street. A Corner Lot may also be a Golf Lot or a Dual Frontage Lot.
- (o) **"Design and Siting Guidelines and Restrictions"** means the Mandalay Design and Siting Guidelines prepared by the Beveridge Joint Venture as amended from time to time.
- (p) **"Dual Frontage Lot"** means a Lot that does not directly abut the Golf Course whose Rear Boundary also abuts a Street or lane.
- (q) **"Dwelling"** has the meaning given to it in the Victoria Planning Provisions, as amended from time to time.
- (r) **"Edge Boundary"** means the boundary or part of a boundary of an Edge Lot which abuts an allotment which is not on the Plan. Exemptions relating to side and rear Setbacks and related siting matters do not apply to an Edge Boundary.
- (s) **"Edge Lot"** means a Lot on the Plan that abuts an allotment which is not shown on the Plan (other than those Lots on the Plan which merely touch at one point an allotment which is not shown on the Plan (i.e. at a corner)).
- (t) **"Fence"** has the meaning given to it in Part 1 Division 2 of the Building Regulations.
- (u) **"Frontage"** has the meaning given to it in the Victoria Planning Provisions, as amended from time to time and in relation to a Lot that has a boundary fronting a public reserve or the Golf Course, includes that boundary.
- (v) **"Garage"** means a domestic garage constructed primarily for the purpose of storage of motor vehicles, trailers, caravans, campervans, boats, golf carts and the like.
- (w) **"Golf Lot"** means a Lot that directly abuts the Golf Course. It does not include a Lot that is separated from the Golf Course by a road or lane.
- (x) **"Golf Course"** means any golf course constructed on land within the Plan.
- (y) **"Height"** has the meaning given to it in Regulation 5 of the Building Regulations.
- (z) **"Lot"** has the meaning given to in the Building Act.
- (aa) **"MCP"** means this memorandum of common provisions.
- (bb) **"MDR"** means the person appointed by the Beveridge Joint Venture to perform the function of the Mandalay Design Reviewer in accordance with the Design and Siting Guidelines and Restrictions.
- (cc) **"Overlooking Zone"** means that part of an Approved Building Envelope for a Lot shown on the Building Envelope Profile as diagonally hatched (as indicated in the key to the relevant profile).

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- (dd) **"Pergola"** has the meaning given to it in Regulation 5 of the Building Regulations.
- (ee) **"Plan"** means the relevant plan of subdivision for a particular Lot which incorporates this MCP.
- (ff) **"Primary Frontage"** (unless the Building Envelope Plan, when read in conjunction with this MCP, indicates otherwise) means the boundary along the Street Frontage and where a Lot abuts more than one Street:
 - (i) in relation to a Corner Lot, means the boundary which abuts a Street and if more than one, the boundary that is the shortest disregarding any Splay Corner, unless the Building Envelope Plan, when read in conjunction with this MCP, indicates otherwise; and
 - (ii) in relation to a Dual Frontage Lot, means the boundary which the Building Envelope Plan, when read in conjunction with this MCP, indicates to be the Primary Frontage.
- (gg) **"Rear Boundary"** means the boundary of a Lot that is, or the boundaries of a Lot that are, opposite its Primary Frontage and which connect the Side Boundaries of that Lot.
- (hh) **"Secondary Frontage"** can only occur in relation to a Corner Lot and means the boundary that abuts a Street which is not the Primary Frontage (and if more than one, the longest boundary abutting a Street which is not the Primary Frontage).
- (ii) **"Setback"** means the shortest horizontal distance from a particular boundary or Building to another boundary or Building (excepting matters specifically referred to in this MCP).
- (jj) **"Side Boundary"** means the boundary or boundaries of a Lot that runs or run between the Primary Frontage of a Lot to the Rear Boundary of a Lot.
- (kk) **"Single Storey Building Zone"** means that part of an Approved Building Envelope for a Lot shown on the Building Envelope Plan as indicated in the legend contained within the Plan.
- (ll) **"Splay Corner"** in relation to a Corner Lot means any title boundary of that Corner Lot which joins two boundaries abutting Streets at an angle and which cuts off the corner of the Lot.
- (mm) **"Street"** for the purposes of determining Street Setbacks, means any road other than a lane, footway, alley or right of way.

