

<b>JRPP No.</b>	2010HCC030
<b>DA No.</b>	1601/2010
<b>Proposal</b>	Telecommunication Facility
<b>Property</b>	Lot 1 DP 114469
<b>Applicant</b>	Telstra Corporation C/-Urbis Services
<b>Owner</b>	Hunter Water Corporation
<b>Lodged</b>	17 September 2010
<b>Value</b>	\$250,000.00
<b>Consent Authority</b>	Joint Regional Planning Panel
<b>Integrated Bodies</b>	Mine Subsidence Board
<b>Referral Agencies</b>	None
<b>Submission</b>	Thirty five (35)
<b>Recommendation</b>	Refuse
<b>Public Notification</b>	23 September to 8 October 2010
<b>Report By</b>	David Lovell, Senior Development Planner, Lake Macquarie City Council

## Joint Regional Planning Panel – Assessment Report

### Precise

The development application proposes the construction of a *telecommunication facility* incorporating a 35 metre high monopole to introduce 3G Telstra communications to Murrays Beach and the surrounding area.

Telstra has identified that *in-building* mobile phone coverage in the Murrays Beach area is inadequate. Coverage is currently provided to the area by the existing Telstra facility at 400 Pacific Highway Cams Wharf, however adjustments to this facility, can not improve the sought coverage.

Due to the likely visual impact, Council Development Assessment and Compliance, Landscape Architecture and Strategic Planning staff do not support the development application.

Staff's objection is that the likely visual impacts of the development on the scenic quality of the place, fails to comply with the relevant statutory documents, which seek to preserve the bushland character of the place and ridgelines, as one of its enduring features.

Council staff are concerned that approval of the development application would introduce an adverse visual impact on the *Lakeside Ridge Precinct* and materially affect the orderly and economic development of this precinct, pursuant to the North

Wallarah Peninsula Master Plan. The application has not adequately demonstrated that the site is suitable for the proposed development.

For the reasons, detailed at appendix A, the application is recommended for refusal.

### **Location**

The proposed development is located over Lot 1 Deposited Plan 114469, 15C Jetty Point Drive, Murrays Beach.

The development site is owned by the Hunter Water Corporation and currently houses a water reservoir.

The site is currently approximately 200 metres from the closet existing dwelling lot within the Murrays Beach estate and is approximately 670 metres from Lake Macquarie and 2.5 Kilometres from the coastline.

The site of the proposed facility is 22 metres east of Jetty Point Drive.

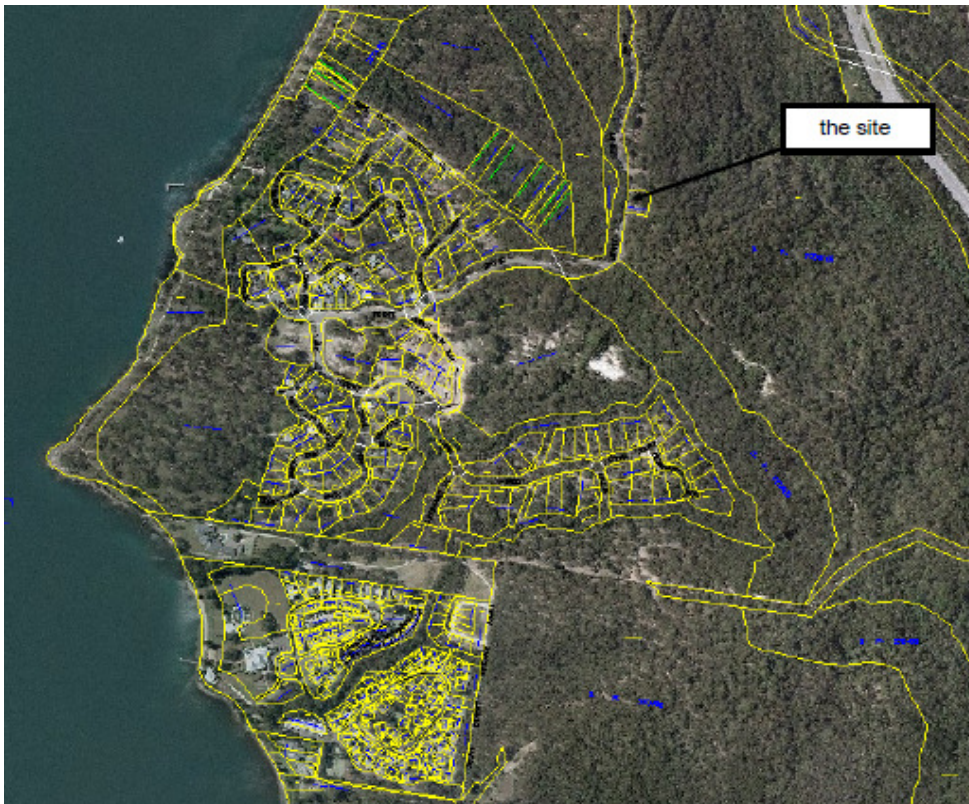


Figure 1-site location in context to current subdivision pattern of Murrays Beach to the west of the site and the Pacific Highway to the east. The immediate land adjoining to the east of the site is identified for subdivision pursuant to the master plan for the locality. (extract Council mapping)

The site has a gradual slope from the eastern to the western boundary (street boundary). The site is mainly cleared. There is no critical habitat or vegetation of ecological significance proposed to be removed.

The development site is bushfire prone and is located within a mine subsidence district.



Figure 2-view of proposed site (extract- Urbis SoEE)

### **Proposal**

The development application proposes:

- the installation of a 35m high Telstra monopole (as shown below at figure 3 and 5);
- the installation of three (3) panel antennas on the monopole. The proposed panel antennas will be located at a height of 30 metres (to the centre line) and will have the following dimensions - 2630mm x 300mm x 115mm - for all 3 WCDMA850;
- the installation of an equipment shelter on plinths to house electrical and telecommunication equipment associated with the facility. The equipment cabin will be 3.28 metres long by 2.28 metres wide by 2.995 metres high and will be coloured in a natural colour;
- the installation of associated feeder cables running internally within the monopole to connect the monopole to the equipment shelter;
- ancillary works including the installation of concrete footing, proposed vehicular guard rail, proposed bollards around the monopole, proposed 450mm wide Telstra elevate cable ladder and compound fencing to enclose the proposed storage and equipment area; and,
- access to the site for construction and maintenance will be from the existing access to the site, off Jetty Point Drive Murrays Beach.

Once constructed the site will be visited by a standard Telstra Station Wagon once a month and then after a year, every 6 months for standard maintenance performed from the proposed shelter.

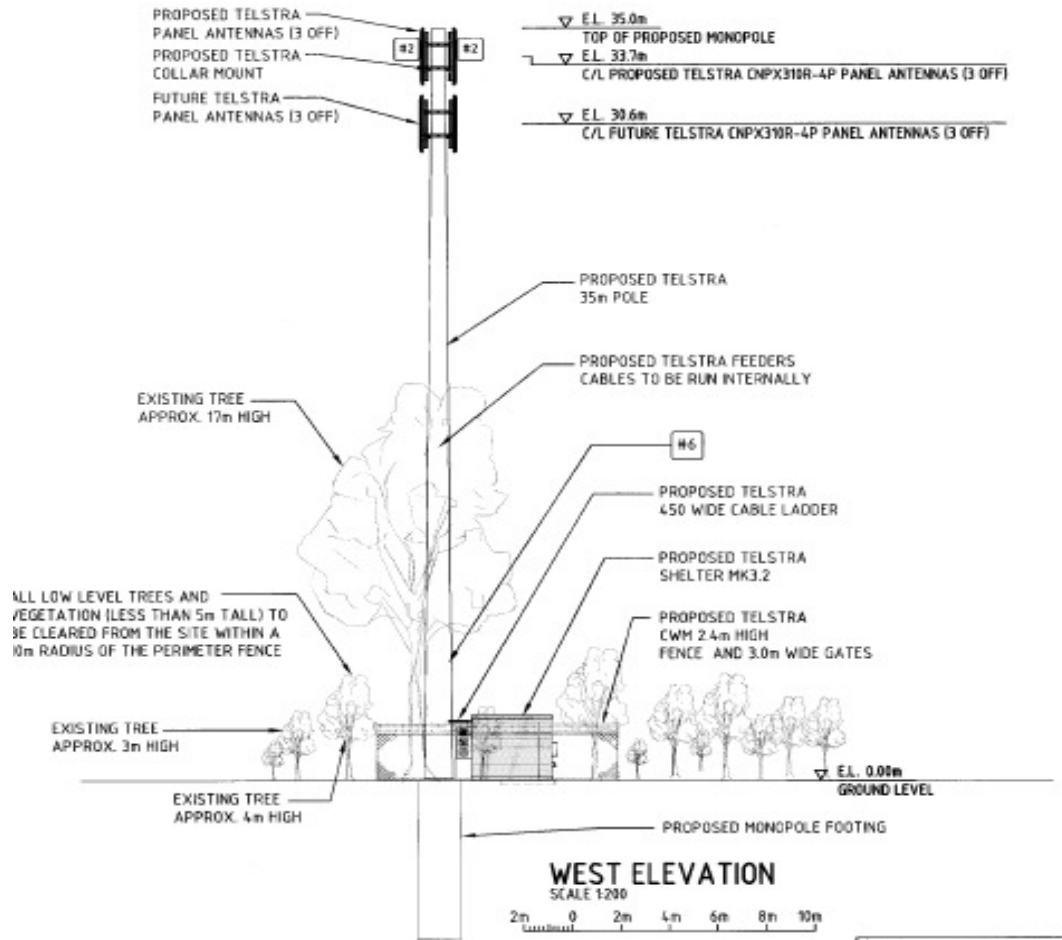


Figure 3-western elevation of the proposed development (extract-Urbis SoEE)



Figure 4-site plan of proposed development (extract-Urbis SoEE)



## Site History

Council engaged consultants in 1997 to undertake an extensive Local Environmental Study (LES) for the North Wallarah Peninsula.

