

**APPENDIX J: CLAUSE 4.6 (GOSFORD LEP 2014) – AMENDED REQUEST FOR EXCEPTION TO THE 31.2M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD APPLICABLE TO THE PROPOSED RESIDENTIAL FLAT BUILDING TO BE ERECTED ON PART LOTS A & B DP 88695, NOS. 21 - 23 MANN STREET, GOSFORD.**

**AUGUST 2015**

2/101 Excelsior St,  
Lisarow NSW 2250  
**TEL:** 02 4328 3851  
**FAX:** 02 4328 4050  
**MOB:** 0408 432 838

sneddond@bigpond.net.au  
**ABN:** 20 100 396 914

## 1. INTRODUCTION.

Clause 4.6 (2) of Gosford Local Environmental Plan 2014 provides for flexibility in the application of planning controls operating by virtue of development standards, in circumstances where strict compliance with those standards would in a particular case be unreasonable or unnecessary and where there are sufficient environmental planning grounds to justify contravening the development standard.

This request demonstrates that the proposed exceedence of the applicable 31.2m maximum permissible building height development standard of Gosford Local Environmental Plan 2014 in relation to the proposed residential flat building described in detail in section 3 of the accompanying Statement of Environmental Effects, is justified having regard to the particular circumstances.

**(Note:** This Clause 4.6 request amends the original request dated August 2014 and originally lodged with DA 46272/2014. The amended request has regard to supplementary comparative mid-winter and mid-summer shadow diagrams prepared by CKDS Architecture, dated 13<sup>th</sup> August 2015 and the View Loss and View Sharing Assessment prepared by Richard Lamb & Associates, dated 3<sup>rd</sup> June 2015).

## 2. SUBJECT LAND & PROPOSED DEVELOPMENT.

**2.1 Subject Land:** The subject land is described as part Lots A & B DP 88695 (being proposed Lot 102 in a boundary adjustment between Lots A & B DP 88695), Nos 21 - 23 Mann Street, Gosford.

The subject land has an area of 3,428m<sup>2</sup>, with a frontage of 60.555m to Henry Parry Drive; a northern boundary of 56.845m; a western boundary of 59.525m; and a southern boundary of 56.675m.

The subject land rises towards Henry Parry Drive from a low point of approximately RL 17m at its western boundary to a highest point of approximately RL 25m near its frontage to Henry Parry Drive, a variation of 8m.

**2.2 Proposed Development:** The proposed development is described in detail in section 3 of the accompanying Statement of Environmental Effects.

In summary, the proposed development involves:

- the demolition of all existing buildings, structures and concrete car park/storage pavement on the subject land;
- the erection of a residential flat building comprising 16 storeys (140 apartments); three basement car parking levels (197 resident/visitor spaces);
- the provision of 26 'Telstra' car parking spaces within Basement Level 1 to accommodate the existing 'Telstra' car spaces located on the subject land, an arrangement required to be accommodated on an ongoing basis within proposed Easement 'D' shown on the survey plan at Figure 4 of the accompanying Statement of Environmental Effects; and

- the proposed upgrade of the pedestrian footpath along the Henry Parry Drive property frontage and connecting into Georgiana Terrace.

### **3. DEVELOPMENT STANDARD TO BE VARIED.**

#### **(i) Maximum Permissible Building Height.**

Clause 4.3 (2) of LEP 2014 provides that development on the subject land shall not exceed the maximum building height shown on the "Height of Buildings Map", which shows the subject land to be subject to a maximum permissible building height of 24m.

Clause 8.9 of LEP 2014 permits the 24m 'baseline' maximum permissible building height control to be exceeded by up to 30% in relation to development applications made on/before the 31st August 2014, in which case the maximum permissible building height for development on the subject land is 31.2m. This 'incentive' provision applies to the proposed development.

The Building Sections Diagrams provided in Annexure A show that the proposed development exceeds the 31.2m maximum permitted building height, by having a maximum building height to the parapet of 47.7m (resulting in a maximum exceedence of 16.5m) and a maximum height to the top of the plant room of 48.9m (resulting in a maximum exceedence of 17.7m).

Clause 4.6 (2) of LEP 2014 allows the consent authority to exercise an appropriate degree of flexibility in applying certain development standards to particular development. This assessment addresses the matters required by Clauses 4.6 (3) - (5) of LEP 2014 in order to satisfy the Council and the Director-General that any requirement for the proposed development to strictly comply with the maximum permissible building height is unreasonable or unnecessary in the particular circumstances.

Council is requested to agree to the proposed development's non-compliance with the 31.2m maximum permissible building height development standard of Clause 8.9 (3) of LEP 2014 ('Development Incentives'), having regard to the matters addressed in this assessment.

#### **(ii) Purpose of the Proposed Maximum Permissible Building Height Variation.**

As explained in the Architectural Design Report provided in Appendix B of the accompanying Statement of Environmental Effects, the proposed building's proportions have been developed in consideration of providing for greater view sharing from neighbouring residences and an appropriate built form when viewed from a distance.

A taller, narrower structure is considered a more appropriate design strategy having regard to protecting the amenity of surrounding residences; making a positive visual contribution to the urban landscape; and providing access to scenic backdrop hillside views, when viewed from a distance. The alternative of presenting a building which fully complied with the maximum permissible building height and floor space ratios applicable to the subject land, would result in a building of 'bulkier' building mass, causing greater view loss and amenity impacts on neighbouring residential properties; and narrowing access to scenic backdrop hillside views, when viewed from afar.

A comparative diagrammatic analysis of a fully complying 'bulkier' building and the proposed taller, narrower structure is provided in Annexure B, which shows that the building form of the proposed development provides for greater view sharing and a reduced visual barrier, than would a fully complying development.

#### **4. CONSIDERATION AS TO WHETHER NON COMPLIANCE WITH THE APPLICABLE 31.2M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD OF GOSFORD LEP 2014 IS REASONABLE IN THE PARTICULAR CIRCUMSTANCES.**

##### **4.1 *"Is the planning control in question a development standard"?***

The 31.2m maximum permissible building height requirement applying to the subject land under Clauses 4.3 (2) and 8.9 of Gosford LEP 2014, is a development standard for the purposes of Clause 4.6 (Exceptions to development standards) and may therefore be varied by the consent authority pursuant to the provisions of Clauses 4.6 (2) - (5) of LEP 2014.

##### **4.2 *"What are the underlying objectives or purpose of the development standard"?***

The underlying objective or purpose of the maximum permissible building height development standard applicable to the subject land and the proposed development is stated within the objectives to Gosford LEP 2014 - Clause 4.3 (1) - Height of Buildings.

The following assessment demonstrates that the proposed development is consistent with the design outcomes sought by the objectives in Clause 4.3 (1) - Height of Buildings (LEP 2014):

- ***"(a) to establish maximum height limits for buildings,"***

**Design Response:** Whilst LEP 2014 provides for a 31.2m maximum permissible building height on the subject land, Clause 4.6 permits the consent authority to exercise flexibility in applying this development standard to a particular development in order to achieve better design outcomes.