2. INTERPRETATION

In this MCP, unless the contrary intention appears:

- (a) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to any document is to that document as varied, novated, ratified or replaced from time to time;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (d) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (e) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) the word "includes" in any form is not a word of limitation; and

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- (g) a reference to an authority, institution, association or body ("original entity") that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity.

3. SITING & SETBACKS

3.1 Exemption from the need for the Consent and Report of the relevant Council

The restriction in the Plan which incorporates this MCP exempts a proposed Dwelling design from requiring the consent and report of the relevant council with regard to a design which does not comply with the Building Regulations in respect of the following:

- (a) minimum Street Setback (regulation 74);
- (b) building height (regulation 75);
- (c) side and rear Setbacks (regulation 79);
- (d) walls and carports on boundaries (regulation 80);
- (e) solar access to existing north facing habitable room windows (regulation 82);
- (f) overshadowing of recreational private open space (regulation 83);
- (g) overlooking (regulation 84); and
- (h) Fences on intersecting street alignments (regulation 92).

3.2 Building Envelopes

- (a) Any Dwelling on a Lot must not be contained outside the Approved Building Envelopes and must not be defined otherwise than by the associated Building Envelope Profile and written notes contained therein, except for the Allowable Encroachments.
- (b) The siting of a Dwelling within the Approved Building Envelope and the Building Envelope Profile is subject to any further restriction or modification imposed by this MCP or any other applicable Control.
- (c) No exemption from the need for consent and report of the relevant council in respect of Building Regulations 79, 80, 82, 83 and 84 applies in respect of an Edge Boundary. The siting requirements of a Building in respect of an Edge Boundary must accord with Building Regulations 79, 80, 82, 83 and 84 unless consent and report of the relevant council has been obtained in accordance with the Building Regulations. In terms of this MCP, exemptions relating to minimum Street Setback (regulation 74), building height (regulation 75) and fences on street alignments (regulation 92) still apply in respect of an Edge Lot.

3.3 Minimum Street Setback

- (a) Any Dwelling on a Lot must be set back from the Primary Frontage by at least the distance referred to in the Building Envelope Plan.
- (b) Any Dwelling on a Lot which is a Corner Lot must be set back from the Secondary Frontage by at least 2.0 metres unless otherwise stated in the Building Envelope Plan.
- (c) Any Dwelling on a Dual Frontage Lot need not be set back from its Rear Boundary, unless otherwise stated in the Building Envelope Plan.

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3.4 Exceptions to Setbacks

- (a) A deck may encroach into the Setback from a Side or Rear Boundary of a Lot up to 2 metres subject to MDR approval and provided the deck (and any roofing) is integrated into the overall house design.
- (b) Despite any other provision in this MCP or the Building Regulations, an Allowable Encroachment must not exceed 4 metres in height.

3.5 Garages

- (a) If a Garage or Carport is located facing the Primary Frontage or has a rear wall facing a Side Boundary, either the side or rear wall of that Garage or Carport (as applicable) must be built within 1500 millimetres of a Side Boundary or as otherwise approved by the MDR.
- (b) If a Garage or Carport is located facing the Secondary Frontage of a Corner Lot, then unless otherwise indicated on the Building Envelope Plan, that Garage or Carport:
 - (i) must have a Setback of at least 5.0 metres from the Secondary Frontage; and
 - (ii) be built within 1500 millimetres of the Rear Boundary.
- (c) A Garage or Carport on a Dual Frontage Lot must:
 - (i) be located facing the Rear Boundary; or
 - (ii) at the rear of the Dual Frontage Lot,
 and be:
 - (iii) set back from the Rear Boundary by at least 5.0 metres; and
 - (iv) built within 1500 millimetres of a Side Boundary.

