

**Memorandum of common provisions**  
**Restrictive covenants in a plan**  
**Section 91A Transfer of Land Act 1958**

AA010633  
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This memorandum contains provisions which are intended for inclusion in plans under the Subdivision Act 1988 to be subsequently lodged for registration.

**Operative words including words to bind the burdened land and words of annexation must not be included.**

Provisions to apply to the plan:

**Burdened land:** As set out in the plan.

**Benefited land:** As set out in the plan.

**GENERAL**

- A. This MCP has been prepared by SIG Group in order to regulate the siting, form, design and landscaping of residential development in accordance with the Endorsed Building Envelope Plan, so as to create a high level of amenity for occupiers of Lots within the Plan of Subdivision.
- B. The provisions of this MCP are incorporated into one or more restrictions created by the Plan of Subdivision.
- C. This MCP, which includes the Endorsed Building Envelope Plan, provides siting details for a particular Lot.
- D. This MCP imposes restrictions on the design and siting of Buildings, which in some cases may be different to those of the Building Regulations and Planning Scheme.

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- E. Where the siting restrictions in this MCP are contrary to Regulations 74, 79, 80, and 83, of the Building Regulations, no consent and report of the relevant council is required, as this MCP has been prepared with regard to Regulation 71 of the Building Regulations.
  - F. This MCP does not apply to a lot under 300 square metres (i.e. Small Lots). These lots will be assessed against the Small Lot Housing Code (forming part of the Pakenham East Precinct Structure Plan). Where a dwelling on a Small Lot does not comply with the requirements of the Small Lot Housing Code, a separate planning permit will be required from Cardinia Shire Council.
  - G. The restriction created by the Plan of Subdivision does not exempt a Lot which has an Edge Boundary from the need for report and consent in relation to Regulations 79, 80 and 81 to the extent that they relate to that Edge Boundary.
  - H. Any matter not addressed in this MCP will still need to be addressed as required by the Building Regulations.
  - I. This MCP cannot be changed or amended unless with the written consent of the Responsible Authority.

**1. DEFINITIONS**

**1.1 In this MCP:**

- 1.2 **“Building”** has the same meaning as in the Building Act.
- 1.3 **“Building Act”** means the Building Act 1993 as amended from time to time.
- 1.4 **“Building Envelope Plan”** means the Building Envelope detailed on the Plan of Subdivision for a particular lot.
- 1.5 **“Building Permit”** means a building permit in terms of the Building Act.
- 1.6 **“Building Regulations”** means the Building Regulations 2018 as amended from time to time.
- 1.7 **“Build to Boundary”** means a requirement indicated on the Endorsed Building Envelope Plan whereby a Building may be built abutting a side boundary, which has a build to boundary line marked on the Endorsed Building Envelope Plan.
- 1.8 **“Clear to the Sky”** has the same meaning as that in the Building Regulations.
- 1.9 **“Control”** includes a restriction in terms of the Subdivision Act 1988, an agreement under section 173 of the Planning Act, a Planning Permit, an Act or an order of a Court or tribunal, which relates to the siting of a Building.
- 1.10 **“Corner Lot”** is any lot with a boundary with a secondary frontage.
- 1.11 **“DRP”** means Design Review Panel
- 1.12 **“Edge Boundary”** means the boundary or part of a boundary of a Lot that abuts a lot which is not shown on the Plan of Subdivision.