Recommendations made in the LES resulted in the adoption of the *North Wallarah Peninsula Conservation Land Use Management Plan* (CLUMP) and gazettal of the *Lake Macquarie Local Environmental Plan 2000 – North Wallarah Peninsula* (LMLEP2000).

The CLUMP was prepared to support the LMLEP 2000 and is legally bound to this instrument. It provides an overall conservation and development land use framework for the Wallarah Peninsula development. The CLUMP contains planning principles, implementation procedures, criteria for preparation of master plans, environmental and other criteria, that development at the Wallarah Peninsula must satisfy.

The North Wallarah Peninsula Master Plan (NWPMP) consists of a Development Land Use Plan and eight specialist Management Plans. NWPMP makes a range of recommendations in the form of strategies. Considerations formed from the strategies provide the criteria against which development applications are to be assessed. The eight specialist Management Plans are:

- Ecological Site Management Plan
- Bushfire Management Plan
- Physical Infrastructure Management Plan
- Open Space and Public Access Management Plan
- Built Form Management Plan
- Visual Integration Management Plan
- Social Equity Management Plan
- Construction Management Strategy.

These plans, in addition to the CLUMP and LMLEP200 have been taken into consideration during assessment of the application. Figure 5 below shows the statutory framework for North Wallarah Peninsula.

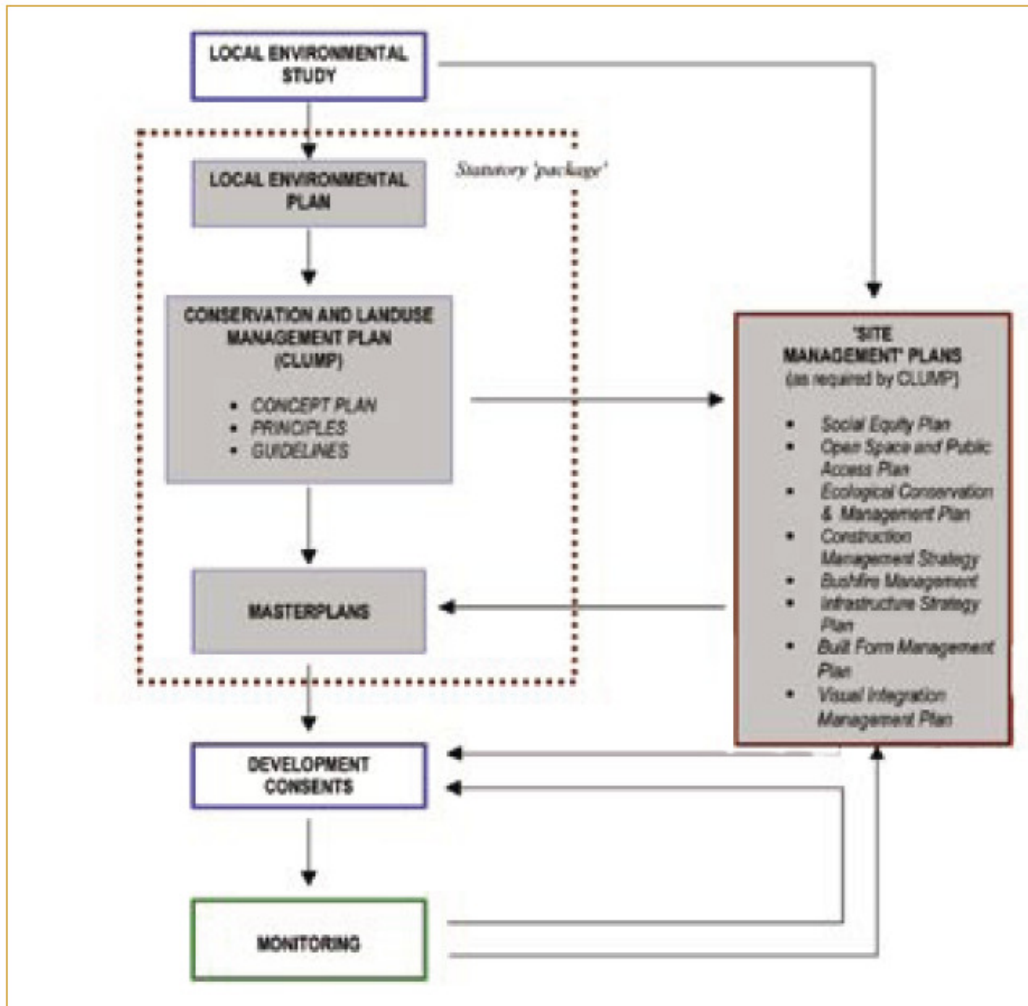


Figure 5- statutory framework

## Background

Seven potential sites for the facility were considered by the applicant.

The applicant concluded that the proposed site is the most suitable, due to the separation of the development site from sensitive land uses, whilst additionally providing the most optimal coverage of the sites considered.

During the public notification period, Council received 35 written objection submissions.

One of these submissions was made by Stockland. Stockland, the developer of North Wallarah Peninsula, has undertaken substantive land use investigations of the *Lakeside Ridged Precinct* (the location of the development), in accordance with the *North Wallarah Peninsula Masterplan*.

Stockland objects to the proposed location of the facility *inter alia* on the basis that the development application will have an adverse impact on the planned housing subdivision surrounding the proposed development site. Stockland recommended two alternative locations for the facility and met with Telstra to consider. Stockland's preferred locations are shown below at figure 6 (candidates I and J).

In principle, Council staff are supportive of either one of these locations mainly due to their close proximity to the Pacific Highway and the greater ability of these localities to absorb the likely visual impacts of the development.

Telstra eliminated these alternative sites due to insufficient coverage to the west of the target area, increased height, visual impacts and mine subsidence constraints. However, these findings are not supported by any coverage mapping, geotechnical, or visual analysis to support elimination.

During assessment of the application, Council staff recommended that co-location with a proposed Optus Facility at 400 Pacific Highway Cams Wharf be considered in addition to the further investigations of previously eliminated sites.

Candidate H, also shown at figure 6 below, represents the location of the proposed Optus facility (DA/1458/2010) which is subject to a deferred commencement approval. Telstra eliminated this site due to the inability of the site to meet their preferred *in-building* coverage target area, as shown below at figure 7. Figure 8 shows the coverage plan for the proposed site.



Figure 6-alternative Stockland locations I and J. Candidate H is Council's preferred site which is would see co-location of the facility with an approved Optus facility (extract-Urbis SoEE).

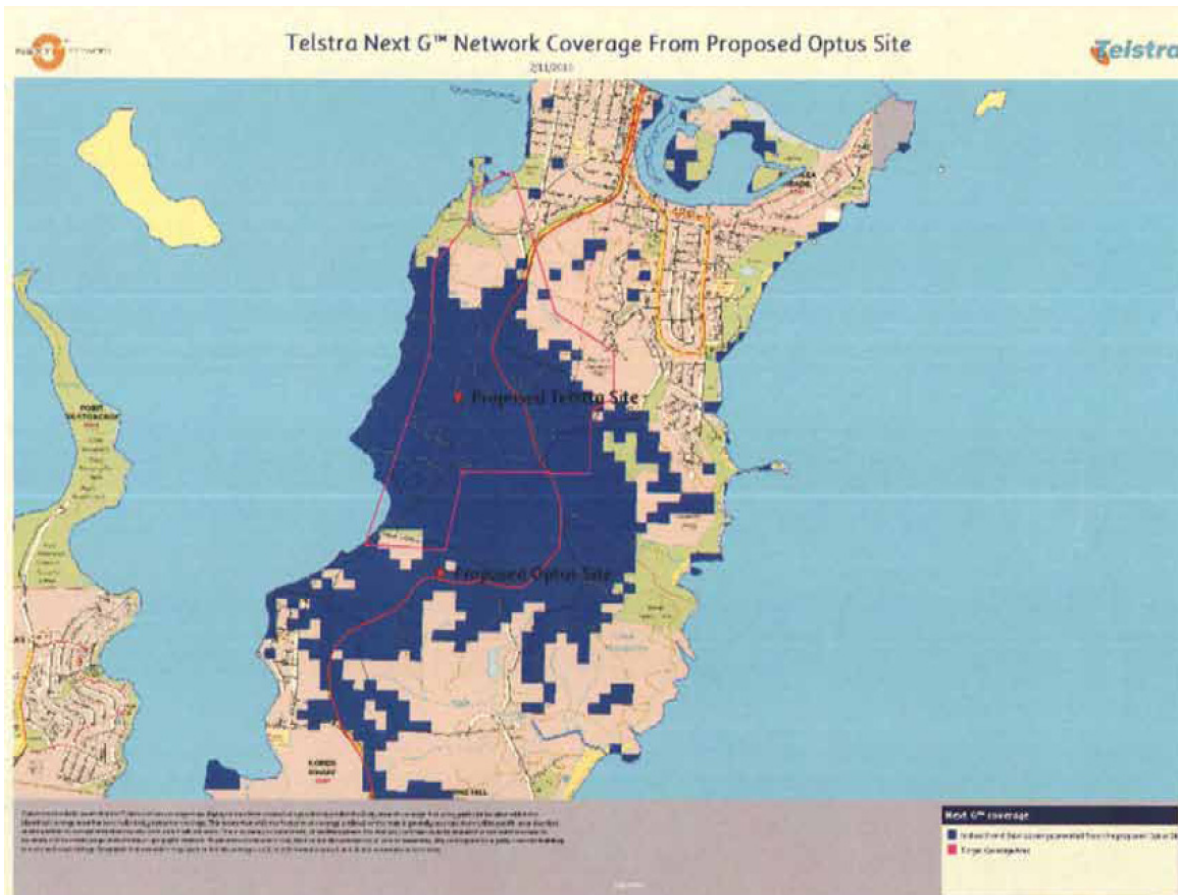


Figure 7- shows the possible indoor hand held coverage from the co-location Optus site (blue), in comparison to target area which is delineated by a pink line (extract-Urbis SoEE).

