

Memorandum of Common Provisions

Section 91A Transfer of Land Act 1958

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Lodged by:

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This memorandum (containing 19 pages) contains provisions which are intended for inclusion in instruments and plans to be subsequently lodged for registration.

1 GENERAL

- 1.1 This memorandum of common provisions ("**MCP**") is incorporated in a restriction in the plan of subdivision that applies to the relevant Lot.
- 1.2 This MCP is intended to give effect to the exceptions available under Regulation 406 of the Building Regulations.
- 1.3 Where the siting of a building complies with a particular siting requirement under the applicable Approved Building Envelope and this MCP, the report and consent of the relevant council is not required in respect of a Lot where the design does not comply with a siting requirement in the related Regulation in Division 2 of Part 4 of the Building Regulations.
- 1.4 This MCP also imposes restrictions on the development of a Lot not related to Regulation 406 of the Building Regulations.
- 1.5 Conditions 8, 9 and 10, relating to the Small Lot Housing Code, and condition 11, relating to proximity to RAAF Base Williams, of Planning Permit No. WYP7759/14, are satisfied by way of this MCP.

2 DEFINITIONS

- 2.1 Unless otherwise defined in this MCP, the words below shall have the meaning attributed to them in the instrument identified:
 - 2.1.1 In the *Building Act 1993*:
 - (a) building;
 - 2.1.2 In the *Building Regulations 2006*:
 - (a) clear to the sky;

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MCP

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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- (b) height;
- (c) private open space;
- (d) recreational private open space;
- (e) raised open space;
- (f) secluded private open space;
- (g) setback; and
- (h) site coverage.

2.2 In the planning scheme prepared under the *Planning and Environment Act 1987* that applies to the relevant Lot:

- 2.2.1 Frontage (clause 72 of the relevant planning scheme);
- 2.2.2 Dwelling (clause 74 of the relevant planning scheme);
- 2.2.3 Habitable room (clause 72 of the relevant planning scheme); and
- 2.2.4 Storey (clause 72 of the relevant planning scheme).

2.3 In this MCP:

- 2.3.1 “**ANEF 13-20**” means a forecast noise level between 13 and 20 inclusive using the *Australian Noise Exposure Forecast* methodology as shown in the 2007 ANEF Contours RAAF Base Williams Point Cook Plan.
- 2.3.2 “**Approved Building Envelope**” means a three dimensional building envelope for the purposes of Regulation 406 of the Building Regulations that comprises a Building Envelope Plan, a Building Envelope Profile and the matters in this MCP and has the same meaning as the same term in Regulation 402.
- 2.3.3 “**BBZ**” means that part of a Lot shown as Building to Boundary Zone in the Building Envelope Plan or the Building Envelope Profile.

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- 2.3.4 “**Building Envelope Plan**” means a building envelope plan shown on the plan of subdivision that includes the restriction that incorporates this MCP. The Building Envelope Plan forms part of the Approved Building Envelope, prepared for the purposes of Regulation 406.
- 2.3.5 “**Building Envelope Profile**” means a building envelope profile included within this MCP as notated for a particular Lot on the relevant Building Envelope Plan. The Building Envelope Profile forms part of the Approved Building Envelope, prepared for the purposes of Regulation 406.
- 2.3.6 “**Building Regulations**” means the *Building Regulations 2006* as amended from time to time.
- 2.3.7 “**Front Boundary**” means:
- (a) in the case of any Lot where only one boundary of that Lot abuts a road, the boundary which abuts the road; and
 - (b) in the case of any Lot where two boundaries of that Lot abut a road, the shorter boundary which abuts the road, ignoring any corner boundary created by a splayed corner.
- 2.3.8 “**Lot**” means a lot on the plan of subdivision that includes the restriction that incorporates this MCP.
- 2.3.9 “**Natural Ground Level**” means the ground level after the engineering works associated with works associated with the subdivision have been completed.
- 2.3.10 “**Overlooking Zone**” means that part of a Lot shown as an overlooking zone in the Building Envelope Plan or the Building Envelope Profile.
- 2.3.11 “**Plans**” means the Building Envelope Plan and the Building Envelope Profile.
- 2.3.12 “**Regulation**” means a regulation of the Building Regulations, unless specified otherwise.

