



NOTICE OF MEETING

Notice is hereby given that a meeting of the

DEVELOPMENT CONTROL UNIT

will be held at the Council Chambers, Breese Parade, Forster on

29 OCTOBER 2009 AT 2.00PM

The order of the business will be as detailed below (subject to variation by Council)

1. Apologies
2. Declarations of Pecuniary & Non-Pecuniary Conflicts of Interest
3. Confirmation of the Minutes from previously held meetings:
DCU 15 October 2009
4. Consideration of Officers' Reports:
Director Planning & Environmental Services
5. Late Business
6. Close of Meeting

* **NB** If a Councillor wants to call in any Application for determination by Full Council, they must notify the General Manager's Secretary of the Item by 12.00 noon on Tuesday 27 October 2009.

Keith O'Leary
General Manager

GREAT LAKES COUNCIL

COUNCIL STRATEGIC DIRECTION

Council has adopted a Vision, Mission and five Strategic Objectives to guide the overall direction of Great Lakes Council.

VISION

Great Lakes.....

A leader in the provision of infrastructure and services which sustain and enhance the natural environment and achieve a quality lifestyle for residents and visitors.

MISSION

Providing governance which is:

- *Effective*
- *Efficient*
- *Socially Just*
- *Transparent*
- *Visionary*

STRATEGIC OBJECTIVES

1. *Natural and Built Environment*

To plan for future growth while ensuring a healthy well managed natural environment.

2. *Community and Social Wellbeing*

To provide opportunities for recreation and culture for all and to foster a safe and caring community.

3. *Economic Development*

To plan for sustainable economic and tourism development.

4. *Infrastructure Management*

To plan and manage infrastructure and assets to meet community needs.

5. *Corporate Governance*

To ensure Council management and practices provide effective, efficient, socially just, transparent and visionary governance. To create long term financial viability while responding to the needs and demands of the community.

The following is extracted from Council's adopted Code of Conduct. The Code applies to Councillors, members of staff and delegates of Council and also includes contractors and volunteers

GREAT LAKES COUNCIL

CODE OF CONDUCT PRINCIPLES AND ETHICAL DECISION MAKING

- **Integrity** – You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.
- **Leadership** – You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of Council. *This means promoting public duty to others in the council and outside, by your own ethical behaviour.*
- **Selflessness** – You have a duty to make decisions solely in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*
- **Objectivity** – You must make decisions solely on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.*
- **Accountability** – You are accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*
- **Openness** – You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*
- **Honesty** – You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*
- **Respect** – You must treat others with respect at all times. This means not using derogatory terms toward others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

Ethical Decision Making

Consider the following points when assessing a potential action or decision.

- Is the decision or conduct legal?
- Is it consistent with Council policy, Council's objectives and Council's Code of Conduct?
- What will the outcome be for yourself, your colleagues, Council and other interested parties?
- Does it raise a conflict of interest?
- Do you stand to privately gain or lose at the public expense?
- Can the decision be justified in terms of the public interest?
- Would the decision withstand public scrutiny?

TABLE OF CONTENTS

CONSIDERATION OF OFFICERS' REPORTS: 1

DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES 1

- 1 PES - Proposed Aerial, Retaining Wall and Gazebo - DA54/2010 - 6 Kiola Place, Forster..... 1
- 2 PES - Proposed Roof Over Existing Timber Deck - DA528/2007 - 4 First Ridge Road, Smiths Lake 10

CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

1 PES - Proposed Aerial, Retaining Wall and Gazebo - DA54/2010 - 6 Kiola Place, Forster

Index: DA54/2010 & PK5706
Author: Senior Building Surveyor - Bruce Arkle
DCU Meeting: 29 October 2009

DETAILS:

Date Received: 3 August 2009
Applicant: S J Kell
Owner: Mr Bailey and Ms Kell
Land: Lot 70 DP 262684, 6 Kiola Place, Forster
Area: 623.3m²
Property Key: 5706
Zoning: 2(a), GLLEP 1996

SUMMARY OF REPORT:

The application is the result of a submission regarding the erection of a high television antenna. The applicant has taken advantage of having to submit a development application to request consideration of a swimming pool, retaining wall and cabana.

