

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0424
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot B DP 329073, 80 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2024/0946 granted for Use of the premises as a restaurant
Zoning:	Warringah LEP2011 - Land zoned RE2 Private Recreation WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	The Trustee For Cirillo Planning Trust

Application Lodged:	04/08/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/08/2025 to 01/09/2025
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent to modify condition No."24. Noise management" of the parent consent. Particulars of the condition include matters related to hours of operation in association with outdoor noise, such as music / general noise and use of outdoor areas to 11pm for "Pilu" restaurant, particularly in association with special occasions / group bookings. The applicant seeks to amend this condition as the noise / time restrictions on low background music / alfresco dining is too restrictive for the outdoor area (such as seasonal evening casual dining) and especially when the applicant has group bookings, such as small reception gatherings (e.g engagement / wedding party),

special occasions, and the like.

The application is referred to the *Northern Beaches Local Planning Panel* (NBLPP) as condition No.24, was amended by NBLPP.

The public exhibition of the application resulted in 1 submission of objection and 8 in support of the modification.

Concerns raised in the objection received predominantly relate to permissibility, noise and general amenity concerns. Submissions of support from other nearby residents state that there are no unreasonable concerns with 'Pilu' restaurant operations or any noise concerns (in their experience).

The wording of condition 24 has been carefully reviewed and reworded to allow for the desired outcome by the restaurant whilst maintaining the residential amenity of the locality and ensuring no unreasonable impacts result. The condition also includes a 24 month trial period to both allow these hours to be tested and allow a long enough lead time for bookings.

On the balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the NBLPP, as the consent authority, grant approval to the DA modification.

Condition changes include those agreed to by the applicant and the referral response conditions from NSW Police (Condition No.2) of DA2024/0946.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to amend condition No.24 of development consent DA2024/0946 granted for "use of premises as a restaurant". The consent allows for ancillary group bookings as part the restaurant operation's (e.g. as a special occasion restaurant booking).

Condition No.24 currently reads as follows:

"24. Noise management

The restaurant is to be operated in accordance with the following:

- *Any amplified music must be limited to, and restricted during the hours of 10:00am and 10:00pm. Noise levels to be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.*
- *No outdoor amplified music.*
- *Outdoor background and/or acoustic (non-amplified) music is limited to 10pm. Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.*
- *All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.*
- *Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.*
- *Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.*
- *A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:*
 - *Amended Operating Hours*
 - *Amplified and non-amplified and background music requirements*
 - *Opening of windows*
 - *A contact number must be displayed for the purposes of receiving any complaints if they arrive.*

- *A copy of PoM to be available on restaurant's webpage.*

The PoM should be sent to Council and approved prior to operating under this consent. The PoM is to reviewed regularly to ensure any required updated proposed for approval by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties."

Comment:

The applicant raised concerns with the 10pm restriction for outdoor background music which, they claimed, places unreasonable restrictions for events and special occasion bookings of the restaurant.

After discussions with the applicant and Council's Environmental Health Officers, the proposed condition (as requested to be put to the NBLPP by the applicant) is as follows:

"24. Noise management

The restaurant is to be operated in accordance with the following:

- *Any amplified music is only permitted during the hours of 10:00am to 11:00pm. Noise levels for amplified music must be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.*

For the outside terraces:

- *Exclusively in association with a ceremony, for up to two occasions per day, being held between 11:00am and 1:30pm AND between 4:30pm and 7:00pm.*
- *Music is limited to 73dBA @ 3m LA10 from any speaker (equal to Sound Power 90dBA).*
- *The times and noise levels approved for the lower and middle outdoor terrace areas are subject to a trial period of 24 months, commencing at the date of issue of the Occupation Certificate for DA2024/0946. At the end of this trial period, a further modification application may be lodged to make these times and noise levels permanent.*

For indoor dining areas:

- *90dBA LA10 (Sound Pressure Level) during all permitted trading times.*
- *Until 11pm daily (except for New Years eve).*
- *All doors and windows must be closed during amplified music, doors and windows are permitted to be open during background music as per below.*
- *Background music must be no more than 65 dBA for dining areas, all measured as a sound pressure level.*
- *All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows and doors open.*
- *Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.*
- *Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.*

A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:

- *Amended Operating Hours*
- *Amplified and non-amplified and background music requirements*
- *Opening of windows and doors*
- *A contact number must be displayed for the purposes of receiving any complaints if they arrive.*
- *A copy of PoM to be available on restaurant's webpage.*

The PoM must be sent to Council and approved prior to operating under this consent.

The PoM is to be reviewed at least once per year and any required updates must be approved by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties and surrounding public spaces."