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- 2.3.13 **“Side Boundary”** means a boundary of a Lot that runs between and connects the street frontage of the Lot to the rear boundary of the Lot.
- 2.3.14 **“Small Lot”** means a Lot that has an area of less than 300 square metres and is designated in the Building Envelope Plan as a Small Lot for the purposes of the Small Lot Housing Code.
- 2.3.15 **“Small Lot Housing Code”** means the Small Lot Housing Code prepared by the Metropolitan Planning Authority dated August 2014, and which is included as an incorporated document in the Wyndham Planning Scheme in the Schedule to clause 81.01.
- 2.3.16 **“Street”** when this term is used for the purposes of determining street setbacks, it means any road other than a lane, footway, alley or right of way.

3 APPLICATION OF SITING REQUIREMENTS

- 3.1 Clause 4 of this MCP does not apply to:
 - 3.1.1 a Small Lot if the requirements of the Small Lot Housing Code are met; and
 - 3.1.2 any Lot for which a planning permit is required under the Wyndham Planning Scheme for the construction of a building on that Lot.

4 SITING REQUIREMENTS

4.1 Minimum street setback (Regulation 409)

- 4.1.1 Buildings on the Lot must be set back from the Front Boundary by the minimum distance noted on the Plans, or if no front setback dimension is shown on the Plans, at least 4.0 metres.
- 4.1.2 Garages must be constructed within the Approved Building Envelope and setbacks less than 5.5 metres from the Front Boundary are not permitted.

4.2 Encroachments into front setbacks

The following may encroach into the specified front setback distances by not more than 1.5 metres:

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4.2.1 porches and verandahs of up to 4.0 metres in height for a single storey dwelling and 9.0 metres in height for a two-storey dwelling;

4.2.2 masonry chimneys; and

4.2.3 sunblinds.

4.3 Splayed and curved street frontages

4.3.1 Unless noted on the Building Envelope Plan, the minimum front setback on a splayed or curved corner between two street frontages is on an arc connecting the front street setback line to the side street setback line commencing at the points that are perpendicular to the points where the street alignment commences to arc.

4.3.2 Front entrances are to be easily accessible from the Front Boundary.

4.4 Building height (Regulation 410)

The height of a building must not exceed the maximum building height shown in applicable Building Envelope Profile. The maximum building height between specified points on a Building Envelope Profile lies on a straight line drawn between the two specified points within a profile. Maximum building heights between profiles lie on a straight line drawn between the closest parts of the two profiles.

4.5 Side and rear setbacks (Regulation 414)

4.5.1 Side setbacks

- (a) A building on a Lot must be setback from a Side Boundary not less than the distance specified in applicable Approved Building Envelope.
- (b) If there is no applicable dimension on the Approved Building Envelope plan, the building must be setback from a Side Boundary in accordance with Regulations 4.09, 4.14 and 4.15 as may be applicable.

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4.5.2 Rear setbacks

- (a) A building on a Lot must be setback from a rear boundary not less than the distance specified in the Approved Building Envelope.
- (b) The following minimum rear setbacks apply to any wall of building where a setback is not indicated by an applicable Approved Building Envelope:
 - (1) a rear wall of the building not exceeding 3.6 metres in height must be setback from the rear boundary not less than 3 metres; and
 - (2) a rear wall of the building exceeding 3.6 metres in height must be setback from the rear boundary by 5.0 metres plus a further 0.3 metres for every 1.0 metre of height above 3.6 metres to a height of 6.9 metres plus a further 1.0 metre for every additional 1.0 metre of height above 6.9 metres.
- (c) The maximum height of a building facing a rear boundary must not exceed the maximum building height shown in the Approved Building Envelope.

4.5.3 Encroachments

- (a) The following may encroach into the specified, side and rear setback distances by not more than 0.5 metres:
 - (1) porches and verandahs;
 - (2) masonry chimneys;
 - (3) sunblinds;
 - (4) screens, but only to the extent needed to protect a neighbouring property from a direct view;
 - (5) flues and pipes;
 - (6) domestic fuel tanks and water tanks; and

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- (7) heating and cooling equipment and other services.
- (b) The following may encroach into the specified setback distances:
 - (1) landings with an area of not more than 2 square metres and less than 1 metre high;
 - (2) unroofed stairways and ramps;
 - (3) pergolas;
 - (4) shade sails;
 - (5) eaves, fascia, gutters not more than 600mm in total width;
 - (6) carports, walls and buildings within the BBZ; and
 - (7) swimming pools no higher than 600mm above Natural Ground Level.
- (c) This clause does not apply in relation to a side or rear setback from a Lot which is not on the plan of subdivision that contains the restriction that incorporates this MCP (Regulation 406(2)).

