



Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.3 – Height of Buildings

Address: 50D Raby Road, Gledswood Hills

Proposal: Demolition of the existing entry road, Community title subdivision to create 73 lots (69 dwelling lots, three superlots for the residential flat buildings and one community lot for the park), construction of 69 dwellings and three residential flat buildings containing 90 apartments, associated earthworks, construction of local roads, drainage, neighbourhood park / piazza, community facilities and landscaping works and acoustic attenuation measures.

1.0 Introduction

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of Camden Local Environmental Plan (CLEP) 2010. The development standard for which the variation is sought is clause 4.3 Height of Buildings under CLEP 2010.

This application has been prepared in accordance with the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide*, August 2011, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1');
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2');
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3');
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

2.0 Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

The Camden Local Environmental Plan (CLEP) 2010.

2.2 What is the zoning of the land?

The land is zoned R1 General Residential.

2.3 What are the Objectives of the zone?

The objectives of the zone are:

- To provide for the housing needs of the community.

- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow for educational, recreational, community and religious activities that support the wellbeing of the community.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

2.4 What is the development standard being varied?

The development standard being varied is the height of buildings development standard.

2.5 Is the development standard a performance based control? Give details.

No.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of CLEP 2010.

2.7 What are the objectives of the development standard?

The objectives of the development standard are contained in Subclause 4.3(1)(a) and (b), and are:

- to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- to minimise the adverse impact of development on heritage conservation areas and heritage items.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) establishes a maximum height of buildings control for the site. Clause 4.3(2) states the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. A copy of the map is provided at Figure 1.

The Height of Buildings Map identifies two building heights to the area to which the DA applies, comprising:

- 9.5m – Coloured Green and labelled “J”, and
- 12.5m – Coloured Yellow and labelled “M”



Camden Local
Environmental
Plan 2010

Height of Buildings Map -
Sheet HOB_016

Maximum Building Height (m)

C

5

F

6.5

G

7

I

8.5

J

9.5

K

10

L

11

M

12.5

O

15.5

SRGC

SEPP Sydney Region Growth Centres

Refer to Clause 4.3A

Refer to Clause 4.3B

Refer to Clause 4.3C

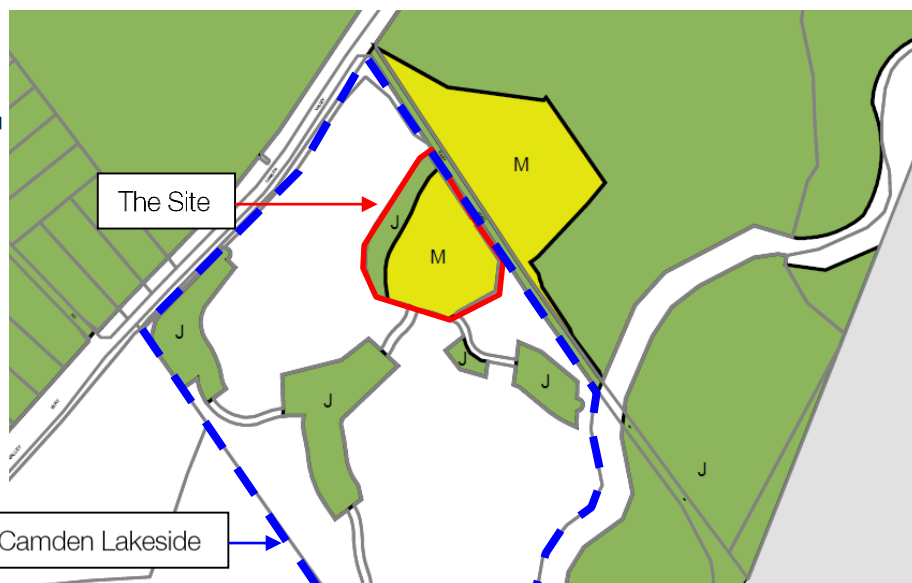


Figure 1: Extract of CLEP 2010 Height of Buildings Map

2.9 What is the proposed numeric value of the development standard in the development application?

The proposed development is an integrated DA, in that it proposes both subdivision works, including bulk earthworks, and the construction of built form i.e. dwellings and residential flat buildings.

The bulk earthworks involve the contouring of the land to minimise the need for retaining walls and ensure the smoothest transition across the entirety of the precinct.

The site has an area of 6.34ha and is typically described as a gently rolling site comprising a small knoll toward the south and a gully that runs vaguely in an east-west direction from the centre of the site toward the north-western boundary, parallel to Raby Road. This gully is coloured blue and dark green on the extract from the cut and fill plan at Figure 2.