As explained in section 3 (ii) above, the proposed development of a taller, narrower structure on the subject land results in a building of more appropriate proportions, with improved amenity outcomes for neighbours. The proposed exceedence of the maximum permissible building height is therefore consistent with the objectives of Clause 4.6.

- ***"(b) to permit building heights that encourage high quality urban form,"***

**Design Response:** As explained in the Architectural Design Statement provided in Appendix B of the accompanying Statement of Environmental Effects, the proposed development exhibits high quality urban form.

- ***"(c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,"***

**Design Response:** The proposed building height exceedence does not reduce the opportunity for either the proposed development, neighbouring residences or public areas to receive satisfactory exposure to sunlight.

The mid-winter and mid-summer shadow diagrams provided in Annexure C provide a comparative analysis of the shadows cast by the design height and footprint of the proposed development and the shadow cast by the same development if it were limited to the applicable maximum permissible building height development standard of 31.2m. These diagrams show:

- In mid-winter at 9am the proposed development (in comparison to a complying development) casts an additional length of shadow over the front setback of the Anglican Church, part of the formation of Mann Street and a small section of 'Memorial Park' located on the western side of Mann Street. The existing conditions shadow diagram shows that existing buildings in the vicinity located along the eastern side of Mann Street cast similar shadows along the length of Mann Street.

The additional shadow cast by the proposed development (compared to a complying development) has a minor transitory impact in the early morning on public areas along Mann Street, including the Memorial Park. However, no overshadowing is caused to important ceremonial parts of the park.

The proposed development will cast shadow over the approved (unconstructed) residential development located at No. 17 Mann Street and over part of the existing medium density residential development located at Nos. 84-86 Henry Parry Drive, both of which are located immediately to the south of the proposed development. However, a complying development has the same shadow impact on these properties as does the proposed development.

- In mid-winter at 12pm the proposed development (in comparison to a complying development) casts an additional length of shadow over the existing residential development located at Nos. 84-86 Henry Parry Drive. It is noted that the approved development at No. 17 Mann Street, when constructed, will also cast a shadow over part of Nos. 84-86 Henry Parry Drive.

There is no overshadowing of public areas at 12pm.

- In mid-winter at 3pm the proposed development (in comparison to a complying development) will cast an additional length of shadow over residential buildings at Nos. 95, 97 and 99 Henry Parry Drive. However, this overshadowing is not significant given that it is for a transitory period in late afternoon.

At 3pm there will also be a minor increase in the shadow cast over the the Henry Parry Drive road formation in the late afternoon.

- In mid-summer at 9am the proposed development (in comparison to a complying development) will cast a minor additional shadow over the Mann Street roadway formation, approximately equating the shadow cast by the existing Telstra buildings fronting Mann Street, as shown on the existing conditions diagram.

- In mid-summer at 12pm the proposed development will not result in any shadow impacts on public areas and will not cast shadow over the approved (unconstructed) residential development located at No. 17 Mann Street, immediately adjacent to the southern property boundary.
- In mid-summer at 3pm the proposed development (in comparison to a complying development) will cast a minor additional shadow over the roadway formation of Henry Parry Drive.

This comparative shadow analysis demonstrates that the proposed development (in comparison to a complying development) does not have unreasonable shadow impacts on either the public domain or existing/proposed residential buildings in the immediate locality.

- *"(d) to nominate heights that will provide an appropriate transition in built form and land use intensity",*

**Design Response:** The design height of the proposed development results in development that provides for a gross floor area consistent with the maximum permissible floor space ratio (residential density) applicable to the site.

- *"(e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,"*

**Design Response:** It is demonstrated in the Visual Impact Assessment provided in Appendix M of the accompanying Statement of Environmental Effects and the View Loss and View Sharing Assessment prepared by Richard Lamb & Associates, dated 3<sup>rd</sup> June 2015, that the proposed development does not cause significant visual impact; does not adversely impact on view corridors from public spaces; and provides for greater view sharing than would a development fully complying with the applicable maximum permissible building height/floor space ratio development standards.

The summary conclusion of the View Loss and View Sharing Assessment undertaken by Dr. Richard Lamb is as follows:

*"There are two separate but related issues that have been addressed in this submission. The first is the overall merits of the proposed height of the building. The second is the extent to which the program for the building fosters view sharing.*

*Despite the potential visibility of the building, its overall height does not appear likely to cause significant negative impacts on the character or scenic quality of views. In the context of incentives to foster greater building heights, approvals of buildings exceeding the existing height controls in the CBD and of other applications currently before the Council proposing an uplift, the building would appear to be satisfactory and neither out of scale nor incompatible with desired character.*

*With regard to the visual effects of height, rather than urban design considerations, it has been shown above that increased height proposed above the benchmark height of 24m plus the 30% bonus would not lead to significant increases in view loss in the public domain.*

*With regard to view loss to the private domain, the building would be on a site which has provided fortuitous views for residents to its east and north as a result of its effectively undeveloped nature. A site of this size with no vertical development in the vicinity of the*

*CBD is almost an anachronism in contemporary Gosford.*

*Any building occupying a reasonable complying envelope will have significant impacts on views from the residential visual catchment, including the Broadway Apartments and Georgiana Quay buildings. As the site is directly south of Broadway Apartments and in a direction in which scenic views are possible and desirable, it is inevitable that a new building will cause view loss. The same could be said for Georgiana Quay in views south west and west.*

*The height of the building proposed above the benchmark height does not cause significant increases in view loss from the private domain either. The extra height component would obscure views of sky, only. Therefore, view loss is not a reasonable reason for objection to the height proposed for the building. No extra weight should be given to the extent of view loss in Step 4 of Tenacity as a result of non-compliance with the height limit.*

*The remaining question is therefore whether the program for the building fosters view sharing.*

*The proposed building provides wider separation between residential towers than required in the DCP and has greater setbacks all round. The slimmer and taller form of the tower component increases view access for neighbours. The wide setback distance between the taller part of the building and the Broadway Apartments assists further.*

*I have analysed the extent to which the building promotes view sharing, above. In my opinion the building is successful as regards view sharing by being modelled and located on its site in such a way that it achieves satisfactory view sharing to the extent that is reasonable to expect.*

*In regard to the related issues of building height and view sharing, in my opinion the proposal is reasonable and despite the breach of the height control that is proposed, the application can be supported."*

- ***"(f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features."***

**Design Response:** Other than for a minor transitory cast of shadow over a small section of Memorial Park at 9am in mid-winter, the proposed development does not overshadow any public open space. This overshadowing is not considered excessive.

In relation to retaining views to natural topographical features, the View Loss and View Sharing Assessment prepared by Dr. Richard Lamb concludes:

*"Despite the potential visibility of the building, its overall height does not appear likely to cause significant negative impacts on the character or scenic quality of views. In the context of incentives to foster greater building heights, approvals of buildings exceeding the existing height controls in the CBD and of other applications currently before the Council proposing an uplift, the building would appear to be satisfactory and neither out of scale nor incompatible with desired character.*

*With regard to the visual effects of height, rather than urban design considerations, it has been shown above that increased height proposed above the benchmark height of 24m plus the 30% bonus would not lead to significant increases in view loss in the public domain."*

#### **4.4 "Matters for Consideration by the Director-General".**

Clause 4.6 (4) (b) of Gosford LEP 2014 requires the concurrence of the Director-General to be obtained for development that contravenes a development standard.