4.6 Walls on boundaries (Regulation 415)

4.6.1 Walls, parts of a building and carports within 1 metre of a Lot boundary must be within a BBZ. The BBZ spans the length of the Side Boundary between the front and rear setbacks permitted by the building envelope.

4.6.2 Within the BBZ, the following apply:

- (a) Walls and carports within 1 metre of a boundary must not exceed the greater of:
 - (1) 10 metres plus 25% of the remaining length of that boundary; and
 - (2) the length of any abutting wall of a building or carport on the adjoining Lot constructed within 1.0 metre of that boundary.

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- (b) Maximum average height of a wall or side of a carport in the BBZ is restricted to 3.2 metres, or 3.6 metres if the total length of wall in the BBZ is 7 metres or less in length;
- (c) Building height within the BBZ must not exceed 3.6 metres;
- (d) A wall on a Lot boundary must be sited less than 200mm from the Lot boundary. No wall may be sited within a setback of between more than 200mm and less than 1000mm from a Lot boundary.; and
- (e) Carports may be built within 1 metre of a Lot boundary if the side of the carport facing the boundary is open.

4.7 Overlooking (Regulation 419)

4.7.1 From habitable room windows

If a habitable room window is in a part of the building within an Overlooking Zone indicated in a setback profile or indicated by dimensions on the Plans, any part of the window that is more than 3.6 metres above Natural Ground Level must not allow a direct view to an adjoining Lot. This does not apply to windows in a rear wall which complies with the specified rear setbacks.

4.7.2 From raised open spaces

- (a) A raised open space within an Overlooking Zone indicated in a setback profile or indicated by dimensions on the Plans and with a floor level of more than 2 metres above Natural Ground Level must not allow a direct view to an adjoining Lot.
- (b) A direct view is:
 - (1) From a habitable room window, any line of sight measured from a height of 1.7 metres above the floor level of the habitable room and contained within the space enclosed by:
 - (A) a vertical plan measured at an angle of 45 degrees from each side of the window; and

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- (B) a horizontal plan 1.7 metres above the floor level of the habitable room; and
 - (C) the ground level below; and
 - (D) a horizontal distance of 9 metres from the window.
- (c) From a raised open space, any line of sight measured from a height of 1.7 metres above the floor level and along the perimeter of the raised open space to any point within a horizontal distance of 9 metres from the raised open space and extending 45 degrees beyond any point where the perimeter of the raised open space meets a wall of the building.
- (d) This clause does not apply in relation to the overlooking of a Lot which is not on the plan of subdivision that contains the restriction that incorporates this MCP (Regulation 406(2)).

4.8 Resolving conflicts

In the case of a conflict between a siting matter in the text of this MCP and a Building Envelope Plan or a Building Envelope Profile, the Building Envelope Plan or the Building Envelope Profile prevail. Where there is a conflict between a Building Envelope Plan and a Building Envelope Profile, the Building Envelope Plan prevails.

5 SMALL LOTS

Unless subject to a planning permit under the Wyndham Planning Scheme, a building on a Small Lot must be sited in accordance with the Small Lot Housing Code.

6 RAAF BASE WILLIAMS POINT COOK

Any Lot that is within the 13-20 ANEF contours (2007 ANEF Contours Plan) is subject to the following requirements:

- 6.1 every contract of sale for the Lot must include a special condition to the effect that the Lot is within proximity to the Royal Australian Air Force Point Cook air base and may be affected by aircraft noise associated with the air base;

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- 6.2 any external lighting at the Lot must not be directed above the horizontal plane;
- 6.3 all external roof cladding and roof materials must be of low reflectance; and
- 6.4 all buildings and development at the Lot must be not more than 15 metres in height above Natural Ground Level.

7 OTHER REQUIREMENTS

7.1 Fencing

7.1.1 Front fences

- (a) If a front fence is constructed, the design should complement the design of the dwelling and any front fences on adjoining properties.
- (b) A front fence should not exceed 1.2m in height.
- (c) A front fence includes any fence within the front building setback dimension as shown on the Building Envelope Plan, or where no setback is shown, within 4m of the Front Boundary.

7.1.2 Side fencing

A side fence must not have a height of more than 2.0 metres above Natural Ground Level.

7.1.3 Rear fencing

A rear fence of a Lot must not be constructed at a height of more than 2.0 metres above Natural Ground level.

