

Mr Michael French

Modification 2023/0661 – 90 Hudson Parade, Clareville

Thank you for the opportunity to comment on this modification application. Our property adjoins the northern boundary of 90 Hudson Parade, Clareville.

Many aspects of this modification application were previously submitted to the council with DA2022/2042, which was withdrawn following the public consultation period.

Our comments include matters raised in our submission on DA2022/2042 and they also address new aspects and claims made by the applicant and their consultants in MOD2023/0661.

1. Modifications are not consistent with approved (existing) uses of the boatshed

MOD2023/0661, like DA2022/2042, seeks alterations to the boatshed structure in the form of:

- Replacement of the existing solid timber door at the western (jetty) side of the boatshed with new timber, glazed bifold doors
- 8 x new timber framed double hung windows on the northern and southern sides of the boatshed.

The applicant's justification for these modifications are:

- Windows – to allow for improved ventilation and increased natural light inside. Improving visual appeal of the boatshed, by breaking up the bulk of the north and south elevations.
- Door – to be more functional and allow more natural light inside.

As the applicant has outlined, existing use rights apply to the boatshed and jetty associated with 90 Hudson Parade. The council consent, N0052/12, that the applicant seeks to modify with this application, specifies that the boatshed must only be used for the storage of small boats and/or equipment. Condition of consent number 13, provides:

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats and/or boating/marine equipment. The incorporation any internal kitchen facilities, habitable rooms, shower or toilet facilities are not to be permitted.¹

This is supported by standard condition 1(c), applying to all domestic waterfront licences:

You must not reside or permit any person to reside on the Premises unless otherwise specified in Item 6 of Schedule 1.²

Installation of 8 windows and glazed doors on the western side of the boatshed are plainly inconsistent with the approved existing use of the boatshed as a facility for storage of small boats and/or boating/marine equipment. Indeed, installation of the proposed windows would reduce the storage, hanging and rack space for watercraft. If the applicant genuinely seeks to improve light and

¹ Consent, N0052/12

² Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 18 January 2024.

ventilation in the shed, beyond the existing ventilation vents on the eastern and western sides of the shed and the clear colourbond panels on the roof, while also maintaining the storage functionality of a boatshed, they would install small windows or vents high on the northern and southern side of the shed.

The applicant's intentions to use the boatshed for unapproved uses, can be implied from the withdrawn DA2022/2042. In this application, the applicant referred to the boatshed as a "boathouse". This terminology has been mostly, but not completely, changed in MOD2023/0661.

Figure 1 shows the uses of the boatshed at the time this property was sold to the applicant in early 2022.



Figure 1 - McGrath, [Sales photo for 90 Hudson Parade showing internal use of boatshed](#), accessed 18 January 2024.

The applicant has provided photos of other boatsheds north of 90 Hudson Parade, that include glazed windows. Only 1 of these boatsheds is subject to a Crown Lands Licence and this is a structure that predates the existing waterfront planning controls.

The council should not approve an application that is inconsistent with the existing use rights applying to the boatshed and the existing conditions of the consent.

Use of the boatshed for unapproved purposes would jeopardise the existing use rights the applicant relies on to keep these structures and risk compliance action by the council and the Crown.

2. Glazed surfaces on the beach are not in the public interest

If approved, this application would result in a significant increase in glazed, reflective, surfaces above and below the mean high water mark.

The applicant claims the modifications would improve the visual appeal of the boatshed. We disagree – an increase in glazed, reflective surfaces, would create unnecessary glare and reduce amenity for the public and adjoining landowners. This impact is unnecessary for a facility that is approved for the storage of boats and boating equipment.

As the applicant notes:

Clareville Beach reserve...is an important recreational playground for locals and Sydneysiders, with recreational activities involving picnics and BBQ's, motor boats, yachts, paddleboards, kayaks and swimming.

