

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

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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.

Burdened Land: As set out in the Plan of Subdivision

Benefited Land: As set out in the Plan of Subdivision

Covenants:

A. Preliminary

- A. This MCP (Version 1) provides the information necessary to interpret the approved building envelopes.
- B. This MCP includes:
 - a) Any varied design parameters from the Building Regulations.
 - b) Matters not covered by the Building Regulations.
- C. Any matter not addressed in this MCP will still need to be addressed as required by the Building Regulations.
- D. This MCP is retained by the Registrar of Titles pursuant to-section 91(A) of the Transfer of Land Act.

B. Provisions

- A. 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.
 - B. This MCP will specify any encroachments allowed outside the approved building envelope.
- 1. Edge Lots (refer regulation 71)**
- 1.1. Regulation 71 of the Regulations applies to each Edge Lot irrespective of remaining Sections of this MCP.
- 2. Minimum street setbacks (refer regulation 74)**
- 2.1. The building on a lot must be set back from a street frontage boundary in accordance with the applicable setback identified in the building envelope plans

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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 plans.

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Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

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- 2.2. The following may encroach a maximum of 2.5 metres into the minimum front boundary setback:
 - 2.2.1. porches, pergolas and verandahs that are less than 3.6 metres above natural ground level;
 - 2.2.2. eaves, fascia and gutters;
 - 2.2.3. decks, steps and landings less than 800 millimetres in height.
 - 2.3. A garage opening on a lot with a single storey dwelling must not occupy more than 40 per cent of the width of the front boundary.
 - 2.4. A garage opening on a lot with a two storey dwelling must not occupy more than 25 per cent of the area of the front façade.
 - 2.5. A garage on a lot must be setback at least 5.5 metres from the front boundary of the lot, except where an alternative garage setback is approved by the Responsible Authority.
 - 2.6. A garage on a lot must be setback at least 840 millimetres behind the front building line.
- 3. Side and rear Setbacks (refer regulation 79)**
- 3.1. The building on a lot must be set back from side and rear boundaries in accordance with the applicable setback profiles as identified in the building envelope plans.
 - 3.2. If a lot is shown with the profile identifier codes A and B on opposite side boundaries, the codes can be interchanged.
 - 3.3. the following building elements may encroach up to 500 millimetres into the minimum side and rear setbacks specified in the building envelope plans:
 - 3.3.1. verandahs, porches, covered walkways;
 - 3.3.2. masonry chimneys, flues and pipes;
 - 3.3.3. sunblinds and screens (to the extent necessary to protect the neighbouring property from a direct view);
 - 3.3.4. fuel tanks and water tanks;
 - 3.3.5. heating and cooling equipment and other services.
 - 3.4. The following building elements may encroach into the minimum side and rear setback specified in the building envelope plans:
 - 3.4.1. pergolas and shade sails;
 - 3.4.2. landings with a maximum area of 2 square metres and a maximum height of 1 metre;
 - 3.4.3. unroofed stairways and ramps;
 - 3.4.4. eaves, fascia and gutters, if the encroachment is not more than 600 millimetres.
 - 3.5. In addition to the allowable encroachments in the Building Regulations, the following can encroach into the minimum side and rear setback specified by the relevant setback profile identifier code:
 - 3.5.1. outbuildings not exceeding 3.6 metres in height.

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4. Walls on boundaries (refer regulation 80)

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

5. Overlooking (refer regulation 84)

- 5.1. The requirements of regulation 84 apply to any habitable room window, balcony, terrace, deck or patio of a dwelling on a lot within the specified overlooking control area (as identified in the relevant setback profile codes shown on the building envelope plan), that has a direct view into an adjoining lot.

6. Driveways

- 6.1. A driveway must be fully constructed and match the location and width of an existing crossover prior to occupancy of any dwelling constructed on the lot.
- 6.2. Relocation of a driveway crossover or, the addition of a driveway crossover to a corner lot, is permitted with the written approval of Cardinia Shire Council. Relocated crossovers must be constructed at the lot owners expense to the specification of Cardinia Shire Council and be of the same finish as that originally constructed.

7. Fencing

- 7.1. Fencing plans must be submitted to and approved by the Arbor Architectural Review Panel as part of the design approval process set out in the Arbor Officer Design Guidelines.
- 7.2. All boundary fencing must be constructed prior to occupancy of any dwelling constructed on the Lot
- 7.3. No fencing will be permitted forward of the front building line.
- 7.4. For all lots, side and rear fencing must:
- 7.4.1. be constructed from capped timber palings with exposed timber posts to both sides;
 - 7.4.2. not exceed 1.85 metres above natural ground level;
 - 7.4.3. finish a minimum of 1 metre behind each side of the front building line;
 - 7.4.4. not be painted or stained.
- 7.5. Side boundary fencing along the secondary street frontage of a corner lot must:
- 7.5.1. be constructed from capped timber palings with exposed timber posts to both sides;
 - 7.5.2. not exceed 1.85 metres above natural ground level;
 - 7.5.3. must not exceed 50% of the length of the secondary street frontage;
 - 7.5.4. not be painted or stained;
 - 7.5.5. not directly face a landscaped reserve;
 - 7.5.6. allow for a minimum of two recessed bays 600 millimetres setback from the secondary street frontage and a minimum 3 metres in length, with planting provided within these bays;
 - 7.5.7. be setback a minimum 600 millimetres from the exposed face of a retaining wall, with planting provided within this setback

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7.6. Return fences must be constructed to match the side and rear fencing, or be constructed from horizontal stained timber slats no greater than 50mm wide, or any other material approved in writing by the Arbor Architectural Review Panel. Return fences must be setback to allow for access to the meter boxes.