3.6 Side and Rear Setbacks

- (a) Except for Allowable Encroachments, a Dwelling on a Conventional Lot or a Corner Lot which is not a Golf Lot or a Dual Frontage Lot must be set back from the boundaries of the Lot as follows:
 - (i) subject to clause 3.6(d), from its Side Boundary by at least the distance referred to on the Building Envelope Plan;
 - (ii) from its Rear Boundary by at least 2.0 metres, unless otherwise stated in the Building Envelope Plan; and
 - (iii) if the Lot is a Corner Lot, from its Secondary Frontage by at least 2.0 metres.
- (b) Except for Allowable Encroachments, a Dwelling on a Golf Lot must be set back from the boundaries of the Lot as follows:
 - (i) subject to clause 3.6(d), from its Side Boundary by at least the distance referred to on the Building Envelope Plan;
 - (ii) from its Rear Boundary by at least 3.0 metres, unless otherwise stated in the Building Envelope Plan; and
 - (iii) if the Lot is a Corner Lot, from its Secondary Frontage by at least 2.0 metres, unless otherwise stated in the Building Envelope Plan.

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- (c) Except for Allowable Encroachments, a Dwelling on a Dual Frontage Lot:
 - (i) subject to clause 3.6(d), must be set back from its Side Boundary by at least the distance referred to on the Building Envelope Plan;
 - (ii) need not be setback from its Rear Boundary, unless otherwise stated in the Building Envelope Plan; and
 - (iii) if the Dual Frontage Lot is a Corner Lot, must be set back from its Secondary Frontage by at least 2.0 metres unless otherwise stated in the Building Envelope Plan.
- (d) For the avoidance of doubt, a Dwelling, Garage or Carport may be constructed in the Building to Boundary Zone. However, a Dwelling, Garage or Carport may only be constructed in the Building to Boundary Zone on one Side Boundary and must not be constructed within 1 metre of the other Side Boundary.

3.7 Building Height

- (a) Subject to clause 3.7(b), the Height of a Building shall only be limited by any Height restriction defined in the associated Building Envelope Profile.
- (b) The Height of a Building within the Single Storey Zone must not exceed 4 metres.

3.8 Walls and carports on Boundaries

- (a) This clause 3.8 applies to construction of:
 - (i) a wall within 1500 mm of a Side Boundary of a Lot; or
 - (ii) any part of a Carport constructed within 1500 mm of a Side Boundary of a Lot and which is open on the side facing the boundary or boundaries.
- (b) The Height of the wall or Carport shall only be limited by any Height restriction defined in the associated Building Envelope Profile.

3.9 Solar access to existing north facing habitable room windows

Regulation 82 of the Building Regulations does not apply to a Building constructed on a Lot, provided that Building is located entirely within an Approved Building Envelope (except for Allowable Encroachments or as otherwise provided in this MCP).

3.10 Overshadowing of recreational private open space

Regulation 83 of the Building Regulations does not apply to a Building constructed on a Lot, provided that Building is located entirely within an Approved Building Envelope and the applicable Building Envelope Profile (except for Allowable Encroachments or as otherwise provided in this MCP).

3.11 Overlooking

Except as otherwise provided in this MCP or in the Design and Siting Guidelines and Restrictions, a Building may be constructed, but a habitable room window may not be located anywhere within an Overlooking Zone.

4. FENCING

- (a) Except with the consent of MDR and subject to clauses 4(b) and 4(c), no Fence shall be constructed along any boundary abutting a Street, except in relation to the Rear Boundary of a Dual Frontage Lot.
- (b) Subject to the approval of MDR, retaining walls or courtyard defining walls may be built within the area between the Primary Frontage and the front of the Dwelling.

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- (c) Where a Lot is a Corner Lot:
 - (i) a Fence may be constructed along a Frontage which is not the Primary Frontage as long as it does not exceed 1.8 metres in Height; and
 - (ii) a Fence may be constructed within 9 metres of a point of intersection of street alignments exceeding a Height of 1 metre provided that Fence:
 - (A) is not constructed along the Primary Frontage, except in accordance with clause 4(a);
 - (B) does not exceed 1.8 metres; and
 - (C) except in the case of a Fence constructed in accordance with clause 4(a), remains at least 1 metre behind the front façade of any Dwelling constructed on the Lot and returns to abut the Dwelling.