It is the residential lots within the location of the existing gully that technically do not comply with the 9.5m height of building development standard, as the bulk earthworks propose between 3 and up to 5m of fill within this narrow gully.

When the height of building is measured from ground level (existing) being the base of the gully i.e. prior to the bulk earthworks occurring and the gully filled, it results in the measurement of the building height being significantly exaggerated due to the inclusion of the fill height. The dwellings themselves are typically 6m in height to the ridge level for a single storey dwelling and approximately 8m to the ridge of a two storey dwelling, when measured from the proposed new ground level. However, when the fill of the gully is taken into account as technically required by the LEP, it results in the two storey dwellings having a non-compliant height within the 9.5m building height limit area, along the western edge of the site. The dwellings that are non-compliant are listed in Table 1. An extract of the Dwelling Elevations has been provided at Figures 3 & 4 and a copy of the plans are attached to this statement.

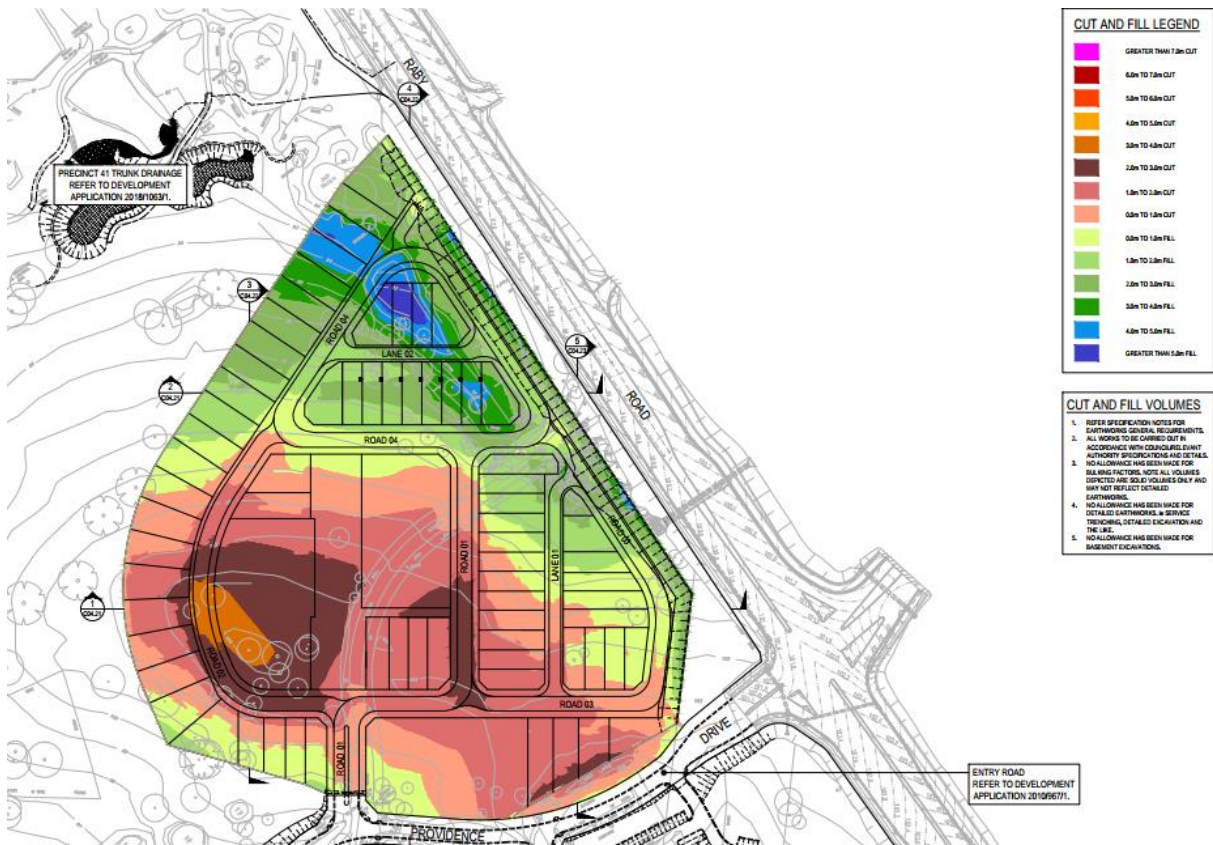


Figure 2: Extract of Cut and Fill Plan (Source: Ensipire)