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- 1.13 **“Finished Surface Level”** means the finished surface level of the ground at the time of registration of the Plan of Subdivision.
  - 1.14 **“Front Façade”** is the elevation that addresses the Primary Frontage.
  - 1.15 **“Front Garden”** refers to the whole area between the front boundary of a lot and the dwelling, garage and return fence
  - 1.16 **“Front Loaded”** refers to a lot where the garage is accessed from the primary frontage.
  - 1.17 **“Habitable Room”** has the same meaning as in the Building Code of Australia.
  - 1.18 **“Height”** has the same meaning as that in the Building Regulations.
  - 1.19 **“SIG Group”** means “Pakenham East Development Pty Ltd (ACN 667 140 123) pr any associated entity or related body corporate of SIG Group.
  - 1.20 **“Lot”** means an allotment on the Plan of Subdivision.
  - 1.21 **“MCP”** means this memorandum of common provisions.
  - 1.22 **“Natural Ground Level”** means the ground level after engineering works associated with the subdivision.
  - 1.23 **“Outbuilding”** is a structure not attached to the dwelling, such as a shed or gazebo.
  - 1.24 **“Plan of Subdivision”** means plan of subdivision PS908880E and which incorporates this MCP.
  - 1.25 **“Planning Act”** means the Planning and Environment Act 1987 as amended from time to time.
  - 1.26 **“Planning Permit”** means a permit issued under the Planning Act.
  - 1.27 **“Planning Scheme”** means the Cardinia Planning Scheme.
  - 1.28 **“Primary Frontage”** is the boundary that abuts the Public Realm on a lot with one boundary abutting the Public Realm, the shorter boundary on a lot with more than one boundary abutting the Public Realm, or as otherwise noted on the Plan of Subdivision.
  - 1.29 **“Private Open Space”** has the same meaning as that in the Building Regulations.
  - 1.30 **“Public Realm”** is any land that is within the ownership of a public body, including Council and servicing authorities.
  - 1.31 **“Rear Loaded”** refers to a lot where the garage is accessed from the rear or side of the lot, usually from a lane or secondary street.
  - 1.32 **“Regulation”** means a regulation of the Building Regulations.
  - 1.33 **“Responsible Authority”** means Cardinia Shire Council, as the responsible authority under the Planning Act.
  - 1.34 **“Secondary Frontage”** is the longer boundary on a lot with two intersecting boundaries abutting the Public Realm

- 1.35 **“Setback”** means the shortest horizontal distance from a particular boundary or Building to another boundary or Building.
- 1.36 **“Side Street”** means a laneway, street or road which abuts a Lot other than a Front Street.
- 1.37 **“Site Coverage”** has the same meaning as that in the Building Regulations.
- 1.38 **“Small Lot”** means a lot which has a land area of under 300 square metres.
- 1.39 **“Small Lot Housing Code”** means the Small Lot Housing Code incorporated in the Cardinia Planning Scheme.

## **2. EXEMPTION FROM THE NEED FOR REPORT AND CONSENT**

### **2.1 General**

Only one (1) dwelling is permitted per lots, unless otherwise provided for on the relevant Plan of Subdivision.

Lots may not be further subdivided.

In respect of a Building that does not require a Planning Permit, the restriction described under “CREATION OF RESTRICTION A” in the Plan of Subdivision exempts a proposed dwelling design which complies with this MCP 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:

- 2.1.1 minimum street setbacks (Regulation 74),
- 2.1.2 building height (Regulation 75),
- 2.1.3 side and rear setbacks (Regulation 79),
- 2.1.4 walls on boundaries (Regulation 80); and
- 2.1.5 overshadowing of recreational private open space (Regulation 83).

## **3. BUILDING REGULATION PROVISIONS**

### **3.1 Minimum Street Setback (Regulation 74, Cardinia Planning Scheme Clause 54.03-01)**

- 3.1.1 All dwellings must be setback in accordance with the specified Building Envelope for each Lot.
- 3.1.2 Garages or carports must be set back behind the front façade of the dwelling.
- 3.1.3 Garages or carports accessed from the front street, must be setback no less than 0.5m behind the building line (excluding encroachments).

### **3.2 Building Height (Regulation 75, Cardinia Planning Scheme Clause 54.03-2)**

- 3.2.1 The height of all buildings on the lot must not exceed 9 metres and must be no higher than two storeys above Natural Ground Level.

**3.3 Side and Rear Setbacks  
(Regulations 79, Cardinia Planning Scheme Clause 54.04-01)**

3.3.1 The side setback is designated on the Building Envelope Plan for each Lot.

**3.4 Walls on Boundary  
(Regulation 80, Cardinia Planning Scheme Clause 54.04-02)**

3.4.1 The Height of a wall on or within 350mm of a side boundary or rear boundary of a Lot, or the Height of a carport constructed on or within 1 metre of a side or rear boundary of a Lot and which is open on the side facing the boundary or boundaries, must not exceed a height of 3.6 metres or a maximum Height of 3.6 metres above Finished Surface Level.