5. GENERAL

- (a) In the case of a conflict between the Plan and these written notations, the specifications in these written notations prevail.
- (b) Buildings must not cover a registered easement unless:
 - (i) provided for by the easement; or
 - (ii) the consent of all parties who enjoy or whose land enjoys the benefit of the easement is obtained.
- (c) The Beveridge Joint Venture and the MDR may, in their absolute discretion, authorise in writing the siting of a Building which does not comply with the restriction created by the Plan which incorporates this MCP, provided that such siting complies with the requirements of the Building Regulations and/or is subject to the report and consent of the relevant reporting authority in terms of the Building Regulations. Approvals by the Beveridge Joint Venture and the MDR in accordance with this clause may be provided in circumstances where the Beveridge Joint Venture and the MDR consider, in their absolute discretion, that the siting is desirable in terms of achieving a better planning outcome in terms of the Design and Siting Guidelines and Restrictions than may otherwise be achieved and will not result in any significant detriment to abutting owners and occupiers, but may also be given in other circumstances.
- (d) Formal application for a Building Permit must not be made until the design and siting of a Dwelling to be built on any Lot on the Plan is approved by the MDR, which approval may be:
 - (i) given or refused in the MDR's absolute discretion;
 - (ii) refused even if the design and siting of a Dwelling to be built on any Lot on the Plan is in accordance with the Design and Siting Guidelines and Restrictions.








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BUILDING ENVELOPE PROFILES:

Diagrams and plans

Explanation of symbols and terms in profile diagrams and plans

The following symbols have been used in the templates:-

- Building Envelope Profile Types**
-  Building Envelope Profile Type A
 -  Building Envelope Profile Type B
 -  Building Envelope Profile Type C
 -  Building Envelope Profile Type D
 -  Building Envelope Profile Type E
 -  Building Envelope Profile Type F
 -  Building Envelope Profile Type G

Single Storey Building Envelope hatch types



Building to Boundary Zone

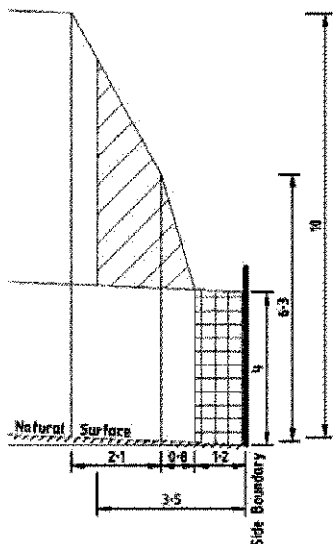
Double Storey Building Envelope hatch types



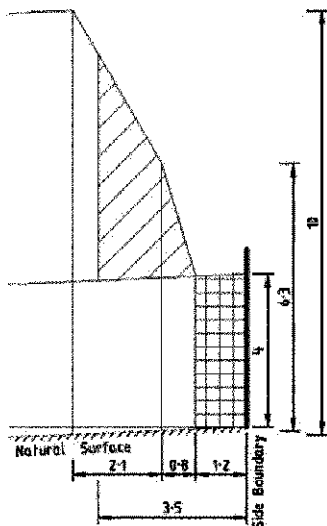
Overlooking Zone - Habitable room windows or raised open spaces are a source of overlooking

**Memorandum of common provisions
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(A) Profile - NORTH, EAST or WEST Boundary