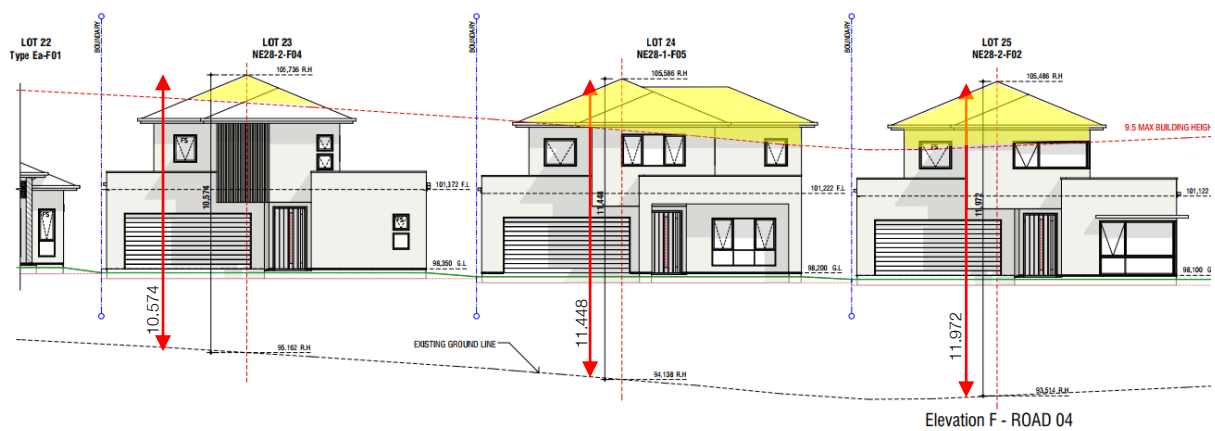


Figure 3: Extract of Dwelling Elevations demonstrating building heights for Lots 23 to 25 (Source: Sekisui House)

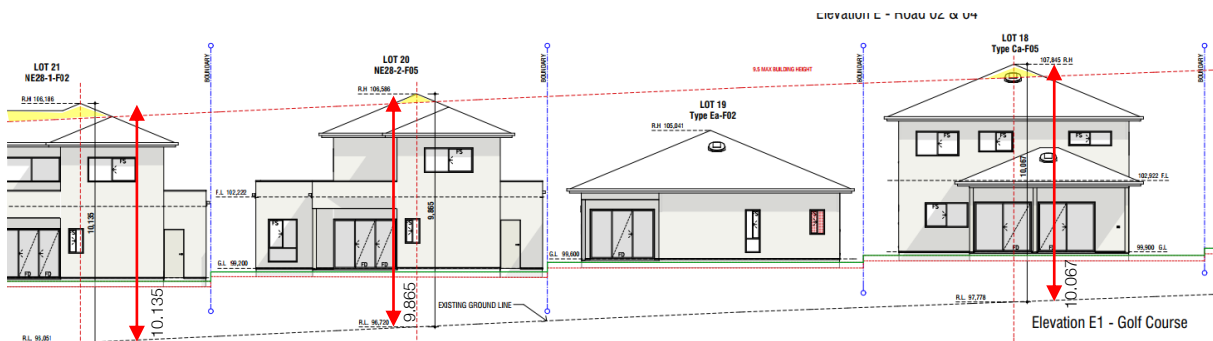


Figure 4: Extract of Dwelling Elevations demonstrating building heights for Lots 18 to 21 (Source: Sekisui House)

Dwelling/Lot	Building Height above ground level (existing)	Extent of variation	Percentage Variation
18	10.067m (RL10.845)	0.567m	5.9%
20	9.865m (RL106.586)	0.365m	3.8%
21	10.135m (RL106.186)	0.635m	6.6%
23	10.574m (RL105.736)	1.074m	11.3%
24	11.448m (RL105.586)	1.948m	20.5%
25	11.972m (RL105.486)	2.472m	26%

Table 1: Numerical value of building non-compliance

The maximum breach of the height of building standard is by 2.472m by Dwelling on Lot 25 which represents a variation to the control by 26%.

Notwithstanding this, this dwelling has an actual building height of 7.586, when measured from the ground level (proposed). Had it not been for the fill in the gully, these dwellings would readily comply with the height of building control.

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

This is identified in Table 1 above.