SUMMARY OF RECOMMENDATION:

That the application is approved subject to the television antenna being reduced in height to no more than 3.6m following the change over of the current black spot repeater on the water tower at Forster from an analogue signal to digital.

FINANCIAL/RESOURCE IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

LEGAL IMPLICATIONS:

An applicant may appeal a decision of Council.

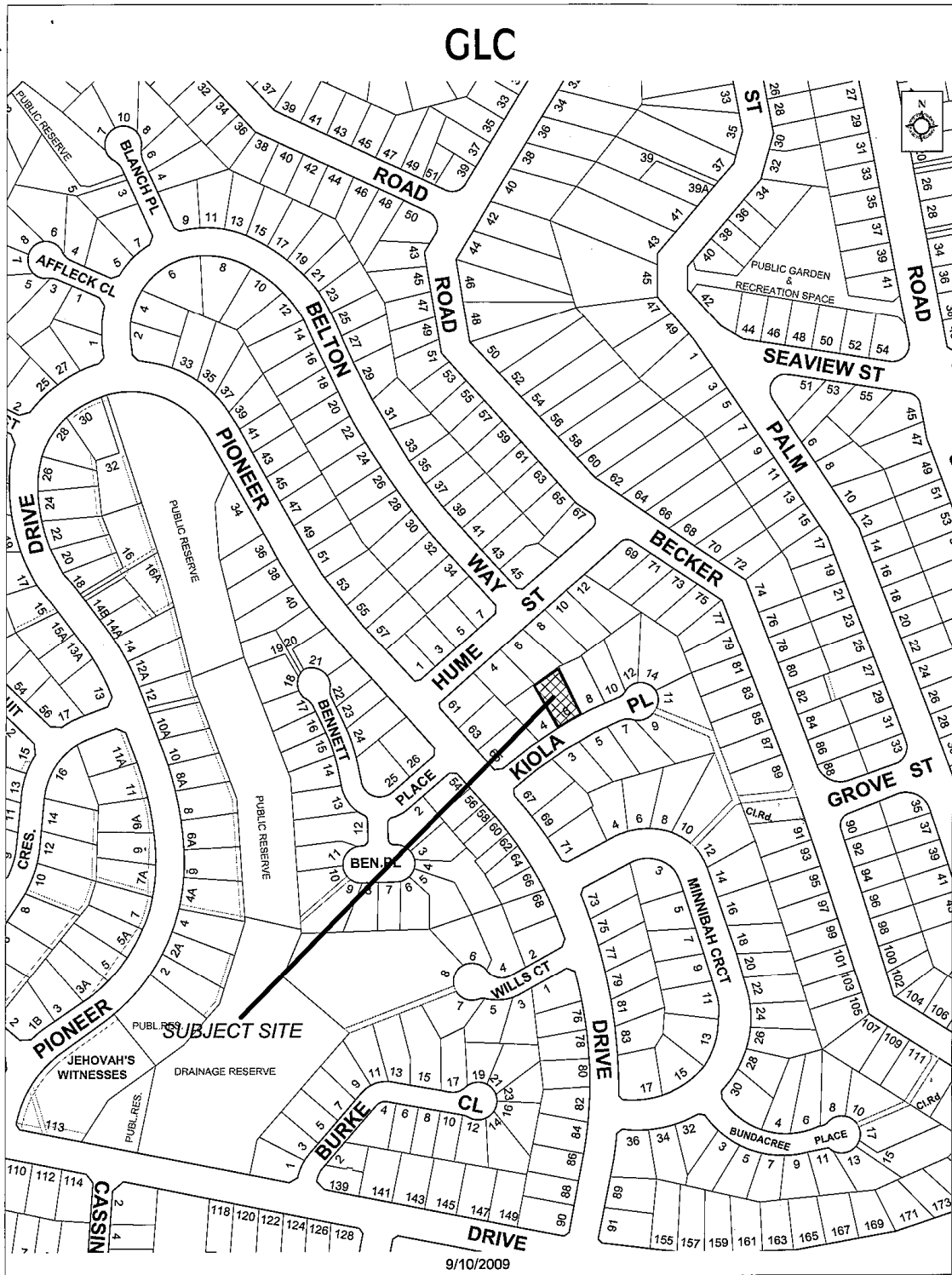
LIST OF ANNEXURES:

Nil.