7.7. Sections 1.7.1 to 1.7.6 of this MCP (both inclusive) do not apply to lots being used as a display home.

Sections 1.7.1 to 1.7.6 of this MCP (both inclusive) apply to a lot once the dwelling ceases to be used as a display home.

8. Lot Layout

8.1. The following additional clauses apply to all lots:

8.1.1. only one dwelling may be constructed on the lot;

8.1.2. further subdivision of any lot to create additional lots is not permitted.

9. House Design

9.1. The building or structure must:

9.1.1. not exceed two storeys.

9.1.2. be connected to a recycled water supply for toilet flushing and garden taps;

9.1.3. for lots with a north facing rear yard;

a) allow for at least one living room, family room or lounge with a north facing window or windows with an area of at least 5 square metres;

b) allow for an eave or other shading device which extends a horizontal distance equal to 50% of the vertical distance from the shading device to the window sill.

9.1.4. be articulated, incorporating various planes or setbacks to façade elements;

9.1.5. feature blockwork, stone, brick, or cement render / applied textured finish for at least 60% of the area (excluding windows and garage doors) visible from the street;

9.1.6. not include weatherboard for greater than 40% of the area (excluding windows and garage doors) visible from the street;

9.1.7. only use muted or non-reflective colours on external surfaces;

9.1.8. not use second-hand building materials without the approval of the Arbor Architectural Review Panel;

9.1.9. not use unfinished fibre-cement sheeting or blue board sheeting;

9.1.10. not use weatherboards with an exposed height of greater than 180mm;

9.1.11. not use fascia boards, trim and exposed metalwork that are not colour coordinated with the home;

9.1.12. not use reflective glazing or excessively tinted glass;

9.1.13. not be a relocated or transportable home unless approved by the Arbor Architectural Review Panel;

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- 9.1.14. not allow exposed stumps or support posts (excluding veranda or pergola posts);
- 9.1.15. not allow external plumbing (excluding downpipes or guttering) visible from the street;
- 9.1.16. minimise the visibility of external antennae and aerials, satellite dishes, rainwater tanks, clothes lines, evaporative coolers and other air conditioning units from the street;
- 9.1.17. not allow meter boxes to face the street frontage(s), and must be contained within a wall;
- 9.1.18. for pitched roofs (including garage roof);
 - a) not be less than 22.5° unless approved by the Arbor Architectural Review Panel;
 - b) have an eave width of at least 450 millimetres (unless the wall is on a lot boundary, or is a parapet wall);
 - c) have an eave on the front façade return around the side of a home for a minimum length of 4 metres;
 - d) have an eave on all sides on the second storey for double storey homes.
- 9.1.19. for flat roofs (including garage roof) be enclosed behind a parapet if visible from the street;
- 9.1.20. feature a roof built of corrugated Colorbond (e.g. custom orb) or terracotta, slate or concrete tiles if visible from the street;
- 9.1.21. feature a lock up garage with a panel lift door integrated into the design of the home;

10. Parking of Commercial Vehicles

- 10.1. Residents must not allow commercial vehicles (greater than 1.5 tonnes), boats, caravans or trailers to park in locations visible from the street for more than four hours.

11. Signage

- 11.1. Residents must:
 - 11.1.1. not display or allow to be displayed any sign, including “for sale” signs;
 - 11.1.2. not allow signs which advertise products or business, with the exception of builder’s signs smaller than 0.6 square metres in area during construction.

12. Maintenance

- 12.1. Residents must not allow any rubbish including site excavations and building materials to accumulate on a lot (unless the rubbish is neatly stored in a suitably sized industrial bin or skip) or allow excessive growth of grass or weeds.

13. Landscaping

- 13.1. Residents must not plant or allow to be planted any flora the species of which is noxious or which is included in any list of a Responsible Authority as a prohibited species or weed in the area in which the Land is located.

14. Design Approval

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

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- 14.1.1. Comply with the Arbor Officer Design Guidelines;
- 14.1.2. Receive approval of all plans and specifications by the Arbor Architectural Review Panel (email: approvals@arborofficer.com.au) prior to a building permit being procured for any such building or structure.

15. Permission to construct contrary to these MCPs and any Building Envelope

- 15.1. The requirements of these MCPs may be varied with the consent of the Responsible Authority and when:
 - 15.1.1. where consent of the Responsible Authority is required by the Scheme;
 - 15.1.2. a planning permit is issued affecting the lot;
 - 15.1.3. required by operation of the law.

16. Notes on this MCP

16.1. Conflicting Annotation

- 16.1.1. In the case of a conflicting annotation between the building envelope plan and this MCP text, the MCP text takes precedence.
- 16.1.2. In the case of conflict between the Arbor Officer Design Guidelines and this MCP text, the MCP text takes precedence.

16.2. Natural Ground Level

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

16.3. Easements

- 16.3.1. Buildings must not cover registered easements unless approved by the relevant authority.

17. General Definitions

- 17.1. **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.
- 17.2. **Arbor Officer Design Guidelines** means the design guidelines prepared by Arbor and Southern Sustainable Development (Officer), as amended from time to time.
- 17.3. **Building** has the same meaning as in the Building Act
- 17.4. **Building Act** means the act of the Victorian Parliament known as the Building Act 1993, and any re-enactment or replacement of that act.
- 17.5. **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.
- 17.6. **Building envelope plan** means the plan which is attached to this MCP showing dwelling setbacks and other related matters.
- 17.7. **Building Permit** means a permit in terms of the Building Act.