3.0 Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- “(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.”*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- “(a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

This request has been prepared having regard to the latest authority on clause 4.6, contained in the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (‘Four2Five No 1’);
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (‘Four2Five No 2’);
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (‘Four2Five No 3’);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

Yes. The proposed development meets the objectives of the control. The proposed dwellings are consistent with the bulk and scale of surrounding dwellings on neighbouring land to the north and south. The non-compliance is not generated by the dwellings themselves, but by the fact that the proposed development includes bulk earthworks that result in the height of certain dwellings exceeding the height control by virtue of the measurement of ground level (existing).

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective or purpose of the height control would not be defeated or thwarted if compliance was required, but it would result in a poorer urban design and urban landscape. Compliance would necessitate significant changes in levels between dwellings, large retaining walls and would affect road design, contours and drainage.

The proposed building height maintains the following planning outcomes:

- The actual dwelling heights when measured from the proposed ground levels are one and two storeys and well inside the 9.5m height control.
- The bulk and scale is consistent with residential development on the surrounding urban release areas and in keeping with the character; and
- The heights as proposed do not have any unacceptable visual impact, disruption of views, loss of privacy and loss of solar access to existing development and do not have an adverse impact of development on heritage conservation areas and heritage items.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

No.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

No.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. The variation to the development standard is considered a technicality as the DA is an integrated subdivision and built form DA. The building height control is measured from ground level existing and does not enable the bulk earth works proposed as part of the subdivision component of the DA to be taken into account.

Had the subdivision works, including bulk earthworks been approved and undertaken as a separate DA in advance of this application being lodged, the dwellings would comply with the "new" ground level (existing) created by the approved and constructed subdivision works.

3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

3.4.1 Objectives of the Height of Building standard

Yes

3.4.2 Objectives of the zone

Yes

3.5 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

No

3.6 How would strict compliance hinder the attainment of the objects specified in Section 5(a),(b), and (c) of the Act?

The objects set down in Section 5(a)(i) and (ii) are as follows:

"to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land..."*

Strict compliance would hinder the orderly and economic use of the land in that it would result in a far more complicated subdivision and built form outcome. The non-compliance is due to an anomaly in the landscape being a gully that traverses the site, which is proposed to be filled as part of the bulk earthworks phase of the development. Strict compliance would prevent the filling of the gully, reduce the economic use of the site in that it would result in a more complicated build and more costly build in due to steeper grades, retaining walls and dwelling design.

3.7 *Is there public benefit in maintaining the development standard?*

Yes, there is public benefit in maintaining the development standard. However, the standard is a blanket control that does not accommodate the technicalities of this integrated subdivision and built form application. Notwithstanding this, the DA meets the objectives of the development standard, therefore we are of the opinion that the essence of the development standard is maintained.

3.8 *Is the objection well founded?*

Yes, for the reasons outline above.