Under Clause 4.6 (5), the Director - General is required to consider the following matters in deciding whether to grant concurrence.

**4.4.1 *"Whether contravention of the development standard raises any matter of significance for State or regional environmental planning"*.**

It is demonstrated in the accompanying Statement of Environmental Effects and in this request, that the proposed development is consistent with State and regional planning policies/strategic directions seeking to encourage the revitalisation of Gosford City Centre.

Approval of the proposed development and the proposed exceedence of the 31.2m maximum permissible building height development standard in this particular case, would not raise any matter of significance for State or regional planning.

**4.4.2 *"The public benefit of maintaining the development standard"*.**

The accompanying Statement of Environmental Effects demonstrates that the proposed exceedence of the 31.2m maximum permissible building height development standard does not have adverse scenic/visual impacts, or amenity impacts on either the public domain, or neighbouring properties.

As the purpose of the proposed building form and maximum permissible building height exceedence is to result in a building of improved architectural proportions and aesthetic design and to provide greater opportunity for view sharing, approval of the proposed development will not undermine the maintaining of the maximum building height development standards applicable elsewhere within the B4 Mixed Use zone.

**4.4.3 *"Any other matters required to be taken into consideration by the Director-General before granting concurrence."***

There are no other matters currently specified to be taken into consideration by the Director-General before granting concurrence.

**6. CONCLUSION.**

It is considered that any requirement for the proposed development to strictly comply with the applicable 31.2m maximum permissible building height development standard of Clauses 4.3 (2) and 8.9 of Gosford LEP 2014, would be unreasonable or unnecessary in the particular circumstances:

- the proposed development is in the public interest as it will facilitate the economically viable redevelopment of the subject land in a manner consistent with the strategic planning objectives for the revitalisation of Gosford City Centre;
- the proposed development is consistent with objectives for development within the *B4 Mixed use* zone applying to the subject land under Gosford Local Environmental Plan 2014;
- the proposed development is consistent with the objectives of the maximum building height development standard as expressed in Clause 4.3 (1) of Gosford Local Environmental Plan 2014;



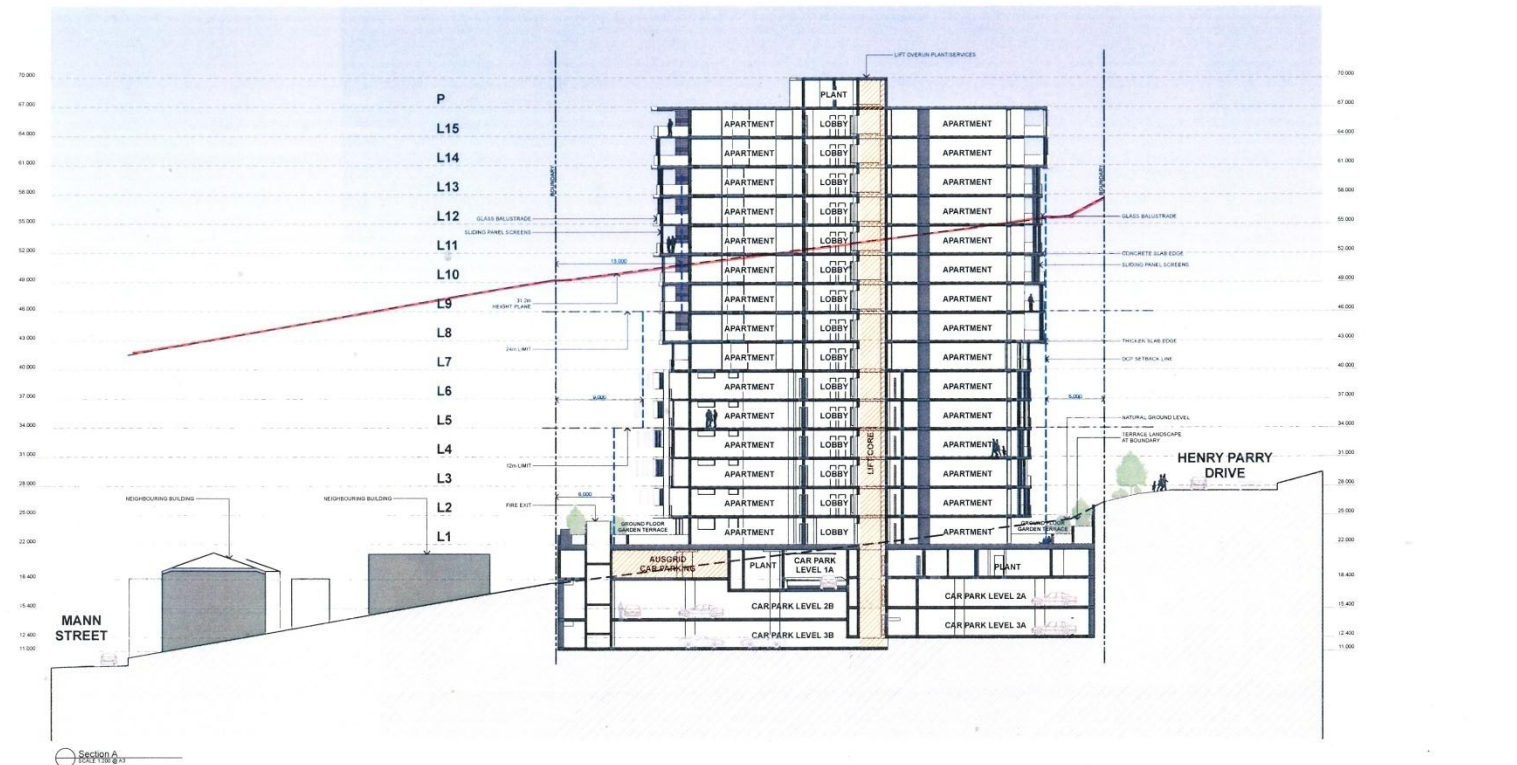
- the particular circumstances relating to the subject land and the proposed development are unique to this application and will not lead to similar development applications which would cumulatively undermine the planning objectives for the locality;
- the proposed exceedence in maximum permissible building height does not result in any additional GFA or residential density to that permitted under the maximum permissible floor space ratio applicable to the subject land and the proposed development; enhances view sharing from neighbouring properties; and does not have adverse scenic/visual impacts or amenity (privacy/overshadowing) impacts on either the public domain, or neighbouring residential properties; and
- there is no public benefit to be derived, or planning purpose to be served, in requiring the proposed development to strictly comply with the applicable maximum permissible building height development standard of LEP 2014, having regard to the particular circumstances.