LIST OF ATTACHMENTS:

Nil.

SUBJECT SITE AND LOCALITY:



BACKGROUND:

On the 2 July 2009 a submission was received by council raising concern in regard to the recent erection of a 10.0m high television antenna at the subject premises. An inspection was carried out by a member of Councils regulatory control department on the 21 of July.

The inspection noted that an antenna appeared to be about 10.0m high and had been erected without the prior approval of Council.

The owner of the premises was informed that they would have to submit a development application for consideration of the use of the structure.

Initially the owner protested that television antenna had never been subject to a formal development application to Council stating that they would be disadvantaged as the new digital signal was not available from their home until a height of 10.0m was attained.

Recent changes to legislation have clarified the need for an application, if the development is not exempt or complying under either local or state legislation then it needs consent.

In support of this application two installers have testified that to receive a digital reception at the subject premises it is necessary to have a television antenna to a height of 10.0m

PROPOSAL:

It is proposed that the television antenna, to a height of approximately 10.0m, be permitted to remain, that a swimming pool, gazebo and retaining wall within the backyard be approved.

SITE DESCRIPTION:

The site is located on the north western side of Kiola Place. Existing on site is a split level brick and tile dwelling with a tiled roof.

REPORT:

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations that apply to the Development Application on the subject land

Great Lakes Local Environmental Plan 1996 (GLLEP 1996)

The allotment is zoned 2(a) Low Density Residential and the proposed works are considered to be consistent with the objectives of the zone.

SEPP (Exempt and Complying Development Codes)

This code permits television antenna to be erected up to 1.8m above the ridge line of a dwelling without Council approval.

DCP 28 (Exempt and Complying)

Councils Exempt and Complying development control plan permits television antenna to be erected to a height of 3.6m above the ridge of a building within a residential zone.

The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

Context and Setting

The swimming pool, cabana and retaining wall structures are unlikely to affect the amenity of the area or that of adjoining neighbours. The comparatively high television antenna is considered to be an unusual circumstance that singularly is not a major imposition but where numbers of these structures are erected they are likely to affect the current visual amenity of the locality in a detrimental manner.

Site Design and Internal Layout

The site design proposed by the application is considered reasonable although the limited space between the proposed swimming pool and existing dwelling will offer a challenge in terms of compliance with the fencing requirements of the Swimming Pool Act 1992.

Visual Impact

The visual impact of the television antenna has been discussed previously. It is considered that singularly the antenna is acceptable but where numbers of these structures are erected it is considered that the visual amenity of the locality will be detrimentally affected.

Cumulative Impacts

It is considered that where a number of very high television or other antennas are erected within this locality they would have a detrimental impact on the visual amenity of the area.

Any Submissions Made in Accordance with the Act or Regulations

The application was notified to adjoining owners in accordance with Council's Policy no submissions were received.

It must be noted that although no submissions have been received the matter of the antenna and its likely impact on the locality have been discussed with nearby residents who are concerned particularly where they become common place.

CONCLUSION:

This matter has brought to attention the fact that the currently operational analogue repeating stations, installed to overcome black spot reception at a number of locations within the Council boundaries, will require upgrading to transmit a digital signal. It is expected that, over the coming years, funding will be made available from the Commonwealth Government so that this work can be completed.

The proposed additions to the dwelling, the swimming pool, cabana and retaining wall will be recommended for approval. It will be recommended that the television antenna be permitted to remain until funding to up grade the existing analogue repeating stations to digital is available and the work completed.

