# Notice of Development Control Unit Meeting

## to be held at the Council Chambers
## 4 Breese Parade, Forster

## 5 April 2018 at 2pm

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

1, Acknowledgement of Traditional Custodians

2. Declaration of Pecuniary or Conflicts of Interest (nature of interest to be disclosed)

3. Apologies

4. Confirmation of Minutes

5. Matters arising from Minutes

6. Addresses from the Public Gallery

7. Consideration of Officers' reports

8. Close of meeting

Steve Embry
**Acting General Manager**

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**CONSIDERATION OF OFFICERS' REPORTS:**

**DIRECTOR PLANNING & NATURAL SYSTEMS**

## 1 DA-288-2018 - LIFT WELL TO EXISTING RESIDENCE - 24 MOIRA PARADE, HAWKS NEST

**Report Author** **Aaron Green, District Building Surveyor**

**File No. / ECM Index** **DA-288/2018**

**Date of Meeting** **5 April 2018**

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**DETAILS**

Date Received: 7 December 2017

Applicant: Mrs R M Bobako and Mr L Bobako

Owner: Mrs R M Bobako and Mr L Bobako

Land: Lot 12 DP 25955 - 24 Moira Parade, Hawks Nest

Property Key: 11067

Zoning: R3 Medium Density Residential, GLLEP 2014

**SUMMARY OF REPORT**

- Application submitted for a lift well to an existing residence.
- The proposal does not comply with Section 5.5.2.5 Side and Rear Setback Controls of Great Lakes Development Control Plan.
- One objection was received from a neighbouring property.
- Non-compliances and neighbour objection discussed throughout report.

**SUMMARY OF RECOMMENDATION**

That development application No. 288/2018, for a lift well located at Lot 12 DP 25955, 24 Moira Parade Hawks Nest be approved subject to conditions of consent.

**FINANCIAL/RESOURCE IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

**ATTACHMENTS**

A: Photographs of view from 7 Pelican Avenue, Hawks Nest

Attachment A has been circulated in hard copy to the Councillors and Senior Staff, however this Attachment is publicly available on Council's website.

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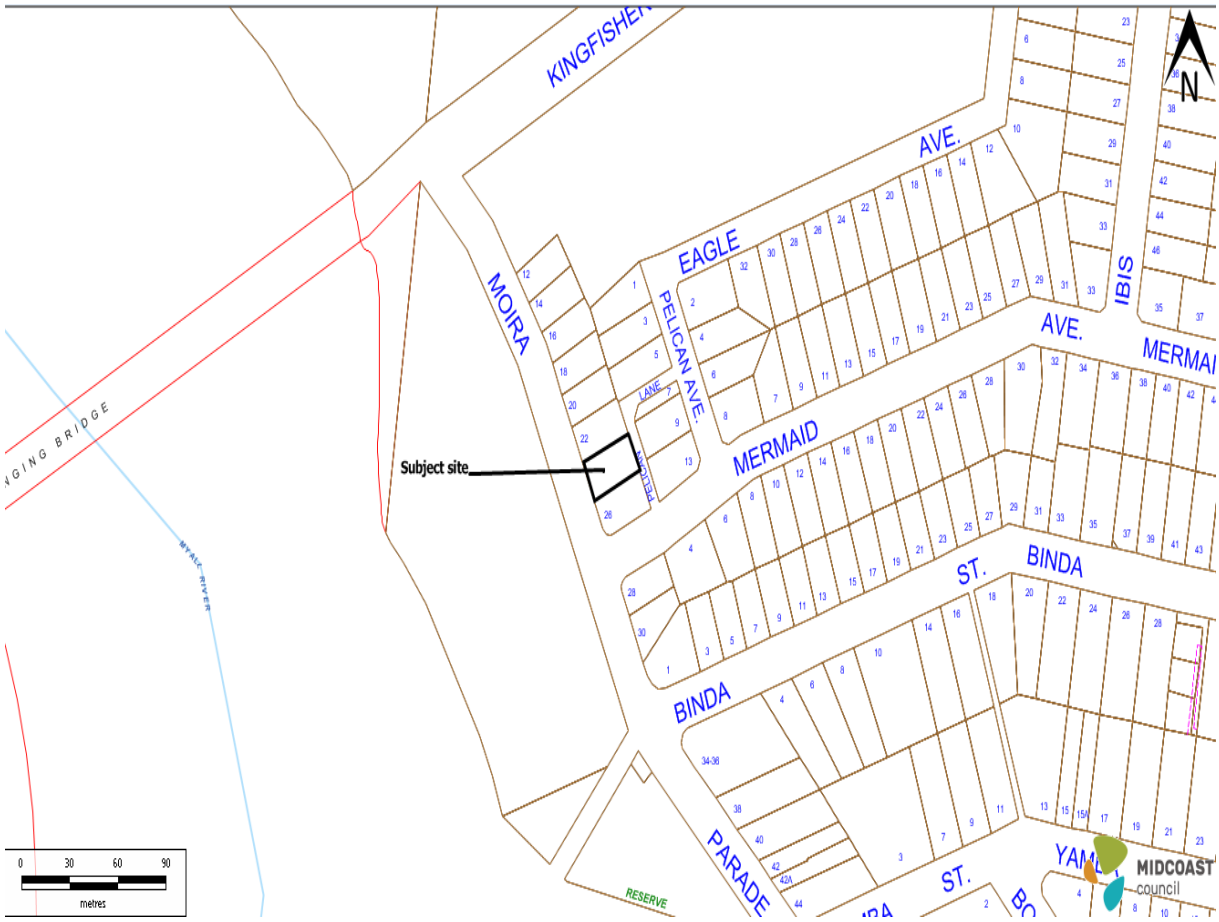
## SUBJECT SITE AND LOCALITY