Gosford City Council is therefore requested to exercise its discretion under Clause 4.6 (2) of Gosford Local Environmental Plan 2014 and approve the exceedence of the 31.2m maximum permitted building height development standard in respect to the erection of the proposed residential flat building on part Lots A & B DP 88695 (being proposed Lot 102 in a boundary adjustment between Lots A & B DP 88695), Nos 21 - 23 Mann Street, Gosford, in the manner detailed in section 3 of the accompanying Statement of Environmental Effects.

This request demonstrates that there are sufficient environmental planning grounds for the proposed development to contravene the 31.2m maximum permissible building height development standard applying to the subject land and the proposed development under Clauses 4.3 (2) and 8.9 of Gosford Local Environmental Plan 2014. Approval will result in a building of appropriate architectural form and improved amenity outcomes for residential neighbours, without adverse impacts on the public domain.

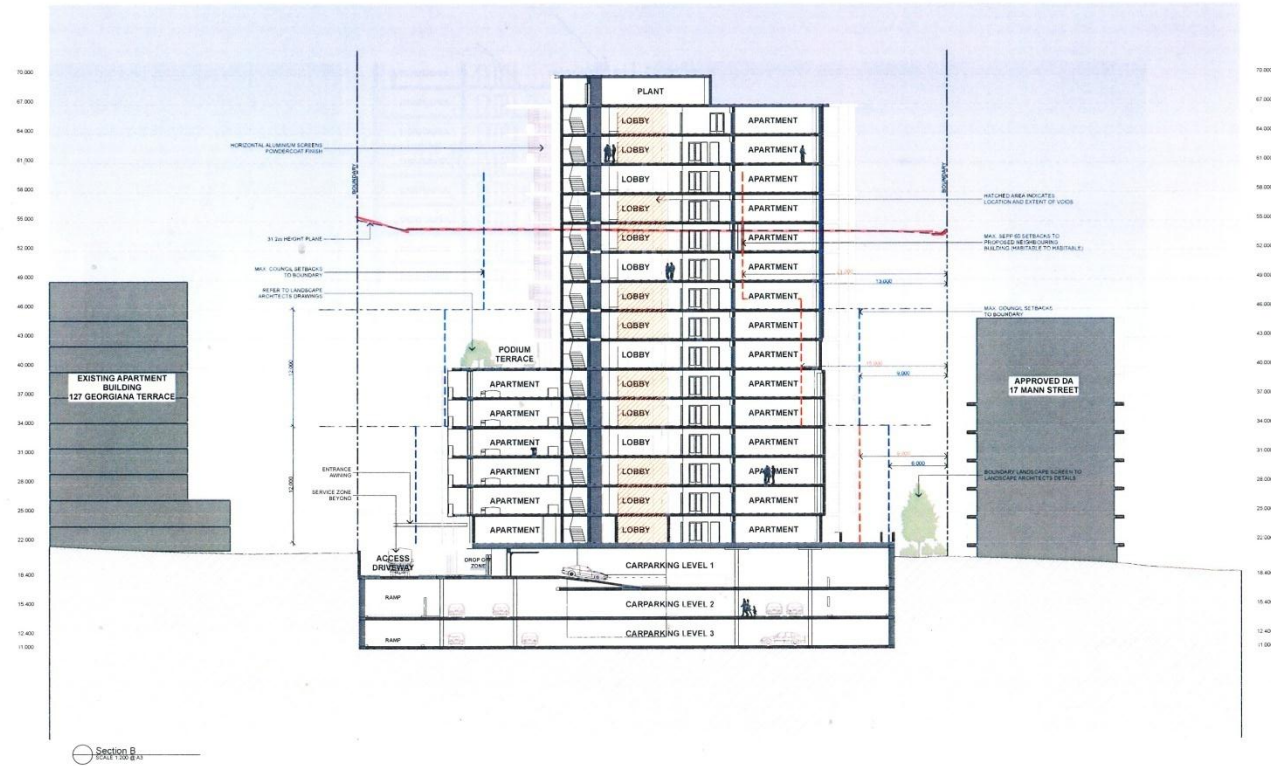
**Doug Sneddon**  
**13th August 2015.**

**ANNEXURE A: SECTIONS SHOWING THE HEIGHT OF THE PROPOSED DEVELOPMENT RELATIVE TO THE APPLICABLE 31.2M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD.**



Section A  
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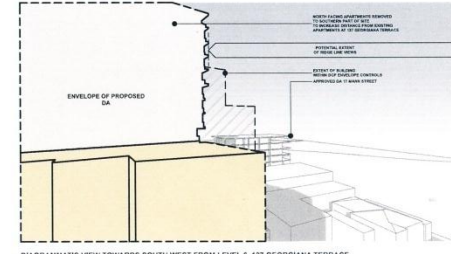
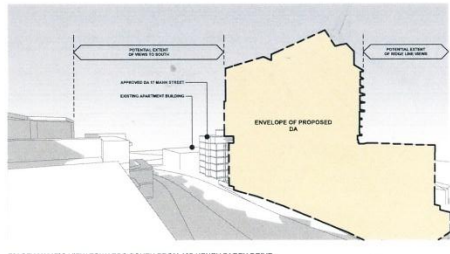
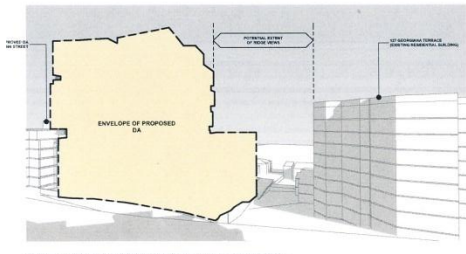
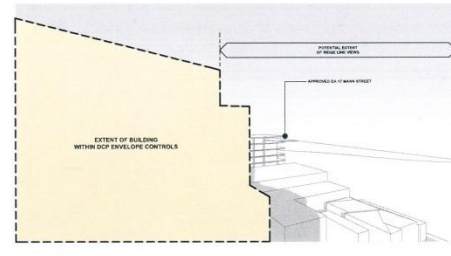
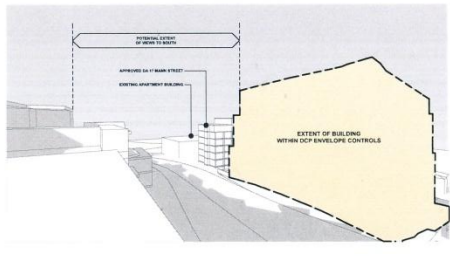
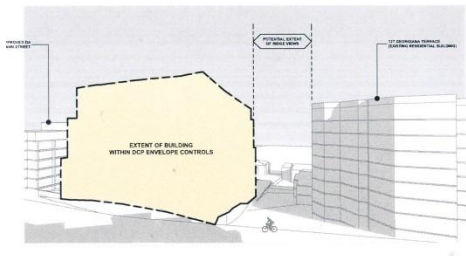
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**Project:** 1460 Pinnacle Residential Development  
**Site:** 27/05/2014  
**Scale:** 1:200 @ A1  
**Author:** CKDS ARCHITECTURE  
**Check:** CKDS ARCHITECTURE  
**Date:** 27/05/2014