Figure 7 demonstrates that the co-located option retains coverage to the majority of the areas of Murrays Beach, North Wallarah Peninsula, the Pacific Highway and Cams Wharf.

When Comparing figures 7 and 8, the co-location option does not provide full coverage to the target (pink) area nominated by Telstra. Two areas, (Area A and Area B), figuratively shown at figure 10, are not covered. To consider whether co-location is practical and viable, Council undertook a desktop study of these two locations.



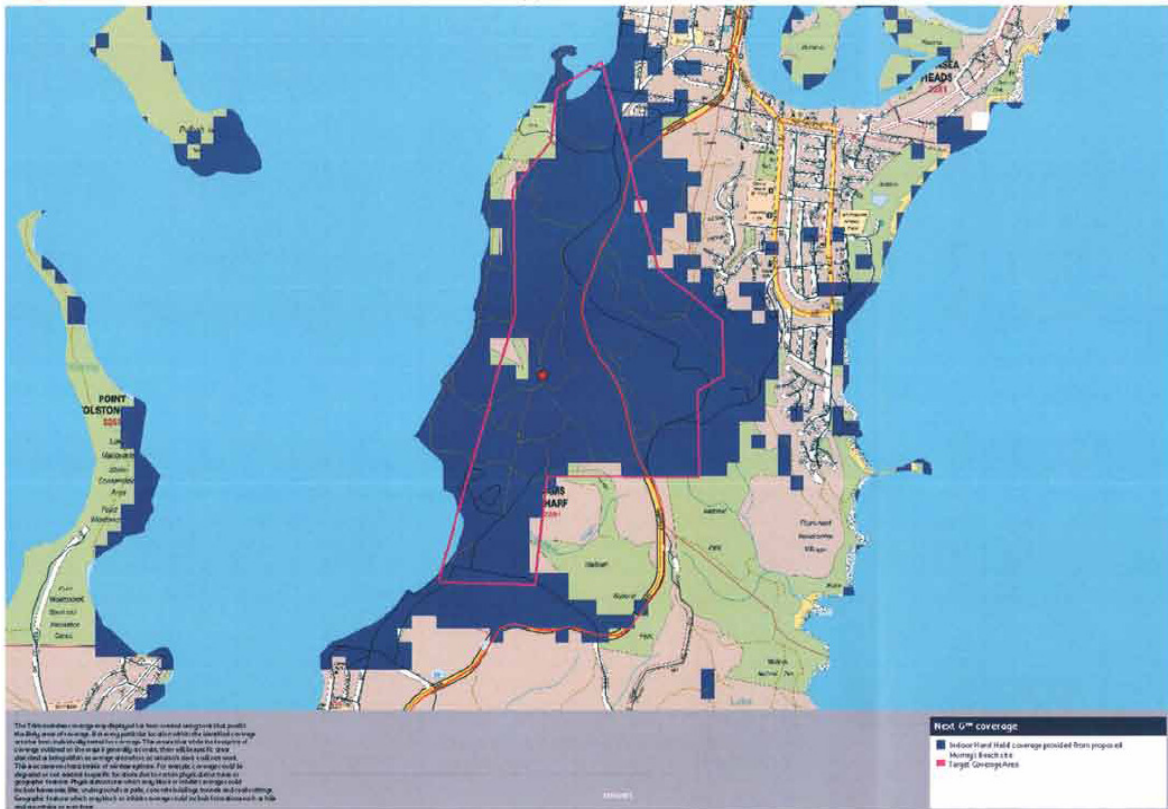


Figure 8- shows indoor hand held coverage from the proposed Telstra Murrays Beach site in comparison to the target area, shown delineated by a pink line (extract –Urbis SoEE).

- Area A-north of Murrays Beach

Pursuant to *Lake Macquarie Environmental Plan 2004*, land within this area is zoned 7(1) Conservation Primary, 6(1) Open Space, and 7(2) Conservation (Secondary).

Any future development within these zones is likely to be of a low-density due to the prevailing zone objectives and permissible uses, and due to the existing property conditions and site constraints of the place. Lands within this area are affected by sea level rise, are low lying, bush fire prone, affected by acquisition by zoning, ecological corridors, and are known to be within a sensitive Aboriginal cultural landscape. In this regard, whilst some further development in this area may be possible, the potential to support a moderate to high increase in residential population is highly unlikely. These lands are not identified for land release or further subdivision pursuant to the *Lower Hunter Regional Strategy*.

In this regard, not providing the optimum of *in-building* mobile phone coverage to these lands, under a co-location option, is not considered to be an inappropriate compromise.

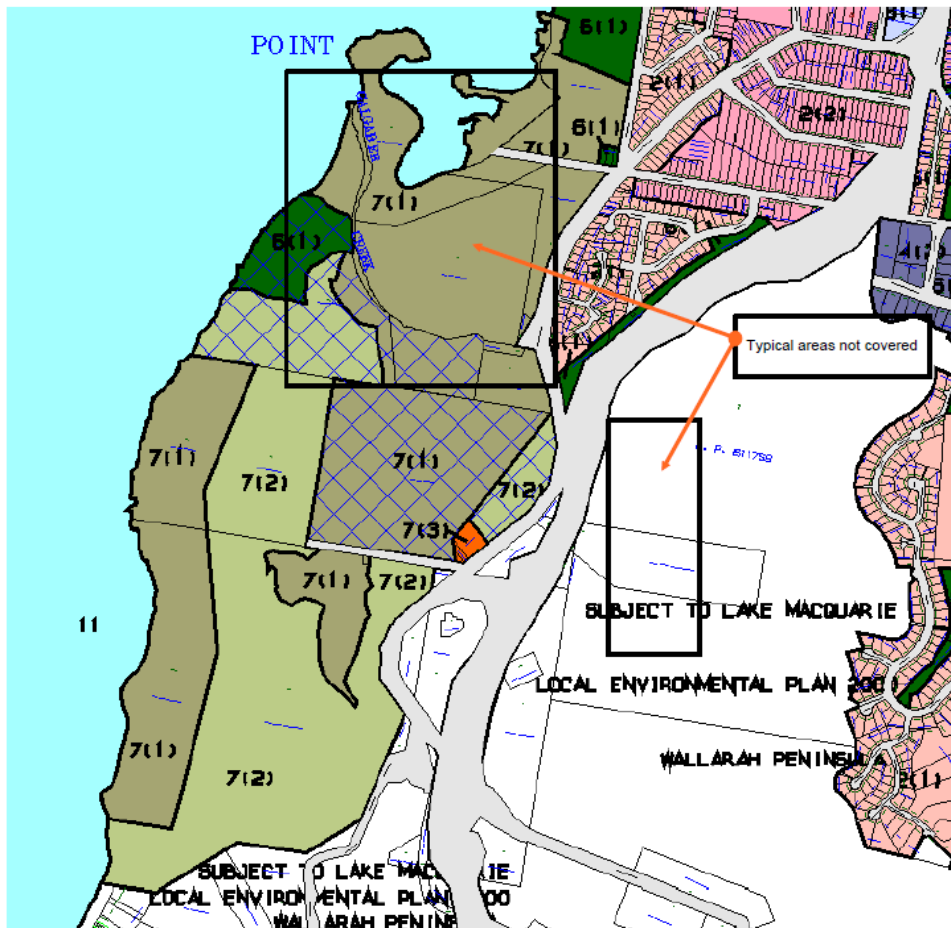


Figure 9-shows areas of non-coverage under the co-location options overlaid land use mapping *Lake Macquarie Local Environmental Plan 2004* (extract from Council)

- Area B- east of the Pacific Highway

Area B is within *Lake Macquarie Local Environmental Plan 2000* and zoned 10(a) investigation. This is a small portion of the total target area where *in-building* mobile phone coverage may be compromised.

Pursuant to *North Wallarah Peninsula Master Plan* this area is identified for a mix of housing and open-space conservation. In contrast to Area A, this area is identified for a higher population, however in comparison to the overall desired target area, a potential compromised *in-building* Telstra service to this area on balance is not considered to be an impractical compromise.

Council also recommended that three sites previously eliminated by Telstra be further investigated. Of these sites, candidate E, is considered by Council staff to also be a practical alternative site for the facility.

- Candidate E – Road reserve of Pacific Highway Cams Wharf

This site is preferred by Council due to the sites proximity to the Pacific Highway, it is located within lands zoned under *Lake Macquarie Local Environmental Plan 2004*, is likely to promote less of a visual and scenic quality impact to Murrays Beach and North Wallarah Peninsula then the proposed location and also provides coverage to

the area required. Figure 10 below shows the location of candidate E in context to other possible sites, particularly F which is the proposed site.