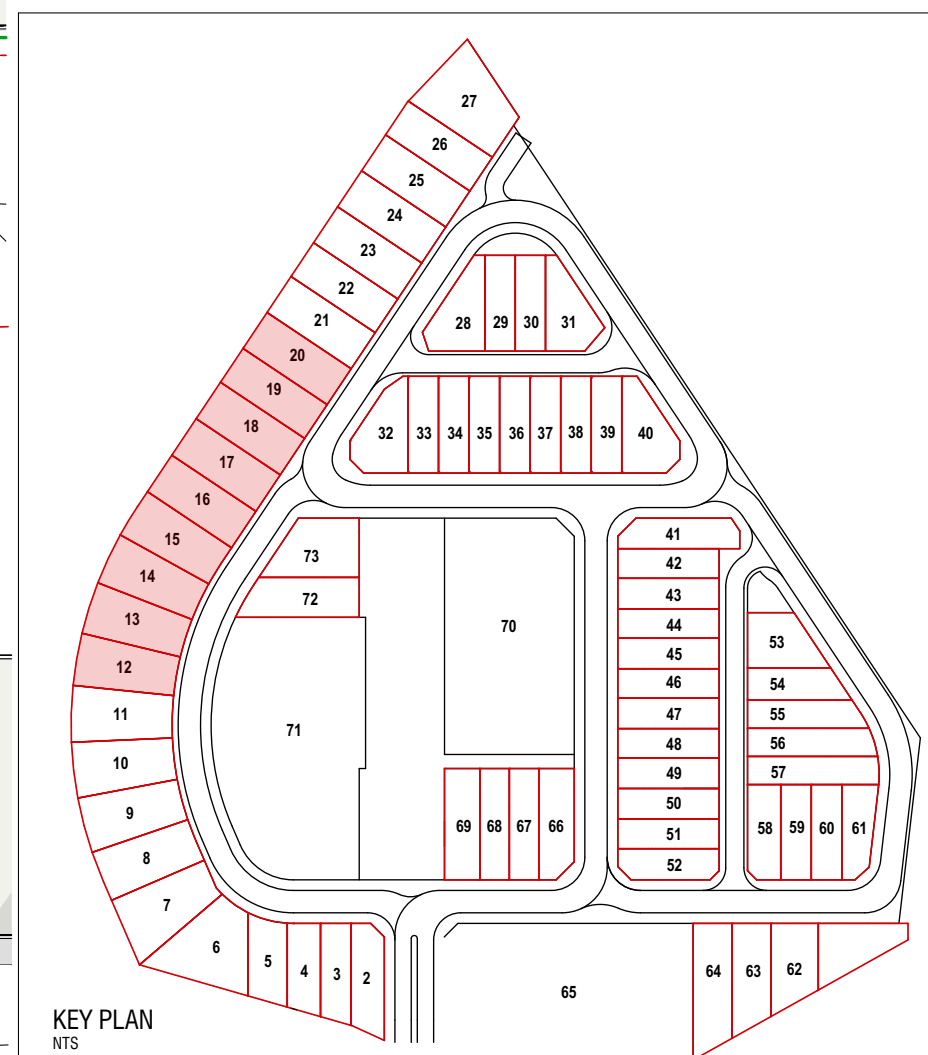
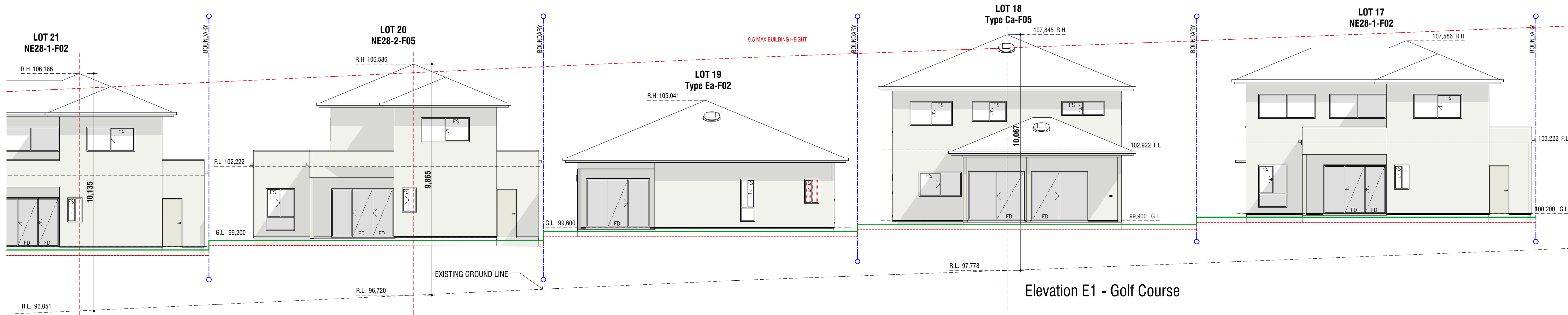
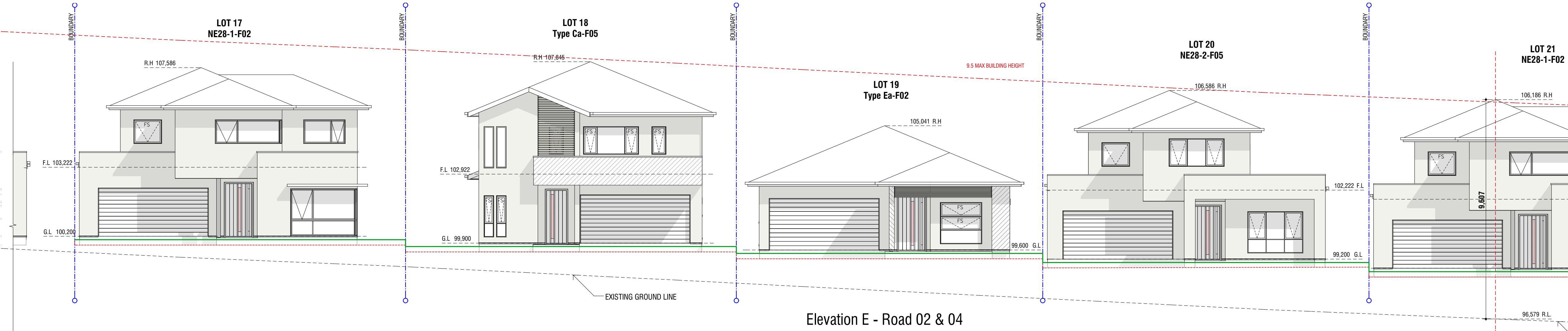
