
From: Julia Williams
Sent: 25/01/2023 10:28:12 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: Submission on DA2022/2042 - 90 Hudson Parade, Clareville
Attachments: Submission - 90 Hudson Pade - January 2023.pdf;

Please find attached my submission on DA2022/2042, for 90 Hudson Pde, Clareville.

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From: Julia Williams [REDACTED]
Sent: Wednesday, January 25, 2023 10:21:44 PM
To: Julia Williams [REDACTED]
Subject: Submission on DA2022/2042 - 90 Hudson Parade, Clareville

86 Hudson Parade
Clareville NSW 2107
25 January 2023

Dear Mr Lane

Submission on DA2022/2042 – 90 Hudson Parade CLAREVILLE

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

We are very disappointed that neither the applicant (Cullen Feng), nor our new neighbours, consulted us before submitting the application to council. Consultation with neighbours before submitting a DA would have allowed us to raise any issues directly and informally and it would also have given the applicant an opportunity to address identified issues before the statutory consultation process. Without being given such an opportunity, we must engage with this process.

We are also concerned by the unsubstantiated claims and, what we consider to be misleading representations, made by the applicant in the Statement of Environmental Effects.

Our comments cover 6 issues, outlined below.

1. Proposed timber batten privacy screen/ pool fence on northern side of pool

The applicant has proposed to “install a timber batten privacy screen/ pool fence in lieu of the extg low black aluminium pool fence”.¹ The existing pool fence on the northern side of the pool is actually an unpainted aluminium fence installed in a raised garden bed. A hedge of viburnum odoratissimum is currently growing between this fence, at or slightly above the height of the fence.

In 2009, the council imposed conditions of consent on this development that, in part, responded to our concerns about view sharing from screening and hedging along the northern side of the development. We raised these concerns in our submission on the development.² The relevant conditions are:

Condition B15:

The screening hedge plants (*Westringia fruticosa*) along the northern boundary are to be pruned regularly so as to maintain a maximum height of 1.8 metres and not obstruct the views towards Pittwater from neighbouring properties. The front hedge on the western side of the property shall be maintained below this height.

Condition B14:

The existing landscaping required to be retained together with any additional landscaping required by this Development Consent is to be maintained for the life of the development.³

The *westringia fruticosa* hedge that was approved by the council was removed by the original applicant and replaced with a faster-growing, but not local, species. We have not been concerned by this as previous owners have mostly maintained it at a reasonable height. Indeed, when the current owners purchased the property, this hedge was substantially taller, as can be seen from Figure 1.

¹ Cullen Feng, [Statement of Environment Effects](#), November 2022, p 15.

² [Williams – Submission](#), July 2009.

³ Consent N0194/09, 15 September 2009.



Figure 1 - McGrath, [Sales photo for 90 Hudson Parade showing hedge on northern edge of pool](#), 2021/22, accessed 12 January 2023.

I understand that most recent previous owners pruned the viburnum hedge to achieve compliance with the *Swimming Pools Act 1992*. This is because the hedge presented a safety concern as it could be climbed by a child to gain access to the pool.

We do not oppose the installation of a privacy screen/ pool fence to replace the existing aluminium fence. However, we request that this screen or fence and the surrounding landscaping is consistent with the existing conditions of consent. That is, the maximum height of the screen/fence and landscaping, measured from ground level (not from the raised garden bed) be 1.8 metres. We request that the council impose an explicit condition of consent to this effect.

A *westringia fruticosa* hedge (as required by the original consent) would have a much lower potential maximum height than a viburnum hedge, so our new neighbours will need to ensure their gardeners maintain the hedge in accordance with the existing condition of consent.

We also note that, according to the applicant's plans, the proposed privacy screen/ pool fence, will not extend as far west as the existing aluminium fence. This is because the applicant has proposed to reduce the size of the pool/spa, extend the deck and have glass pool fencing along the edge of the extended deck. We do not oppose this aspect of the application.

While my family has been mildly amused by the applicant's representation of our stature in its Statement of Environmental Effect (see Figures 2 and 4 below), the reality is very different, as you can see from Figures 3 and 5. It is concerning that a planning professional would present such a misleading representation to the council to justify the scale of the proposed privacy screen/pool fence.



Figure 2 – Cullen Feng, [Statement of Environmental Effects](#), November 2022, p 16.



Figure 3 – Photo of Williams family members in positions consistent with the figures represented in Cullen Feng Statement of Environmental Effects.



Figure 4 – Cullen Feng, [Statement of Environmental Effects](#), November 2022, p 16.