Figure 10 – showing candidate E location (extract Urbis SoEE)

Candidate E was eliminated due to potential impacts of mine subsidence. The applicant has undertaken a geotechnical assessment of the site. The geotechnical report made two recommendations to enable the construction of the facility at the location, being:

1. design for pothole subsidence and allow provision for re-leveling if adverse tilt occurs; and,
2. grout voids under and 7 metres of the boundary of the site to eliminate subsidence risk.

The applicant concluded that the costs associated with making the site suitable are cost prohibitive, moreover the ameliorative options recommended above, were considered to be speculative only.

Council's engineering staff has considered the geotechnical report and recommends that the constraints posed by mine subsidence are unlikely to render the proposal as economically unviable, or the site unsuitable, notwithstanding additional costs would be incurred.

Council notes that the Mine Subsidence Board in their assessment of the proposed site has recommended conditional approval, similar to the recommendations above, where the removal of any risk of mine subsidence by a suitable means, such as grouting is required to be undertaken. Alternatively, the Board must be satisfied by confirming through geotechnical investigations that the workings are long- term stable and therefore, not at risk of mine subsidence.

Overall, Council staff conclude that the site selection process has been flawed and alternative sites have been eliminated without an acceptable degree of evidence. Council maintains that:

1. the co-location option is viable, notwithstanding some minor compromise to the optimum target area;
2. candidate E is a viable location, notwithstanding additional construction costs; and,
3. the preferred sites of Stockland were eliminated without an acceptable evidence demonstrating that these sites are not suitable on coverage grounds.

For these reasons, it is considered that the carrier has not met its responsibilities under the Australian Communications Industry Forum 'Industry Code-Deployment of Mobile Phone Network', the ACIF Code, as per Part 6 of Telecommunications Act 1997. The carrier has not fully disclosed the factual basis to findings associated with the elimination of potential sites and in doing so has not fully shown a precautionary approach to site selection.

## **Section 79C: Potential matters for consideration**

### **Section 79C(1):**

#### **(a)(i) the provisions of any EPI's**

##### ***State Environmental Planning Policy (Major Projects)***

Pursuant to clause 13C(b) of the policy, due to the application proposing a structure greater than 13 metres in height within the *coastal zone*, the proposed development is a *regional development*. In this regard, the Joint Regional Planning Panel is the consent authority.

##### ***State Environmental Planning Policy 71-Coastal Protection***

The development site is located in the coastal zone, however is not located in a sensitive coastal location. The proposal has been considered against the aims and objectives of the plan and the matters of consideration under clauses 7, 8 and part 4. The proposal is compliant with the policy.

##### ***State Environmental Planning Policy (Infrastructure)***

Clause 115 (3) of the policy is applicable:

*C115(3)- Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

#### Planning Comment

The *NSW Telecommunications Facilities Guideline Including Broadband July 2010* is applicable and contains four principles governing the *design, siting, construction* and the *operation* of *telecommunication facilities*. These principles are considered below.

*Principle 1: A telecommunication facility is to be designed and sited to minimise visual impact.*



The development is proposed to be positioned on a ridgeline where the tower shall punctuate the tree canopy by up to 20 metres.

The Visual Integration Management Plan nominates that the visual catchment and scenic quality of the place is sensitive to change. North Wallarah Peninsula is recognised for its contribution to the visual amenity of the region and local conservation values. The development is sited on a ridgeline traversing the Lake Sector of the North Wallarah Peninsula and is located within the Lakeside Ridge Precinct of the North Wallarah Peninsula Master Plan. The precinct undeveloped.

The main viewshed for the proposal includes:

- the lands north-east, east and south-east of Jetty Point Drive and west of the Pacific Highway (the Lakeside Ridge Precinct);
- lands to north-west and west of Jetty Point Drive, extending to the foreshore of Murrays Beach; and,
- residential precincts across the lake and west of the site and land east of the Pacific Highway.

The catchment is further defined below.

#### *Existing Static Views*

- Existing parklands to west of the site Murray Beach towards the lake foreshore. Filtered views of the development may be observable above the tree canopy 600 m from the site.
- Residential precincts across the lake from Murray Beach. The facility will be observable above the ridgeline (which is contrary to the controls for the place), however the visual impact at this distance is not likely to be significant.
- The closest existing development lot is 150 m from the site, a dwelling on this allotment is unlikely to have significant views of the facility due to the influence of a habitat corridor that is proposed running north to south and west of Jetty Point Drive.
- The Existing residential development within Murray Beach to the south of Jetty Point Drive are unlikely to have significant views of the proposal.

#### *Transient Views*

- Motorists using the local road network, mainly Jetty Point Drive will have direct views of the facility passing with 22 m of the site;
- Motorists using the Pacific Highway will have direct views of the development above the ridgeline and tree canopy from a distance of around 370 to 570 metres.

#### *Future Static Views*

- The development is located on a prominent ridgeline within the Lakeside Ridge Precinct. Future static views of the site will be observable from this precinct between the ridgeline and the Pacific Highway, to the north, east and south. Dwellings are proposed to be located in an area ranging from 50 to 500m from the site. Visual impacts with the removal of vegetation for roads and housing is likely to make the site significantly more observable than current conditions would promote.

Figure 11 below shows the likely future location of residential development to the proposed development site.

## Concept Development Plan – North Wallarah Peninsula

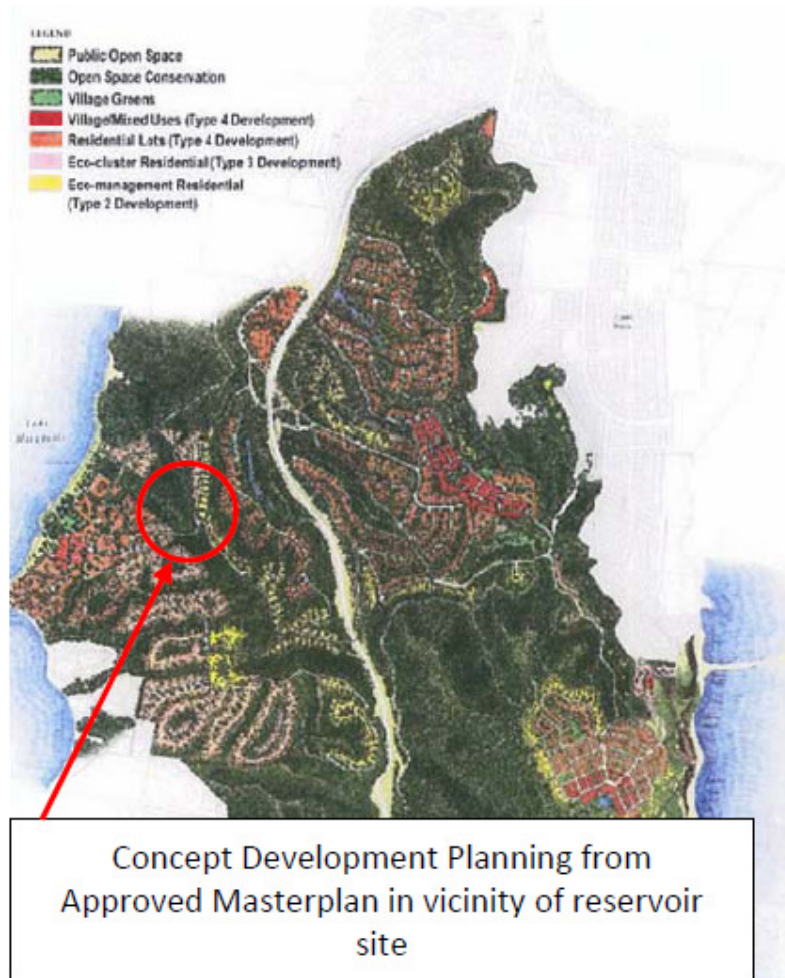


Figure 11-locaiton of future residential development likely in context to the proposed site.

### *Context of the view*

There are no other structures positioned above the canopy within the precinct or surrounds and none planned.

### *Visual Impact Analysis*

The application is supported by a visual impact analysis.

The report concludes that::

- the development will have a moderate visual impact on the surrounding area;
- the proposed site is relatively separated from sensitive land uses;
- existing vegetation will screen and mitigate the visual impact of the development;

- the tower will be visible from some distance given its elevated position, however the site is setback from major roads and urban areas, minimising the level of visual impact for local residents;
- the development will not pose a visual impact on the residential areas of Swansea or Caves Beach;
- park areas to the west of the site at Murray Beach will experience a minor visual impact, however the abundance of trees and bushland surrounding the park minimise the visual bulk of the structure;
- the facility will be observable from the opposite side of the lake at Gwandalan which is over 3.5km from the site, however no visual amenity impact is likely;
- and the natural colouring of the develop and slim-line design of the structure will mitigate the visual impact of the development; and,
- given the advantages derived by the public at large, and given the facilities low level of impact, any general loss of visual amenity, will be outweighed by these factors.



Figure 12-montage of proposed location from Jetty Point Drive (extract-Urbis SoEE)

PROPOSED TELSTRA  
INSTALLATION



Figure 13- montage of facility from a distance of 700 m north-east of the proposed site . This montage does not adequately demonstrate the impacts of the proposal on Lakeside Ridge Precinct. (extract-Urbis SoEE)



Figure 14-photograph looking south-west from 35 metres in elevation above the site. The existing housing within Murrays Beach cannot be seen.



Council staff has considered the applicant's visual impact analysis and acknowledges the following:

- visual impacts from the shorelines park areas within Murray's Beach are not considered likely to be high or adverse;
- visual impacts to existing properties south-west of the site are not likely to be adversely affected;
- visual impacts from across the lake are not considered likely to be high or adverse;
- the visual impacts from motorists using the Pacific Highway at speed, are not likely to be high or adverse; and,
- the visual impacts on residents or Swansea or Caves beach are unlikely.

