

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

**PLAN / DOCUMENT AS REQUIRED UNDER CONDITION OF PERMIT
PLANNING AND ENVIRONMENT ACT 1987
WYNDHAM PLANNING SCHEME**

Permit No: WYP13135/21.03

Condition No: 5

Sheet: 1 of 32

Approved by: Ray Lin
WYNDHAM CITY COUNCIL

Date: 17 June 2022

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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 PS 906058S.

Benefited land; As set out in PS 906058S.

Expiry Date; As set out in PS 906058S.

Covenants; Except with the written consent of the Responsible Authority, the registered proprietor or proprietors for the time being of any burdened lot must not construct or allow to be constructed on the lot or any part of it any building that is not in accordance with the following;

1. Preliminary

1. The matters addressed in this MCP are those that vary from the provisions in the Regulations and the Scheme. All provisions not addressed in this MCP are as required in the Regulations and Scheme.
2. This MCP is retained by the Registrar of Titles pursuant to section 91(A) of the Transfer of Land Act.

2. Provisions

1. Any building requiring a building permit to be constructed on a lot to which this MCP applies must be sited within the approved building envelope.

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The provisions are to be numbered consecutively from number 1

2. Further pages may be added but each page should be consecutively numbered.
To be used for the inclusion of provisions in instruments and plans.

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2. This MCP will specify any encroachments allowed outside the approved building envelope.
3. The conditions set out in the Small Lot Housing Code apply to the Lots shown thus * on the building envelope plan.

3. Text of restrictions

3.1 Minimum street setbacks (Regulation 74 and Clause 54.03-1)

A building must be set back from a street alignment in accordance with Regulation 74 (Minimum street setbacks) in Part 5 of the Regulations and Clause 54.03-1 in the Scheme, except as specified below.

A building on an allotment must be set back from a street boundary not less than the distance specified in respect of that boundary on the following relevant building envelope plan.

In the case of corner lots, buildings must be setback a minimum of 2 metres from the secondary frontage street or, if applicable, the minimum distance noted on the relevant building envelope plan.

Encroachments

The following may encroach into the setback distance required above by not more than 1.5m.

- a) Verandahs and porches that have a maximum height of not more than 3.6 metres above the natural ground
- b) Unroofed balconies that have a maximum height of not more than 4.0 metres above the natural ground
- c) Eaves, fascia and gutters
- d) Screens referred to in Regulation 84(5)(d) or 84(6) of the Building Regulations 2018.
- e) Decks, steps or landings - less than 800mm in height

A garage on an allotment must be set back not less than 5.0 metres from the front street boundary of the allotment and must be set back not less than 0.5 metres behind the front building line (excluding encroachments) of the dwelling.

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3.2 Building Height (Regulation 75 and Clause 54.03-2)

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The height of a building on a lot must be in accordance with Regulation 75 (Building Height) in Part 5 of the Regulations and Clause 54.03-2 in the Scheme, except as specified below.

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The height of a building on a lot must not exceed 10.0 metres unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 7.5 degrees or more, in which case the maximum building height should not exceed 12.0 metres.

3.3 Site Coverage (Regulation 76 and Clause 54.03-03)

The site area covered by buildings on an allotment must be in accordance with Regulation 76 (Site coverage) in Part 5 of the Regulations and Clause 54.03-3 in the Scheme, or the maximum site coverage as specified in the schedule to the zone.

3.4 Side and rear setbacks (Regulation 79 and Clause 54.04-1)

Side and rear setbacks on an allotment must be in accordance with Regulation 79 (Side and rear setbacks) in Part 5 of the Regulations and Clause 54.04-1 in the Scheme, except as specified below.

Side and rear setbacks for building elements (such as walls and roof coverings) must comply with the requirements specified in the height and setback profiles noted below and shown on the plan by the identifier code.

A building on a lot which has two side boundaries denoted as " 0 or 1 " in the plan of subdivision must be setback atleast one metre from one of the two side boundaries.

The following may encroach not more than 0.5 metres into the minimum side and rear setbacks.

- Porches and verandahs
- Masonry chimneys
- Screens (to the extent needed to protect a neighbouring property from a direct view)
- Flues and pipes
- Domestic fuel tanks
- Heating and cooling equipment and other services
- Water Tanks

The following may encroach into the minimum setbacks.

- Landings with a maximum area of 2.5 square metres and a maximum height of 1 metre
- Unroofed stairways and ramps
- Pergolas
- Shade sails
- Eaves, fascias and gutters not more than 0.6 metre in total width

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- Outbuildings not exceeding 10 square metres in area and 3 metres in height.

A garage with access facing the side street boundary of a residential allotment must be set back at least 0.5 metres behind the side street building line of the dwelling.

Carports may be built on or within 200 millimetres of a side street boundary if the side of the carport facing the boundary is open.