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- 17.8. **Corner lot** means a lot sited at the intersection of two streets (excluding laneways) where those streets form boundaries of the lot
- 17.9. **Dwelling** has the same meaning as in the Scheme;
- 17.10. **Edge lots** 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.
- 17.11. **Front boundary** means;
- 17.11.1. In the case of a lot where only one boundary abuts a road, that boundary which abuts the road;
or
- 17.11.2. 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.
- 17.12. **Front Building Line** means the front façade wall excluding any façade treatment or pier.
- 17.13. **Height** has the same meaning as in the Regulations.
- 17.14. **Lot** has the same meaning as in the Subdivision Act 1988, and any re-enactment or replacement of that act.
- 17.15. **MCP** means this memorandum of common provisions
- 17.16. **On the boundary** means a setback of up to 200 millimetres from the property title boundary.
- 17.17. **Plan of subdivision** means the plan of subdivision to which this MCP is incorporated by way of a restrictions on that plan of subdivision.
- 17.18. **Private Open Space** has the same meaning as in the Regulations.
- 17.19. **Regulations** means the Building Regulations 2018 or any subsequent regulations made pursuant to the Building Act.
- 17.20. **Reserve** has the same meaning as in the Subdivision Act 1988, and any re-enactment or replacement of that act.
- 17.21. **Return fence** means the fence that is situated between the dwelling and the side boundary fence, or on a corner lot, between the dwelling and a side boundary fence along a secondary street frontage.
- 17.22. **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.
- 17.23. **Scheme** means the planning scheme of the local authority responsible for the land contained within the plan of subdivision.
- 17.24. **Secluded Private Open Space** has the same meaning as in the building regulations.
- 17.25. **Secondary Street Frontage** is any boundary that abuts a road or reserve, other than the Front Boundary
- 17.26. **Setback** has the same meaning as in the Regulations.
- 17.27. **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.

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17.28. **Street**, for the purposes of determining street setbacks, means any road other than a footway or carriageway easement.

Expiry: As set out in the Plan of Subdivision (if applicable)

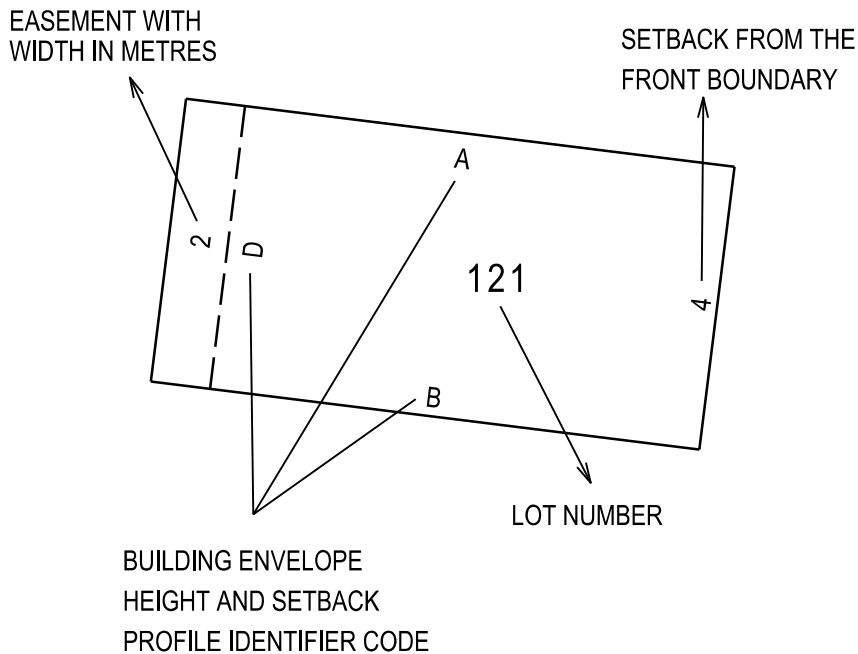
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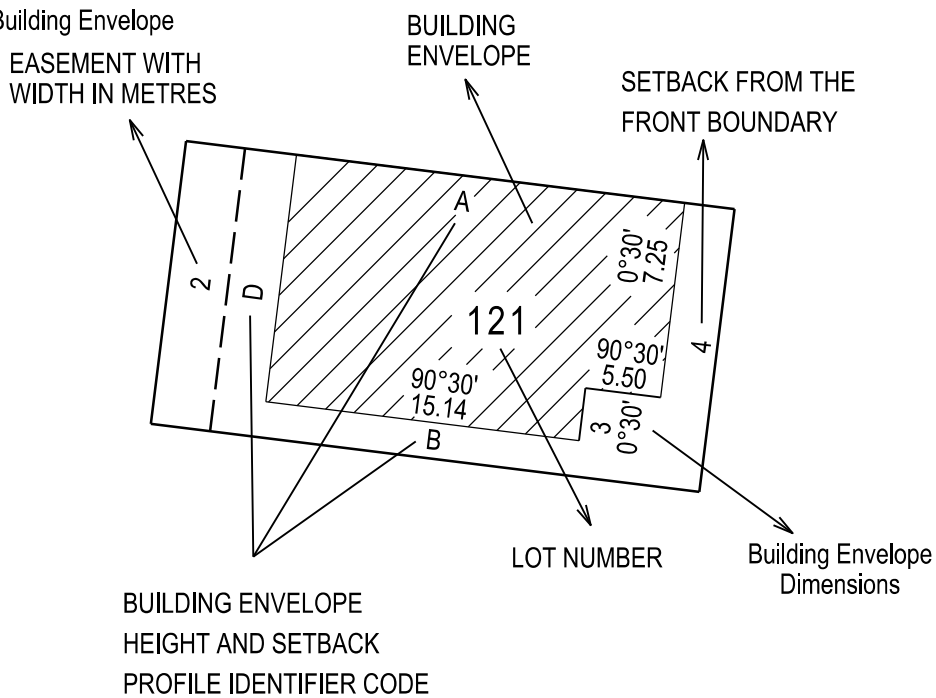
18 Diagrams and Plans