Where Council objects to the applicant's visual analysis is as follows.

1. The proposed development site in the future will not be relatively separated from sensitive land uses. The facility will eventually be centrally located within a residential area inclusive of a planned village 400 m northeast of the site.
2. Dwellings are likely to be as close as 50 m to the proposed site and share common property boundaries. The planned village and residential areas are likely to have direct static views of the facility above the tree canopy, particularly as the canopy is further selectively cleared for buildings and infrastructure such as roads.
3. The application has not adequately addressed or demonstrated the likely visual impacts of the development on the Lake Sector and Lakeside Ridge Precinct (the lands north-east, east and south east, between Jetty Point Drive and the Pacific Highway) as shown in figure 165 below.
4. The slim-line design of the development in managing distance views can be effective. However, in this case, the use of a slim-line design will not reduce the future visual impacts of the development obtained close by to the site, mainly from the Lakeside Ridge Precinct which range from between 50 to 500 metres.

The application has not demonstrated that the telecommunication facility is designed and sited to minimise visual impact (principle 1).

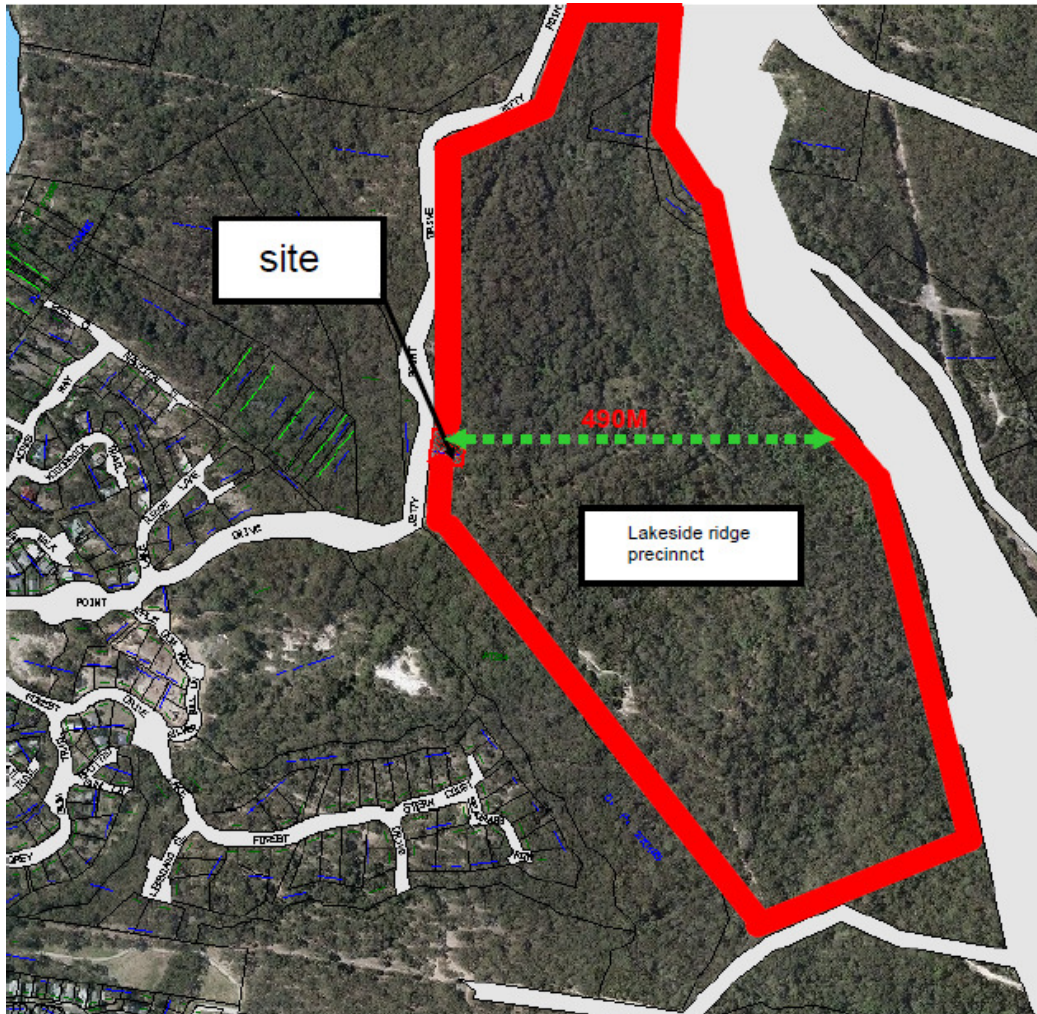


Figure 15-visual catchment of tower on Lakeside ridge precinct. The application has not adequately established and considered the likely impact of the development on this precinct which is positioned directly below the site and is to house a future village. Demonstration of Views looking west from the pacific highway and within the precinct, using photomontages are not provided for assessment.

Principle 2: Telecommunication facilities should be co-located wherever practical.

The application is not proposing co-location.

As discussed above under 'Background' Council considers that co-location is a viable option.

Under these circumstances, the application is not considered to fully comply with the principle 2.

Principle 3: Health standards for exposure to radio emissions will be met.

The application complies with principle 3.

Principle 4: Minimise disturbance and risk and maximise compliance.

The application is not considered to comply with the place based planning controls for the locality and as result principle 4.

### **State Environmental Planning Policy No1-Development Standards**

The application is supported by a SEPP1 submission. The objection requests a variation to development standards that apply to height restrictions as specified in the master plans, whereby development should not penetrate the tree canopy of the locality, especially in regard to ridgelines.

The variation is sought based on the following reasoning:

- *in order to provide sufficient network performance for the areas surrounding the site, the telecommunications facility will require a height above the tree canopy to avoid signal interference between obstacles such as trees, building and terrain;*
- *if Telstra were to construct a tower within the tree canopy, the signal would be blocked by the surrounding trees and the facility would have no use or purpose in its function. Therefore, it is not logical or reasonable to impose the height limit policy on a telecommunications facility, which the policy clearly does not account for, is not designed to administer to, and is not applicable to this development; and,*
- *this of course means that the site selected has to be the correct site and is expressed in the submitted statement of environmental effects and this document, the selected site is the only available site that can meet Telstra's coverage objectives provided it can penetrate the tree canopy.*

#### Planning Comment

The objection applies the long-standing five-part test set out in *Winten Property v North Sydney (2001) 130 LGERA 79*. In the matter *Wehbe v Pittwater Council (2007) NSW LEC 827*, Chief justice Preston set out a new five part test:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying object or purpose if the standard is not relevant to the development and there compliance is not necessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and,
5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

#### Planning Comment

The SEPP 1 objection identifies that the development standard it is seeking to vary is contained within the North Wallarah Master Plan (Visual Integration Master Plan (VIMP)), section 4.3.1 Consideration L1,

- *“Heights of buildings should be limited to structures that do not break the top of the tree canopy for most of the lake sector.”*

Council considers that the following other *considerations* as development standards are also applicable and provide an intent measure to the standard above:

- *“building heights should be tailored to a level within the natural canopy on a precinct basis to ensure views to the ridgeline are dominated by tree canopy”*. (section 4.3.1 VIMP);
- *“retention of the visual consistency of the canopy across the sector is essential to the overall visual integrity of the sector”* (section 4.3.2 VIMP);
- *“siting of built form will ensure maximum canopy retention in order to maintain existing level of visual absorption capacity”* (4.3.2 VIMP); and,
- *“overall height of development should be restricted to maintain the natural character of the hillsides of the Lake Sector, by keeping built form within the tree canopy.*

In addition, the following considerations are also detailed in the Built Form Management Plan (BFMP):

- *“buildings will not protrude above the top of the tree canopy on the central ridgeline”* (section 6.3 Consideration 18 BFMP); and;
- *“building locations and height controls will respect the typical height of the ridgeline tree canopy. Generally the height of buildings will not exceed the top of the tree canopy.”* (section 5.2 consideration 3 BFMP).

The master plans as discussed earlier are tied to LMLEP2000 and are required to be considered prior to the determination of development applications, pursuant to the zone objectives and clause 24 of LMLEP2000.

The master plans contain principles, strategies, and guidelines/considerations, to inform how the scale, height and character of development should unfold in the North Wallarah Peninsula. The need to consider these guidelines/considerations pursuant to the environmental planning instrument, take on the form of development standards. The requirements to consider height controls is consistent with the definition of a development standard under the Act, which includes standards inclusive of the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or works.

The underlying object or purpose of the standards sought to be relaxed, is to maintain development and buildings below the tree canopy, to maintain the bushland character of hillsides and ridgelines as the dominate landscape features of the place. It is argued by Council that approval of development above the tree canopy will affect the character of the place by positioning an imposing structure on a ridgeline, within a landscape, where no other tall structures exist, and or, are planned. Approval in this case may undermine the intent of the development standards to maintain development below the tree canopy.

Maintaining the standard is particularly relevant given the close proximity of the site to the future planned subdivision areas of the Lakeside Ridge Precinct. Undermining the standard may place further pressure on maintaining other future developments within the vicinity to below the tree canopy, inclusive of other possible telecommunication carriers.



It is noted that telecommunication towers requires a line of site free of obstructions, however as discussed above, there are alternative sites, which offer coverage to the majority of the area, where greater compliance is likely. This is the first of such developments proposed in North Wallarah Peninsula, and there are no other planned developments which propose heights above the tree canopy of the locality. In this case, the standard has not been thwarted, and therefore compliance can be considered in this case to have greater determining weight.