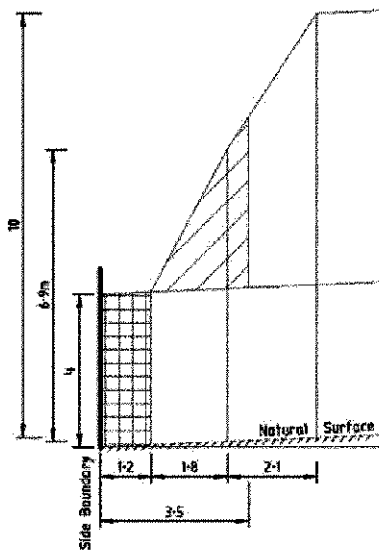


Natural surface rising from side boundary

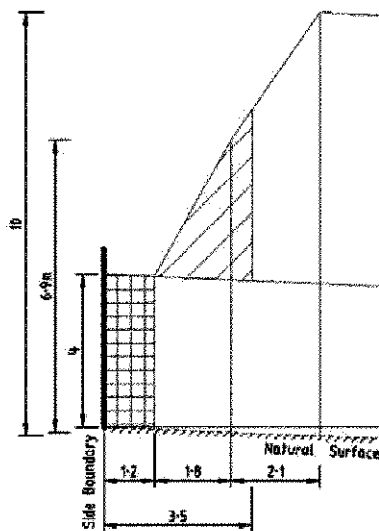


Natural surface falling from side boundary

(B) Profile - SOUTH Boundary



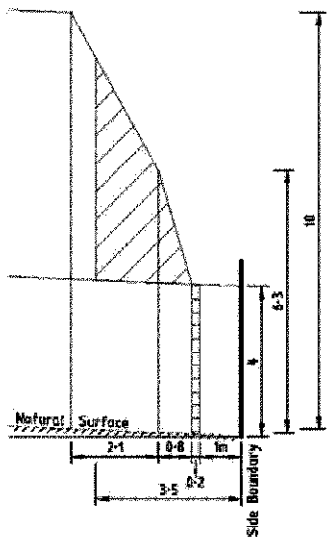
Natural surface rising from side boundary



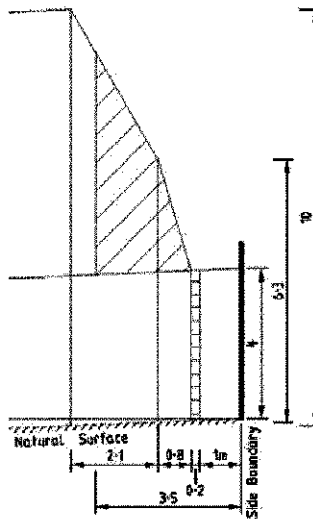
Natural surface falling from side boundary

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C Profile - NORTH, EAST or WEST Boundary (1m setback)

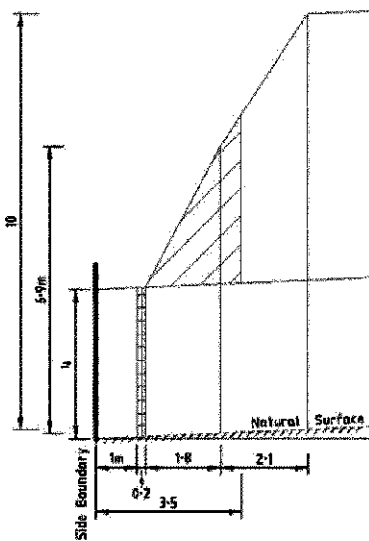


Natural surface rising from side boundary

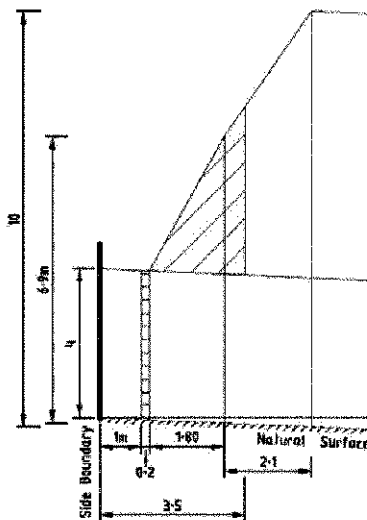


Natural surface falling from side boundary

D Profile - SOUTH Boundary (1m setback)



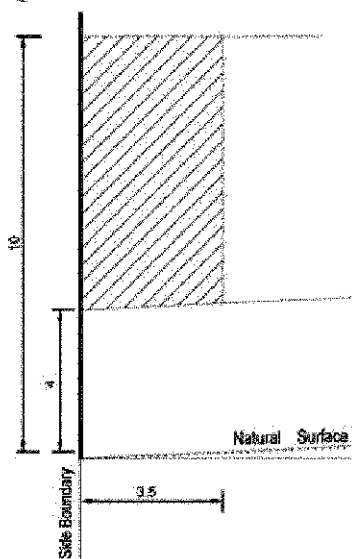
Natural surface rising from side boundary