## BACKGROUND

The site has previously been used for residential purposes.

A summary of previous approvals are shown below:

| Approval no. | Descriptions | Determination | Date |
|---|---|---|---|
| DA 6/2001 | Alterations & additions to dwelling | Approved | 5/9/2000 |
| K4/01 | Alterations & additions to dwelling | Approved | 26/10/2001 |

## SITE DESCRIPTION

The subject allotment is described as Lot 12 DP 25955, and is located at 24 Moira Parade, Hawks Nest. The site is located at the northern end of Moira Parade, Hawks Nest on the eastern side of the street. There are existing dwellings to the north, east and south. To the west of the site on the other side of the road is the Myall River. The site has an area of 505m², is relatively flat, rectangular in shape, and an existing two storey dwelling is erected on the land.

**PROPOSAL**

The proposal seeks consent for a two storey passenger lift well to the northern elevation of the existing dwelling. The lift well will utilise slab on ground construction and the external finishes include rendered brickwork and a colorbond roof. The roof will have a 22 degree pitch and finish below the ridge level of the existing dwelling.

**REPORT**

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

***a) The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

***Great Lakes Local Environmental Plan 2014***

Having regard for the matters for consideration detailed in Part 4, Division 4.3 Section 4.15 of the *Environmental Planning & Assessment Act 1979,* the following is a summary of the evaluation of the proposal pursuant to the provisions of the relevant clauses of the Great Lakes Local Environmental Plan 2014.

**Zone:** The allotment is zoned R3 Medium Density Residential

**Definition:** This zoning allows for a variety of housing types and facilities or services to suit the needs of a medium density residential environment.

| LEP Requirement | Summary of Requirement | Complies |
|---|---|---|
| **Zone Objectives** | • *To provide for the housing needs of the community within a medium density residential environment.*<br>• *To provide a variety of housing types within a medium density residential environment.*<br>• *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*<br>• *To achieve increased population density in locations that support the business centre.* | *Yes* |
| **Permissible use** | *Dwelling houses are permitted with consent and defined by the GLLEP 2014 as being: dwelling house means a building containing only one dwelling.* | *Yes* |
| **4.1 – Min Lot Size** | *Minimum Lot Size requirement is 1000m²* | *No (the lot has existing use rights)* |

| LEP Requirement | Summary of Requirement | Complies |
|---|---|---|
| **4.3 –Height of buildings** | *Maximum height of buildings requirement for a building on the subject land is not to exceed 12m.* | *Yes* |
| **4.4 –Floor Space Ratio** | *The maximum floor space ratio for a building on the subject land is not to exceed the floor space ratio of 1:1.* | *Yes* |
| **7.1- Acid Sulfate Soils** | *The subject site is classified as containing Class 2 potential acid sulfate soils.* | *Conditioned - The provision of an acid sulfate soils management plan will be a condition of consent.* |
| **7.3 – Flood Planning** | *The subject site is identified as being within a "Flood Planning Area". The objectives of this clause are: (a) to minimise the flood risk to life and property associated with the use of land,*<br>*(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*<br>*(c) to avoid significant adverse impacts on flood behaviour and the environment.* | *Conditioned* |

** Non-complying issues discussed below*

**4.1 – Min Lot Size**

The subject site does not comply with the current lot size requirements under GLLEP 2014. The allotment was created with consent under a previous instrument and no changes to the allotment size are proposed with this application.