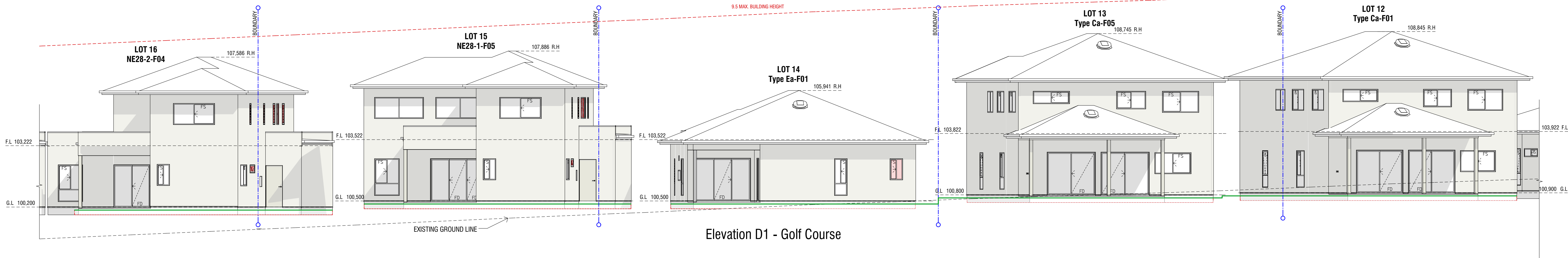
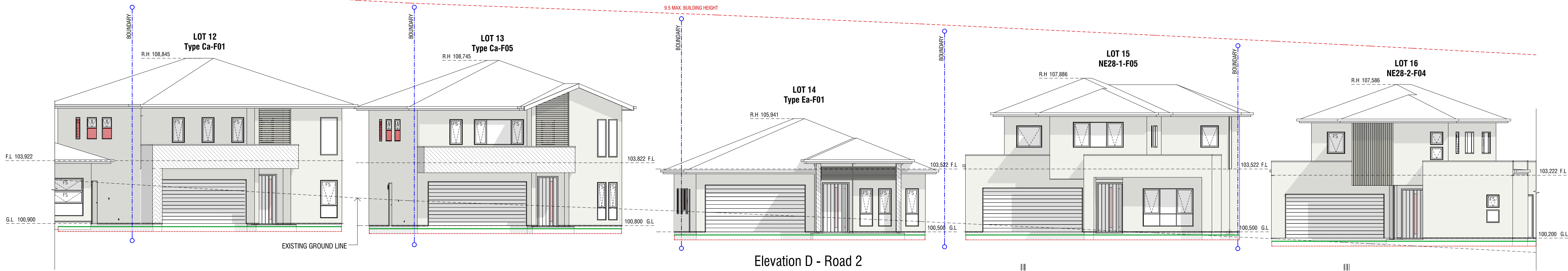
4.0 Conclusion