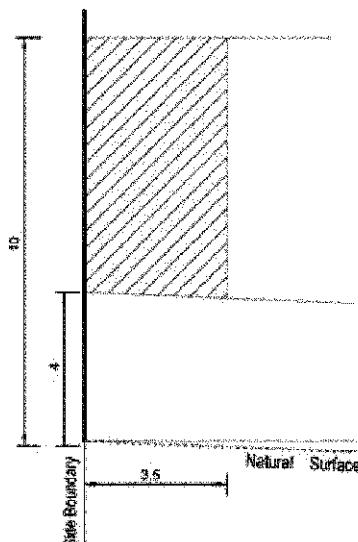
Natural surface falling from side boundary

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E Profile - Party wall boundary

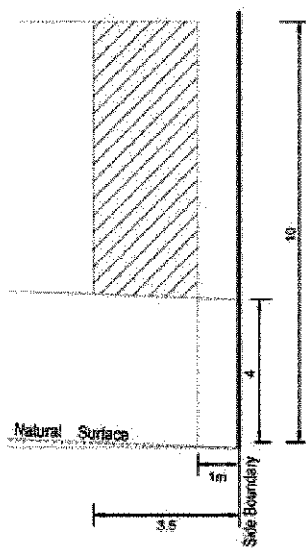


Natural surface rising from side boundary

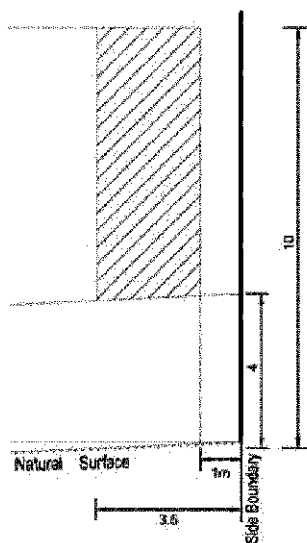


Natural surface falling from side boundary

F Profile - EAST or WEST Boundary (1m setback)



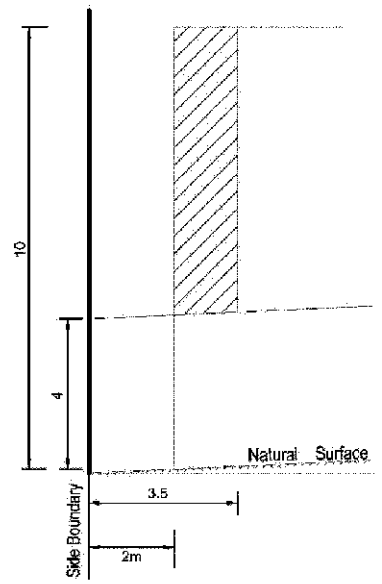
Natural surface rising from side boundary



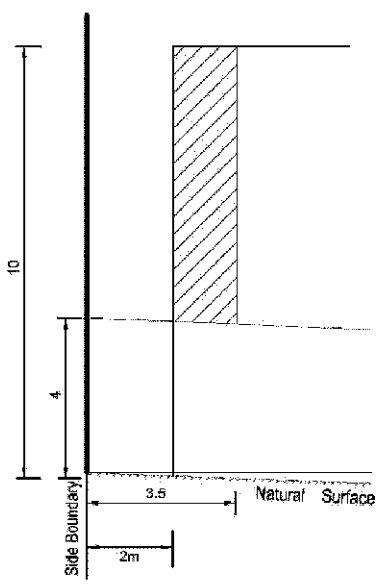
Natural surface falling from side boundary

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G Profile - SIDE Boundary (2m setback)



Natural surface rising from side boundary



Natural surface falling from side boundary

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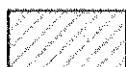
STAGE 43 BUILDING ENVELOPE PLANS

LEGEND

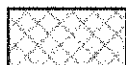
Refer "Diagrams and Plans" in this document for further definitions.