The recreational activities enjoyed on Clareville beach include beach cricket and other ball games. The boatshed at 90 Hudson Parade is often used as a "backstop" or "silent keeper" in many a game of beach cricket. The installation of windows in the boatshed would bring significant risk of broken glass on the beach – a risk that is clearly not in the public interest.

3. Pontoon to store jetski

The applicant has installed a pontoon to store a jetski on the northern side of the jetty. Interestingly, this structure is not shown in any of the photos the applicant has submitted with its application.

The pontoon is an unapproved structure that is inconsistent with the conditions of consent applying to the boatshed and jetty and with the standard conditions applying to domestic waterfront licences.

Condition B4, applying to consent N0052/12 for the boatshed and jetty, provides:

There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.³

Standard domestic waterfront licence condition 18 provides, as relevant:

- a) You must ensure that any vessel secured at the Premises is moored or berthed wholly within the Premises, or otherwise as shown on the plan attached in Schedule 3 of this Licence.
- b) You must not Permanently moor or berth a vessel on the Land or Premises, unless this Licence specifically provides for a Berthing Area in the Permitted Use in Item 5 of Schedule 1 of this Licence.
- j) In this clause, 'Permanently' means mooring or berthing a vessel at the Premises for any period of time greater than six hours.⁴

The pontoon has been permanently installed since mid-December 2022. At some low tides, it sits directly on the seabed, as shown in Figures 2-4.

³ Consent N0052/12, accessed 12 January 2023.

⁴ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 18 January 2024.



Figure 2 - Photo 1 of jetski pontoon at low tide, 23 December 2022



Figure 3 – Photo 2 of jetski pontoon at low tide, 24 December 2022



Figure 4 – Photo 3 of jetski pontoon at low tide, 24 December 2022

We do not believe that a pontoon would be permitted at any point along the jetty. This is because an application by a previous owner for a pontoon at the western (deepest) end of the jetty was disallowed because:

- (a) it was not consistent with existing use rights
- (b) it would not allow 600mm to be maintained between the underside of the pontoon and the substrate at zero tide.⁵

As owners of waterfront properties, we have an obligation to protect the Crown Land adjoining our properties for the benefit of the public, including future generations. Our neighbours have other options for launching their watercraft that do not cause permanent damage to a public resource.

We request that the council require the applicant to seek formal approval of this structure, and that the council refer the unapproved structure to the Department of Primary Industries and the Department of Planning (Crown Lands). We brought this issue to the council's notice in January 2023, in our submission on DA2022/2024.

⁵ See Pittwater Council Development Unit Report, 27 September 2012, pp 11 and 24.

Even if the structure ends up being approved, the applicable licence fee will need to be adjusted, according to the area-based formula set by the Independent Pricing and Regulatory Tribunal⁶, backdated to December 2022.

We also note that the various referrals the council has obtained during the public consultation period, do not cover the unapproved jetski pontoon. The application, including the jetski pontoon, must be referred again to the various council authorities whose advice is required.

4. Environmental controls during construction activities

The applicant's assessment under the SEPP (Resilience and Hazards) 2021, claims:

The proposed works do not require any reclamation or dredging and will not have any adverse impact to the biodiversity, hydrological and ecological environment.

While the application does not include any new works that could have an adverse environmental impact, significant rectification work is required to existing structures, including the public access walkways and skid ramps to ensure the structures continue to comply with the conditions of licence.

We request the council ensure any consent imposes controls to ensure these works do not have adverse environmental impacts.

5. Encroachment of boatshed on our property

As the applicant's plans show, the boatshed adjoining 90 Hudson Pde, Clareville, encroaches on our property. With the applicant planning works to the boatshed, they should use this opportunity to rectify this encroachment.

We thank the council for its consideration of our comments. We are happy to clarify any matters raised in this submission.

Yours sincerely

Julia Williams

⁶ See IPART, [Review of method for determining rents for domestic waterfront tenancies in NSW](#), December 2011, and IPART, [Letter to DPE – 2023 annual update to domestic waterfront tenancies rate of return](#), April 2023.