**CKDS ARCHITECTURE**  
 1460 Pinnacle Residential Development  
 141/152 SP 83895  
 17/17 Mann Street  
 Gairloch 2275

**Sections Section B**  
 Scale: 1:200 @ A1  
 Date: 27/05/2014

**1375 A-302 B**  
 Date: 27/05/2014

**ANNEXURE B: COMPARATIVE VIEW ANALYSIS OF THE PROPOSED BUILT FORM AND A FULLY COMPLYING (HEIGHT/FSR) DEVELOPMENT.**



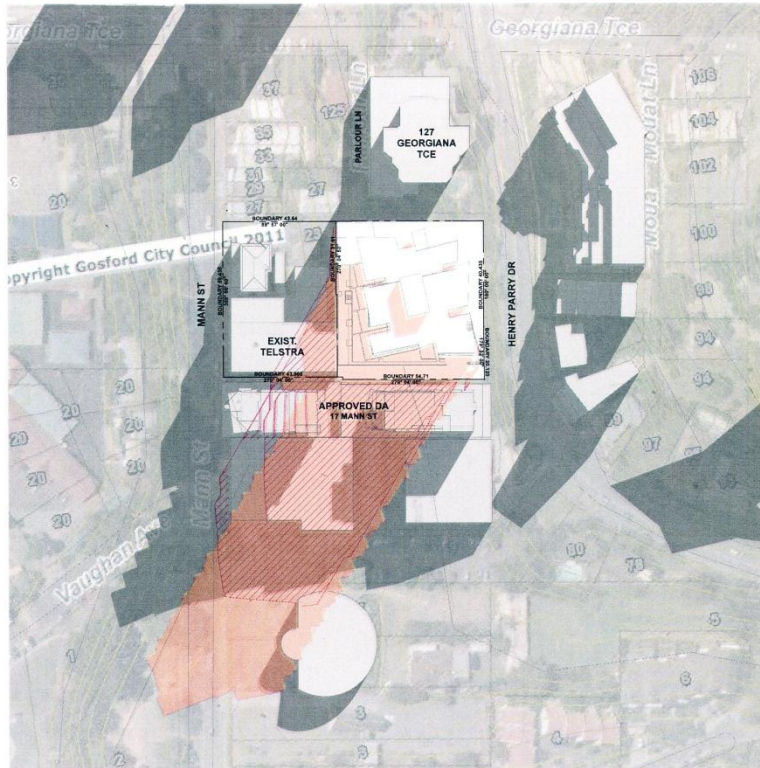
DIAGRAMMATIC VIEW TOWARDS WEST FROM 167 HENRY PARRY DRIVE

DIAGRAMMATIC VIEW TOWARDS SOUTH FROM 167 HENRY PARRY DRIVE

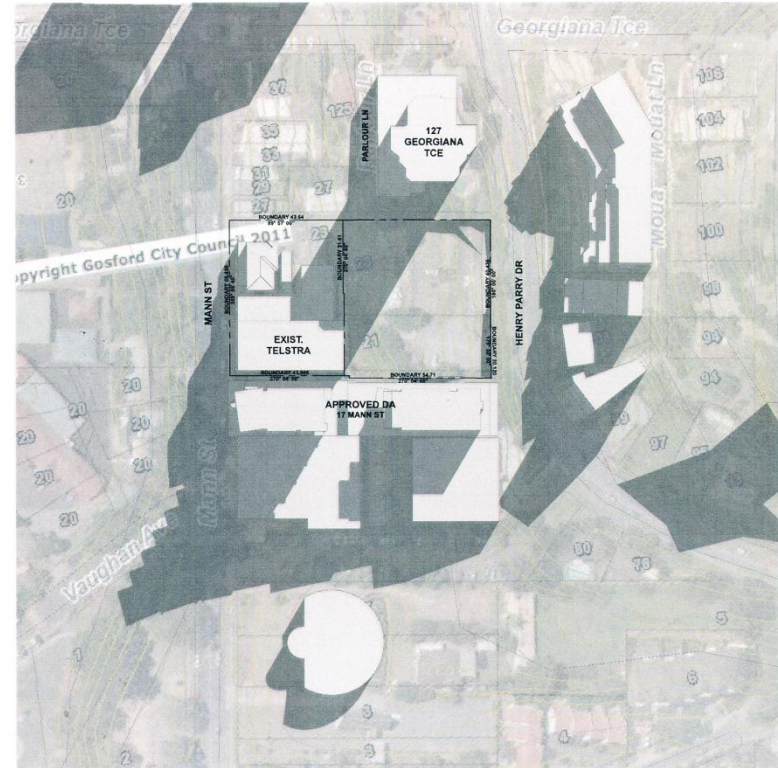
DIAGRAMMATIC VIEW TOWARDS SOUTH WEST FROM LEVEL 6, 127 GEORGIANA TERRACE

CKDS Architecture Pty Ltd 10/117 Stirling Street, Perth WA 6000 Tel: (08) 9447 4444 Fax: (08) 9447 4445 Email: info@ckds.com.au	Date: 20/06/2014 Drawn: LF Checked: CK Title: 1375	Project: 1466 Pinnacle Residential Development Client: Pinnacle Developments Group Site: 1466 Pinnacle Residential Development Address: 1466 Pinnacle Residential Development, Perth WA 6000	Sheet: 1375 Title: Diagrams Subtitle: View Diagrams	Project Number: 1375 Drawing Number: A-404 Scale: B																								
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**ANNEXURE C: MID-WINTER & MID-SUMMER COMPARATIVE SHADOW  
DIAGRAMS FOR BOTH THE DESIGN HEIGHT OF THE  
PROPOSED DEVELOPMENT AND A DEVELOPMENT  
COMPLYING WITH THE APPLICABLE MAXIMUM  
PERMISSIBLE BUILDING HEIGHT DEVELOPMENT  
STANDARD OF GOSFORD LEP 2014.**