Figure 5 - Photo of Williams family member in position consistent with the figures represented in Cullen Feng Statement of Environmental Effects

2. Proposed lockable gates to restrict public access to the jetty

The applicant has proposed to “install a lockable gate to each side of the side ramps up to the jetty...”. It argues that this required to minimise unauthorised use by members of the public, including for boat drop offs and collections.⁴

This would be a significant and material change to the existing use of the jetty. We are strongly opposed to this proposal.

⁴

Cullen Feng, [Statement of Environment Effects](#), November 2022, p 7.

The supposed “unauthorised use” of the jetty is consistent with community usage for decades and also consistent with the community’s understanding of their right to access, in accordance with the conditions of the domestic waterfront licence applying to the jetty. A version of the special conditions of a licence that applied to the jetty in 2011 is available on the council’s website.⁵ Clauses 86, 87 and 88 of this licence provide, as relevant:

- 86 The Jetty permitted by this Licence shall be available for public use and the Licensee will not interfere with the public’s use of the jetty during the period between sunrise and sunset on any day, subject to the normal provisions of a Licence.
- 87 Within 12 months of the date of execution of this Licence the Licensee will submit a Development Application to Pittwater Council that contains:
- (a) whatever measures are required to provide practical pedestrian access past the boatshed subject of this Licence
 - (b) whatever measures are required to ensure pedestrian access to and from the jetty
 - (c) ...
- 88 The Licensee shall erect and maintain signage at both the northern and southern side of the boatshed to indicate the route of public access around the boatshed.

Licence condition 88, showing the public’s right of access across Crown Land, has never been complied with. Currently our neighbour discourages public access with “Private Jetty” signage at the northern and southern sides of the boatshed (See Figure 6).



Figure 6 – Photo showing “Private Jetty” sign affixed to the northern side of the boatshed

Provision of public access to the jetty is also consistent with the rights available under a Crown Lands licence and contrasts with the rights available under a Crown Lands lease. The NSW Government explains the difference as follows:

A licence is an authority granted by the department under the *Crown Land Management Act 2016*, which gives permission to occupy and use Crown land for a specified purpose and term. A licence does not provide for exclusive use and possession of the land.

⁵ Domestic Waterfront Licence # 463671, issued to Clausen Property Pty Ltd, [Schedule 2](#).

Where substantial development is proposed that involves significant capital investment, a lease may be more appropriate.

A lease of Crown land gives exclusive use over a particular piece of land for a specified term and purpose. Generally, leases are sought over Crown land where longer-term security is important, such as for commercial purposes.⁶

The jetty and boatshed adjoining 90 Hudson Parade are subject to a domestic waterfront **licence** and not a domestic waterfront **lease**, which would provide exclusive use. The difference in the rights afforded to domestic waterfront licensees and leaseholders is reflected in the quantum of annual fees paid to the State, according to the formula determined by the Independent Pricing and Regulatory Tribunal. It is also reflected in the standard licence condition 1(b) that applies to domestic waterfront licences:

This Licence does not confer on You any right of exclusive possession of the Premises.⁷

These standard conditions explain that Premises “means the Land and the Improvements and any of Your plant and equipment.”

A previous owner of 90 Hudson Parade, Clausen Holdings Pty Ltd, submitted an application to the then Pittwater Council, in February 2012 (amended in September 2012), proposing the construction of “public access walkways” to provide public access to the jetty and around the boatshed.⁸ This council issued its consent in October 2012. Since that time, the public has utilised the jetty and walkways.

This applicant now proposes to alter the existing use of the jetty and public access walkways. Critically, the public access walkways provide the public with access over Crown Land. The applicant notes that a strip of sand is available for public access between the boatshed and the house. This strip of sand is located on privately owned property and so does not fulfil the requirement of public access over Crown Land.

Standard condition 1f, applying to all domestic waterfront licences, provides:

You must allow the public at all times to have access over that part of the Land that is situated below the mean high water mark and any structure constructed on the Land shall be constructed so as not to unreasonably obstruct access by the public over such lands.⁹

Mr Mordant, in his submission on this application, raises issues of public risk/safety or liability that, in his view, justify the installation of lockable gates.¹⁰ These issues are addressed under the conditions of licence applying to all domestic waterfront licences and should not be used as bases for restricting public access to a structure under licence on Crown Land. Condition 15 (Care and maintenance) provides, as relevant:

- a) You must at all times keep the Premises in good repair and properly maintained.
- b) You must at all times keep the Premises in a clean and tidy condition, clear and free of rubbish and debris.