18.1 Diagram illustrating the interpretation of the building envelope and the annotation with respect to all edge lots in this stage development

18.1.1 Typical Building Envelope



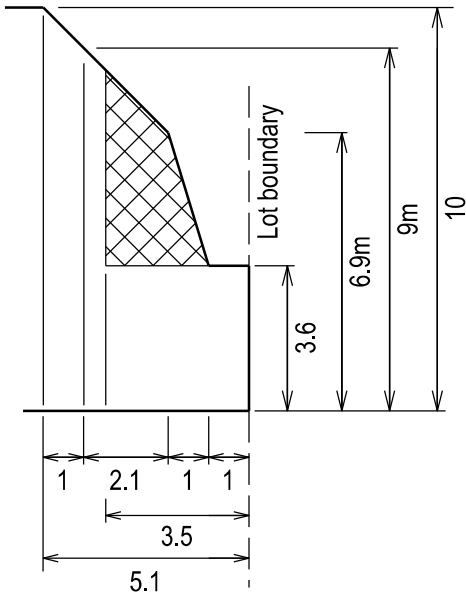
18.1.1 Custom Building Envelope



For lots shown with a building envelope height and setback profile identifier code, as well as a hatched building envelope, both the profile identifier code and the hatched building envelope must be adhered to.

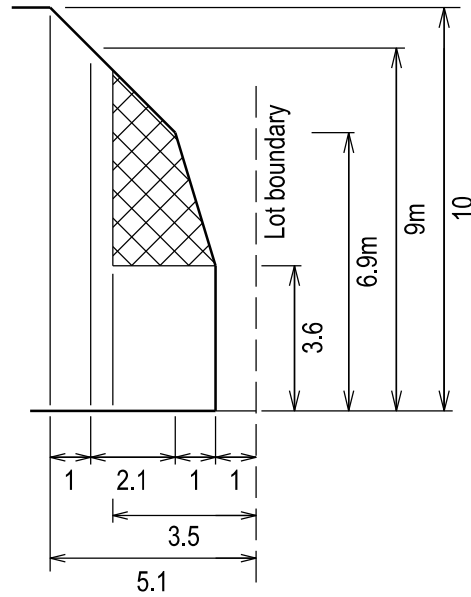
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18.2 Building height & setback profiles referenced in the building envelope plan



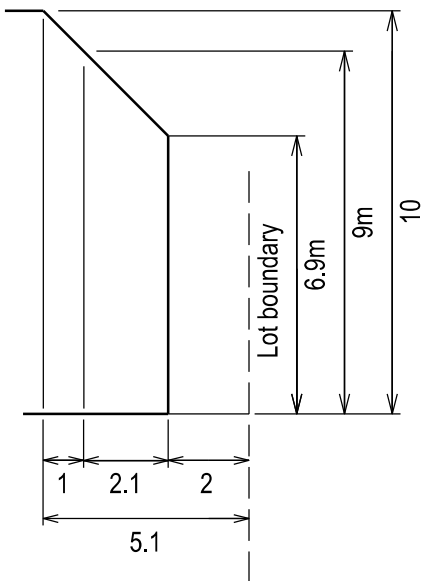
Side boundary shared with the side or rear boundary of a residential lot in the same development stage

PROFILE (A)



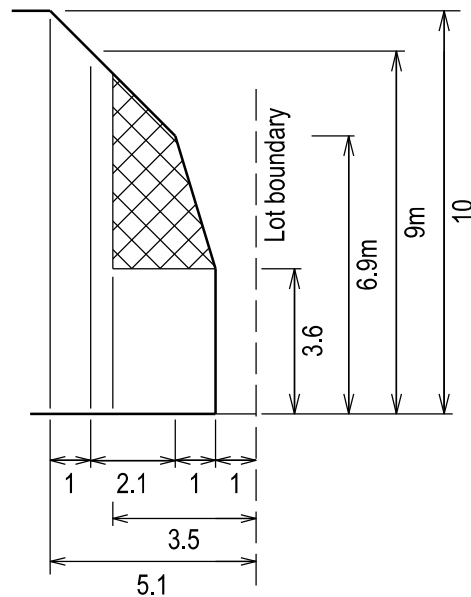
Side boundary shared with the side or rear boundary of a residential lot in the same development stage

PROFILE (B)



Side boundary abutting a street or public open space

PROFILE (C)



Rear boundary adjoining the rear or side boundary of a residential lot

PROFILE (D)

EASEMENT REQUIREMENT

WHERE A PROFILE WHEN APPLIED COVERS AN EASEMENT, THE PORTION OF THE PROFILE ABOVE THE EASEMENT CANNOT BE CONSIDERED FOR APPROVAL/BUILT UPON. THIS MAY VARY ONLY IN THE CIRCUMSTANCES WHERE BUILDING ON THE EASEMENT RECEIVES PRIOR WRITTEN CONSENT OF THE RELEVANT AUTHORITY.