***Draft Environmental Planning Instruments***

The following is a summary of the evaluation of the proposal pursuant to the provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

**State Environmental Planning Policy Coastal Management**

The Coastal Management State Environmental Planning Policy (SEPP) will establish a new, strategic land use planning framework for coastal management. The Coastal Management SEPP will consolidate and improve current coastal-related SEPPs. It will replace SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection) and ensure that future coastal development is appropriate and sensitive to our coastal environment, and that we maintain public access to beaches and foreshore areas.

Under this SEPP the subject site is mapped as being within a coastal environment area, the proposed development complies with the requirements for development within this area.

***State Environmental Planning Policies (Sepp's), and other State Guideliines & Policies***

Having regard for the matters for consideration detailed in Part 4, Division 4.3 Section 4.15 of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the proposal pursuant to the provisions of relevant State policies.

| State Policy | Requirement | Complies |
|---|---|---|
| **SEPP 71 - Coastal Protection** | *State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) applies to all land within the coastal zone as defined in the Coastal Protection Act 1979 and accordingly applies to the subject site. Matters of consideration listed in clause 8 are:*<br>• *retention of existing public access to the coastal foreshore*<br>• *impact of effluent disposal on water quality*<br>  • *development must not discharge untreated stormwater into a coastal water body* | Yes |
| **NSW Coastal Policy 1997** | *The New South Wales Coastal Policy is a broad policy for the Coastal Zone that is required to be considered having regard to the provisions of Clause 92 of the Environmental Planning and Assessment Regulations 2000.*<br><br>*The site is located within the Coastal Zone. Relevant to the principles of the Coastal Policy.* | Yes |

***Development Control Plan 2014***

Having regard for the matters for consideration detailed in Part 4, Division 4.3 Section 4.15 of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the proposal pursuant to the relevant provisions of the Great Lakes Development Control Plan 2014.

| Development Control Requirement | Requirement | Complies |
|---|---|---|
| **4.2 Flooding** | *Alterations and additions are to have habitable areas above the 2060 1% flood level* | Yes |
| **5.0 Single Dwellings, Dual Occupancies, Villas & Townhouses** | | |

| Development Control Requirement | | Requirement | Complies |
|---|---|---|---|
| **5.1 Solar Access & Overshadowing** | | *Buildings should be designed to allow at least two hours of sunshine upon the internal and outdoor living areas of adjacent dwellings and between 9.00 am and 3.00 pm on 21 June.* | Yes |
| **5.2 Views & Privacy** | | *In designing buildings the concept of 'view sharing' should be adopted by considering the impact of buildings on the views enjoyed by neighbours.* | Yes-(further discussed later in this report) |
| **5.5 Setbacks**<br>**Residential and Village zones** | Side | *A residential building must be setback from its side boundaries:*<br>*(a) A minimum of 900mm for a building with a maximum wall height of 3.8m.*<br>*(b) Where the wall height is greater than 3.8m the minimum setback shall be: 900mm + (building height over 3.8m/4)* | No |
| **5.6 Building Height** | | *Does the dwelling comply with the maximum height of buildings as shown in the Great Lakes LEP Height of Buildings Maps?* | Yes |
| | | | |
| **14.0 Waste** | | *A completed Site Waste Minimisation and Management Plan (SWMMP) shall be prepared and lodged with the development application.* | Yes |

** Non-complying issues discussed below*

**5.5 Setbacks**
**Residential and Village zones**

The relevant objectives of this section are:

- To ensure residential buildings have sufficient separation to provide privacy, solar access, landscaping opportunities and amenity for occupants.

The DCP provides a numerical formula that if followed will meet the objectives of the DCP. Using this formula, the required setback for the lift well is 1813mm. The proposed lift well has a setback to the side boundary of 760mm. The applicant is seeking a variation to this section of the DCP and has provided the following justification:

- The dwelling at 7 Pelican Avenue, Hawks Nest has a zero setback to the northern boundary.

A review of the approved development application (DA 404/2007) does confirm that the dwelling at 7 Pelican Avenue, Hawks Nest has a zero setback for part of the building on the Northern boundary. Additional to this, it has a 200mm setback from the Southern Property Boundary for a small portion of the building. This sets precedence for side setback variations within the area.

The applicant has also stated that they have explored alternate positions for the lift well with none of them being suitable. If the lift well was located to the rear of the dwelling it would have to be accessed by bedroom four downstairs and bedroom three upstairs which would essentially eliminate two bedrooms turning the four bedroom dwelling into a two bedroom dwelling. The lift well can't be located on the southern side of the dwelling as it would block the driveway access to the detached garage. To position the lift well at the western (front) elevation would also be impractical as it would need to go through a first floor reinforced concrete balcony.