WINTER 9am - Proposed Development

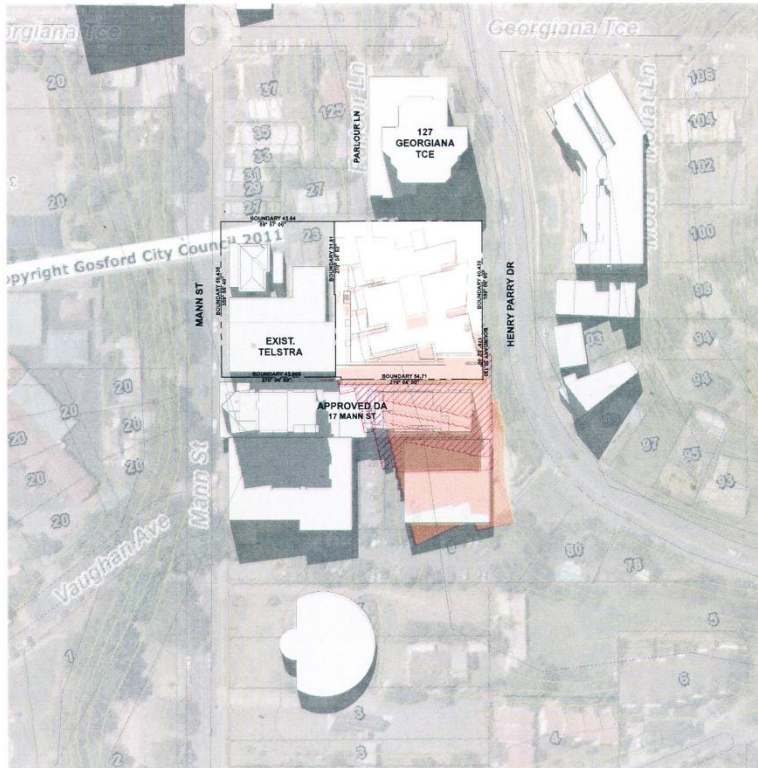


WINTER 9am - Existing Conditions

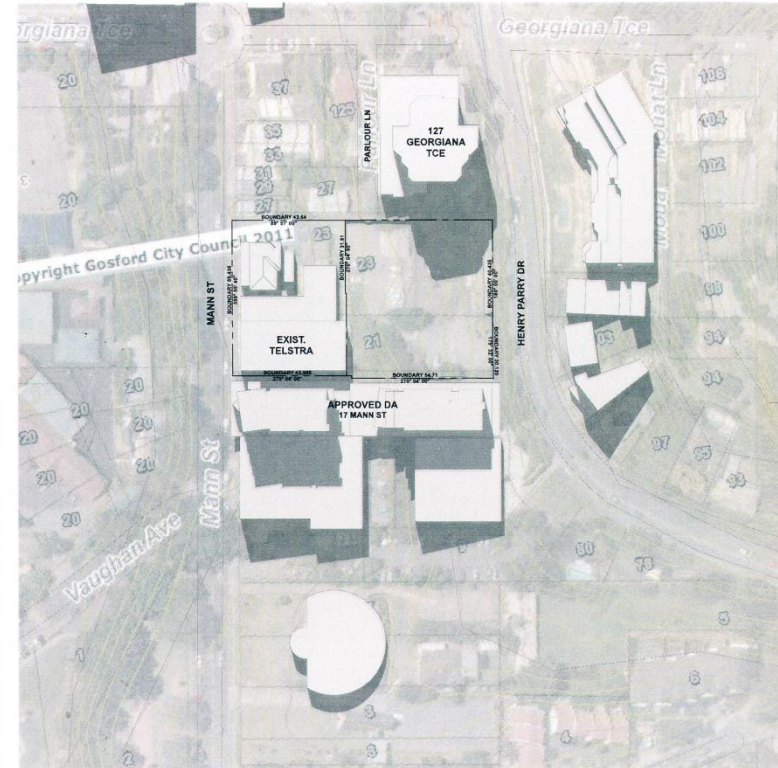
- OVERSHADOWING - EXISTING
- OVERSHADOWING - COMPLIANT ENVELOPE
- OVERSHADOWING - PROPOSED

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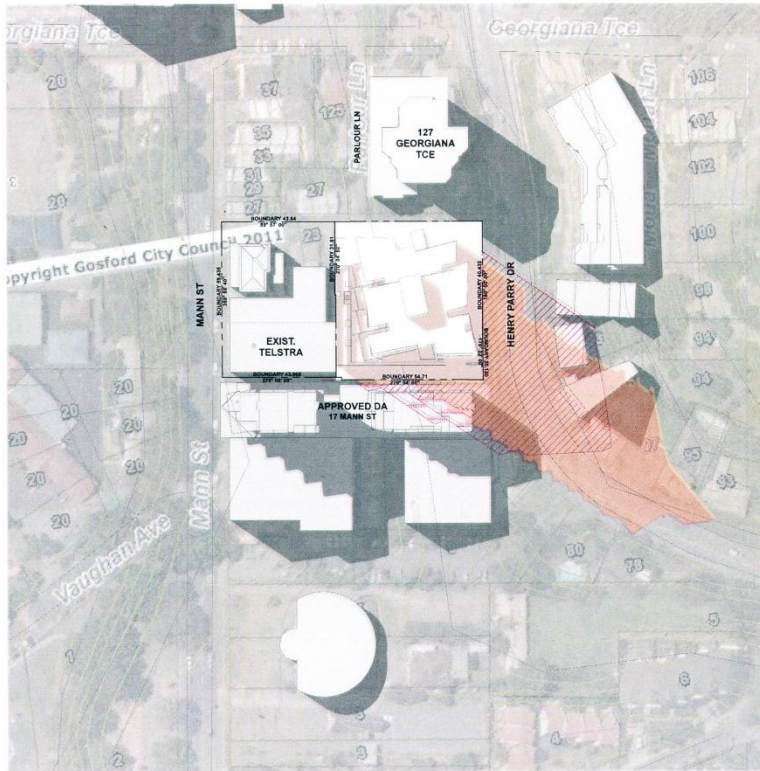
WINTER 12pm - Proposed Development