7.1.4 Materials and construction

Fences must be constructed as follows:

- (a) a front fence must be constructed with timber or a combination of timber and masonry or stone materials and include a minimum 20% transparency; and

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- (b) side and rear fences must be constructed with exposed posts, timber palings and a timber cap;

unless otherwise specified in writing by the developer of the estate in which the Lot is located.

7.2 Council report and consent

The siting of a building on a Lot that does not require a planning permit under the Wyndham Planning Scheme and which does not comply with this MCP must be subject to the report and consent of the relevant council.

8 BUILDING ENVELOPE PLAN AND BUILDING ENVELOPE PROFILE

The following legend and symbols have been used in the Building Envelope Plans and Building Envelope Profiles.

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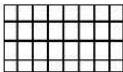
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Building Envelope Profile Identifier	Component of Building Envelope Profile Identifier
<div>A1</div>	A = Building Envelope profile Type



Single Storey Building Envelope (wall height not exceeding 3.6m)



Building to Boundary Zone



Overlooking Zone – Habitable room windows or raised opens spaces are a source of overlooking.



Non Overlooking Zone – Habitable room windows or raised opens spaces are not a source of overlooking.

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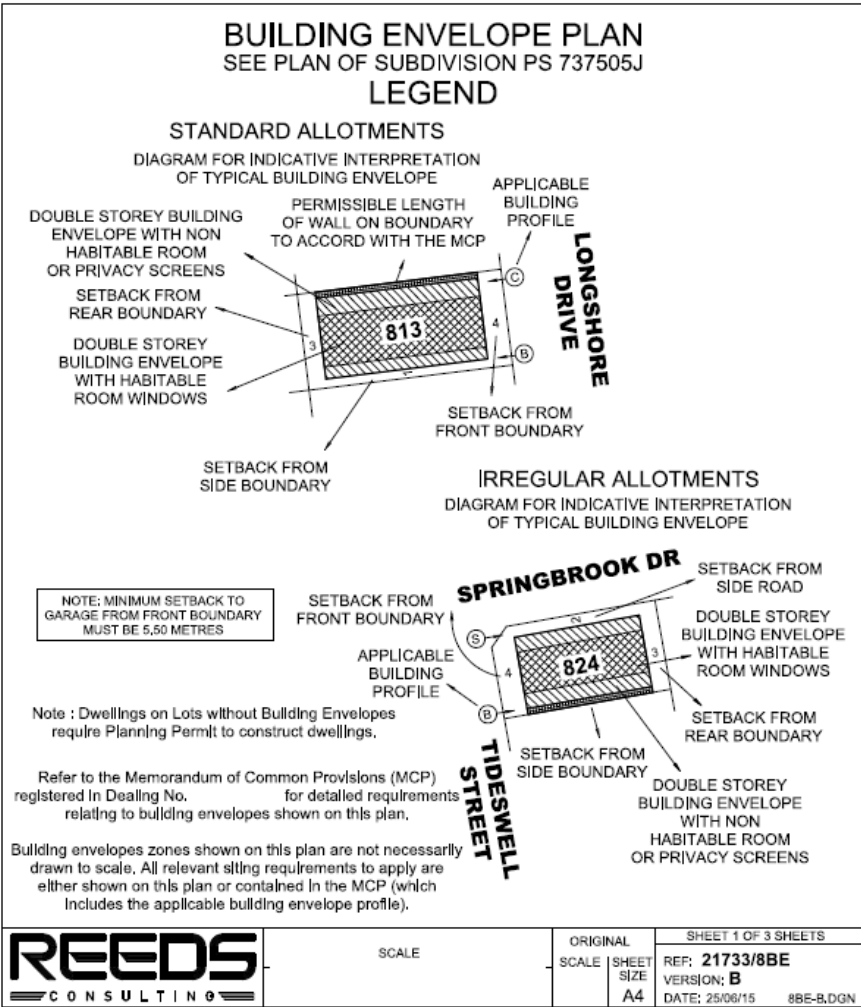
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8.1 Interpretation of a Building Envelope Plans and a Building Envelope Profile