RECOMMENDATION:

That development application 54/2010 for the use of a television antenna, installation of a swimming pool and construction of a retaining wall and cabana is approved subject to the following conditions;

The following condition/s have been applied to ensure that the development complies with the provisions of the Environmental Planning and Assessment Act and Regulations and Policies of Council:

1. The development being carried out in accordance with the details set out in the Development Application unless otherwise amended by these conditions of consent.
2. The existing television antenna shall be permitted to remain but shall be reduced in height to a height not exceeding 3.6m, above the roof of the existing dwelling, once the existing analogue repeating stations have been upgraded to achieve a digital signal.
3. The building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority subject to the provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000) to verify compliance with this consent and the standards of construction detailed in the Building Code of Australia, at not less than the following stages prior to proceeding to the subsequent stages of construction:
 - a) Commencement of works.
 - b) Footings.
 - c) Steel reinforcement.
 - d) Framework including floor, wall and roof framing prior to fixing of internal lining.
 - e) Stormwater drains.
 - f) Final.
4. Work on any building shall not commence until a Construction Certificate, complying in all respects with the provisions of the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Building Code of Australia, has been issued.
5. It is a condition of approval that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
6. Submission of a Damage Bond Application Form and payment of a bond in the amount of \$1,110.00 payable for the purpose of funding repairs to any damage that may be occasioned to Council assets by activities/works associated with the construction of the development approved by this consent and ensuring Council standards and specifications are complied with. The bond shall be paid to Council prior to the issue of any Construction Certificate that may be issued for any component of the development.

A final inspection will be carried out by Council's responsible officer and the bond (minus the administration fee) will be considered for refund:

1. Once all works, including landscaping, driveway construction, turfing, etc, have been completed; AND
2. Following issue of an Occupation Certificate by the Principal Certifying Authority for the development; or
3. Upon application for the release of the subdivision.

A fee will be deducted from the bond to cover administration costs as follows:

- \$110.00 for developments up to the value of \$400,000.

The Damage Bond is reviewed periodically and therefore the fee and bond amount payable shall be determined from Council's current fees and charges document at the time of lodgement of the Damage Bond.

7. Building work that involves residential building work (within the meaning of the Home Building Act, 1989) must not be carried out unless the principal certifying authority:
 - a) in the case of work to be done by a licensed contractor:

- (i) has been informed in writing of the licensee's name and contractor number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act (in relation to insurance policies); or
 - b) in the case of work to be done by any other person:
 - (i) has been informed of the person's name and owner-builder permit number; or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the market cost of the labour and materials involved in the work does not exceed \$5,000.
8. Structural drawings prepared by a suitably qualified and experienced Structural Engineer being submitted to and approved by the principal certifying authority prior to the issue of a construction certificate. The plans shall detail:
- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
 - b) Footings of the proposed structure.
9. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life or property.
10. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- a) must preserve and protect the building from damage.
 - b) if necessary, must underpin and support the building in an approved manner.
 - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, ***allotment of land*** includes a public road and any other public places.

11. Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied.
- The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.
12. The additions to the building are not to be occupied until fully completed in accordance with the approved plans and conditions of development consent.
13. Roof material shall be of a subdued low-reflective colour installed in accordance with the manufacturer's details. The colour of the roofing material is to be approved by Council prior to the issue of any Construction Certificate (unpainted metal, zincalume, white or off-white materials are not acceptable).
14. A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:

- a) The name, address and telephone number of the principal certifying authority for the work; and
- b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
- c) The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be removed when the work has been completed.

The following condition/s have been applied to ensure that reasonable levels of health, safety and amenity for the occupants of the building, neighbouring properties and the locality are maintained after the erection of the proposed building:

- 15. Building materials, sand or waste materials shall not be placed on the footway or road reserve at any time.

The following group of condition/s have been applied to ensure that noise from the development does not create a nuisance and to ensure that reasonable levels of the amenity of the area are maintained during construction and after the erection of the building:

- 16. The use of the premises and the operation of all plant and equipment shall not give rise to any offensive noise as defined in the Protection of Environment Operations Act.