SINGLE STOREY BUILDING ZONE



OVERLOOKING ZONE - Habitable room windows/raised open spaces are a source of overlooking

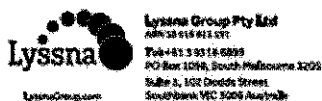


NON OVERLOOKING ZONE - Habitable room windows/raised open spaces are not a source of overlooking



BUILDING BOUNDARY ZONE

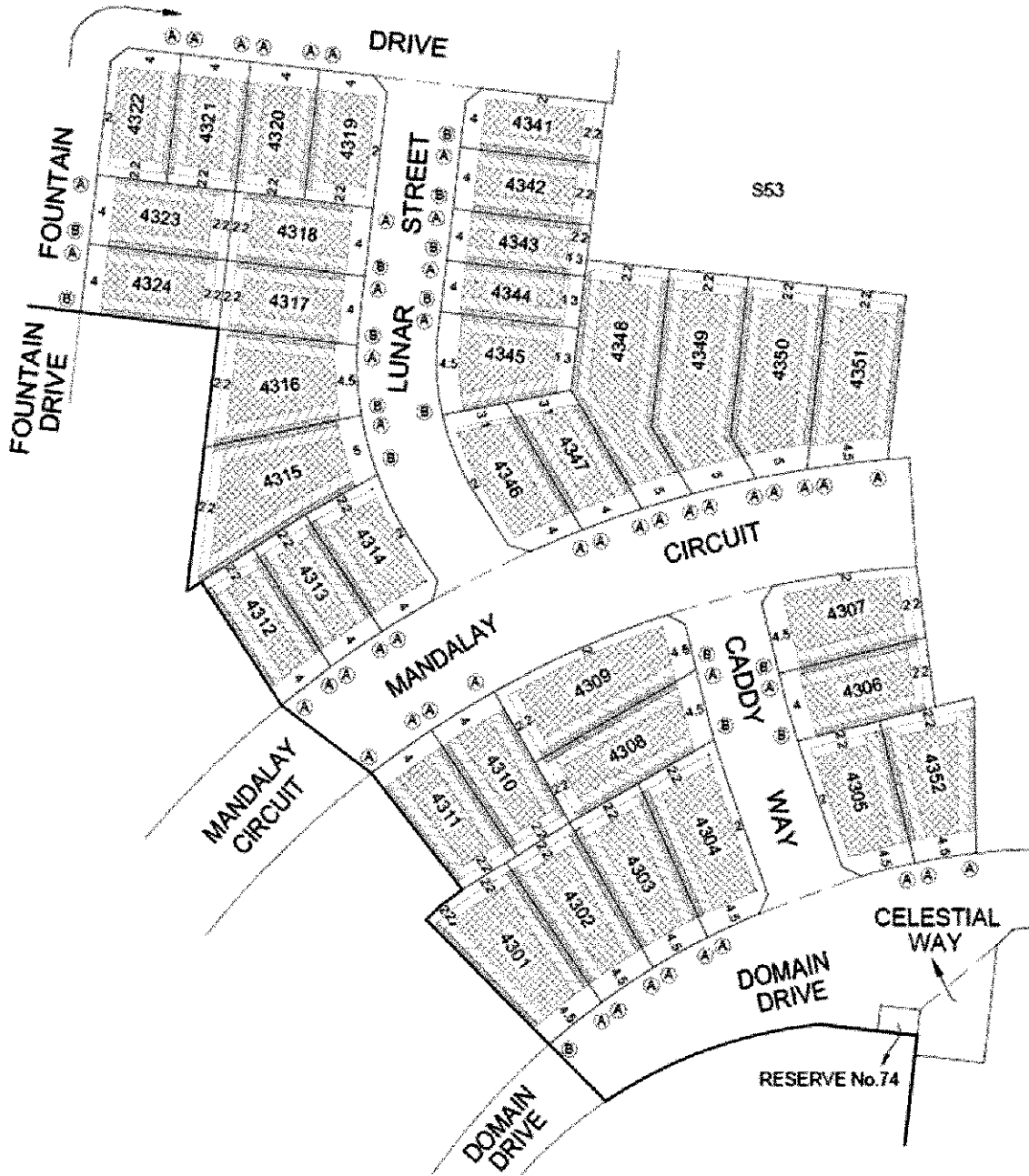
The registered proprietor or proprietors of the lot are required to build in accordance with the approved building envelopes shown hereon and in the "Profile Diagrams" in this document.