Diagram illustrating the interpretation of a Building Envelope Plan



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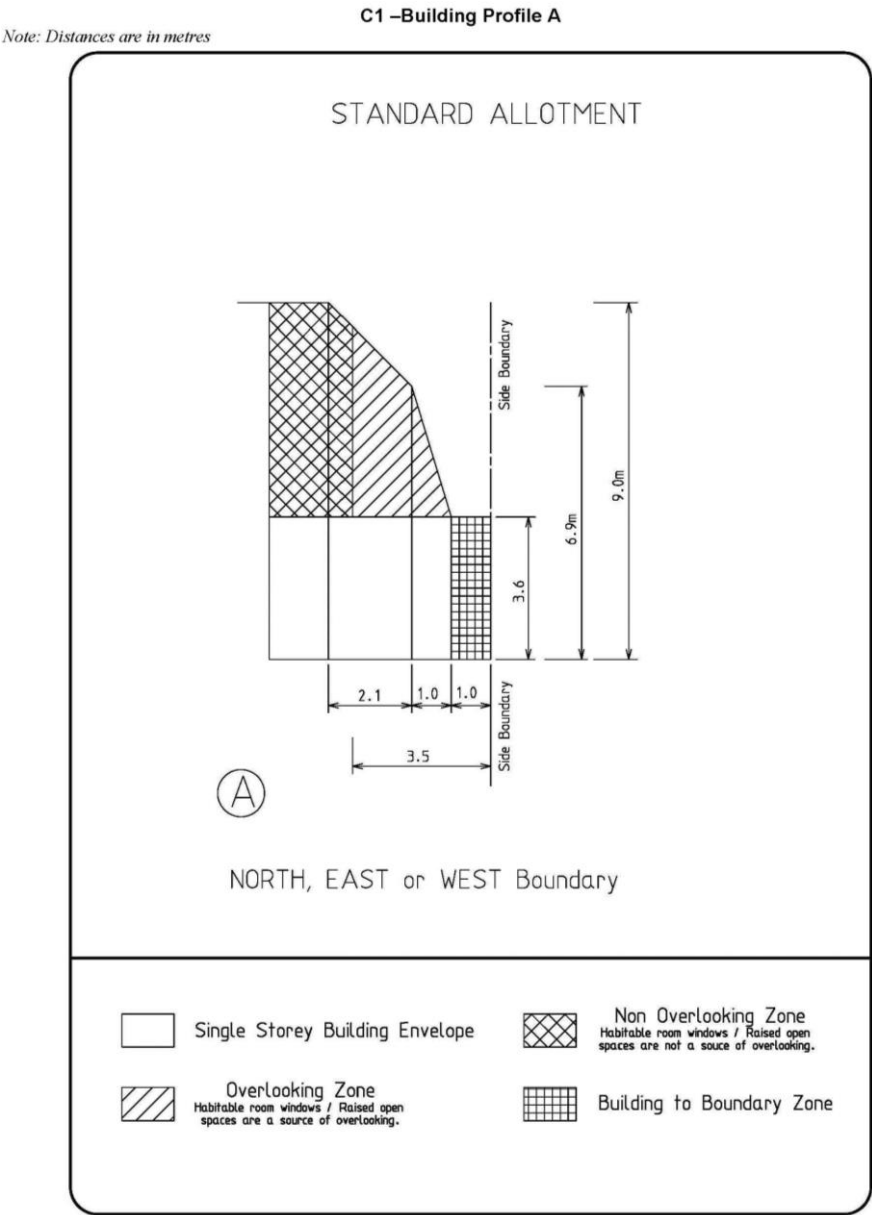
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8.2 Building Envelope Profile dimensions