The following conditions have been imposed to ensure compliance with the Swimming Pools Act 1992 and to ensure the adequacy of the pool and it maintains reasonable levels of public safety and amenity:

- 17. The swimming pool is to be fenced in accordance with the Swimming Pool Act 1992. Such fence is to be erected prior to the pool being filled.
- 18. Temporary fencing is to be provided during construction of the swimming pool.
- 19. Backwash of the filter and other waste water being discharged to MidCoast Water's sewer in an approved manner.
- 20. Forty-eight hours notice in writing being submitted to the Principal Certifying Authority for a final inspection of the completed pool, and in this regard, the pool is NOT to be filled with water until the pool has been completed and consent for filling granted by an accredited certifier.
- 21. The motor, filter, pump and all sound producing equipment or fitting associated with or forming part of the pool filtering system being sound insulated and/or isolated so as not to create an offensive noise to the occupants of the adjoining premises.
- 22. A warning sign is to be erected in a prominent position in the immediate vicinity of the swimming pool. The sign must be erected in accordance with the document entitled "Policy Statement No 9.4.1: Guidelines for the Preparation of Posters on Resuscitation", published in 1985 by the Australian Resuscitation Council and the sign must bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the document entitled "Cardio-Pulmonary Resuscitation" published by the Australian Resuscitation Council.
- 23. The spa/pool installation shall comply with the Building Code of Australia, NSW 1.2.2.

Prior to the use of the spa/pool, the principal contractor shall submit certification to Council or the principal certifying authority, certifying that the spa/pool installation complies with Australian Standard 1926.3-2003-Swimming Pool Safety "Water Reticulation Systems".

The following conditions have been applied to ensure that adequate drainage is provided from the premises and to maintain adequate levels of health and amenity in the locality:

24. Stormwater shall be discharged to the existing stormwater drainage system.

The following condition/s have been applied to ensure compliance with Council's Erosion and Sediment Control Policy:

25. All erosion and sediment control measures undertaken on the site shall be undertaken to conform to the specifications and standards contained in Council's guidelines.

26. An Erosion and Sediment Control Plan (ESCP) shall be prepared by the applicant (or applicant's agent) prior to a construction certificate being issued.

27. The site shall be landscaped with all disturbed ground being stabilised against erosion to Council's satisfaction within 30 days of completion of building works.

2 PES - Proposed Roof Over Existing Timber Deck - DA528/2007 - 4 First Ridge Road, Smiths Lake

Index: DA528/2007 & PK 11789
Author: Senior Building Surveyor - Bruce Arkle
DCU Meeting: 29 October 2009

DETAILS:

Date Received: 26 April 2009
Applicant: Martin Salt
Owner: Mr and Mrs Salt
Land: Lot 44 DP 32207, 4 First Ridge Road, Smiths Lake
Area: 569.1m²
Property Key: 11789
Zoning: Village 2, GLLEP 1996

SUMMARY OF REPORT:

The applicant has requested that a condition of consent requiring a privacy screen be deleted. A submission has been received objecting to the proposed modification.

SUMMARY OF RECOMMENDATION:

That the condition is modified to require a less intrusive screen.

FINANCIAL/RESOURCE IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

LEGAL IMPLICATIONS:

The applicant may appeal a decision of Council.