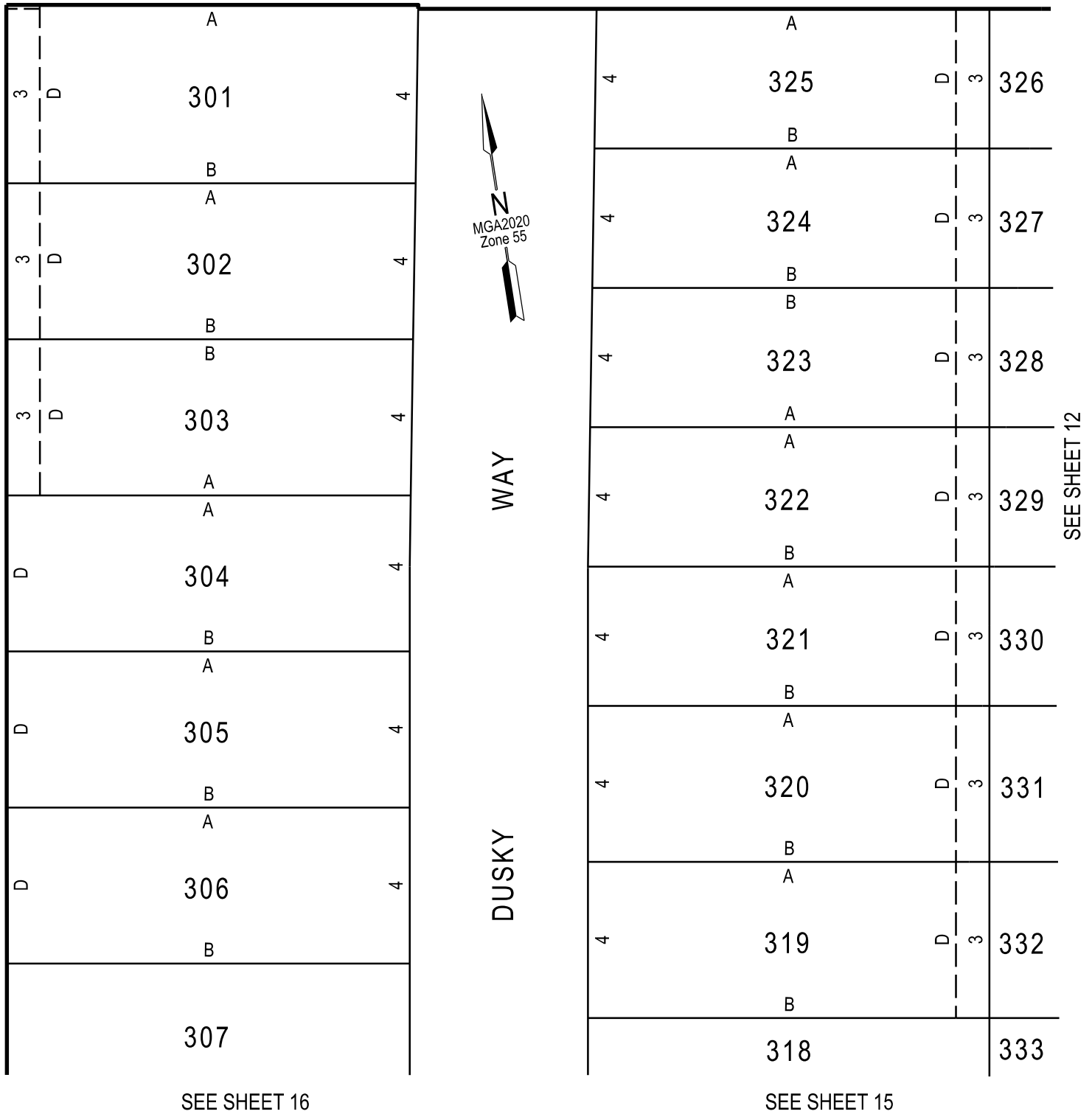


OVERLOOKING CONTROL AREA
 (refer 'overlooking' in MCP)