The development standard sought to be relaxed is not considered to be unreasonable or unnecessary in the circumstances of the case. The standard is considered to be applicable to *telecommunication facilities* and not merely residential development. The Built Form Management Plan (master plan) includes *telecommunication facilities* in the definition of *built form*.

The objection is not well founded, does not adequately persuade the Council that compliance is unnecessary or unreasonable.

The Council considers that relaxation of the height controls would hinder the attainment of the objects of the Act, mainly approval of the tower may adversely affect the development of the Lakeside Ridge Precinct and the promotion and co-ordination of the orderly and economic use and development of this land, in keeping with the intent of the master plan.

#### ***Lake Macquarie Local Environmental Plan 2000—North Wallarah Peninsula***

The following clauses of the plan are applicable:

##### Clause 3-The aims of this plan

*(a) provide for the development of certain land at North Wallarah Peninsula that is consistent with the integration of natural and developed landscape and conservation values attributed to the land, and*

##### Planning comment

The development site is suitable for development, however the height of the proposed development in contrast to the existing ridgeline, is counter to maintaining the scenic quality objectives of the place.

*(b) ensure that the Council and approval bodies acknowledge and consider the conservation principles that have been identified for the land at North Wallarah Peninsula, and in the Conservation and Land Use Management Plan,*

##### Planning comment

- *Conservation Land Use Management Plan (CLUMP)*

The principles of the CLUMP has been taken into consideration.

The CLUMP contains seven planning principles. The applicant conflicts with principle three:

- *locate and design development in a manner that complements the surrounding natural environment and recognises good aesthetic qualities;*
- *design of the built form and associated development is to maintain high scenic quality of the coastal environment; and,*
- *building height, form, massing materials, colour and reflectivity are all to be considered in the design process with the intent of minimising contrast with the surrounding landscape in the coastal and lakeshore environments.*

The proposal is positioned at a prominent position within the Lakeside Ridge Precinct, where it has the potential to visually dominate the existing and future setting of the place. As proposed, the height and form of the development would contrast significantly with the existing context of the place. The positioning of the development in close proximity to the future residential settlement planned for the locality, plus the gateway location of the site, make the development site unsuitable for the proposed development.

- *Lakeside Ridge Precinct*

The development site is located within the *Lakeside Ridge Precinct* of the CLUMP. The objective of the precinct is:

*“to allow sensitive residential development that responds to the ecological values and visual aspects of the site providing for road access across the precinct connecting the Swansea Valley and Lakeshore Precincts.”*

The precinct guidelines state that:

*“the tree-lined ridges should be maintained as one of the essential landscape elements of the region. This will require strict planning guidelines, construction practices and built form to ensure the maintenance of vegetative cover and minimise potential visual impacts; all building on the ridges, should be designed to be viewed as part of the existing environment and landscape, rather than dominate it.”*

The development is not considered to comply with the guidelines for the precinct and as a result this aim of the plan.

*(c) direct the future use of North Wallarah Peninsula in a manner that ensures sensitivity to the physical, social and natural environmental values, and environmental heritage, of the land, and*

#### Planning Comment

The development has not adequately demonstrated the likely impacts of the proposal on the Lakeside Ridge precinct, between Jetty Point Drive and the Pacific Highway.

*(d) achieve ecological sustainability through an harmonious integration between the natural and developed landscape, and*

#### Planning Comment

The application does not conflict with this aim of achieving ecological sustainability.

*(e) to properly integrate humans within their environment.*

#### Planning Comment

The proposed development is not considered likely to visually integrate with the natural environment of the place.

#### Clause 10 - Zone objectives applicability:

*(1) The objectives of a zone are set out in subclause (1) of clauses 12–18.*

*(2) Consent must not be granted to the carrying out of development unless the consent authority is satisfied that the carrying out of the development is consistent with:*

*(a) the aims of this plan, and*

*(b) one or more objectives of the zone within which the development is proposed to be carried out.*

#### Planning Comment

The development site is zoned 10(a) Special Development 'A' zone (or Sustainable Mixed Use Development Zone).

The aims of the plan and zone objectives have been taken into consideration.

The application is not considered to be consistent with aims (a), (b), (c), and (e) and zone objectives (a), (b), (c), (d) and (f).

#### Clause 17 - The objectives of Zone

The objectives of the zone are:

*(a) to achieve a planned urban outcome, based on principles of ecological sustainability, at a village settlement scale, enhancing quality of lifestyle, social equity, and ecological awareness,*

#### Planning Comment

The proposal is not considered to conflict with the principles of ecological sustainable development or, social or ecological awareness of residents of village. However, defining whether the development affects the enhancement of quality of lifestyle is more difficult to equate.

Taking objection submissions into consideration, there could be considered to be a strong nexus between the proposed development and the lifestyle of residents who have chosen to reside in a place with particular and strict planning controls. In this regard, the visual impact of proposed development could affect one lifestyle who chose to reside in a bushland setting which is dominated by the natural environment rather than the man made environment. However, rather than merely taking objections into consideration, rather there must be a finding of fact that the development is likely to promote an adverse visual impact.

The visual impact of the development has been discussed above and Council has concluded that the development is likely to pose a significant impact on the future development of the Lakeside Ridge Precinct. The precinct is planned to house three different development types. All are within close proximity to the proposed development site and are discussed below in greater detail.

The development site is within an area proposed for development type 2 and in close proximity to also development type 4 subdivision patterns. Figure 16 below shows the location of planned development subdivisions to the proposed site.

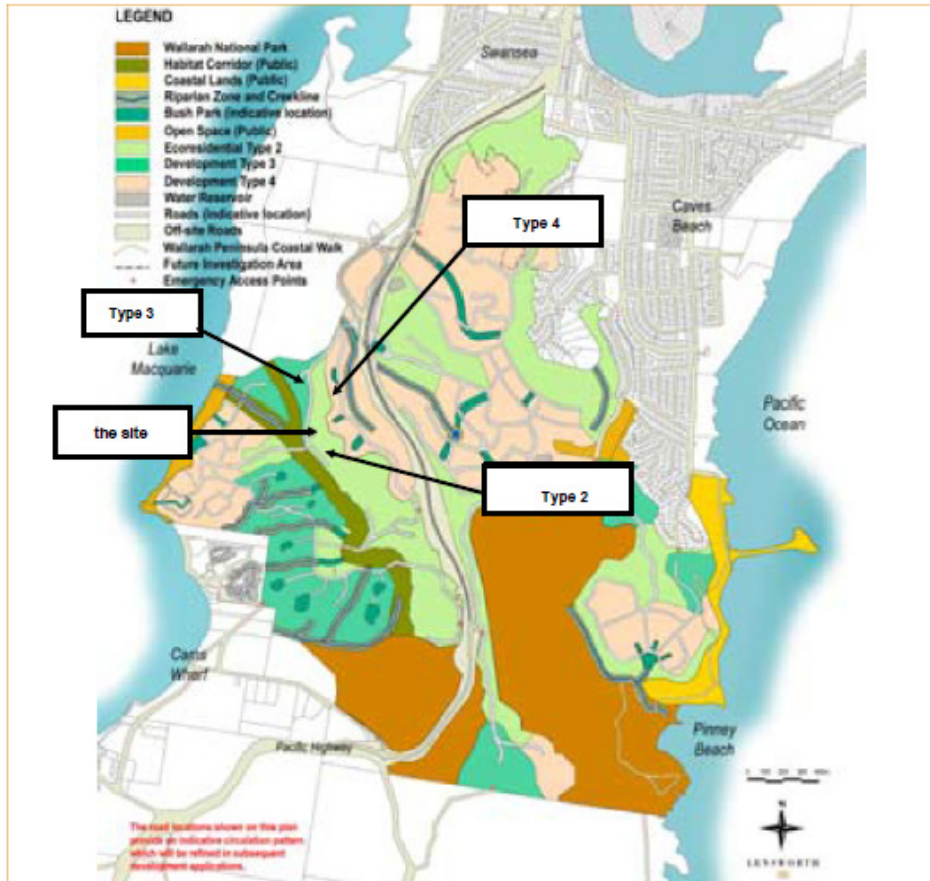


Figure 16-land use plan (extract from NWMP).



Figure 17-development type 2 master plan.



The Development type 2 subdivision pattern which will be immediately adjoining and east of the development site, is proposed to be characterised by generally large lots up to one hectare with individual building footprints of less than 750 sqm. Figure 17 above shows an illustration of the indicative subdivision.

The Development type 3 subdivision pattern which is proposed to follow the ridgeline profile and likely to be accessed off Jetty Point Drive, is proposed to be characterised by lot sizes of between 750-1250sqm, forming clusters of residential dwellings planned as individual precincts of 20-40 lots. This pattern will be north and north west of the site, being in close proximity to the proposed site. Figure 18 below, shows an example of this pattern, which may be planned along the ridgeline where the application is proposed.