Additional to this, one of the owners of the dwelling has been diagnosed with Parkinson's Disease making it increasingly difficult for them to mobilise safely around the existing dwelling and thus providing the need for the lift in order to safely access all parts of the dwelling. The applicant has provided a letter from an Occupational Therapist (Annexure C) detailing the effects of the condition, why a lift is required and stating why the proposed location of the lift well is the most functionally appropriate location.

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

The proposal is considered to be consistent with the context, setting and character of the locality. It is anticipated that the proposed development will not result in any significant impacts listed above.

***Context and Setting***

The proposed development is considered to be contextually appropriate on this site in this urban location.

***Site Design and Internal Layout***

The residential allotment is capable of supporting the proposed works.

***Views***

It has been identified that the proposed lift well will cause view loss to 7 Pelican Avenue Hawks Nest. The Courts have acknowledged that views from a person’s home can have considerable value. However, that does not mean that a person has the power to protect and maintain their view as a legal, proprietary right. The extent of view loss is discussed in detail below.

To quantify the impact on views, reference is made to the Land and Environment Court (LEC) decision in *Tenacity Consulting v Warringah (2004).* In this decision the court used a four step assessment to determine the application based on view sharing principals. If a planning principle is observed by the Council when assessing a development, the planning decision is more likely to be sound in the eyes of the Court.

Below is a summary of the impacts of the proposal on views from nearby properties.

| | |
|---|---|
| **Step 1 – Views to be affected**<br>*Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.* | |
| ***Property*** | ***Comment*** |
| 7 Pelican Avenue, Hawks Nest | The subject property has a water view of the Myall River in which the interface between the land and water is visible. This view can be seen from bedroom 1 on the third level of the dwelling. From the outdoor and living area on the second level a partial view of the Myall River can be seen. (See Attachment A.) I would classify the view to the Myall River as moderately valuable, what most people would describe as nice. |
| | |
| **Step 2 – From what part of the property are views obtained**<br>*For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.* | |
| ***Property*** | ***Comment*** |
| 7 Pelican Avenue, Hawks Nest | To achieve the view in question the occupants need to look across their rear boundary, over a lane way (Pelican Lane), across the adjoining side boundary of 22 and 24 Moira Parade, then across the front boundary of 24 Moira Parade. All views appear to be achieved from a standing position. |
| | |
| **Step 3 – Extent of the impact**<br>*This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.* | |
| ***Property*** | ***Comment*** |
| 7 Pelican Avenue, Hawks Nest | The impact of the view loss would be considered minor. The majority of the view from the bedroom, the living and outdoor area would remain as it is achieved by viewing over the dwelling on 22 Moira Parade. See Attachment A. |

| | |
|---|---|
| **Step 4 – Reasonableness of the proposal**<br>*A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.* | |
| ***Property*** | ***Comment*** |
| 7 Pelican Avenue, Hawks Nest | The proposal does not comply with section 5.5.2.5 Side and Rear Setback Controls of the Great Lakes Development Control Plan as discussed earlier in the report. The applicant explored alternate positions for the lift well with none of them being suitable. If the lift well was located to the rear of the dwelling it would have to be accessed by bedroom four downstairs and bedroom three upstairs which would essentially eliminate two bedrooms turning the four bedroom dwelling into a two bedroom dwelling. The lift well can't be located on the southern side of the dwelling as it would block the driveway access to the detached garage. To position the lift well at the western (front) elevation would also be impractical as it would need to go through a first floor reinforced concrete balcony. It is considered that the applicant has investigated alternate designs however these options do not provide the same development potential and amenity to the building occupants. Considering these constraints, and that the majority of views will be retained from the objectors' property, it is considered on balance that the proposal is reasonable. |

***View summary***

To achieve the view the occupant of the objectors building is required to look over four different boundary lines in what appears to be a standing position. Whilst some of the view will be lost the majority of the view will be retained including part of the interface between the land and water. The proposed development is considered reasonable with only minor view loss occurring as a result. The view loss was identified via a submission received during the neighbour notification process. After the initial submission Council requested photos (Attachment A) and also to visit the objector's property to see the view loss in person. The photos were supplied but access to the property was denied. Therefore the view loss assessment has been undertaken using the photos supplied by the objector.

***Privacy (Aural and Visual)***

The proposed development does not unreasonably impact on the privacy relationship with neighbouring properties.

***Overshadowing***

The proposed development does not result in unreasonable overshadowing of neighbouring properties.

***Visual Impact***

The proposed development will create a visual impact in that it will partially eleiminate water views enjoyed by surrounding properties.

***Soils***

The allotment is affected by class 2 acid sulfate soils. The submission of an acid sulfate soils management plan would be a condition of consent of any approval given

***c) The Suitability of the Site for the Development***

The subject site is considered to be suitable for residential development in the form of alterations and additions.