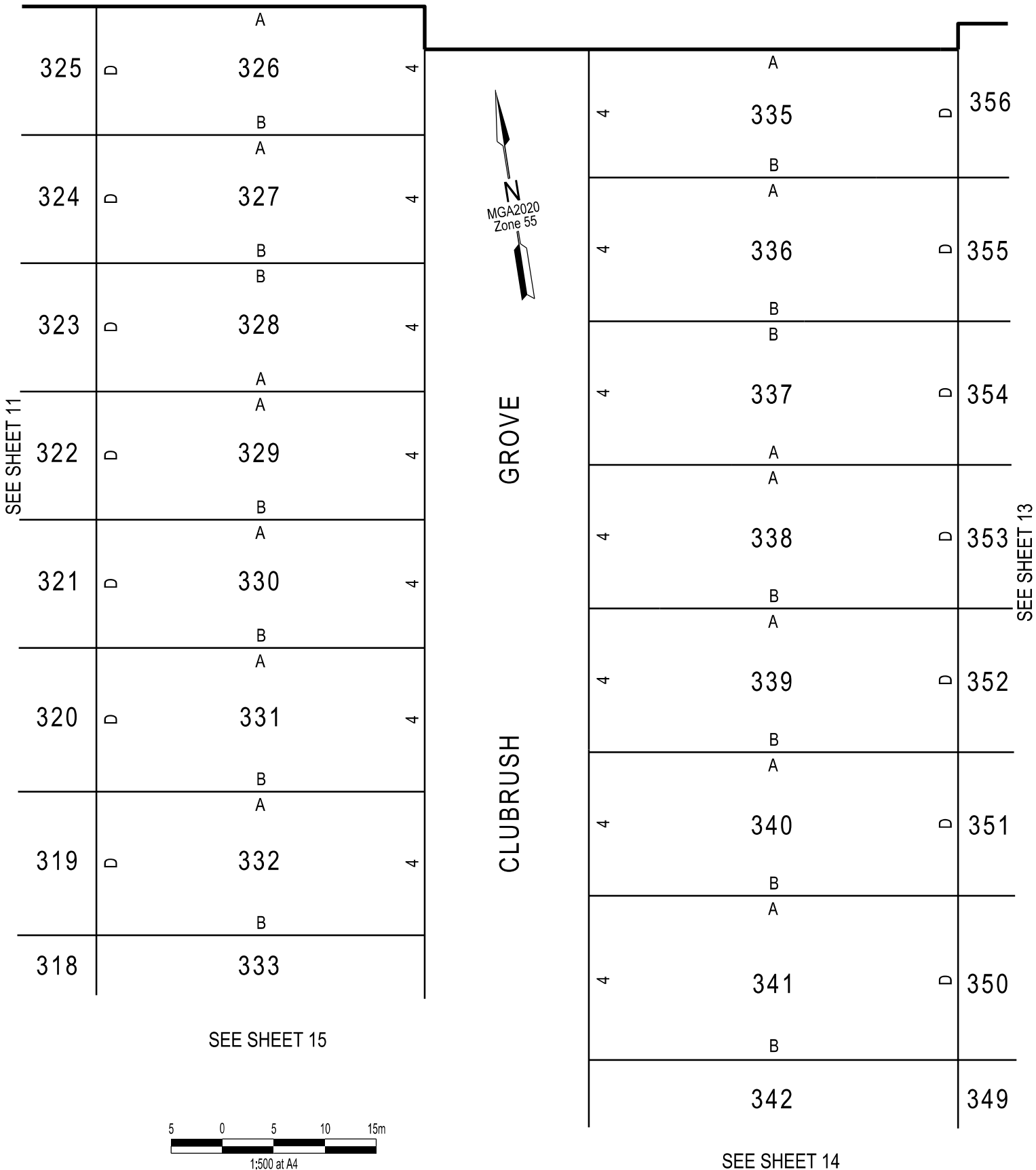
ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE

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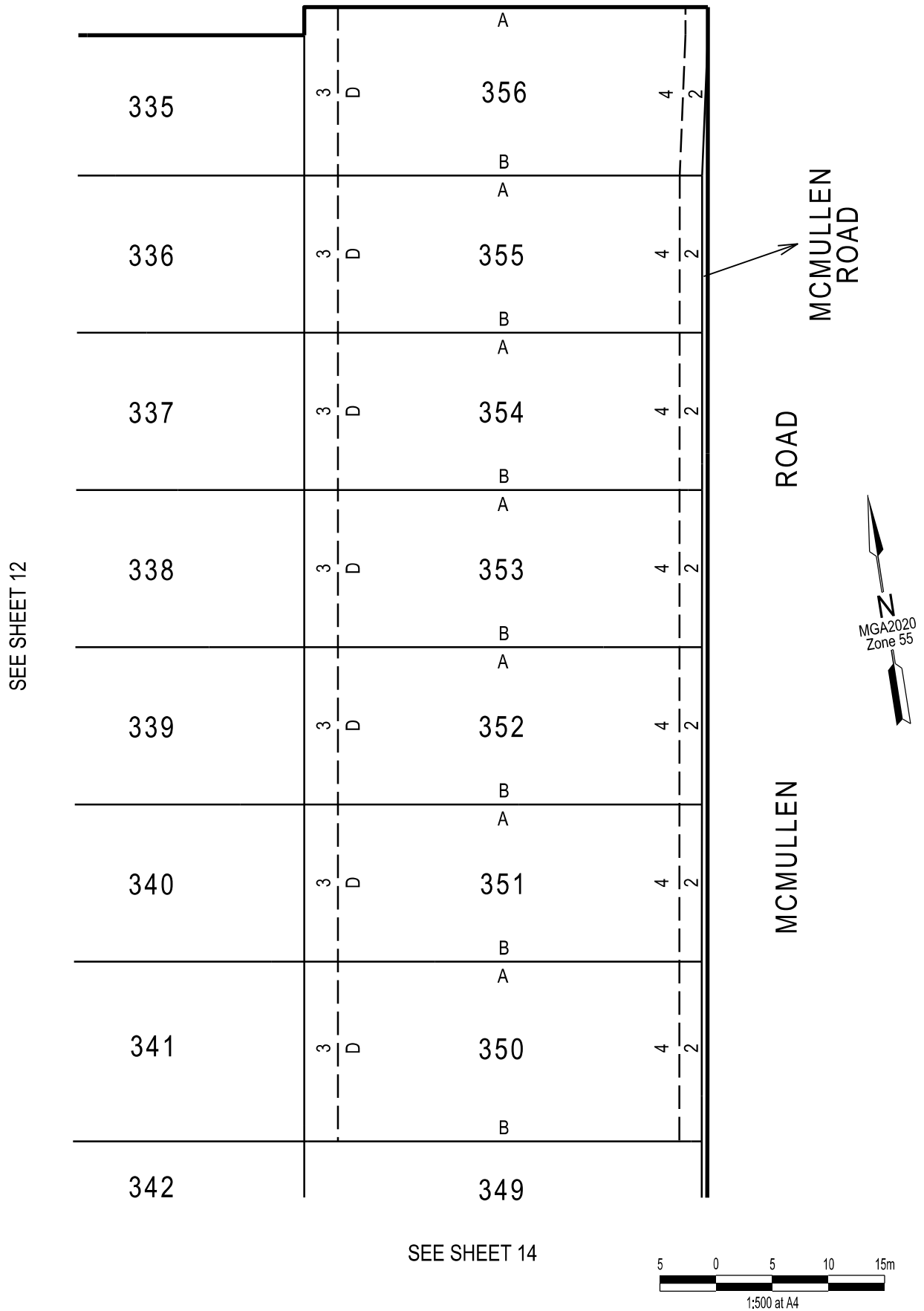
18.3 Diagram illustrating the interpretation of the building envelope and the annotation with respect to all edge lots in this stage development