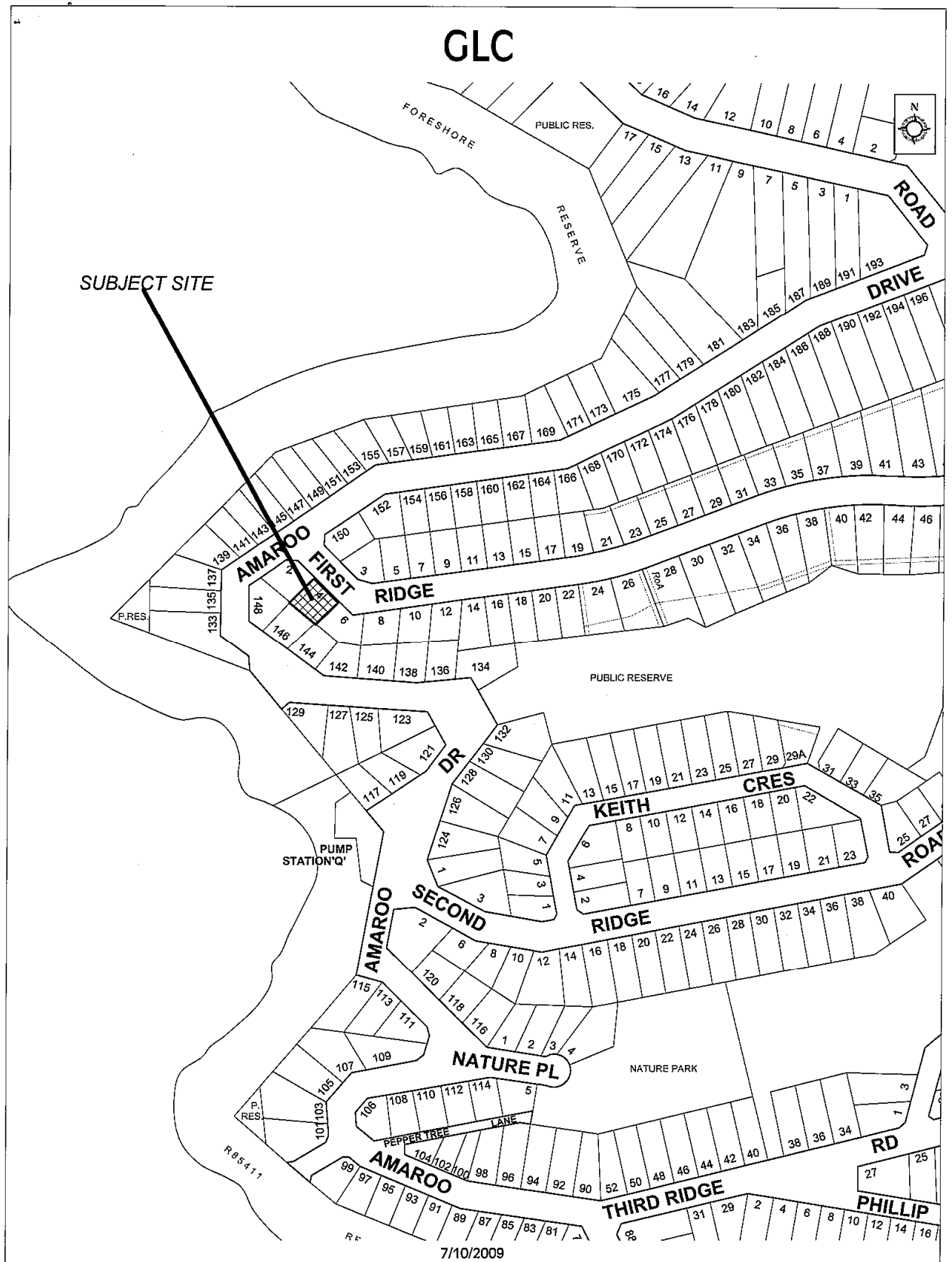
LIST OF ANNEXURES:

A: Site plan and elevation

LIST OF ATTACHMENTS:

Nil.

SUBJECT SITE AND LOCALITY:



Disclaimer.
This map was produced by Great Lakes Council using information from the Land

BACKGROUND:

The following is a summary of events leading up to the requirement for the screen.

The circumstances of the screen originate from the dwelling consent by Council on the 8 February 2000 (DA691/2000). An occupation certificate was issued for the completed dwelling on the 12 April 2002. A submission received around the 6 January 2006 indicated that the deck had been extended without the consent of Council. Investigation revealed that the deck had been altered/enlarged prior to the issue of an occupation certificate and some time before the receipt of the submission from the neighbour. The adjoining neighbour was informed at that time that due to the circumstances of the deck (lapsed time-v-issue of a construction certificate) that the matter would not be pursued.

Application for a building certificate was received for the dwelling and altered deck and ultimately issued on the 9 August 2006. The property was sold to the current owner on the 18 September 2006.

Development application No. 528/2009, for the erection of a roof over the disputed deck, was submitted to Council around February 2007. Following consideration of a report to Council's Development Control Unit, where it was considered that the use of the deck would be intensified by the roof addition, the application was approved subject to conditions including condition No 11. "A 1.5 metre high privacy screen is to be erected to the rear of the deck area that projects to the south-west.

Details of the privacy screen are to be submitted to Council for consideration, prior to the issue of a construction certificate.