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Edge lots are not beneficiaries of the restriction described in 3.4 above.

3.5 Walls on boundaries (Regulation 80 and Clause 54.04-2)

Walls constructed on a boundary must be in accordance with Regulation 80 (Walls on boundaries) in Part 5 of the Regulations and Clause 54.04-2 in the Scheme, except as specified below.

Construction within 200mm of a boundary is only permitted where the setback profiles identified in the building envelope plan indicate a building area on the boundary.

The height of a wall or carport of an allotment must not exceed a maximum height of 3.6 metres unless abutting a higher existing or simultaneously constructed wall.

Edge allotments are not beneficiaries of the restriction described in 3.5 above.

3.6 Daylight to existing habitable room windows (Regulation 81 and Clause 54.04-3)

The provision of solar access to existing north - facing habitable room windows must be in accordance with Regulation 81 (Daylight to existing habitable room windows) in Part 5 of the Regulations and Clause 54.04-3 in the Scheme.

3.7 Solar access to existing north-facing habitable room windows (Regulation 82 and Clause 54.04-4)

The provision of solar access to existing north - facing habitable room windows must be in accordance with Regulation 82 (Solar access to existing north facing habitable room windows) in Part 5 of the Regulations and Clause 54.04-4 in the scheme except as specified below.

Reference to an existing north-facing habitable room window, in the case of buildings on allotments contained within this MCP, refers to ground floor windows only.

Any north facing habitable room window at ground level to be constructed in a building on an allotment must be clear to the sky and setback within the building envelope of the north boundary of that allotment.

3.8 Overshadowing of recreational private open space (Regulation 83 and Clause 54.04-5)

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 54.04-5 in the Scheme, except as varied as a consequence of other restrictions in this MCP.

Edge allotments are not beneficiaries of the restriction described in 3.8 above.

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3.9 Overlooking (Regulation 84 and Clause 54.04-6)

Any overlooking of a habitable room or secluded private open space of an existing dwelling on an allotment must be in accordance with Regulation 84 (Overlooking) in Part 5 of the Regulations and Clause 54.04-6 in the Scheme, except as varied as a consequence of other restrictions in this MCP.

The requirement applies to any habitable room window, balcony, terrace, deck or patio of a dwelling on an allotment within the specified overlooking control area (as indicated in the relevant height and setback profiles) that has direct views into an adjoining allotment.

Edge allotments are not beneficiaries of the restriction described in 3.9 above.

3.10 Private open space (Regulation 86 and Clause 54.05-2)

A dwelling on an allotment must provide private open space as specified in Regulation 86 (private open space) in Part 5 of the Regulations and Clause 54.05-2 in the scheme.

3.11 Dwelling on a Lot

Only one dwelling may be constructed on the lot.

3.12 Design Approval

The design of any building or structure to be constructed on a lot must:

1. Comply with the Harlow Estate Design Guidelines; and
2. Receive approval of all plans and specifications by Harlow Design Assessment Panel via the Design approval panel at www.harlowtarneit.com.au prior to a building permit being procured for any such building or structure.

3.13 Driveways

A driveway must be fully constructed prior to occupancy of any dwelling constructed on the lot.

Relocation of a driveway crossover or, the addition of a driveway crossover to a corner lot, is permitted with the written approval of Design Assessment Panel and Wyndham City Council. Relocated crossovers must be constructed at the lot owners' expense to the specification of Wyndham City Council and be of the same finish as that originally provided by SIG Group.

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4. Notes on this MCP

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4.1 Conflicting Annotation

4.1.1 In the case of a conflicting annotation between the building envelope plan and this MCP text, the MCP text supersedes the plan.

4.2 Natural Ground Level

4.2.1 Ground level after engineering works associated with the subdivision is to be regarded as natural ground level.

4.3 Easements

4.3.1 Buildings must not be built over registered easements unless approval is gained from the relevant authority.

4.4 Edge Allotments

4.4.1 Edge Allotments are those lots that are part of the same certified plan of subdivision but share one or more common boundaries with or otherwise adjoin a lot that is not part of the same certified plan of subdivision.

4.4.2 Regulation 71 applies to an edge lot regardless of Section 3 of this MCP.

5. General Definitions

5.1 **Approved building envelope** means the building envelope for a particular lot contained in the building envelope plan which is attached to this MCP and has the same meaning as in regulation 71 of the Regulations.