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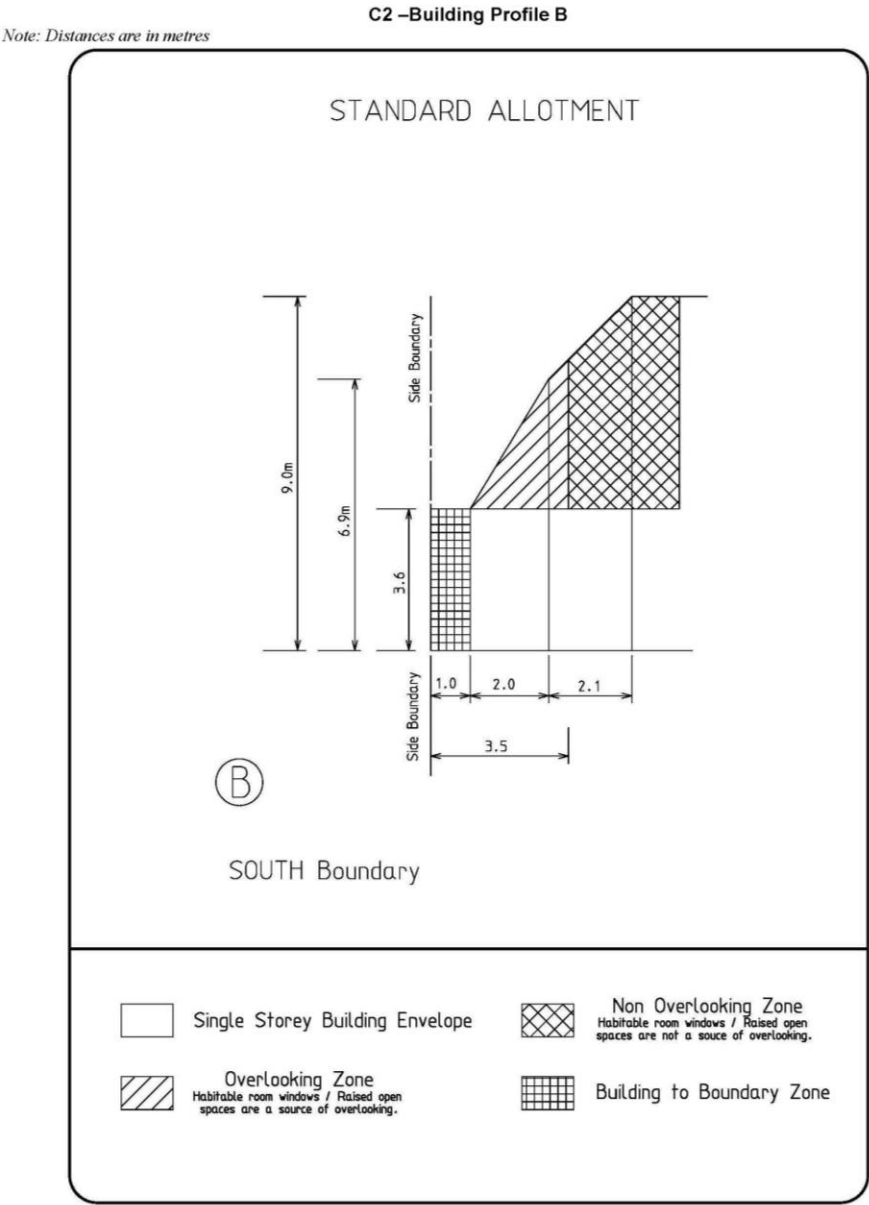
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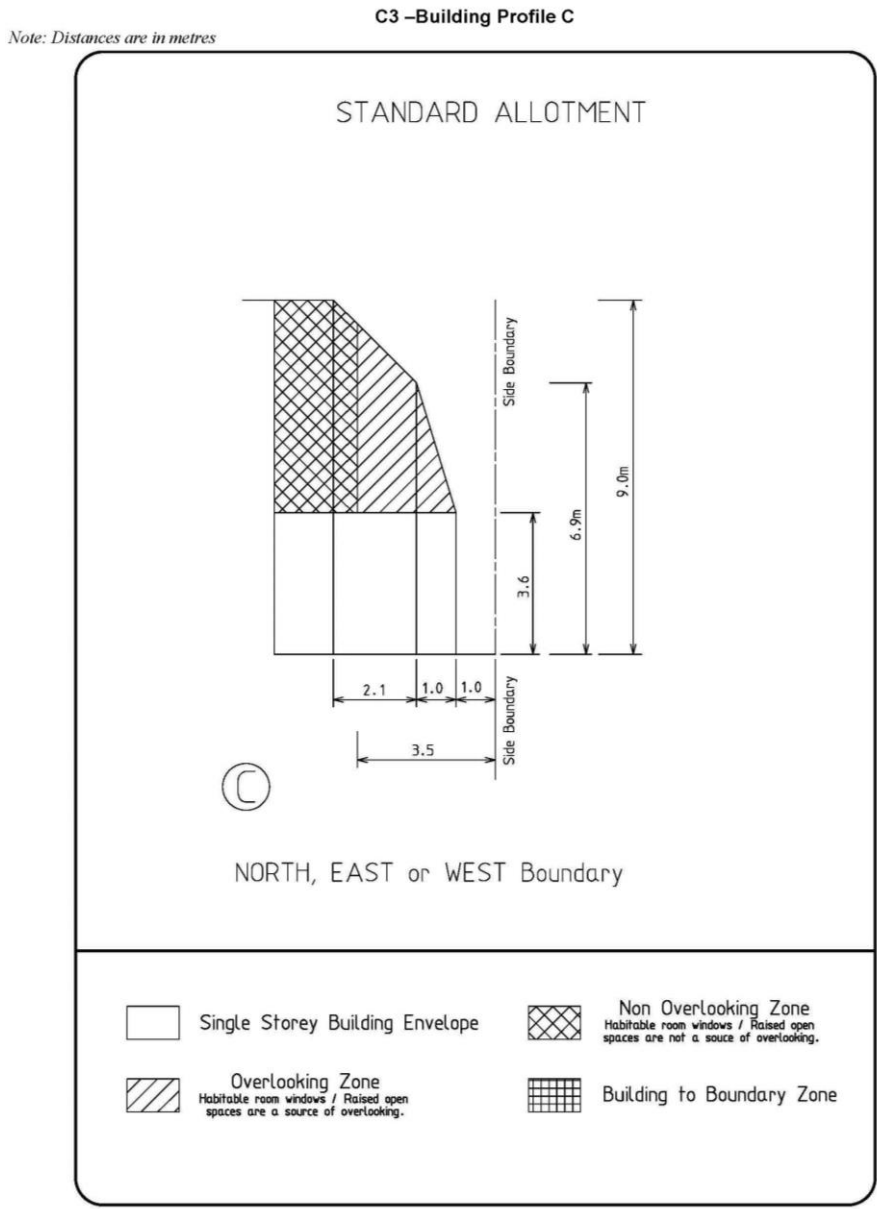
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