***d) Any Submissions Made in Accordance with the Act or Regulations***

The application was notified to adjoining owners in accordance with Council's Policy from 21/12/17 to 22/01/18. One (1) submission was received. The issues raised in the submission and responses to those issues are detailed below:

| **Issue** | **Response** |
|---|---|
| That the proposed development will give rise to the loss of the majority of the view of the Myall River from the bedroom, living and outdoor entertaining area of the property. | View loss has been discussed in detail earlier in the report. It is agreed that there will be a partial loss of views as a result of the proposed passenger lift addition. |
| The proposed development does not comply with side setback requirements as outlined in the Great Lakes Development Control Plan. | Agreed - The proposed side boundary setback does not meet the numerical requirements of the DCP. This has been discussed in detail earlier in the report. |

***e) The Public Interest***

The proposed development, subject to conditions, does not compromise public interest.

**CONCLUSION**

Development consent is sought for the construction of a lift well to an existing two storey dwelling. The proposed development is consistent with LEP 2014 and generally complies with DCP 2014. The applicant seeks a variation to the numerical controls of the DCP relating to side boundary setbacks. The applicant has provided suitable justification for the variation and in this instance the variation is supported with the objectives of the DCP being achieved.

The impact of view loss has been determined making reference to the Land and Environment Court (LEC) decision in *Tenacity Consulting v Warringah (2004)*. The proposed development is considered reasonable with only minor view loss occurring as a result.

The application was notified to neighbouring landowners and one (1) submission was received. The development is unlikely to result in a significant impact on the existing built or natural environment.

The proposal has been assessed in accordance with Part 4, Division 4.3 Section 4.15 of the Environmental Planning and Assessment Act and is considered an acceptable development.

**RECOMMENDATION**

It is recommended that Development Application DA 288/2018 for a lift well to an existing residence on Lot 12 DP 25955, 24 Moira Parade Hawks Nest be approved in accordance with the conditions of consent contained in Annexure A.

Lisa Schiff
**Director**
**Planning and Natural Systems**

**ANNEXURES**

A: Conditions of Consent

**GENERAL CONDITIONS**

**1. Development in accordance with approved plans**

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

| Plan type/Supporting Document | Plan No. & version | Prepared by | Dated |
|---|---|---|---|
| Lower and upper floor plan | DWG No: 11217 Sheet: 1 of 4 | Charlestown Home Plan Service | Nov 2017 |
| Elevations (north-eastern & north-western) | DWG No: 11217 Sheet: 2 of 4 | Charlestown Home Plan Service | Nov 2017 |
| South-eastern elevation & section A-A | DWG No: 11217 Sheet: 3 of 4 | Charlestown Home Plan Service | Nov 2017 |
| Site plan | DWG No: 11217 Sheet: 4 of 4 | Charlestown Home Plan Service | Nov 2017 |

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason**: Information and to ensure compliance.

**2. Compliance with National Construction Code Series- Building Code of Australia**

All building work must be carried out in accordance with the requirements of the *National Construction Code Series - Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

**Reason**: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

**3. Insurance requirements under *Home Building Act 1989***

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates has been given documentary evidence or written notice of the following information:

a) in the case of work for which a principal contractor is required to be appointed:

   i) the name and licence number of the principal contractor, and
   ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .

b) in the case of work to be done by an owner-builder:

i) the name of the owner-builder, and
ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

**Reason**: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

**4. Notification of *Home Building Act 1989* requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

a) in the case of work for which a principal contractor is required to be appointed:

i) the name and licence number of the principal contractor, and
ii) the name of the insurer by which the work is insured under Part 6 of that Act,

b) in the case of work to be done by an owner-builder:

i) the name of the owner-builder, and
ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

**Reason**: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

**5. Adjustment to utility services**

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason**: To ensure utility services remain in a serviceable condition.

**6. Support for neighbouring buildings**

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's one expense:

a) protect and support the adjoining premises from possible damage from the excavation, and;
b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

**Reason**: To protect development on adjoining premises. Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

**PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions must be complied with prior to the issue of any construction certificate:**

**7. Acid sulphate Soils**

Prior to the issue of a Construction Certificate an Acid Sulfate Soils Management Plan, prepared in accordance with the Acid Sulfate Soils Manual, is to be approved by the certifying authority.

Alternatively provide a report prepared in accordance with the Acid Sulfate Soils Manual from a suitably qualified geotechnical engineer that indicates an Acid Sulfate Soils Management Plan is not required for the works.

Any soil that is to be exported from the site is to be disposed of in a lawful manor. Details of the soil disposal are to be submitted and approved by the certifying authority prior to the issue of any construction certificate for works involving excavation of the land.