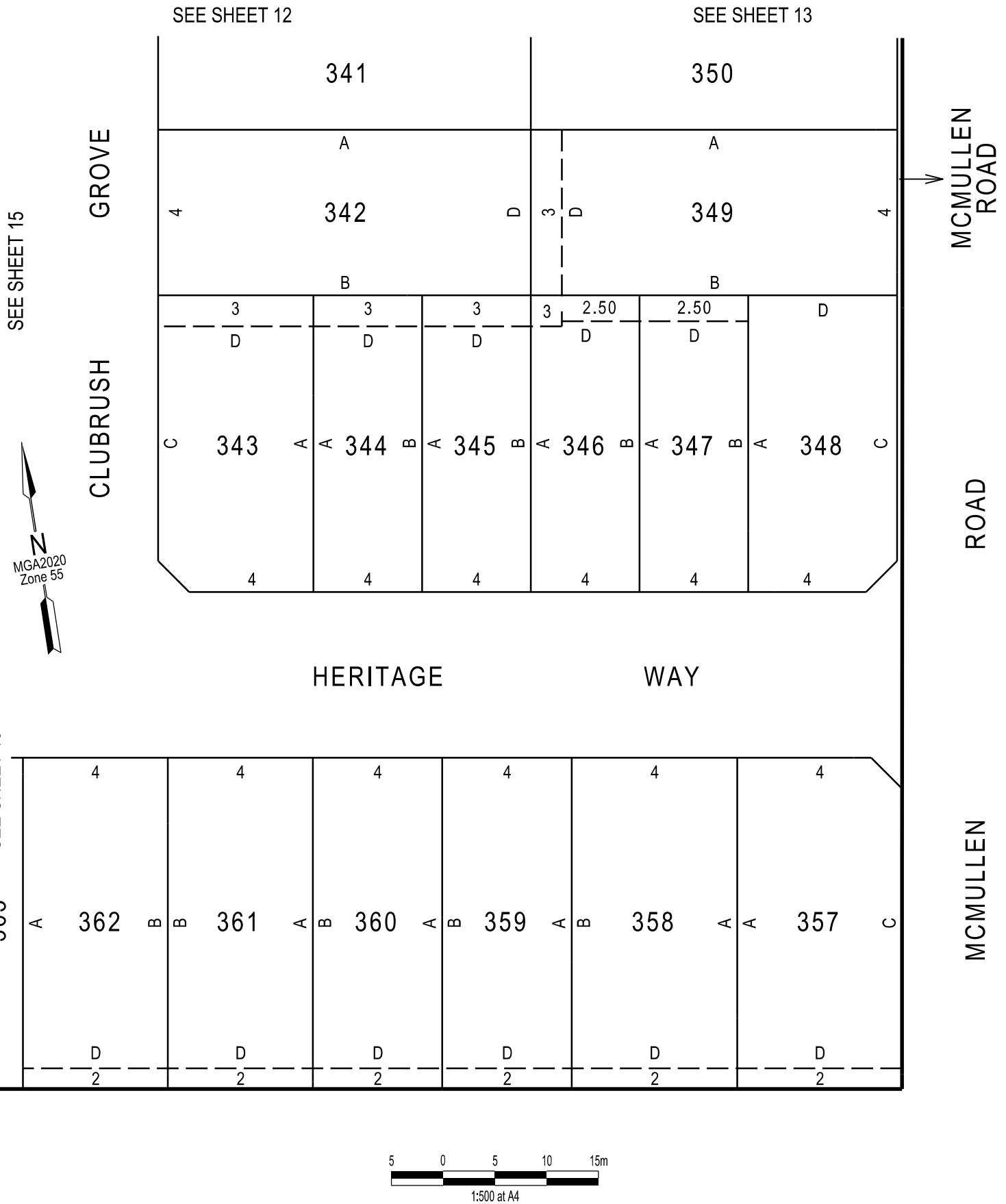
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