3.4.2 Where a retaining wall is built on any Lot which has a Build to Boundary Line on the Building Envelope Plan, the height of the wall on boundary may exceed Clause 3.4.1 provisions. The maximum height measurement of 3.6 metres of the wall on boundary is to be taken from the Finished Surface Level (FSL) or the top of wall height of the retaining wall, whichever is the greater.

3.4.3 The length of a wall on or within 350mm of a side or rear boundary of a Lot or a carport constructed within 1 metre of a side or rear boundary of a Lot (and which is open on the side facing the boundary or boundaries) of the Lot must not exceed the greater of the following lengths:

- (a) 50% of the length of the boundary; and
- (b) 15 metres per boundary.

**3.5 Overshadowing of recreational private open space  
(Regulation 83, Cardinia Planning Scheme Clause 54.04-05)**

3.5.1 Any overshadowing of recreational private open space must be in accordance with regulation 83 (Overshadowing of recreational private open space) in Part 5 of the Regulations and Clause 54.04-05 of the Scheme, except as varied as a consequence of other restrictions in this MCP.

3.5.2 Where sunlight to the recreational private open space of an existing dwelling is reduced by a dwelling of two or more storeys, at least 75 per cent, or 40 square metres with a minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of 5 hours of sunlight between 7am and 5pm on 22 September. The 75 per cent of 40 square metres minimum area, can be measured in different locations during the day.

**4. ENCROACHMENTS**

**4.1 Setbacks and Encroachments**

**(Regulations 74 and 79, Cardinia Planning Scheme Clause 54.03-01 and Clause 54.04-01)**

The following table identifies the maximum distance of encroachments which may be permitted:

Front Setback	Side Setback	Rear Setback
1.5m (balconies, verandahs, open porches, covered walkways and porticos)	0.6m	0.6m
0.6m (eaves, fascias and gutters)		

4.1.1 The following may encroach into the front setback distance as indicated on the Endorsed Building Envelope Plan and the above table:

- (a) eaves, fascia and gutters;
- (b) sunblinds and shade sails;
- (c) permanent and fixed screens referred to in regulation 84(5)(d) or 84(6); and
- (d) decks, steps or landings less than 800 mm in height measured from the finished floor level.

4.1.2 The following may encroach into the side and rear setback distances as indicated on the Endorsed Building Envelope Plan and the above table:

- (a) porches, balconies and verandahs;
- (b) masonry chimneys;
- (c) sunblinds;
- (d) screens, but only to the extent needed to protect a neighbouring property from a direct view;
- (e) flues, pipes and rainwater heads;
- (f) domestic fuel tanks and water tanks; and
- (g) heating and cooling equipment and other services;
- (h) landings with an area of not more than 2m<sup>2</sup> and less than 1m in Height above Finished Surface Level;
- (i) unroofed stairways and ramps;
- (j) shade sails; and
- (k) carports, walls and Buildings within the Build to Boundary zone.

4.1.3 Notwithstanding the above, eaves, fascias and gutters may encroach into the side and rear setback distances by not more than 600mm in total width.

## 5. KALA DESIGN PROVISIONS

### 5.1 Interface Housing Area

5.1.1 If the lot abuts Mt Ararat South Road:

- a) it must contain no more than one dwelling;
- b) the house must be set back from the front boundary of the lot by at least 8m; and
- c) any fence within 3m of the front boundary of the lot must be no higher above natural ground level than 1200mm.
- d) the house must be setback from the side boundary at least 1m for the first 3m of the building envelope.
- e) The house must be an appropriate width for the lot.

### 5.2 Character and Visual Style

- 5.2.1 The exterior of the house must be a contemporary style. Historical styles, such as Edwardian and Georgian, are not permitted. Period elements, such as quoins, fretwork, gable vents and mouldings, may be approved as part of a contemporary façade.
- 5.2.2 The appearance of the front exterior of the house must not be identical or very similar to any other existing or planned houses within three lots in both directions on both sides of the street. The determination of this issue is at the sole discretion of the DRP.