⁶ NSW Government, [Do I need a licence or a lease?](#), accessed 12 January 2023.

⁷ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 12 January 2023.

⁸ See Development Application [N0052/12](#).

⁹ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 12 January 2023.

¹⁰ Mordant, S. [Online submission to DA2022/2042](#), accessed 18 January 2023.

e) You must not make or undertake any alterations to the Premises except with the written approval of the Minister and the required consents and approvals from other relevant public and local authorities.¹¹

Condition 27 (Public risk insurance) provides:

a) You must effect and maintain for the Term a public risk insurance policy (whereby the Minister should be noted on the policy as an interested party for the amount specified in column 2 of Item 10 of Schedule 1 for any one claim relating to liability for death or bodily injury or damage to property arising out of Your use and occupation of the Premises and the matters referred to in clause 26.

b) You must obtain and maintain any other insurances specified (if any) in Item 11 of Schedule 1.

We note that installation of lockable gates would only encourage more risky behaviour from members of the public seeking access to the jetty. They may attempt to access the jetty by climbing up using oyster-covered piles or by merely swimming to the end of the jetty and utilising the new ladder that our new neighbours have installed. This new ladder encourages greater use of the jetty, making it far more appealing to swimmers who previously had to swim into shore to use the jetty a second time. It also acts as a step to allow members of the public to easily climb onto the western-most piles.

Additionally, if our new neighbours' motivation for installing lockable gates is to improve public safety on the jetty, they would seek to install only one gate, beyond the public access walkways, to restrict access to the jetty. However, DA2022/2042 seeks consent for installation of 2 lockable gates, at either side of the boatshed, which would restrict public access to the approved "public access walkways".

They could also consider installing:

- further signage, warning members of the public about the shallow water at low tides
- barriers on the western-most piles that would prevent members of the public climbing or standing on them.

We submit that the lockable gates proposed by the applicant are inconsistent with:

- the standard terms and conditions applying to all domestic waterfront licences
- the special conditions that have applied to the relevant licence
- the existing uses of the jetty and boatshed that the owners of 90 Hudson Pde, Clareville, rely upon to keep these facilities.

Furthermore, the public liability or public safety issues associated with structures on Crown Land are sufficiently addressed through the conditions on insurance, care and maintenance required by the Minister under the domestic waterfront licence.

Therefore, the council should not consent to this aspect of the application.

3. Boathouse vs boatshed

DA 2022/2042 is described as, "Alterations and additions to a dwelling house and boat house". The Statement of Environmental Effects is similarly titled, "Minor alterations to existing residence and boathouse".

¹¹ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 12 January 2023.

We are concerned by the subtle, but potentially meaningful, change in terminology by the applicant to “boathouse”, from the approved “boatshed”.

In 2012, the then Pittwater Council undertook an extensive review of the permissive occupancies and licences granted to various owners of 90 Hudson Parade, Clareville, for the boatshed and associated facilities since 1924.¹² This summarises the land title searches compiled by a previous owner with application N0052/12.¹³

Each of the previous permissive occupancies and licences have been granted for a **boatshed**, not for a **boathouse** (emphasis added).

The Cambridge online dictionary defines a **shed** as:

a small building, usually made of wood, used for storing things: a tool/storage shed; a garden/bicycle shed¹⁴

The same resource defines a **house** as:

a building that people, usually one family, live in:

a detached/semi-detached house; to buy/rent a house; house prices; She lives in a little house in (US on) Cross Street.¹⁵

Both the council consent and the domestic waterfront licence applying to the boatshed expressly prohibit residential habitation. The council consent further 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.¹⁶

Standard condition 1(c), applying to all domestic waterfront licences, provides:

You must not reside or permit any person to reside on the Premises unless otherwise specified in Item 6 of Schedule 1.¹⁷

These conditions are consistent with the definition of a “shed”. We therefore request that the council carefully consider its use of terminology and issue any consent for a **boatshed**, consistent with historical use and the existing conditions applying to this structure.

Figure 7 shows the uses of the boatshed at the time this property was sold in early 2022.

¹² See [Pittwater Council Development Unit Report](#), 27 September 2012, pp 4-6.

¹³ See [Historical Land Tenure Search](#)

¹⁴ [Cambridge online dictionary](#), accessed 12 January 2023.

¹⁵ [Cambridge online dictionary](#), accessed 12 January 2023.

¹⁶ [Consent](#), N0052/12

¹⁷ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 12 January 2023.