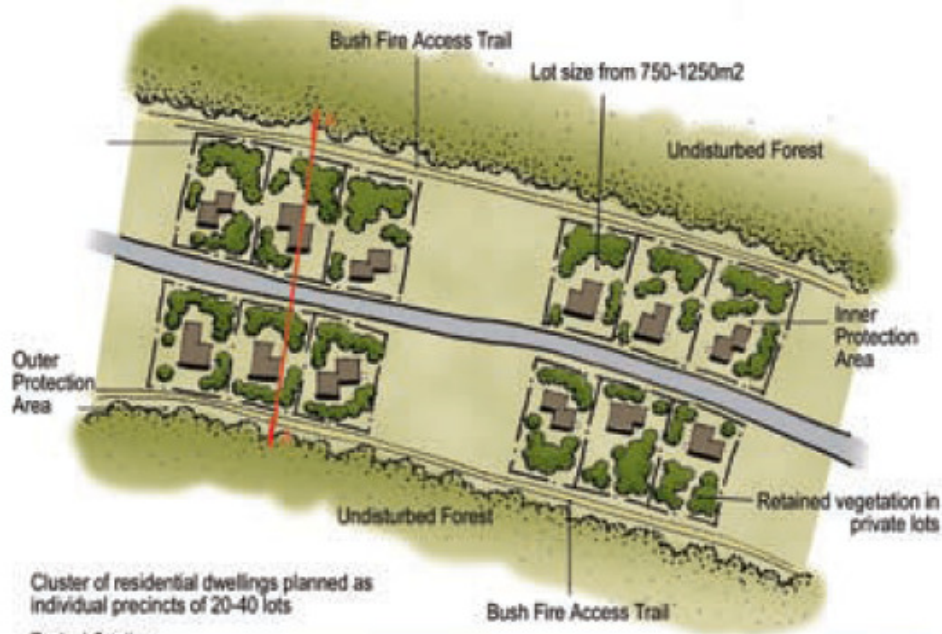


Figure 18-development type 3 master plan.

The Development type 4 subdivision pattern which is to be located north-east of the development site, is an area planned for urban village settlement, with diverse urban forms including terraces, small cottages, large homes, traditional suburban residential development, attached housing, apartments, neighbourhood centre and retail/tourist uses/small commercial and home based business. Figure 19 below, shows an example of this pattern, an area that will have direct sight-lines of the development.



Figure 19-development type 4 master plan.

One of the selection criteria for the site by Telstra was noted as being within a semi-rural location. However as shown above the context of the place is planned to significantly change.

The development application has failed to appreciate or describe and or demonstrate visually the impacts on this precinct. Under these circumstances, the proposed development is likely to have a material affect on the planned outcome of the place and in doing so fail this zone objective.

The application is not considered to meet this objective and may hinder the achievement the of a planned outcome.

*(b) to promote development that is compatible with the amenity of adjoining and surrounding residential development, does not adversely affect the capacity and safety of road networks and can connect to a water supply, and a sewerage and drainage system,*

Planning Comment

The proposal is not considered likely to adversely affect the capacity or the safety of the road network and is able to be connected to services. However, the proposal has the ability to adversely affect existing and future visual and scenic amenity of the place, particularly the planned *Lakeside Ridge Precinct* that adjoins the location of the tower which is planned for future housing, as discussed above under objective (a).

*(c) to ensure that development contributes to a sustainable, vibrant community, and reflects holistic consideration and integration of social, economic and environmental design issues,*

### Planning Comment

The proposal is not considered to conflict with this social and community equity objectives, however from a holistic approach, the proposal does not ensure that the landscape, visual and scenic amenity of the place is protected as sought under the CLUMP and the master plan for the place.

*(d) to promote the ecological compatibility of development with conservation outcomes identified for the land in the North Wallarah Peninsula Local Environmental Study, copies of which are available from the office of the Council,*

### Planning Comment

The application is not considered to conflict with this objective.

*(e) to provide for a range of development types identified in the Conservation and Land Use Management Plan, and described in Schedule 1,*

### Planning Comment

The CLUMP and Schedule 1 of the plan are silent on the role of *telecommunication facilities*.

*(f) to achieve favourable land use outcomes by focussing on environmental, social, economic, community and amenity factors rather than individual land use types,*

### Planning Comment

The likely amenity impacts, due to the visual impacts of the proposal on the village and surrounding residential precincts, is not considered to be acceptable.

*(g) to provide a wide range of housing and accommodation choices through a variety of urban settlement forms*

### Planning Comment

The proposal does not conflict with this objective.

### Clause - 24 Determination of development applications

*(1) The Conservation and Land Use Management Plan provides planning principles and guidelines to provide direction for development on the North Wallarah Peninsula.*

*(2) Before granting a development application, the consent authority is to take into consideration:*

*(a) the matters referred to in the Conservation and Land Use Management Plan, and*

*(b) any master plan applicable to the land the subject of the application, and,*

*(c) any submissions made by the Department of Urban Affairs and Planning concerning the application.*

*(3) Without affecting the generality of subclause (2) (a), before granting a development application relating to land within a heritage conservation area, the consent authority must assess whether the proposed development will have any adverse effect on the heritage significance of any building, work, relic, tree or place situated on or within the land.*

### Planning Comment

Clauses 24(1) thru to 24(3) has been taken into consideration during assessment of the development application.

With regard to clause 24(3) the development site is not located within a heritage conservation area and the proposal is not considered likely to have an adverse effect on any known heritage situated or within the land.

With regard to C24(2)(a), the application is not considered to comply with principle 3 of the CLUMP and the objectives and precinct guidelines for development within the *Lakeside Ridge Precinct* which have been considered above.

With regard to C24(2)(b) , the application has been considered with regard to the North Wallarah Peninsula Master Plan (NWPMP) inclusive of the eight management plans. Assessment against the *Built Form Management Plan*, *Visual Integration Management Plan* and *Infrastructure Management Plan* is further detailed below.

- Built Form Management Plan

The application is not considered to comply with the guidelines/strategies for managing built form within the *Lakeside Ridge Precinct*, which include:

- *buildings will not protrude above the top of the tree canopy on the central ridgelines; and*
- *building height below the top of tree canopy.*

Council staff recommend that these guidelines be adhered to preserve the objective of the master plan and ensure that the amenity of the future development within the Lakeside Ridge Precinct is achieved as sought under the master plan.

It should be noted that the definition of *Built Form* includes phone towers, however there is no specific section in this plan that relates to phone towers.

- Visual Integration Management Plan

Within the precinct there are no specific controls that relate to *telecommunication facilities* however the guidelines of the precinct include protection of the ridgelines of the area and limit development to being located below the ridgeline canopy.

Under the plan, the development site is nominated within *suitability level 2* area. This level is attributed to areas of low to medium visual absorption capacity (VAC). Level 2 sites are suitable for development, provided special planning, design and management provisions are implemented to ensure scenic quality is not significantly reduced.

Councils Landscape Architect has considered the Visual Impact Assessment and concluded that the proposal is not suitable to the character of the place and reached the following conclusions.

*'Due to the Visual Absorption Capacity, slope angle and vegetation cover, the area has a relatively low capacity to visually absorb the development without significantly changing and reducing the visual and scenic quality of the place. The height and form of the proposed monopole is excessive, and would promote a higher level of visual sensitivity than residential development in the vicinity.*

*The development site is immediately adjacent to the areas identified as Type 2 and 3 development, which permits dwellings on lots of approximately 750 – 1250m<sup>2</sup> (development type 3). In this regard, the application has the potential to pose a significant visual impact on these future properties, below and adjacent the development site, particularly once further tree removal is undertaken within the Lakeside Ridge Precinct, for the new residential precincts.*



*The proposed monopole located adjacent to Jetty Point Drive will also have direct visual and scenic quality impacts to this entry road to the existing Murrays Beach residential development. The tower will be highly visible from the road. However, given the character of Jetty Point Drive, which is only 7m wide with flushed kerb and roadside swales, the proposed structure is likely to contrast significantly with the context of the place, and promote a dominant visual impact to residents when entering into Murrays Beach residential site and using surrounds.*

*Murrays Beach development (North Wallarah Peninsula Masterplan) is a sensitive residential project that aims for “a community where the lifestyle of the people and the health of the environment share sustainable outcomes.” The entry driveway is one of the most important elements to present this concept and images of the whole community.*

- Physical Infrastructure Management Plan (NWPMP)

The plan contains a section on *communications* and identifies strategies to deploy communications to the area. It is noted in this section that,

*‘the existing telecommunications infrastructure has sufficient capacity to provide the minimum level to service to Wallarah Peninsula without significant augmentations to the system being required’ and furthermore, that ‘discussions with Telstra have indicated that improved mobile coverage to the Wallarah Peninsula could be achieved through adjustments to the existing mobile coverage infrastructure. This may be achieved by minor adjustments in the alignment of their infrastructure, targeting the Wallarah Peninsula’.*

The strategies the plan adopts with regard to telecommunication facilities state:

- *the developer should, where appropriate, liaise with mobile phone service providers to improve mobile phone coverage through adjustments to their existing networks; and,*
- *the installation of new mobile phone infrastructure should only occur where it complies with the requirements of the other management plans, in particular the potential visual impact of the infrastructure should be addressed and validated by the VMP.*

With regard to these strategies and as discussed above, the applicant has rejected the alternative sites recommended by Stockland, noting that Stockland (the developer) does not support the proposed location and additionally, the site of the proposal is not considered to comply with the strategies and controls of the Built Form Management and Visual Integration Management Plans. In this regard, the proposal is also considered to conflict the strategies for the deployment of communication envisioned under this management plan.

**(a)(ii) the provisions of any draft EPI**

None apply.

**(a)(iii) DCP's**

Lake Macquarie Development Control Plan No. 1 – Principles of Development does not apply to the lands under 2000 Wallarah Peninsula.

Local Environmental Plan 2000 Wallarah Peninsula identifies Development Control Plans 33 and 34 apply to lands contained within the plan. However, these plans apply to exempt and complying development only.

No other Development Control Plans apply.

**(a)(iv) any matters prescribed by the regulations**

The regulations have been taken into consideration during assessment of the application.