### 5.3 Massing and Articulation

- 5.3.1 Every façade facing a lot boundary abutting the Public Realm must be at least moderately articulated. A façade will be deemed to meet this standard if it includes:
  - a) A horizontal step of at least 500mm, excluding to a garage
  - b) a structure that helps articulate the façade, such as a balcony, veranda, porch, pergola, awning, sunshade or screen.
- 5.3.2 If the front facade of the house has two or more storeys, it must articulated by structures such as balconies or other protrusions, and by a change in materials and or finishes.
- 5.3.3 The front door of the house must be prominent, visible from the primary street and complement the front façade.
- 5.3.4 A front entry structure, such as a porch or veranda, must be provided as part of the front façade, with a covered area of at least 3m<sup>2</sup> and a depth of at least 1.5m.

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## 5.4 Materials and Finishes

- 5.4.1 The colour scheme of the house exterior must use muted neutral colours in light tones. A material schedule with colour samples must be included in the application.
- 5.4.2 The front faced must include at least two materials, finishes or colours. Each must cover between 15% and 70% of the walls of the front façade, excluding all openings, such as windows and doors. Contrasting render colours will be deemed to comply, but not two colours of face brick.
- 5.4.3 Both side façades must be treated with the same materials, colours and finishes as the front façade for at least the front 1.5m.
- 5.4.4 If the lot is 12.5m wide or narrower, the front façade of the house must include at least one habitable room window per level.
- 5.4.5 If the lot is more than 12.5m wide, the front faced of the house must include at least two habitable room windows per level.

## 5.5 Roof Design

- 5.5.1 The roof pitch of the house must be at least 20 degrees or less than 10 degrees.
- 5.5.2 Where a flat roof form is proposed, the roof must be concealed by a parapet wall from the public realm and extend along any adjoining façade for at least 3m.
- 5.5.3 Roof cladding must complement the style of your house. Any part of the roof visible from the public realm must use metal sheets with a corrugated profile, or tiles with a flat profile.
- 5.5.4 All roof cladding, guttering and fascias must have a matte finish, be non-reflective, and be colour muted grey, charcoal, bluey-grey or green.
- 5.5.5 All metal sheeting, such as roofing, tanks and fencing, must be painted. This includes galvanised iron and Zinalume.
- 5.5.6 On a single storey house, eaves at least 450mm deep must be provided over all façades facing the Public Realm. They must extend along adjoining façades at least 3m.
- 5.5.7 On a house of two or more storeys, eaves at least 450mm deep must be provided around the entire house.
- 5.5.8 Eaves are not required over a wall constructed on a lot boundary or in front of a parapet.

## 5.6 House Exterior

- 5.6.1 Roller doors or roller shutters must not be used if visible from the Public Realm.
- 5.6.2 External glazing that is visible from the Public Realm must not contain leadlight, stained glass, reflective glass or patterned film.
- 5.6.3 Sliding windows must not be installed on any façade facing the public realm, unless of the ground floor behind a privacy fence.



5.6.4 Air condition units and associated cabling on walls or roofs must not be prominent when viewed from the Public Realm. The units, where appropriate, must be fitted with noise baffles.

## 5.7 Corner Lot Treatments

5.7.1 A Building on a corner Lot must be designed to address both the front and side streets or public open space, to at least as far back as the return fence, and have at least a moderate level of visual interest.

5.7.2 For the Building elevation facing a secondary street:

a) the first 3 metres must feature a continuation of the front facade's main materials, detailing and/or windows.

b) The elevation must contain at least two habitable room windows per level; or must contain windows to at least 50% of the rooms on that façade, which ever is the greater number.

5.7.3 If a wall in a façade facing a secondary street is longer than 10m, it must be varied along its length using:

a) stepping the wall at least 300mm deep for at least 1m; or

b) using a different material or colour for at least 2m.