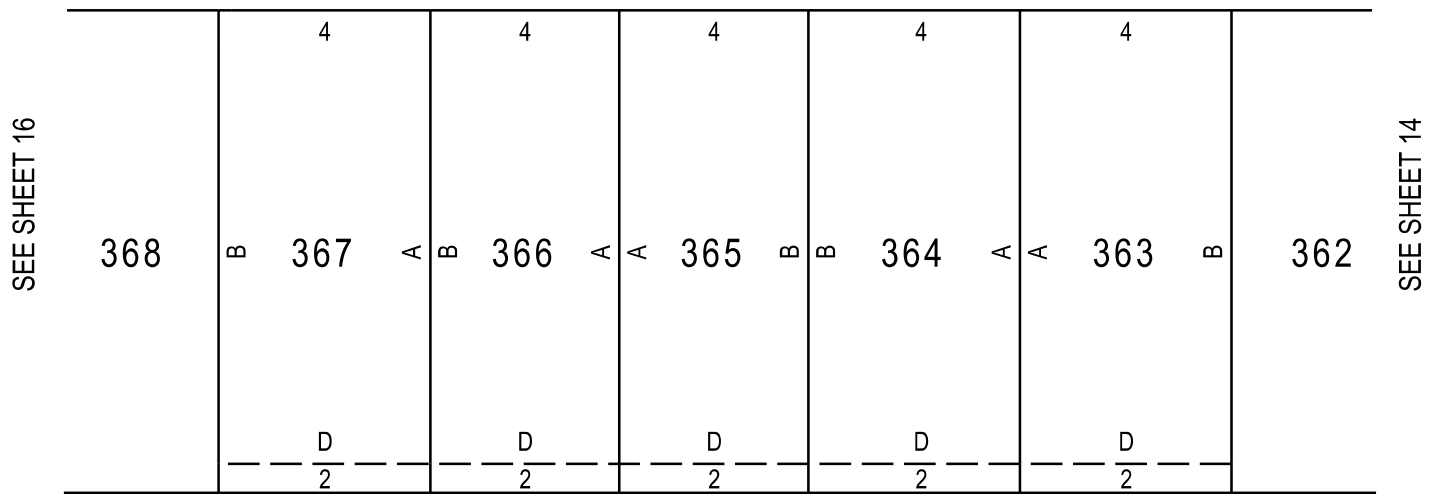
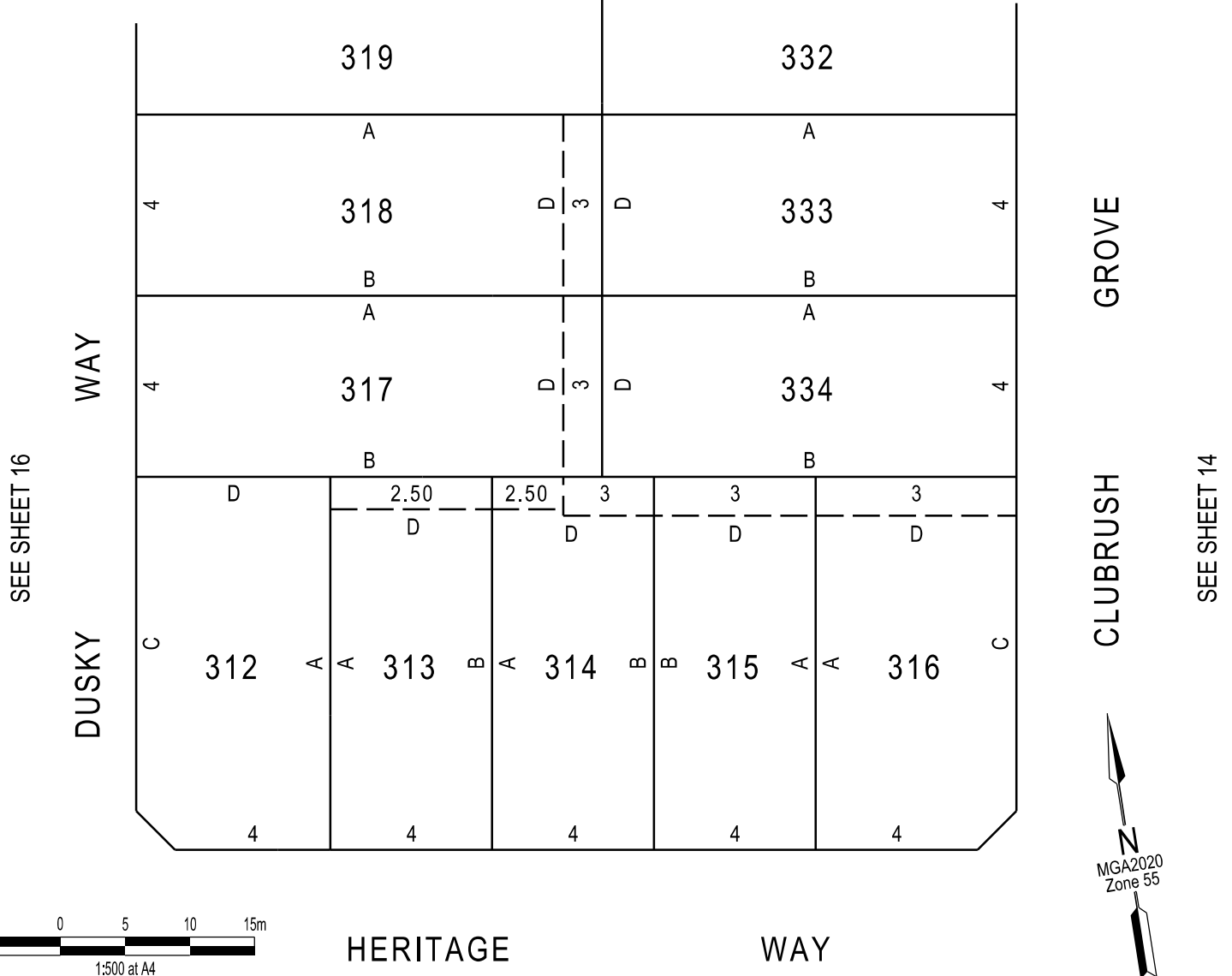
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