PROPOSAL:

The description of work within the application to modify the consent states; "Omission of privacy screen as it serves no purpose of privacy".

SITE DESCRIPTION:

The site is located to the south western side of First Ridge Road, Smiths Lake, near its western end. A single storey dwelling exists on the site with a covered timber deck attached to the rear of the dwelling.

REPORT:

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations that apply to the Development Application on the subject land

Great Lakes Local Environmental Plan 1996 (GLLEP 1996)

The land is zoned 2 Village under GLLEP 1996. The proposal is considered to be consistent with the objectives of the zone and may be permitted with the consent of Council.

State Environmental Planning Policy

The site is partly within the sensitive coastal zone defined by SEPP71.

The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

The proposed modification requests the removal of the need to provide a privacy screen along the south western side of a portion of an existing deck. The property owner has made the following submission regarding the existing privacy screen in the following manner:-

"The privacy screen was originally agreed to because it was conveyed as the only way the consent would be agreed. In actual fact the privacy screen does not give privacy to the subject property or the neighbours property. All the privacy screen has done is blocked out the view of the lake, some trees and sky. When seated on the existing deck the line of sight is above the neighbours roof line."

The privacy screen was required as a condition of consent following consideration of the matters within section 79C of the Environmental Planning and Assessment Act development application No. 528/2007. An extract from that report states the following:-

When the original approval was determined in February 2000, a report went before Council with one of the issues of concern raised by the neighbour being loss of privacy. The report outlined that the dwelling had been designed to take advantage of the available views towards Smiths Lake. It also stated that given the small nature of the site and as the slope falls away towards the rear, that some level of impact created by a development was expected.

In view of the history as outlined in the report and in view of the issues that were originally raised over the development, it is not considered that the deck projection is unreasonable given the site constraints.

It is considered however that given that a roof will be placed on the existing deck that the use of the deck may increase, thus having the potential to have an impact on the property to the south west. In this regard it will be requested as a condition of consent that, a 1.5 metre high privacy screen be erected to the rear of the deck area where the deck projects toward the rear property boundary.

During assessment of the development application to permit a roof addition (DA528/2007) it was considered that the use of the deck would intensify to a point where the privacy (amenity) of the neighbour to the south would suffer.

Ultimately the result permitted an open picket style balustrade below the additional 0.5m high horizontal privacy screening. It is considered that, when viewed from the deck, the resultant privacy screening is not what was intended by Council's decision. The high balustrade tends to enclose those seated on the deck and tends to shut out light and the available view to the lake. This has the result of reducing the amenity of those seated on the deck. As the privacy screen is partly open a relatively easy view of the neighbouring back yard is also available. In short the existing privacy screen does not fulfil its intended purpose.

A compromise has been offered to the owner of the premises. The compromise was to remove the additional screen, and at the same time completely enclose or make solid the 1.0m high baluster by the insertion of villaboard or other suitable material between the handrail and bottom rail of the balustrade. It was considered that this option would prevent inadvertent viewing into the back yard, of the neighbouring property to the south, by those seated on the deck while providing a more open and amenable structure from a seated position on the deck. The owner has agreed to this compromise.

Any Submissions Made in Accordance with the Act or Regulations

The application was notified to adjoining owners in accordance with Council's Policy and one submission was received. The submission objects to the deletion of the privacy screen. A summary of the submission is as follows;

1. By Council allowing this highly illegal deck extension to remain in the first place it has manifested extreme privacy issues for the rear of our residence.

2. The deck, not consistent with its approval is within 2.0m of the dividing boundary. Users of the deck have an uninterrupted view of our back yard, kitchen, dining room, laundry, bathroom, WC, and bedroom unless the windows are drawn.
3. Since the roof has been installed we have found that the use of the deck has increased which has not only increased the impact of privacy issues visually but has also had the effect of impacting on the rear of our property aurally.
4. We request that Council refuse the application to delete the privacy screen.
5. We are unsure why Council has to reconsider this condition of approval.
6. We ask that Council therefore, to ensure that the privacy screening which has never been erected be done immediately.