## 5.8 Garages

5.8.1 Development of the lot must include a fully enclosed garage. A carport or an open sided garage is not sufficient.

5.8.2 If the lot is 12.5m wide or wider, a garage with capacity for at least two cars must be provided.

5.8.3 If the lot is a corner lot, and the vehicle access is from the secondary street, the garage must be setback from the lot boundary by at least 2m.

5.8.4 If the vehicle access is from the rear of the lot, the garage may be on the lot's rear boundary.

5.8.5 If the front façade of the house includes a garage opening, the total width of any openings must not be more than 40% of the lot width.

5.8.6 If the front façade of the house is more than one storey, the area of the garage opening must be no larger than 30% of the total area of the front façade.

5.8.7 Garage doors must be provided as either panel lift or sectional garage doors to main frontage. Roller doors are prohibited when visible from the public realm.

## 5.9 Driveways

5.9.1 Only one driveway is permitted per lot.

5.9.2 The width of the driveway at the lot boundary must match the width of the crossover.

5.9.3 Driveways and associated paved areas for driveway access within the property cannot exceed the width of the garage door.

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- 5.9.4 Acceptable driveway materials include exposed aggregate concrete, concrete coloured throughout, or brick or concrete pavers. Uncoloured concrete or stencilled concrete must not be used. The driveways colour must be muted.
  - 5.9.5 A garden bed at least 500mm wide must be provided between the driveway and the nearest side boundary of the lot.
  - 5.9.6 The driveway must be constructed within 3 months of the issue of the Certificate of Occupancy.

**5.10 Fencing**

- 5.10.1 Side and rear fencing must be made from exposed timber posts no more than 2.0m high; timber rails; a 150mm bottom plinth; lapped vertical timber palings; and timber capping no more than 1.8m high.
- 5.10.2 Privacy fencing must be set back at least 1m behind the closet front wall of the house, except where the lot boundary is also the rear boundary of an adjoining lot.
- 5.10.3 A privacy fence along the lot boundary adjacent to a secondary street must be set behind the closet front wall of the house at least 3m.
- 5.10.4 A return fence, with or without a gate, must be provided between the side boundary of the lot and house. It must be:
  - a) constructed with materials and finishes to match or complement the adjacent fence; and
  - b) the same height as the adjoining fence
- 5.10.5 Fences along the side boundaries of the lot in front of the house must only occur if: the lot has a front fence; they have a maximum height of 1.2m; they are made of the same materials and specifications as either the front fence or side boundary privacy fences. Side boundary fencing is not permitted where the lot has no front fence.
- 5.10.6 Any gate in a fence must match or complement the fence in terms of materials and finishes.
- 5.10.7 Front fences are discouraged. If a front fence is constructed, it must be no more than 1.2 m high above Natural Ground Level.
- 5.10.8 Any part of the front fence higher than 700 mm above Natural Ground Level must include openings in at least 50% of the area.
- 5.10.9 The front fence must complement the dwelling's style, materials and colour. Acceptable material combinations may include: timber slats; masonry pillars with timber or metal infills; and timber posts with metal infills. Wooden palings, and heritage styles, such as Victorian or Edwardian fence types, are prohibited.

**5.11 Landscaping**

- 5.11.1 At least 50% of the front yard must be landscaped with permeable surfaces. This may include areas such as lawn, garden beds and compacted stone toppings.
- 5.11.2 At least half the number of plants in the front yard must be native species.

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- 5.11.3 At least one tree must be planted in the front yard with a height at maturity of at least 4m and a height after planting and any associated pruning of at least 1.5m.
  - 5.11.3 All garden beds in the front yard must be edged using metal, plastic or timber. Garden beds must be mulched to help keep the soil moist, using pine bark or other organic matter, or decorative pebbles.
  - 5.11.4 All front gardens must be landscaped in accordance with these Guidelines (including all turf, soft landscape, driveways and pathways) within 3 months of issue of the Certificate of Occupancy.
  - 5.11.5 The front garden must be kept presentable and well-maintained at all times, with no excessive weed growth. This includes, but is not limited to being free of weeds, litter and debris. Lawns must be regularly mown and kept free of weeds.
  - 5.11.6 Environmental weeds must not be planted or grown on the lot.