Sheet 1 of 3
Version 2
Drawing Date 20/04/21
Job Number AA0015
Drawing Number BE043AD
Drawn By BA

**Memorandum of common provisions
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SEE SHEET 3



Notations:

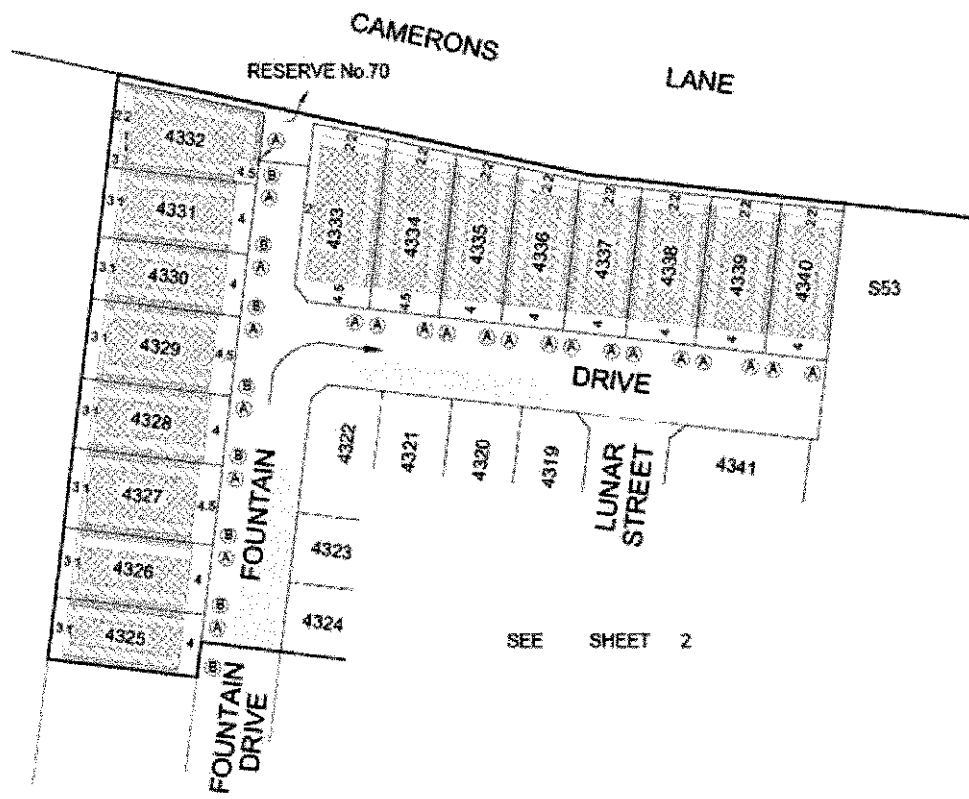
- 1) The Building Envelopes on this plan are shown enclosed by continuous thick lines.
- 2) This diagram is to be read in conjunction with "Profile Diagrams" in this document.
- 3) Profile types (A) & (B) are contained in "Profile Diagrams" in this document.
- 4) The Building Envelopes of Lots 4332 & 4343 are partially defined by easements. See Plan of Subdivision for dimensions.



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Scale 1:750
 Sheet 2 of 3
 Drawing Date 20/04/21
 Job Number AAG015
 Drawing Number BE043AD
 Drawn By BA

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- Notations:
- 1) The Building Envelopes on this plan are shown enclosed by continuous thick lines.
 - 2) This diagram is to be read in conjunction with "Profile Diagrams" in this document.
 - 3) Profile types (A), (B) are contained in "Profile Diagrams" in this document.
 - 4) The Building Envelopes of Lots 4332 & 4343 are partially defined by easements. See Plan of Subdivision for dimensions.

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Scale 1:750
Sheet 3 of 3
Drawing Date 29/04/21
Job Number A20015
Drawing Number BE0434D
Drawn By BA