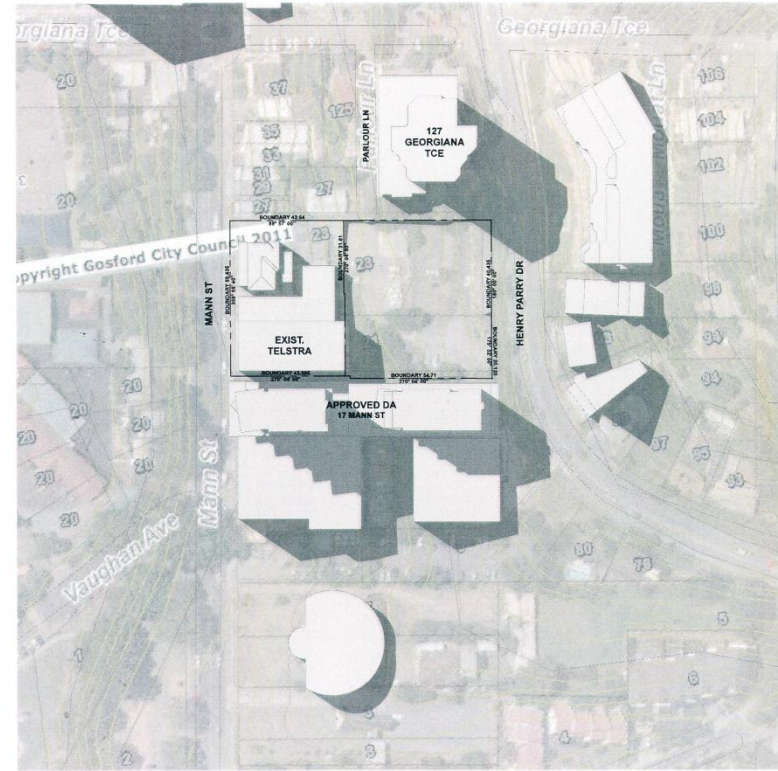
WINTER 12pm - Existing Conditions

- OVERSHADOWING - EXISTING
- OVERSHADOWING - COMPLIANT ENVELOPE
- OVERSHADOWING - PROPOSED

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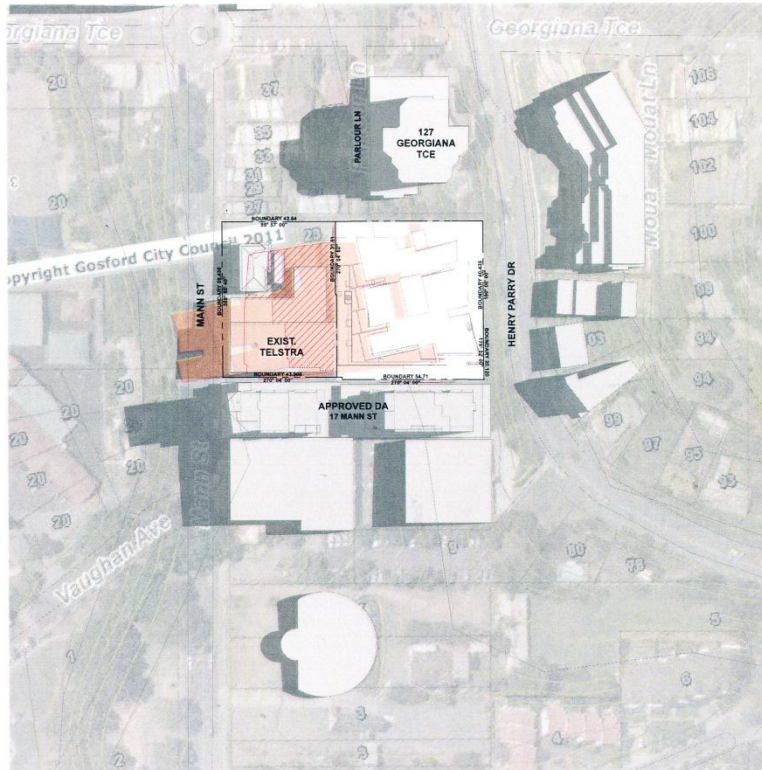
WINTER 3pm - Proposed Development



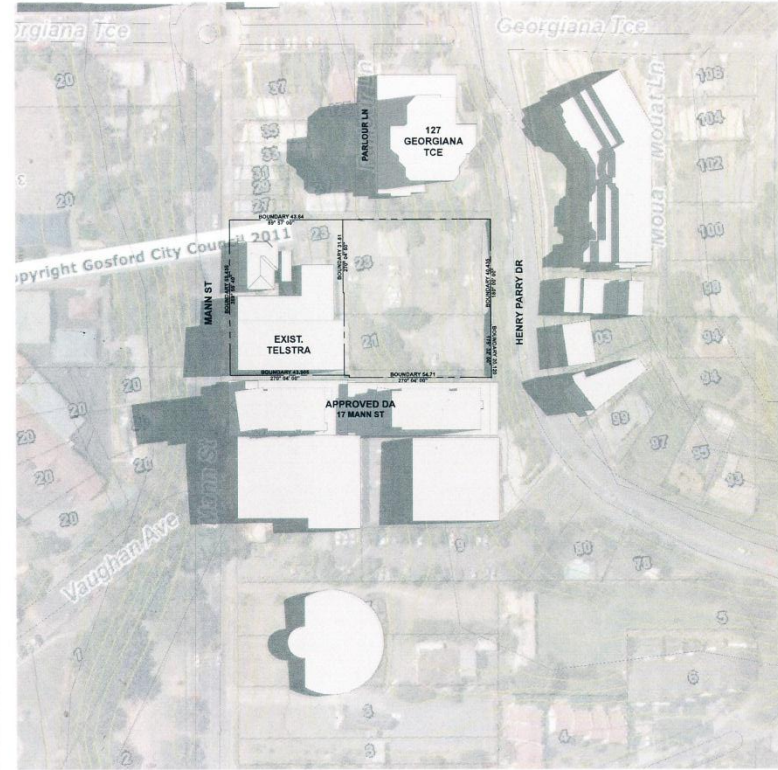
WINTER 3pm - Existing Conditions

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- OVERSHADOWING - PROPOSED

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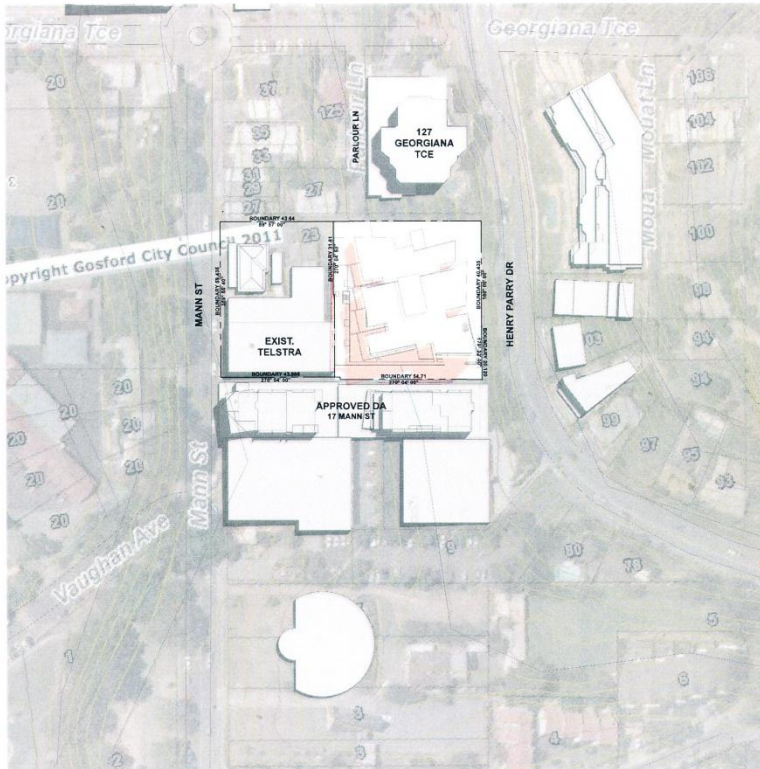
SUMMER 9am - Proposed Development