**(b) the likely impacts of the development**

The likely impacts of the development have been considered.

The application is not supported by adequate information considering, detailing or visually describing the likely visual impact of the development of the Lakeside Ridge Precinct.

In this regard, the proposed development is considered likely to have an adverse affect the visual and scenic amenity of the locality and the future Lakeside Ridge Precinct planned under the North Wallarah Peninsula Master Plan.

**(c) the suitability of the site for development**

The proposed development is not considered to introduce an adverse bushfire risk to the locality and is considered to comply with the NSW RFS Planning for Bushfire Requirements.

The site is not identified within a geo-technical zone.

No critical habitat or vegetation of ecological significance is proposed to be removed.

The Local Aboriginal Land Council has inspected the site and recommended the site is suitable. Not known items of European or Indigenous heritage is proposed to be removed.

However, the development application has not demonstrated to the satisfaction of the consent authority that the proposed development is suitable to the site. The Council is not satisfied that the development will have an adverse visual impact on the visual amenity and scenic quality of the Lakeside Ridge Precinct and the North Wallarah Peninsula.

**(d) any submissions made in accordance with this Act or the Regulations?**

**Public submissions:**

35 written objections submissions were made to the development application. A summary of the issues is shown below.

<b>Issue</b>	<b>Times Mentioned</b>
Visual amenity/character Impacts	21
Health Impacts EME/EMR	20
Impact on 'Community Sensitive location' as defined under ACIF Code	12
Impacts on wildlife and flora and fauna	16
Impacts on Property Values	7
Inability to comply with North Wallarah Peninsula 'Design Essentials'.	10
Lack of community consultation	10

- Visual amenity/character Impacts

Residents are concerned that the proposed height of the development and its location within the estate will adversely affect the character of the place and promote a poor visual impact to residents living nearby and moving through the place. This issue was mentioned more times than any other issue. The likely visual impacts of the development and impacts on the character of the place were taken into consideration by Council staff during the assessment of the application. Council staff concur that the site is not suitable for the proposed development.

- Health Impacts EME/EMR

Residents are concerned that the development will introduce adverse health impacts to those residing in the vicinity of the proposed development. Council staff considered the likely health impacts of the development during assessment of the application. Council staff note that the proposal complies with its requirements. The development application is supported by a Radio Frequency Electromagnetic Energy (RFEME) report as required. The RFEME report details that the maximum cumulative EME level at 1.5 metres above ground level is estimated to be 0.074% of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) public exposure limits.

- Impact on 'Sensitive Community' as defined under ACIF Code

Residents are concerned that a proper assessment of the sensitivity of place has not been undertaken in keeping with the *precautionary approach* to site selection, pursuant to the Australian Communications Industry Forum 'Industry Code-Deployment of Mobile Phone Network', commonly referred to as the ACIF Code.

The code requires carriers, when selecting a site, to have regard to the likelihood of an area being a *community sensitive location*, and to balance this with other considerations.

Section 5.1.4 (c) of the code, defines a community sensitive location may include *residential areas*. Residents are critical of the application where it describes the site as being suitable due to fact that is isolated from residential properties and in a semi-rural location. Taking into consideration the future development of the place, the proposal would be significantly close to future residential properties. Residents of the locality are concerned that the carrier has erred in their assessment of the context of the place and therefore the sensitivity of the location. It is also noted by residents, that there are very strict planning controls on residential properties in the place, which range from having no fences, no aerials or air condensers on roofs or unscreened infrastructure, and so on. These strict planning controls were developed in order to ensure the bushland character of the place remains as the dominate feature and not man made structures. There is resident concern that the proposal will undo and jeopardise the relevance of these design controls and reduce the amenity of the place.

Council staff has taken these matters into consideration. Staff consider that the development is not suitable to the place and in this case, given the close proximity of future residents to the proposed development, the development site could be considered to be located within a community sensitive location, also due to the strict planning controls that apply to the place (in the absence of a further definition which is not contained within the code).

- Impacts on wildlife and flora and fauna

Residents are concerned that the development will adversely impact on wildlife including flora and fauna. These matters were taken into consideration during assessment. Council staff do not consider the development will adversely affect wildlife inclusive of fauna and flora. The development is located outside of the planned habitat corridor and does not propose to remove any known critical habitat.

- Impacts on Property Values

Residents are concerned that the development will impact on their property values. Property values are generally not a matter for consideration subject to section 79 C of Act.

- North Wallarah Peninsula 'Design Essentials'.

Residents are concerned that the development does not comply with the North Wallarah Peninsula 'Design Essentials'. These are a suite of design controls specific to residential dwellings. In this case, Council staff do not consider that the design essentials are relevant.

- Lack of community consultation

Residents are concerned with the lack of community consultation undertaken, and the failure of the developer to submit their proposal to the Murrays Beach design review panel, which was set up by Stockland to review housing proposal for the development. The ACIF code includes provisions for the implementation of community consultation where a development application is not required. In this case, the developer has no statutory requirement to undertake community consultation in addition to the development application notification, which has been undertaken.

- Impact on master plan for North Wallarah Peninsula

Residents are concerned that the development fails to comply with the North Wallarah Peninsula Master Plan, due to the proposed height of the development and visual impacts on the character of the place. Council staff concur that the proposed development fails the strategies and controls espoused in the master plans due to height of the development above the tree canopy of the ridgeline that traverses the Lakeside Ridge Precinct.

#### **Submissions from public authorities:**

The Mine Subsidence Board has recommended approval subject to conditions.

#### **(e) the public interest**

The development application is not considered to be suitable to the site and fails the relevant planning controls.

The application has not adequately demonstrated the likely visual impacts of the development on the Lakeside Ridge Precinct.

The application is not considered to comply with the *precautionary approach* to site selection, pursuant to the Australian Communications Industry Forum '*Industry Code-Deployment of Mobile Phone Network*', commonly referred to as the ACIF Code.

Approval of the development is not considered to be in the public interest.



## Conclusion

The development application proposes a telecommunication tower sited above the existing tree canopy on a prominent ridgeline, within a planning precinct identified for future residential development. The application has not adequately demonstrated what the visual impacts on this precinct will be. Council is concerned that the proposal will pose a significant visual impact on the future desired character of the place and Lakeside Ridge Precinct. In this regard, the application is recommended for refusal subject to the reasons detailed at appendix A.

Appendix	Documents
Appendix A	Reasons for refusal (1 page)
Appendix B	Plans of Development (3 pages)

## Appendix A – Reasons for Refusal

1. The SEPP1 submission lodged with the application does not demonstrate a well founded case for the relaxation of development standards, associated with the retention of the height of proposed development to below the existing tree canopy of the place. In the is regard, retention of the development standards are not considered to be unnecessary or unreasonable. S79C(1)(a)(i) EP & A Act 1979.
2. The application fails to comply with principle 1 and 2 of the *NSW Telecommunication Facilities Guideline Including Broadband July 2010* as required pursuant to Clause 115(3) State Environmental Planning Policy – Infrastructure. S79C(1)(a)(i) EP & A Act 1979.
3. The application fails to comply with the aims of *Lake Macquarie Local Environmental Plan 2000-North Wallarah Peninsula*. The proposal fails to comply with aims (a), (b), (c) and (e). S79C(1)(a)(i) EP & A Act 1979.
4. The application fails to comply with clause 10-zone objectives (applicability) of *Lake Macquarie Local Environmental Plan 2000-North Wallarah Peninsula*. The proposal is not consistent with aims (a), (b), (c), and (e) and zone objectives (a), (b), (c), (d) and (f). S79C(1)(a)(i) EP & A Act 1979.
5. The application fails to comply with clause 17-zone objectives of *Lake Macquarie Local Environmental Plan 2000-North Wallarah Peninsula*. The proposal is not consistent with zone objectives (a), (b), (c), (d) and (f). S79C(1)(a)(i) EP & A Act 1979.
6. The application fails to comply with clause 24-determianiton of development applications of *Lake Macquarie Local Environmental Plan 2000-North Wallarah Peninsula*. The proposal is inconsistent with the principle three of *The Conservation and Land Use Management Plan* and the guidelines of the Built Form, Visual Integration and Physical Infrastructure Management Plans, relevant to building height, as required under the *North Wallarah Peninsula Management Plan*. S79C(1)(a)(i) EP & A Act 1979.
7. The application is considered to promote an adverse visual impact on the scenic quality of the locality, mainly the Lakeside Ridge Precinct of North Wallarah Peninsula. S79C(1)(b) EP & A Act 1979.
8. The application is not supported by adequate information to allow a proper assessment of the likely visual impacts of the proposed development. The analysis demonstrating the likely visual impact of the development on the Lakeside Ridge Precinct is inadequate. S79C(1)(c) EP & A Act 1979.
9. The proposal is considered to be located within a *community sensitive location*, subject to the Australian Communications Industry Forum '*Industry Code-Deployment of Mobile Phone Network*'. Approval of the application in such a location, is not considered to be in the public interest. S79C(1)(e) EP & A Act 1979.
10. The carrier has not met it's responsibilities under the Australian Communications Industry Forum '*Industry Code-Deployment of Mobile Phone Network*', the ACIF Code, as per Part 6 of Telecommunications Act, with regard to the meeting the objectives of the code and application of the precautionary approach to site selection. The carrier has not fully disclosed the factual basis to findings associated with the elimination of potential sites and in doing so has not fully shown a precautionary approach to site

selection. Approval of the application is not considered to be in the public interest. S79C(1)(e) EP & A Act 1979.

## Appendix B – Plans