The proposed development is an integrated DA that proposed to deliver the subdivision and development of dwellings and residential flat buildings within Precinct 1 of Camden Lakeside.

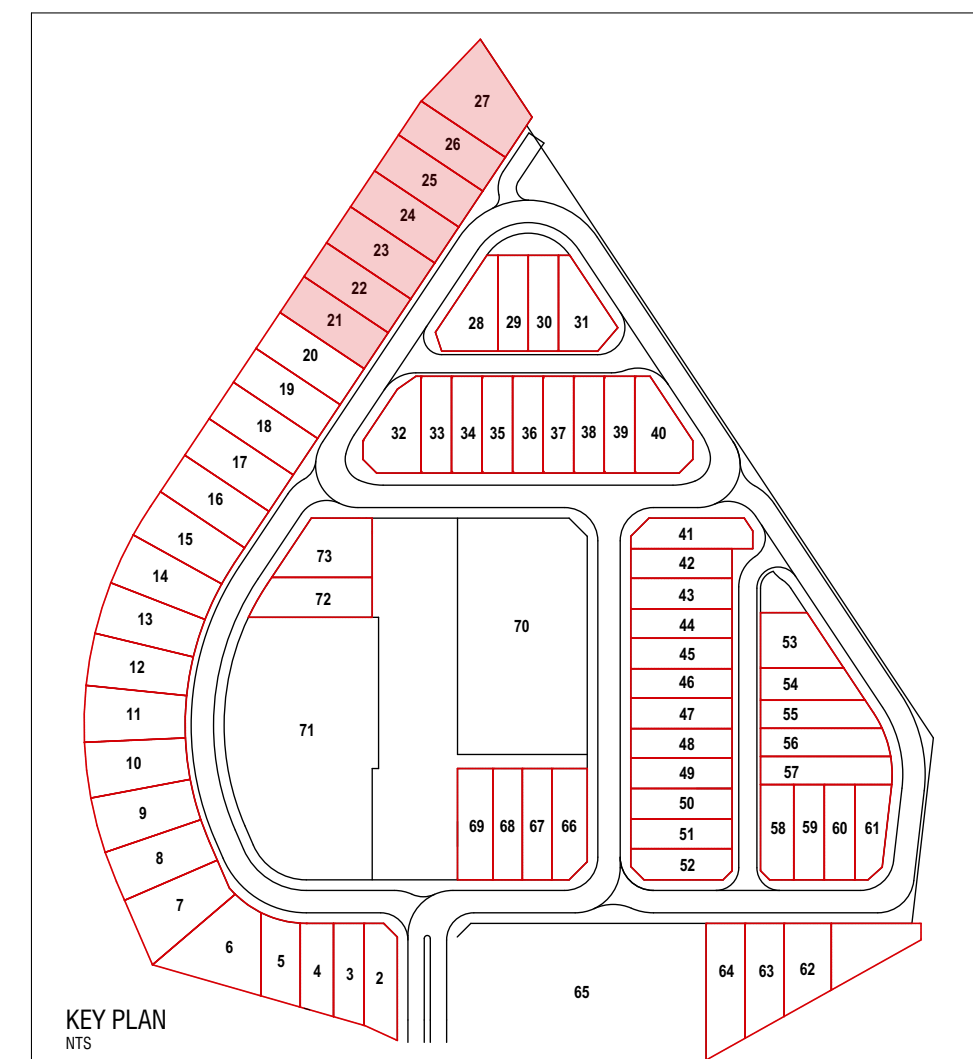
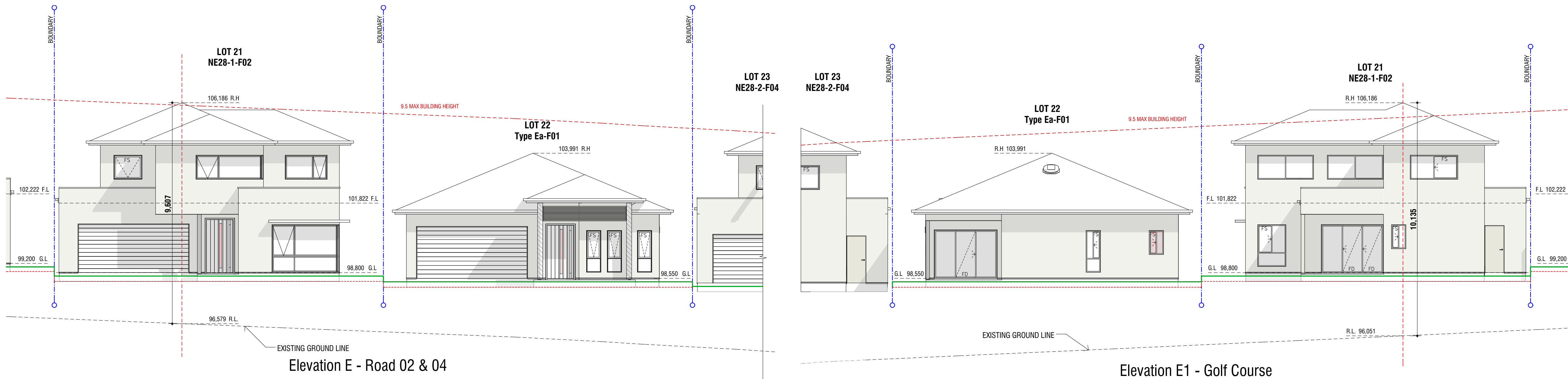
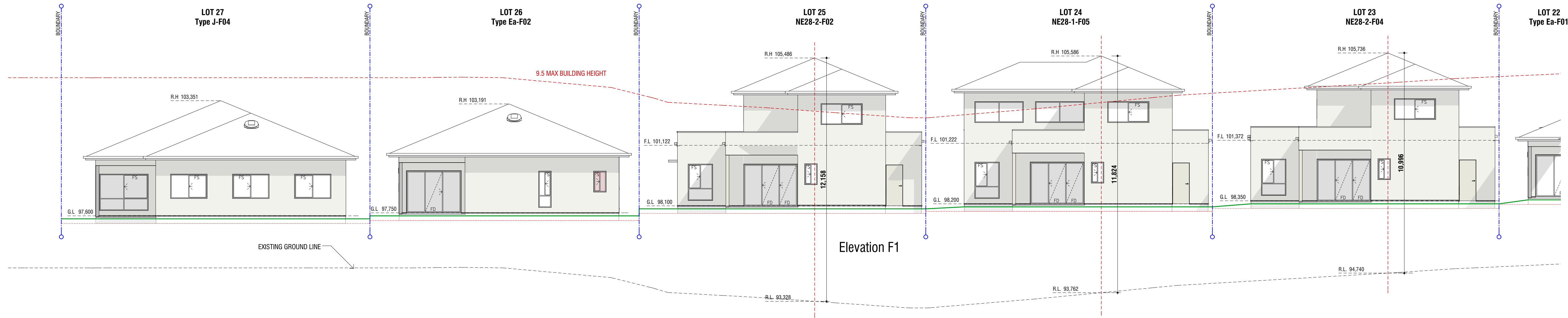
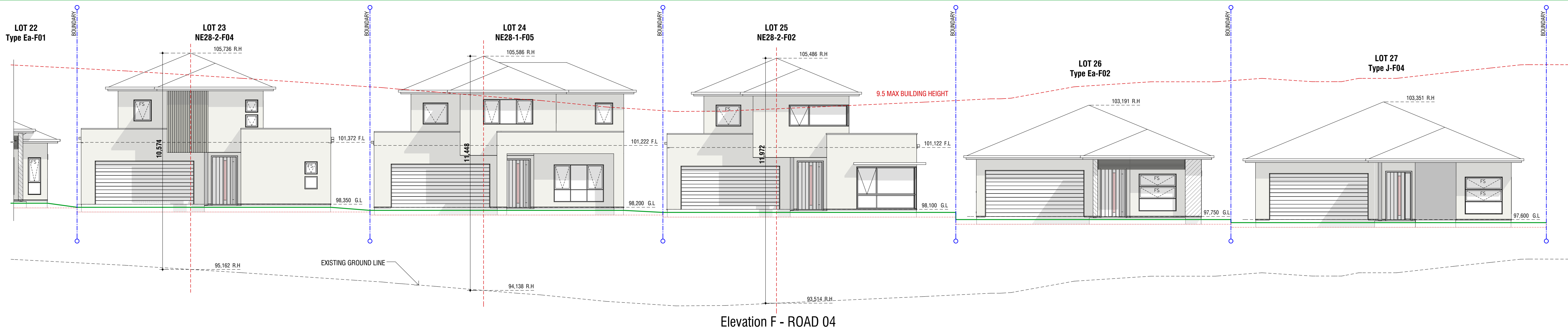
Due to the topography of the site, the subdivision works involve bulk earthworks which involve both cut and facilitate the residential development of the site. These include the filling of an existing gully with up to 5m of fill in part.