## **5.12 Retaining Walls**

- 5.12.1 Use graded slopes or freestanding retaining walls to accommodate differences in ground level. Landscape these areas to soften the appearance. A retaining wall must be no more than 1.0m high, with a garden bed of at least 200mm provided below it. For more height, use more than one wall, with each set back from the lower one with a planting strip of at least 1.0m wide. Council approval may be required for retaining walls. A staggered retaining wall must be no more than 2.0m high.
- 5.12.2 A retaining wall must be setback at least 1m from the house
- 5.12.3 A freestanding retaining wall visible from the Public Realm must be constructed from aesthetically suitable materials such as painted or stained smooth sawn timber; coloured and textured concrete sleepers; and blockwork with a bagged and painted, rendered, or stone clad finish. Unpainted timber and unfinished blockwork are prohibited.
- 5.12.4 The extent, height and finish of all proposed retaining walls must be included in any application for developer approval
- 5.12.5 The total height of a retaining wall with a fence above must be no more than 2.9m.

## **5.13 Outbuildings**

- 5.13.1 Any outbuilding must be:
  - a) no more than 3.6m high;
  - b) constructed of materials and or colours consistent with the house
  - c) not readily visible from the Public Realm

## **5.14 Recycled Water**

- 5.14.1 The house must be connected to the purple pipe recycled water system

## **5.15 Opticomm**

- 5.15.1 The house must be connected to Opticomm

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**5.16 Letterbox**

5.16.1 The letterbox must complement the style of the house, be substantial and be constructed from metal, timber, brick or rendered masonry.

**5.17 Solar Equipment**

5.17.1 Photovoltaic panels and solar water heating panels must not be attached to any wall or roof where they will be prominent from an adjoining street.

**5.18 Screening**

5.18.1 Ancillary structures and items must be located so that they are not readily visible from the Public Realm. This includes items such as: rubbish bin storage areas, washing lines, hot water systems, any water storage tanks, swimming pools, spa pumps, and external plumbing other than that for rainwater.

5.18.2 If a truck, commercial vehicle exceeding 1.5 tonnes, recreational vehicle, trailer, caravan, boat, horse float or any other similar vehicle is parked or stored on the lot, it must not be easily seen from the Public Realm.

**6. SITING OF A BUILDING**

6.1 The siting of a Building within the Building Envelope Plan may be subject to any further restriction or modification imposed by this MCP or any other applicable Control.

**7. VARIATION TO SITING OF BUILDING**

7.1 Notwithstanding anything to the contrary contained in this MCP, SIG Group may in its absolute discretion authorise in writing the siting of a Building/ Element which does not comply with the restriction created by the Plan of Subdivision, provided that such siting complies with the requirements of the Building Regulations.

7.2 MCP approval by SIG Group pursuant to this clause will only be provided in circumstances where SIG Group in its absolute discretion considers that the siting/ Element is desirable, in terms of achieving a better built form outcome than may otherwise be achieved and will not result in any significant detriment to abutting owners or occupiers.

**8. SIG GROUP APPROVAL OF HOUSE DESIGN**

8.1 A two-storey dwelling must be constructed upon any Lot that is identified on the Building Envelope Plan as being a Lot upon which a two-storey residence is required, unless SIG Group, in its absolute discretion, approves in writing otherwise.

8.2 The design and siting of a Building on any Lot and the change to any existing Building on any Lot (where such change requires a Building Permit) must be in accordance with the design guidelines applicable to the Lot and must be approved in writing by SIG Group prior to any formal application for a Building Permit.

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**9. INTERPRETATION**

In this MCP, unless the contrary intention appears:

- 9.1 The singular includes the plural and vice versa;
- 9.2 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 9.3 words importing one gender include other genders;
- 9.4 other grammatical forms of defined words or expressions have corresponding meanings;
- 9.5 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them; and
- 9.6 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.