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- 5.2 **Building** has the same meaning as in the Building Act
- 5.3 **Building Act** means the act of the Victorian Parliament known as the Building Act 1993, and any re-enactment or replacement of that act.
- 5.4 **Building envelope** means an area within each lot where development of a dwelling, shed and garage is allowed subject to the provisions of this MCP.
- 5.5 **Building envelope plan** means the plan which is attached to this MCP showing dwelling setbacks and other related matters.
- 5.6 **Building Permit** means a permit in terms of the Building Act.
- 5.7 **Corner lot** means a lot sited at the intersection of two streets (excluding laneways) where those streets form boundaries of the lot.
- 5.8 **Dwelling** has the same meaning as in the Scheme;
- 5.9 **Front boundary** means;
- In the case of a lot where only one boundary abuts a road, that boundary which abuts the road; or
- In the case of a lot where more than one boundary abuts a road, the shortest of the boundaries which abuts a road and where there is a splayed corner on a lot, that part of the boundary which is created by the splay (the corner section) shall be disregarded.
- 5.10 **Front Building Line** means the front façade wall excluding any façade treatment or engaged pier.
- 5.11 **Height** has the same meaning as in the Regulations.
- 5.12 **Lot** has the same meaning as in the Subdivision Act 1988, and any re-enactment or replacement of that act.
- 5.13 **Harlow Estate Design Guidelines** means the design guidelines prepared by SIG Group, as amended from time to time.
- 5.14 **MCP** means this memorandum of common provisions

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- 5.15 **On the boundary** means a setback of up to 200 millimetres from the property title boundary.
- 5.16 **Plan of subdivision** means the plan of subdivision to which this MCP is incorporated by way of a restriction on that plan of subdivision.
- 5.17 **Private Open Space** has the same meaning as in the Regulations.
- 5.18 **Regulations** means the Building Regulations 2018 or any subsequent regulations made pursuant to the Building Act.
- 5.19 **Reserve** has the same meaning as in the Subdivision Act 1988, and any re-enactment or replacement of that act.
- 5.20 **Responsible Authority** means Wyndham City Council
- 5.21 **Road** means any kind of road, street, lane or other vehicular access way whatsoever and has the same meaning as in the Road Management Act 2004 and any re-enactment or replacement of that act.
- 5.22 **Scheme** means the planning scheme of the local authority responsible for the land contained within the plan of subdivision.
- 5.23 **Secluded Private Open Space** has the same meaning as in the building regulations.
- 5.24 **Setback** has the same meaning as in the Regulations.
- 5.25 **SIG Group** means No 4 Tarneit Pty. Ltd. (ACN 649 857 983) or any associated entity or related body corporate of SIG Group.
- 5.26 **Side boundary** means a boundary of a lot that runs between and connects the front boundary of the lot to the rear boundary of the lot.
- 5.27 **Small Lot Housing Code** refers to the Small Lot Housing Code incorporated into the Scheme
- 5.28 **Street**, for the purposes of determining street setbacks, means any road other than a footway or carriageway easement.
- 5.29 **Type A** on a building envelope plan denotes that the lot is one to which the provisions of the Small Lot Housing Code relating to Type A allotments applies.
- 5.30 **Type B** on a building envelope plan denotes that the lot is one to which the provisions of the Small Lot Housing Code relating to Type B allotments applies.

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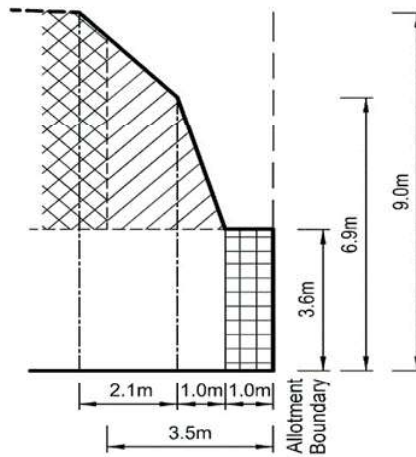
6. Diagrams and Plans

6.1 Building height & setback profiles referenced in the building envelope plan





6.1.1

PROFILE DIAGRAM

(A) Profile



LEGEND

-  Single Storey Building Envelope
-  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 to Boundary Zone

Where a building profile once applied covers an easement, the portion of the profile over the easement cannot be considered for approval nor can it be built upon unless it receives prior written consent of the relevant authority.