A height of building control of 9.5m and 12.5m applies to the site. The proposed buildings are well within such building heights when measured from the proposed bulk earthworks levels, however Clause 4.3 require the building height to be measured from ground level (existing). This means that the fill proposed within the existing gully must be included when calculating building height. This results in the two storey dwellings along the north-western boundary of the site exceeding the 9.5m height control.

Notwithstanding this strict non-compliance, the dwellings meet the objectives of the building height control standard and this objection is considered to be well founded.



ADDRESS: STAGE 41 GLEDSWOOD HILLS NSW 2557		Elevations - Part 2					
 SEKISUI HOUSE		PROJECT INFORMATION:					
		60 Waterloo Rd Macquarie Park, NSW 2113 Tel: (02) 8817 1400 Fax: (02) 8817 4801					
		SERIES	TYPE	STOREY	FACADE	ORIENTATION	GARAGE
		CONTRACT No:			SHEET @A1 SHEET: 4-2		
		MASTER PRELIMINARY			WORK ORDER 21 of 31		
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ADDRESS:		STAGE 41 GLEDSWOOD HILLS NSW 2557		Elevations - Part 3									
 SEKISUI HOUSE		PROJECT INFORMATION:											
		SERIES		TYPE		STOREY		FACADE		ORIENTATION		GARAGE	
		CONTRACT NO:						SHEET @A1		SHEET:		4-3	
		MASTER						PRELIMINARY		WORK ORDER		22 of 31	
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