**Reason**: Management of acid sulphate soils.

**8. Structural details**

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

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.
c) Structural steel beams/columns.

**Reason**: To ensure structural stability and safety.

**9. MidCoast Water approval**

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

**Reason**: To ensure suitable water and sewage disposal is provided to the development.

**10. Structural certification – flood affected buildings**

Prior to the issue of a construction certificate, engineering calculations and certification from a qualified structural engineer must be submitted to and approved by the certifying authority. The certificate must certify that the building, its structural components and associated earthworks have been designed to withstand flood forces due to wind wave run-up, water pressure, associated debris and impact loading arising from the 1% annual exceedence probability (AEP) flood.

For the purpose of this assessment the 1% AEP flood level can be assumed to be RL 1.90m AHD with a velocity of 0.10 m/s.

**Reason**: To ensure the building is structurally adequate to withstand impacts from flooding in accordance with Council and NSW Government Policy.

**11. A Bond is required to guarantee against damage to public land**

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of $2000 and an administration fee of $330 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
b) following issue of an occupation certificate by the certifying authority.

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

**Reason**: Protection of public assets.

**PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

**The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:**

**12. Construction certificate required**

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason**: Statutory requirement under the *Environmental Planning and Assessment Act 1979.*

**13. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days notice to Council, in writing, of the persons intention to commence construction work.

**Reason**: Statutory requirement under the *Environmental Planning and Assessment Act 1979.*

**14. Site access**

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.

**Reason**: To ensure public health and safety during the construction of the development.

**15. Installation of erosion & sediment control measures**

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and *"The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction"* (Landcom). In particular, the following erosion and sediment control measures must be installed:

a) Silt fence or sediment barrier.
b) Temporary driveway from the edge of road to the building site.
c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

**16. Pollution prevention sign**

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work.

Council's PREVENT POLLUTION sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

**Reason**: To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

**17. Toilet facilities - sewered areas**

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

**Reason**: To maintain public health.

**18. Site construction sign**

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

a) showing the name, address and telephone number of the principal certifying authority for the work, and
b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**Reason**: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000.*

**CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK**

**The following conditions must be complied with during any development work:**

**19. Construction times**

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

- Monday to Friday, from 7 am to 6 pm.
- Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason**: To maintain amenity during construction of the development.

**20. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason**: To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

**21. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason**: To protect the environment from the effects of erosion and sedimentation.

**22. Removal of asbestos**

All asbestos containing material associated with demolition/renovation works must be removed, handled and disposed of in accordance with the requirements of the NSW WorkCover Authority and the following requirements:

a) If asbestos is present in an amount greater than $10m^2$, then the demolition and removal must be undertaken by a WorkCover licensed demolition contractor who holds the appropriate WorkCover licence (e.g. Asbestos Demolition Licence) for the material to be demolished.
b) The person having the benefit of the consent must provide the Council/Principal Certifying Authority with a copy of a signed contract with the demolition contractor before any development pursuant to the consent commences.
c) The contract must indicate whether any bonded asbestos material or friable asbestos material will be removed and if so, must specify the landfill site (that may lawfully receive asbestos) to which the material is to be delivered for disposal
d) All asbestos must be removed from the site and be disposed of at an approved licensed waste facility. All asbestos waste must be delivered to an approved licensed waste facility in heavy duty sealed polyethylene bags.
e) The bags are to be marked “Caution Asbestos” with 40mm high lettering. Twenty four (24) hours' notice must be given to the waste facility prior to disposal.
f) Receipts of the disposal of all asbestos to a licensed waste facility must be provided to Council within fourteen (14) days of the material being disposed.

**Reason**: To protect public health and safety and to ensure the correct disposal of asbestos waste.

**Informative:**

The generator and owner of the waste, has a legal obligation under s143 of the Protection of the Environment Operations Act 1997 (“the Act”) to ensure the waste is transported to and disposed of at a facility that can lawfully be used as waste facility for that waste.

In NSW, all asbestos sheeting or asbestos waste must be taken to a landfill that can lawfully receive this waste. Transporters of asbestos waste must now use WasteLocate to provide information to the EPA regarding the movement of any load over 100kg of asbestos waste, or 10m2 or more of asbestos sheeting within NSW. WasteLocate makes it easy for transporters to comply with these reporting obligations under the Waste Regulation and the Asbestos and Waste Tyre Guidelines by creating a consignment number, which can be used to track the location of the waste.

