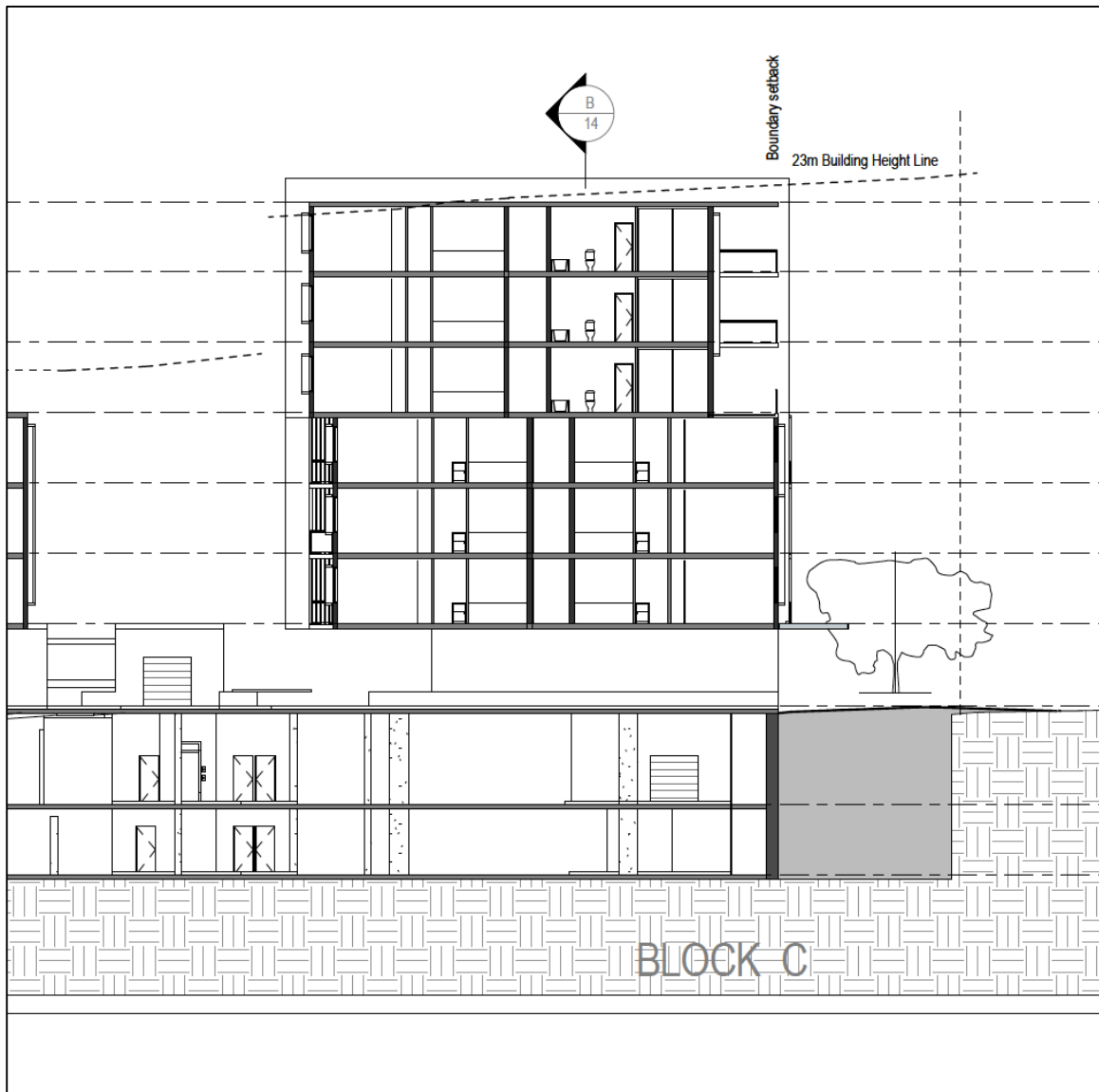


## Appendix 1: Clause 4.6 Variation to Building Height

As shown on the sections below, the proposed development predominantly complies with the 23m maximum building height control with the exception of a portion of the parapet roof form and upper most level of the rear of Block C with a maximum building height of 23.3m which represents a 300mm departure to the control or 1.3%. This is a function of the cross-fall on the site and the need to provide for a consistent ground floor level and subsequent levels above.



Therefore, the proposal is non-compliant with Clause 4.3 – height of buildings that stipulates that the height of a building is not to exceed 23m on the subject site.

The location of the building height departure will ensure that they are not viewable from the street level and in addition, the high quality design of the proposal will contribute towards providing a shop top housing development that reinforces the streetscape and urban context along the site whilst contributing towards expanding the existing town centre and setting the tone and scale for future mixed use development within the subject area.

It is noted that the proposal will not result in any additional overshadowing impacts to adjoining properties, especially to land parcels that bound the site to the south and therefore, the non-compliance with the maximum height control is considered appropriate.

Clause 4.6 of the Holroyd Local Environmental Plan 2013 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (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.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (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*
  - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Each of these provisions is addressed individually below.

#### **Clause 4.6(3)**

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the building height development standard are stated as:

- (1) The objectives of this clause are as follows:*
- (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
  - (b) to ensure development is consistent with the landform,*
  - (c) to provide appropriate scales and intensities of development through height controls.*

The current development proposal is predominantly consistent with the building height with the exception of the external corridors containing lift shafts, stairwells and garbage rooms and a small portion of the roof form and the proposal remains consistent with the objectives based on the following:

- The development proposal is consistent with the intent of the maximum height control as the minor 300mm non-compliance and location at the rear of the building will ensure that the proposal complies with the height limit relative to the streetscape;
- The proportion of the building that protrudes above the 23m height contains limited habitable floor space, reinforcing that the breach to the height standard does not result in the development representing an overdevelopment of the site but rather from the topographical fall from Sherwood Road towards Coolibah Street;
- The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing view corridors;
- Detailed shadow analysis demonstrates that the property to the south retains reasonable solar access. Of key importance is that Council controls permit a zero front, rear and side setback for the sites within this B2 zone and the current design enables future redevelopment on adjoining sites and doesn't compromise solar access.
- The scale and intensity of the development is appropriate noting that the proposal complies with the maximum FSR control that demonstrates an appropriate density.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the

circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

#### **Clause 4.6(4)**

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition, the proposal is consistent with the objectives of the B2 Zone, being:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To permit residential development that is complementary to, and well-integrated with, commercial uses.*

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

#### **Clause 4.6(5)**

As addressed it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality and based on the unique site attributes.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, which is earmarked for future mixed use land uses. The proposal promotes the economic use and



*Shop Top Housing: 9-11 Sherwood Road, Merrylands*

development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.