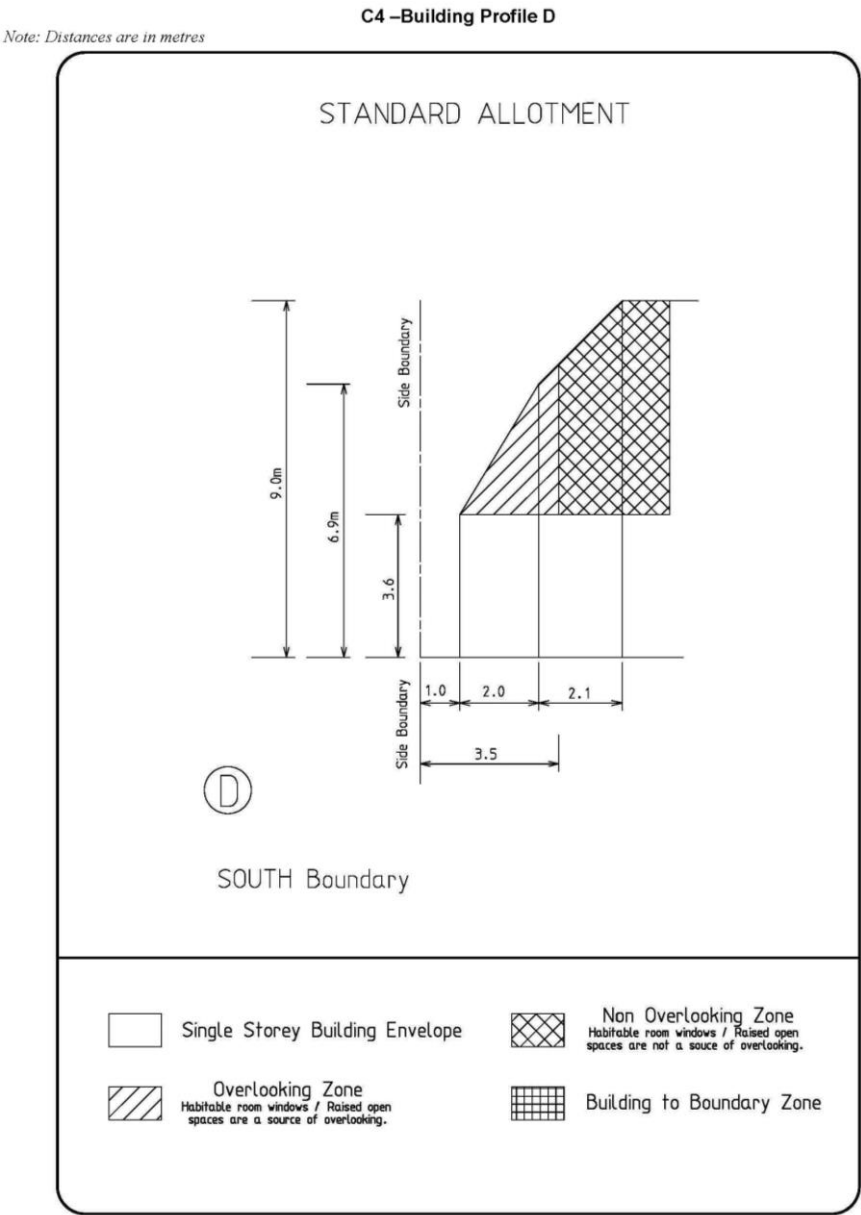
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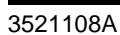
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Transfer of Land Act 1958