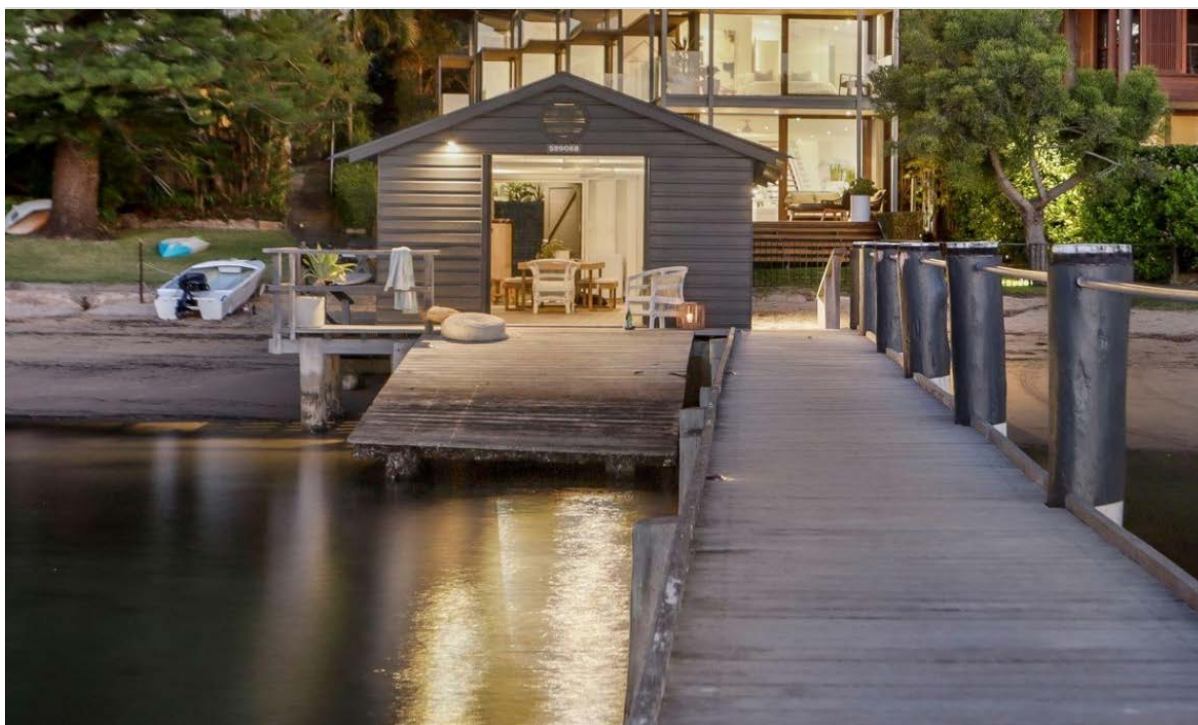


Figure 7 - McGrath, [Sales photo for 90 Hudson Parade showing internal use of boatshed](#), accessed 12 January 2023.

Given the permitted uses of the boatshed, the proposed alterations to the structure (sash windows to provide light and ventilation and bi-folding timber and glazed doors on the water side) appear rather odd to us.

4. Pontoon to store jetski

Our new neighbours have installed a pontoon to store a jetski on the northern side of the jetty. We believe that this is an unapproved structure because it 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.¹⁸

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.¹⁹

The pontoon has been permanently installed since mid-December 2022. At some low tides, it sits directly on the sea bed, as shown in Figures 8-10.

¹⁸ Consent [N0052/12](#), accessed 12 January 2023.

¹⁹ Department of Planning and Environment, [Domestic waterfront licences standard terms and conditions](#), accessed 12 January 2023.



Figure 8 - Photo 1 of jetski pontoon at low tide, 23 December 2022



Figure 9 – Photo 2 of jetski pontoon at low tide, 24 December 2022



Figure 10 – 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.²⁰

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 our neighbours to seek formal approval of this structure. 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 Tribunal.²¹

²⁰ See [Pittwater Council Development Unit Report](#), 27 September 2012, pp 11 and 24.

²¹ See IPART, [Review of method for determining rents for domestic waterfront tenancies in NSW](#), December 2011, and IPART, [Letter to DPIE – 2021 annual update to domestic waterfront tenancies rate of return](#), April 2021.

5. Additional work that should be completed with any approved works

There are a couple of additional works that should be completed with any works the council approves for this development application:

- Removal of a pile from the old boatshed
- Replanting of trees that have been removed.