Comment:

The author of the submission, an adjoining neighbour to the south, has objected to both stages of the development of this site. His submission in regard the original dwelling application raised the same matters of privacy and overlooking as are raised within his most recent submission. On the first occasion the various matters were reported to Council. The report noted that the southern aspect from both dwellings would be favoured in terms of living spaces as that was the direction of a view of the lake. It was also noted that the both adjoining sites had a moderate slope and that overlooking would result from the construction of the dwelling and south facing deck on the subject allotment.

During the construction of the dwelling, apparently prior to the issue of an occupation certificate (2002) the middle portion of the deck was widened by approximately 2.0m. This was not raised immediately with Council but came to light a number of years after the event. Ultimately a building certificate was issued for the dwelling and deck addition.

The second application for the erection of a roof above the existing deck attracted objection. In this instance Council resolved that a condition be placed on the consent requiring the erection of the additional privacy screening to a height of 1.5m (balustrade plus 0.5m screen). This condition related to the perceived intensification of use of the deck as a result of the roof addition.

Inspection of the existing structure indicated that the see through balustrade and additional privacy screen failed to provide the privacy sought by the adjoining property owner. At the same time the balustrade significantly reduced the amenity of the rear deck area of the subject property.

Taking into account the orientation and topographical situation of the two dwellings I must direct Council back to its original decision regarding the dwelling and deck where the following assessment/statement was made:-

The dwelling has been designed to take advantage of views available toward Smiths Lake. Such an outlook is achieved by viewing over a number of other dwellings. This outlook to the rear of the property may also be considered to have an impact in relation to privacy afforded to adjoining properties.

It should be expected that the construction of any dwelling within a residential area would have some impact in relation to privacy afforded between adjoining properties. The construction of the dwelling is no exception, although for the following reasons such impacts are considered acceptable.

The subject site is only small in size with relatively short side boundaries, (23.775m and 25.54m). This results in the construction of any dwelling upon the site being in close proximity to all boundaries.

The natural slope of the site results in the building being elevated at the rear, similar to the majority of dwellings throughout Smiths Lake. The natural slope also results in any dwelling built upon the site looking down towards adjoining properties at lower elevations.

Lowering the building at the rear would not only increase construction costs and necessitate site excavations, but may also increase any impacts upon privacy. This is due to the fact that the decreasing the height of the house would result in an outlook viewing directly into the adjoining dwelling instead of over the top, as presently proposed.

It is considered that the original assessment regarding the dwelling and deck, regardless of the decks width is still valid. The subject building was always going to orientate decks and open space / living areas toward the view. The subject dwelling is located on significantly higher ground and on an allotment with limited depth. The dwelling on the adjoining allotment likewise is situated with decks and living areas orientated toward the view /south.

Where any occupant of the subject building wishes to view the backyard of the lower property they can simply to walk to the privacy screen or to a portion of deck where the privacy screen was not required to look down on the adjoining site.

It is considered that a better outcome, in particular for the occupants of the subject dwelling, would be achieved where the added screen was removed from the top of the balustrade and a solid balustrade to a height of 1.0m was provided in its place. The adjoining neighbour would in turn benefit to a degree by having a solid screen preventing inadvertent viewing into his backyard area by those seated on the deck. Nothing will ever prevent the occupants of the subject dwelling being able to look down into the rear portion of the lower adjoining premises.

CONCLUSION:

The adjoining neighbour to the south was contacted in regard to this matter following receipt of the application and his submission. The author of the submission expressed his disappointment regarding the decision to permit the deck addition once it was found to be wider than the original consent permitted and also that the current owner wished to remove the privacy screen

RECOMMENDATION:

That the application to modify development consent No. 528/2007 by deleting condition No 11 from the consent is approved subject to the following:-

Amending Condition 1 to read:

1. The development being carried out in accordance with the details set out in the development application unless otherwise amended by these conditions of consent.

Amending Condition 11 to read:

11. A privacy screen shall be provided to the south western portion of the deck in the following manner. The existing balustrade, attached to the south western projection of the existing deck, shall be completely enclosed or made solid by the insertion of villaboard or other suitable material between the handrail and bottom rail of the balustrade.