This is page 18 of the Memorandum of Common Provisions



1. If there is insufficient space to accommodate the required information in a panel of the attached form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading.
2. The approved Annexure Pages must be properly identified and signed by the parties to the attached form to which it is annexed.
3. All pages must be attached together by being stapled in the top left corner.

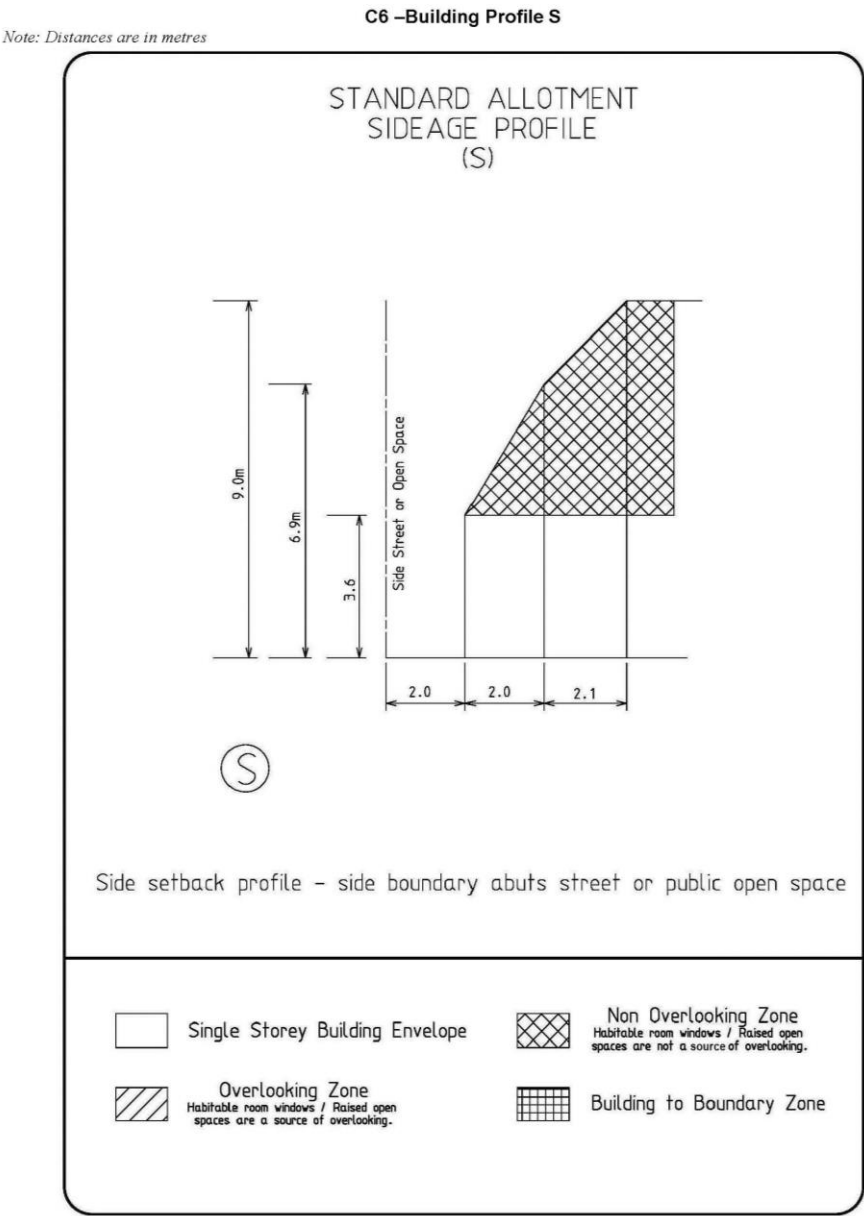
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Annexure Page

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