**10. SPECIAL PROVISIONS**

*None applicable.*

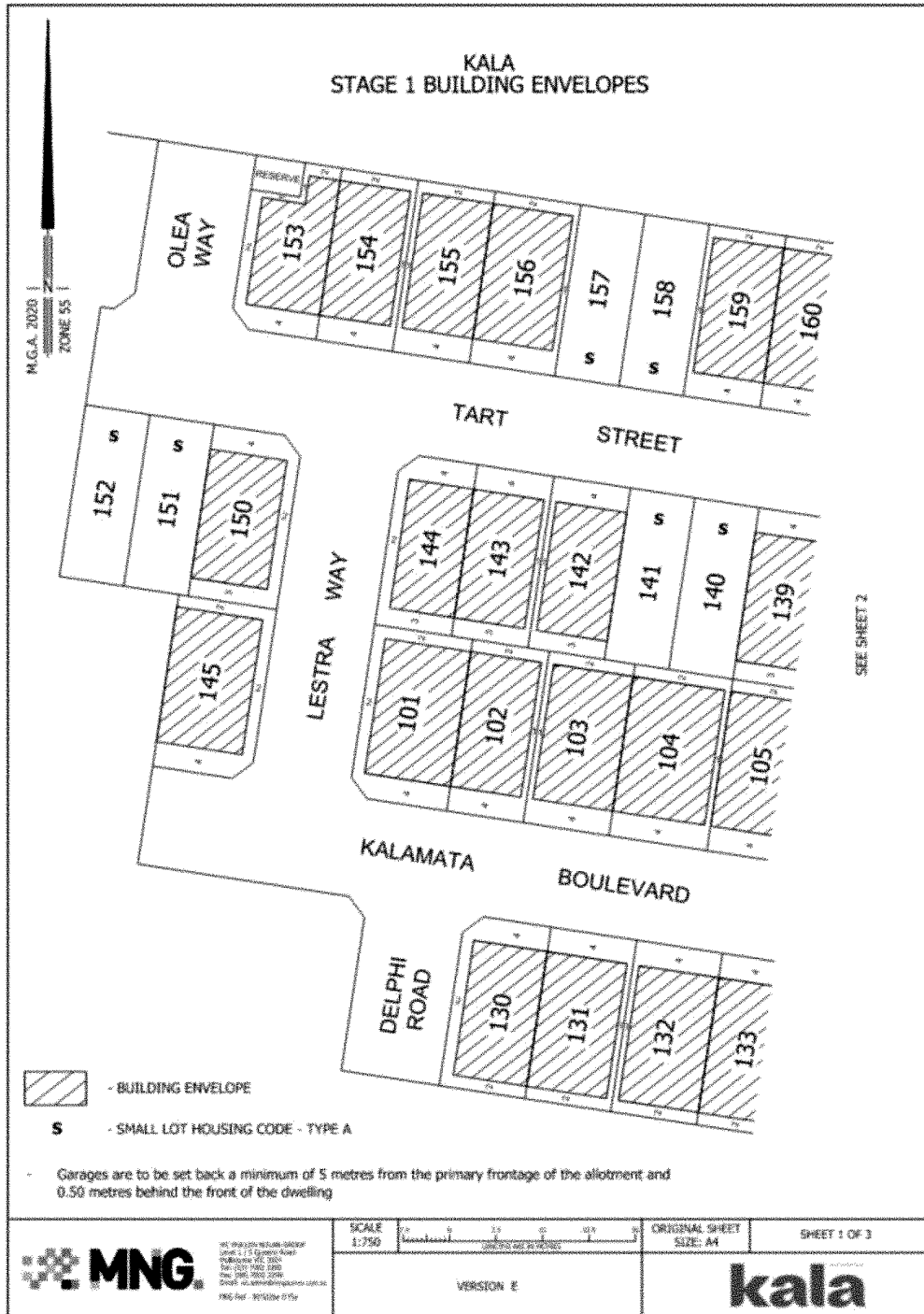
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Restrictive covenants in a plan  
Section 91A Transfer of Land Act 1958

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ANNEXURE A

Endorsed Building Envelope Plan



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