If you have paid for an asbestos removal service (e.g. from a household or construction site), you should request the WasteLocate consignment number from the transporter. You can then use this number to track the load at https://wastelocate.epa.nsw.gov.au/ to make sure it has reached its intended destination, just like a parcel in the post. If the load is not delivered, please contact the EPA.

What to do with asbestos waste?

For more information on how to safely deal with asbestos at home or in the workplace, please visit: http://www.epa.nsw.gov.au/waste/asbestos.htm

**More information on *WasteLocate***
More information about WasteLocate is available on the EPA website at:
http://www.epa.nsw.gov.au/wasteregulation/transport-asbestos-tyres.htm

Should you require any further information, please contact the EPA on 131 555.

**23. Standards for demolition work**

All demolition works must be undertaken in accordance with the provisions of *Australian Standard AS 2601: The demolition of structures*. Prior to demolition, all services must be disconnected and capped off.

**Reason**: To protect public health and safety.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**The following conditions must be satisfied prior to any occupation or use of the building:**

**24. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason**: To ensure compliance with the development consent and statutory requirements.

**25. Stormwater drainage work**

Prior to the issue of a final occupation certificate, stormwater must be collected and disposed of to the kerb and gutter via a suitably manufactured kerb adaptor. Drainage lines within the road reserve must be sewer class or other approved equivalent. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of *Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage.*

**Reason**: To ensure compliance with the development consent and statutory requirements.

**26. Smoke Alarm/s required**

Prior to the issue of an occupation certificate, a smoke alarm/s must be installed and maintained within the entire building and be located in accordance with the Building Code of Australia. The alarm must be hard wired and comply with the Australian Standard 3786 be contained in each storey.

**Reason**: Environmental Planning and Assessment Regulation 2000 fire safety requirement.

B: Letter of Justification

Development Application DA – 288/2018

MID-COAST COUNCIL

06 FEB 2018

T/G DISTRICT OFFICE

PO Box 154
HAWKS NEST NSW 2324

5 February 2018

MID-COAST COUNCIL
07 FEB 2018
RECORDS

Mr Aaron Green, District Building Surveyor
Planning & Environmental Services
MidCoast Council
PO Box 450
FORSTER NSW 2428

Dear Mr Green

**DEVELOPMENT APPLICATION NO DA- 288/2018**
**LOCATION: LOT 12 DP 25955, 24 MOIRA PARADE, HAWKS NEST 2324**
**PROPOSED LIFT WELL TO EXISTING RESIDENCE**

We address the non-compliance issues and objections stated in your letter dated 22 January, 2018:

**Non- compliance with Section 5.5.2.5 Side and Rear Setback Controls**

The neighbours of 22 Moira Parade have no objection to the lift being erected within the required space and have supported this in writing. (see attached). Our neighbours at the rear of our property do not have a problem with the location of the lift. The lift will have a fire wall

The objector's property does not adjoin our property as there is a laneway between us which provides access to neighbouring properties.

The objector states that non-compliance with the DCP as an issue. This is a hypocritical stance as the objector's own house is built on a Zero line boundary, with the **side of the house being the fence** to the side neighbour's house at 9-11 Pelican Avenue. Objections were made to the Zero line but the dwelling was approved!

We are not requesting a Zero line approval – only approximately 600 mm allowance within **our property's boundary**. We hope that Council will be consistent with their dealings in regards to the DCP. How can Council approve

a Zero line dwelling and now question our application? Our side setback will still allow access around the lift well.

**Loss of view**

We do not believe the lift will significantly impair the objector's view of the river. If a view of the river was a priority then you purchase a river frontage property – not two streets back!

The view until recently was obscured by a tall clumped Golden Cane Palm which we have since trimmed, cut back and narrowed in preparation of the approval of the lift.

The majority of the objector's views are obtained by looking over 22 Moira Parade from the rear of the objector's house.

Council's letter suggested that we could relocate the lift to an alternate position. Before submitting the Development Application we explored all placement options. To place the lift at the rear of the house would turn our four bedroom house into a two bedroom home. Not an option! Any other location would create incredible expense to us which in turn would force us out of our home.

**Additional comments**

We need to install a lift in our home because of the medical conditions of my wife, Rhonda, who suffers from a chronic back injury, and Parkinsons Disease which is a degenerative long-term condition affecting movement and restricted mobility. We have supporting documentation from Dr Simon Goode, Ochre Health, Tea Gardens, and Occupational Therapist, Fiona Lyons, stating that a lift at home is needed to enable Rhonda to access the second floor for independent living. (see attached)

The stress of dealing with the objections and possible prolonged delay in having the lift installed is detrimental to Rhonda's health. I, Leon, am a Vietnam Veteran who suffers from Post-Traumatic Stress Disorder and the possibility of not being able to stay in our home is having a negative effect on my current wellness.