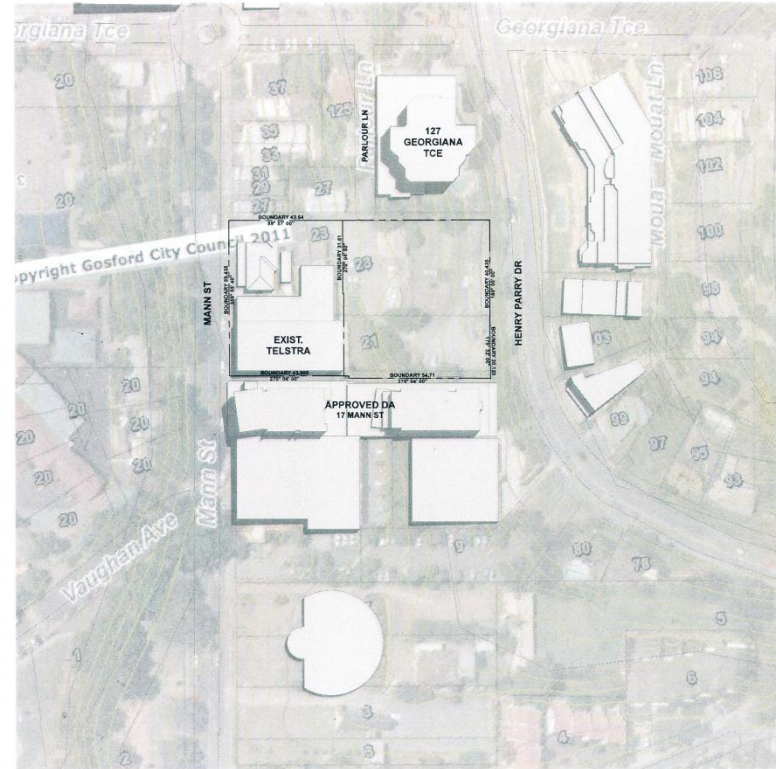
SUMMER 9am - Existing Conditions

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	Title: 1460 Mann Street Residential Development Author: J. GARDNER Date: 13/08/2015	Client: Mann Street Developments 1460 Mann Street Gosford NSW 2250	CKOS ARCHITECTURE 1460 Mann Street Gosford NSW 2250 Phone: 02 4328 4378 Email: info@ckos.com.au www.ckos.com.au



SUMMER 12pm - Proposed Development



SUMMER 12pm - Existing Conditions

- OVERSHADOWING - EXISTING
- OVERSHADOWING - COMPLIANT ENVELOPE
- OVERSHADOWING - PROPOSED

Code	Revision	Description	Date	Author	App. Plan
1		Issue for Approval			

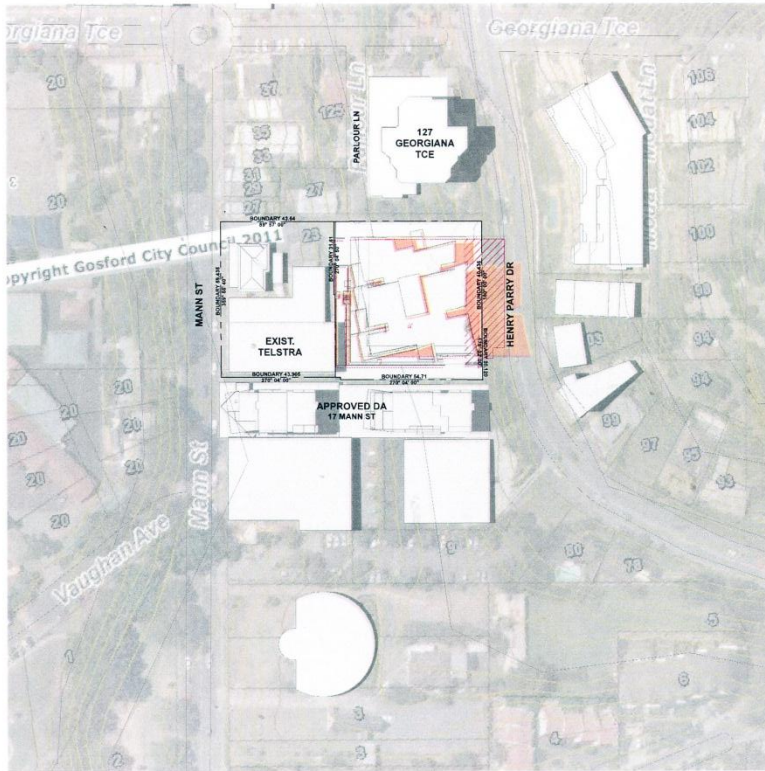
Client	Mann Street Developments
Project	1460 Mann Street Residential Development
Location	1460 Mann Street, Gosford, NSW 2230
Scale	As Shown
Date	13/08/2015

**Mann Street Developments**  
 1460 Mann Street  
 Gosford, NSW 2230

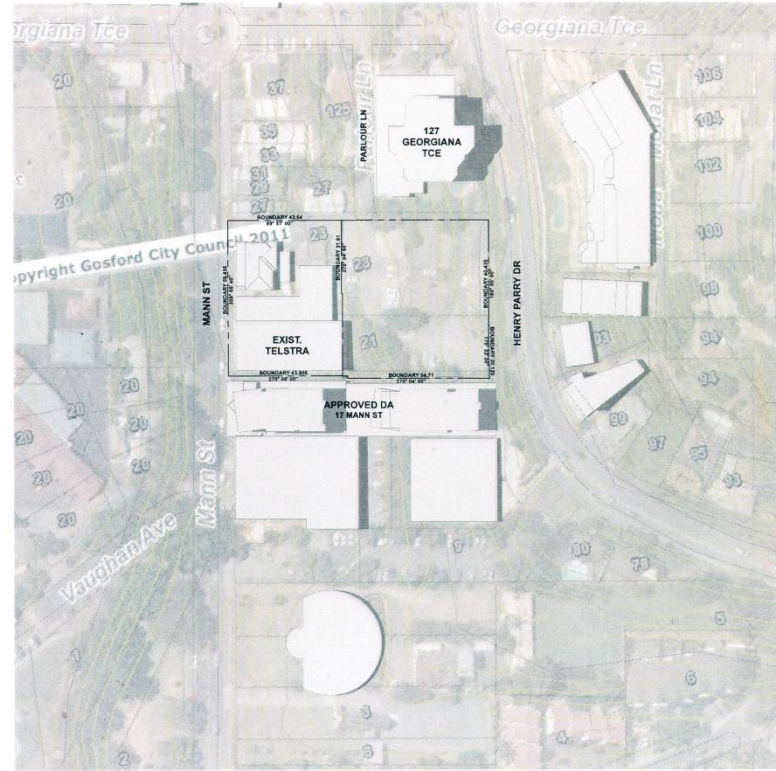
**CKDS ARCHITECTURE**  
 1460 Mann Street Residential Development  
 1460 Mann Street  
 Gosford, NSW 2230

**Diagrams**  
**Shadow Diagrams -**  
**Summer 12pm**

Project No.	1460	Client	A-403E	Date	13/08/2015
Revision		Drawn			
		Checked			
		Appr.			



SUMMER 3pm - Proposed Development



SUMMER 3pm - Existing Conditions

- OVERSHADOWING - EXISTING
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Item	Issue	Description	date	status	App. Name
1	1	Initial Design	13/08/2015	Open	
2	2	Design Development		Open	
3	3	Final Design		Open	

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<p>Project  <b>1460 Mann Street Residential Development</b>          Proposed Lot 167 within Lots A and B DP 88895          17-21 Mann Street          Newcastle NSW 2300</p>	<p>Site  <b>1460 Mann Street Residential Development</b>          Proposed Lot 167 within Lots A and B DP 88895          17-21 Mann Street          Newcastle NSW 2300</p>
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