Removal of pile from the old boatshed

Works on the boatshed in 2012 (approved under consent N0052/12), included removal of a portion of the shed on the southern side. This work was incomplete, leaving a concrete pile in the sandy beach above the mean high water mark. This pile is clearly visible in some conditions where the sand level is sufficiently low (see Figure 11). However, when the sand level is higher, it can be slightly hidden, presenting a hazard for members of the public walking barefoot on the beach.



Figure 11 – Photo showing position of exposed concrete pile from old boatshed

The council should require that this pile be removed in the interests of public safety.

Replanting of trees

Two trees that were required to be maintained on the site have been removed. These trees are marked T2 and T3 on the approved stamped plans for consent N1094/09.²²

Condition B14 of this consent requires that the existing landscaping in these approved stamped plans be maintained for the life of the development.

Given the scale of this development on a small block, we request that the council consider whether replacement planting on the southern side of the development should be required.

6. Inaccurate, misleading and unsubstantiated statements

The applicant makes 2 statements in the Statement of Environmental Effects that we consider are inaccurate, misleading and, in one case, unsubstantiated. These relate to the development being:

- (a) in the “public interest”
- (b) shown to have no detrimental amenity impacts on adjoining properties or the local area.

Development in the “public interest”

The applicant claims that the development is in the public interest, “...as it represents an orderly and incremental development of the land which will improve the amenity of the existing buildings by addressing existing issues with access and visual privacy, providing better usable outdoor space, improving sun-shading and natural light provision.”²³

The public interest is a broad concept that should be adapted to the particular facts and circumstances of the relevant context. However, it is generally understood to refer to the general well-being or welfare of the public – resulting in the greatest good for the greatest number of people.

In the context of this development, it is in the public’s interest that the applicant has sought approval for the proposed work, although approval was not sought for installation of the jetski pontoon, nor the ladder at the western end of the jetty. However, improving the amenity of existing buildings will bring private, not public benefits. And the proposed lockable gates to restrict public access to Crown Land is plainly contrary to the public interest.

Impact of the development on adjoining properties

The applicant has not explained the basis for the statement that, “The development has been shown to have no detrimental amenity impacts on adjoining properties or the local area.”²⁴ Neither the applicant, nor our new neighbours, consulted us about the impact of the development on our family. We are pleased to have this opportunity to respond to the applicant’s statement and correct the record.

The development at 90 Hudson Parade, has had a detrimental impact on the amenity of our home. The scale of the development (a 5 bedroom house on a small block), the aspect of the house (opening towards our property and funnelling noise up into our bedrooms), the choice of materials (hard surfaces that amplify noises) and the unapproved uses of the boatshed, have contributed to this impact.

We identified the potential for these impacts in our original submission to the then Pittwater Council in 2009. We also sought some relief from the foreseeable impacts, including an acoustic barrier on the northern side of the pool. The council did not require the then owner to minimise the acoustic impacts of the development.

²³ Cullen Feng, [Statement of Environment Effects](#), November 2022, p 17.

²⁴ Cullen Feng, [Statement of Environment Effects](#), November 2022, p 17.

As our new neighbours plan to erect a privacy screen on the northern side of the pool, they could use this opportunity to address this design flaw and provide greater acoustic privacy for both properties.

When the occupants of 90 Hudson Parade have the doors on their living areas open, the hard spaces amplify their domestic noises, music and conversations. The design of the development directs noises from within 90 Hudson Parade, and from its balconies, decks and pool, towards our home. We encourage the applicant and the council to consider how the acoustic impact for occupants of our home and 90 Hudson Parade that are caused by the poor design of this development, can be addressed.

For the past decade, 90 Hudson Parade has been used predominantly for short-term rentals. The poor design and unapproved use of the boatshed has attracted large groups, often holding parties, week in, week out. While we tried to resolve most issues directly with occupants and the relevant owners, we have required police attendance on numerous occasions. We are happy to provide further evidence to show the types of uses of this premises over the past decade.

We acknowledge that the use of previous owners and occupiers is not indicative of the likely use and behaviour of our new neighbours. However, the poor design of the development, that has exacerbated the problems we have had over the past decade, remains. We raised our concern about the impacts of the development in 2009 and the reality has been far worse than we could have imagined.

Therefore, it is simply inaccurate for the applicant to claim that the development has had no detrimental impacts on neighbours.

We thank the council for its consideration of our comments. We are happy to clarify any matters raised in this submission and to discuss any proposed solutions with the council and/or the applicant and our neighbours.

Yours sincerely

Julia Williams