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6.2 Building Envelope Plan

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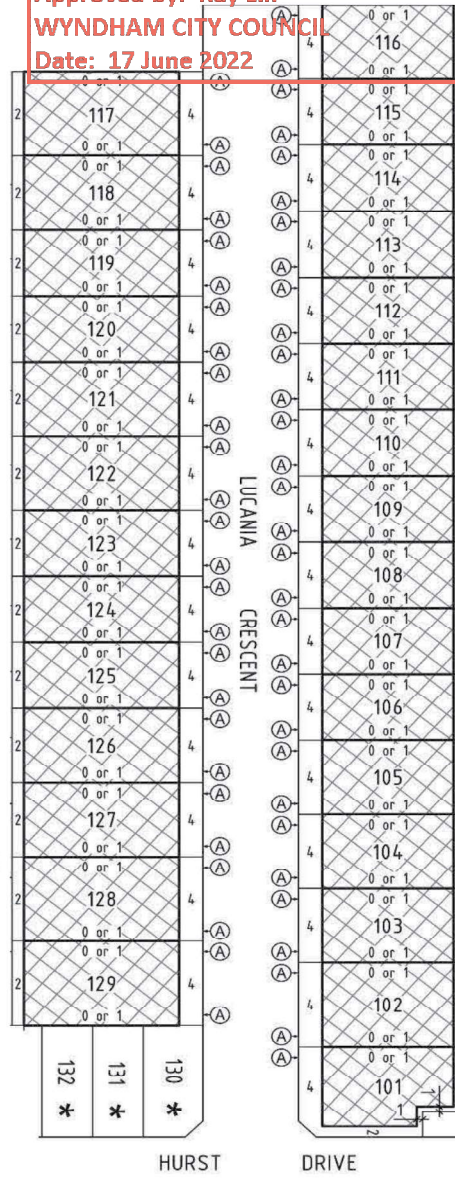
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BUILDING ENVELOPE DIAGRAM

1. The Building envelopes on this plan are shown enclosed by continuous thick lines.
2. Lots shown thus * are subject to the provisions of the Small Lot Housing Code. Lots 130 to 136 both inclusive are Type A lots.
3. A building on a lot which has two side boundaries denoted as '0 or 1' must be setback at least one metre from one of the two side boundaries.

LEGEND

- Building Envelope
- Side Boundary Profile (see MCP for details)
- Double Storey Requirement **DS**



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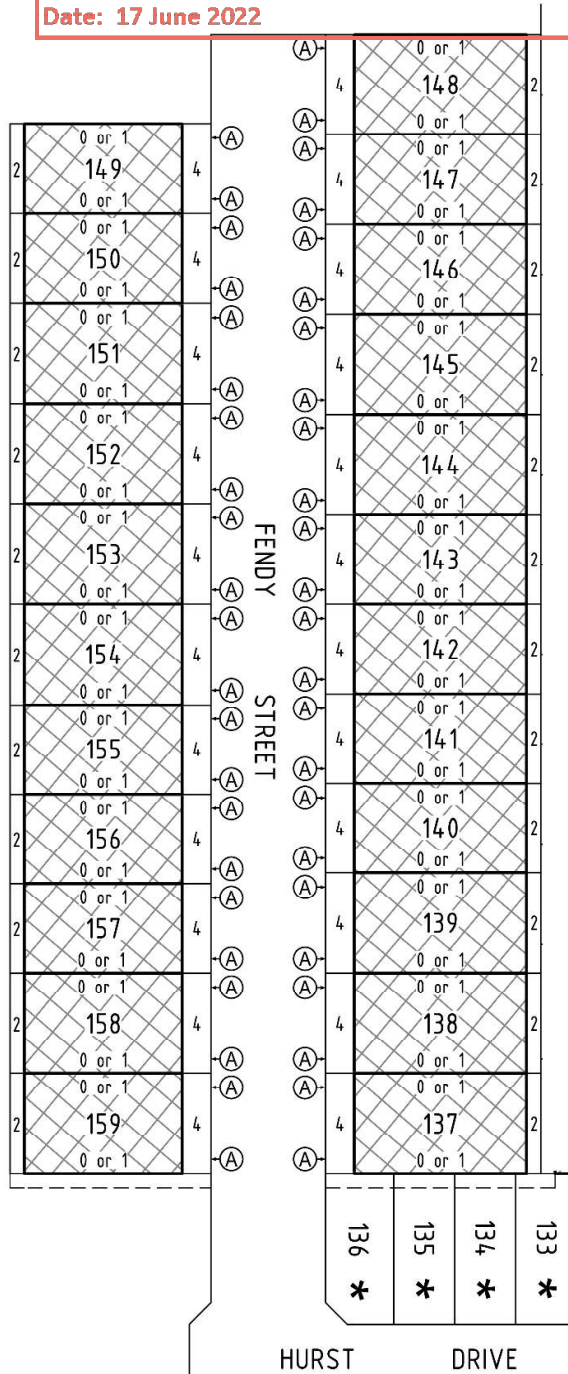
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BUILDING ENVELOPE DIAGRAM

1. The Building envelopes on this plan are shown enclosed by continuous thick lines.
2. Lots shown thus * are subject to the provisions of the Small Lot Housing Code. Lots 130 to 136 both inclusive are Type A lots.
3. A building on a lot which has two side boundaries denoted as '0 or 1' must be setback at least one metre from one of the two side boundaries.

LEGEND

- Building Envelope
- Side Boundary Profile (see MCP for details)
- Double Storey Requirement **DS**

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