In the *MidCoast Council Newsletter*, January 2018, Council promoted the initiative **MidCoast Assist**. The newsletter highlights the need to minimise the

barriers for those with disabilities and seek ways to improve accessibility so that those living with disabilities can have an independent lifestyle. Council's approval of our application will ensure we can live independently in our home. Council's approval would also demonstrate Council's commitment to their Disability Inclusion Action Plan.

It is imperative that we gain the approval of the installation of the lift as documented in our Development Application No DA288/2018 so we can maintain independent living.. A couple of centimetres and a glimpse of the river from a property not on the river (which can be limited by a tree) we believe should not stop our independent living in our home of 17 years and into our future.

Yours faithfully

Enc 3

C: Letter from Occupational Therapist (Hunter Health at Work)

HUNTER
Health at Work

Po Box 561
Raymond Terrace 2324

Tel: 02 4988 6526
Fax: 02 4988 6525

admin@healthatwork.com.au
www.healthatwork.com.au

**To Whom It May Concern**

| | |
|---|---|
| Client Name | Rhonda Bobako |
| Address | 24 Moira Pde., Hawks Nest, NSW 2324 |
| Contact telephone number | 02 49971878 |
| Spouse | Leonid Bobako |

**Therapist**

| | |
|---|---|
| Name | Fiona Lyon |
| Position & Qualifications | Registered Occupational Therapist, B.App Sc.(OT), |
| Business Name | Hunter Health at Work |
| Email address | Fiona@healthatwork.com.au |
| Contact telephone number | 0418 499597 |
| Date of Initial Assessment | 25/1/2018 |
| Date of Report | 5/2/2018 |

Mrs Bobako is known to me through my clinical role as a Consultant Occupational Therapist to the Department of Veterans' Affairs.

Mrs Bobako's recently diagnosed condition of Parkinson's Disease is rendering it increasingly difficult for her to mobilise safely around the house, to manage her own personal care and to manage the stairs. This condition is featured by generalised stiffness, deteriorating balance, unreliable weight bearing and deteriorating coordination, amongst many other symptoms. The condition is chronic.

Currently, Mrs Bobako cannot use the internal flight of steps without significant assistance of her husband. In my opinion, this is not sustainable long term. There is a high chance that Mrs Bobako will require use of a walking device or wheelchair in which case the stairs will soon become impassable.

The Bobako home is on 2 levels, with the entrance, family room and car storage on the ground floor whilst the lounge, dining, kitchen, bedroom and bathroom facilities are upstairs.

Mrs Bobako appropriately desires to achieve independence in mobilising around the home, without reliance upon her husband. The steps are currently a major barrier to her safety and independence.

Many of her independence and safety problems can be variously managed by the introduction of small items of assistive technology. Other aspects of

• Occupational Therapy • Counselling • Ergonomics • Medico-Legal • Veterans Affairs

pursuit of her safe practice of daily living will require major installations. She may still require personal support in selected tasks.

Mrs Bobako requires some major assistive technology solutions to enter and exit the house, and to enjoy the full amenity of the home.

The spacious upstairs area is suitable bathroom alteration. Planning for this is underway.

Having reviewed the access, it is my opinion the Mrs Bobako would be better served, long term, with the installation of a vertical lift between the ground and first floors. The outdoor position on the north wall would appear to be the most functionally appropriate position; close to the street access, close to car storage of close to the large open plan living space upstairs. The vertical lift will be preferable to an indoor chair lift as it will avoid repetitive and cumbersome transfers associate with the use of such a device. The vertical lift will avoid trip and fall hazards. The vertical lift will contribute to Mrs Bobako's personal independence, carer safety and will enhance the quality of her life.

Fiona Lyon
BAppSc (OT) *Cumb* MOTA
Occupational Therapist

NDIS Provider 4050004834
DVA Provider 0851152L

D: Letter from Doctor

Ochre Health Medical Centre Tea Gardens
Myall Quays Boulevard, Tea Gardens 2324
Tel: 02 4997 1900 Fax: 02 4997 1022

Dr Simon Goode
**BHB MBChB PGCertHealSc**

14/12/2017

TO WHOM IT MAY CONCERN

**Mrs Rhonda Bobako**
**24 Moira Pde**
**Hawks Nest 2324**
**DOB: 02/02/1952**

**To whom it may concern,**

Rhonda Bobako is my regular patient. She requires a lift (elevator) at home to enable her to access her second floor for independent living.

Yours sincerely,

Dr Simon Goode.

Dr Simon Goode
Ochre Health Medical Centre
Tea Gardens NSW 2324
Tel 02 4997 1900
Provider No. 200014MJ