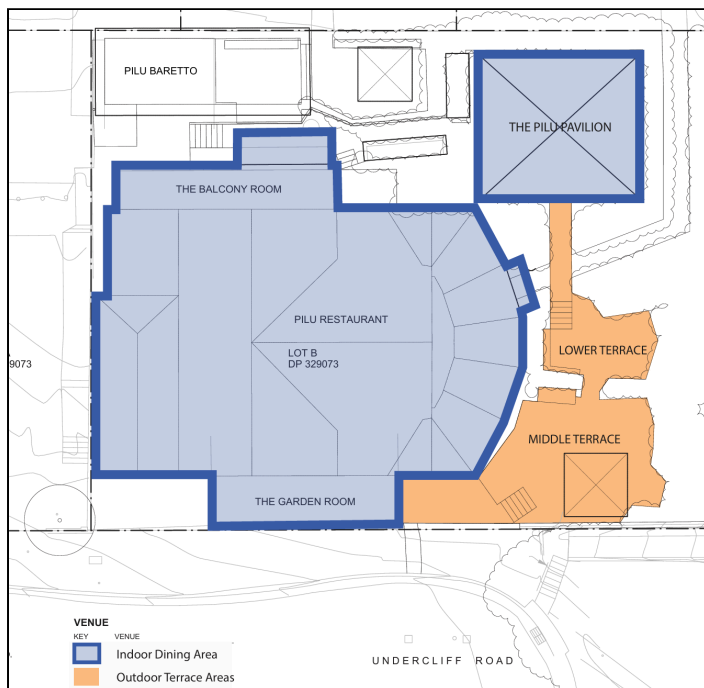


Image: Diagram of restaurant and areas referenced above in the development condition.

The proposed condition enables the responsible use of amplified music both externally and internally within the premises, subject to additional management and noise mitigation measures. This amendment also requires an update to the approved Plan of Management and adds a trial period of 24 months.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land

Warringah Local Environmental Plan 2011 - Zone RE2 Private Recreation

Warringah Local Environmental Plan 2011 - 5.20 Standards that cannot be used to refuse consent – playing and performing music

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D20 Safety and Security

Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot B DP 329073 , 80 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Undercliff Road, Freshwater.</p> <p>The site has a surveyed area of 977m². The site is located within the RE2 Private Recreation zone at Freshwater beach reserve and adjacent carpark area.</p> <p>The site is nominated heritage item under the Warringah LEP 2011, being "I76 - 'Freshwater' Restaurant - No.80 Undercliff Road, Freshwater"</p> <p>The site consists of two buildings, a two-story building ("Pilu" licensed restaurant) and detached single storey cafe and associated outdoor seating.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The western, eastern and northern boundary of the site are adjacent public open space (Freshwater Reserve).</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2024/0946 - Use of premises as a restaurant was granted approval by the NBLPP on 19 March 2025. The consent included special conditions for noise management, group bookings and use of the premises. (This consent is the subject of the current modification application)

DA2022/2281 - Formalisation of the use of premises as a restaurant (Pilu at Freshwater) including ancillary use as a function centre, increased patron numbers and extended hours of operation. (Withdrawn 26 July 2024)

DA2015/1048 - Alterations and additions to an existing kiosk including an increase in seating (Approved 17 December 2015).

DA2007/0873 - Demolition of the existing brick storage shed and construction of a kiosk for use as a Café-Restaurant. (Approved 15 July 2008).

Note: DA2015/1048 and DA2007/0873 relate to a kiosk as a second use and the consent stands alone from the main restaurant.

DA83/177 - Establishment of outdoor dining area for existing restaurant. (Approved 17 May 1983)

DA80/311 - Restoration of "the Kiosk" for use for Refreshment Room purposes.

Note: DA83/177 and DA80/311 relating to the restaurant are proposed to be surrendered, if current application is approved.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2024/946, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none">• The proposal seeks to adjust an existing condition relating to noise management. The condition will be less restrictive but maintains clear requirements and operational details to ensure it is enforceable and workable.

Section 4.55(1A) - Other Modifications	Comments
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2024/0946 for the following reasons:</p> <ul style="list-style-type: none"> • the modification does not seek to change the intensity of use or principal use of the premises as a restaurant. • The existing consent currently permit some music to accompany the use however for particular special bookings the proposal seeks to be able to utilise the outdoor space for groups with background music. • The modification of conditions does not require changes to parking, traffic, signage, building additions, landscaping or seating / dining capacity.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) is addressed in the table below.

The reasons given by the consent authority for the grant of the consent that is sought to be modified is discussed as follows:

Comment on reasons for determination of DA2024/0946

On 19 March 2025 the NBLPP determined DA2024//0946 citing the following reasons for determination:

"The Panel agrees generally with the Assessment Report with amendments in consideration of the amenity impacts on neighbours with regards to the playing of amplified music, access for persons with a disability and the provision of a reviewable condition allowing hours until 11pm Monday to Thursday. "

Condition 24, as amended by the NBLPP, applied unintended additional restrictions on the operation of the restaurant. The proposed changes to condition 24 still maintain the protection of amenity of neighbours in regards to amplified music, whilst allowing for reasonable operation of the restaurant

The reasons for the granting of the original consent have been considered in the assessment of this modification application. The proposed changes will result in a modified development that will not conflict with the original reasons for the granting of consent.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to submission issues raised including, peer review of the Acoustic report by objection submission that the applicant has addressed, referral response considerations, noise, and general modification assessment matters. The applicant, in discussion with council has agreed to revised wording of the condition that includes a 24 month trial extension as part of condition change.</p> <p>Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via an existing condition of consent.</p> <p>Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via an existing condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development and modification proposed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/08/2025 to 01/09/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Withheld	FRESHWATER NSW 2096
Mr Denver John Beven	2 / 87 Crown Road QUEENSCLIFF NSW 2096
Mr David Anthony Wills	4 / 69 Undercliff Road FRESHWATER NSW 2096
Ms Glenda Rae Dunn	1 / 69 Undercliff Road FRESHWATER NSW 2096
Prof Christopher John Griffiths	2 / 67 Undercliff Road FRESHWATER NSW 2096
Mr Denis Gregory Lynch	45 / 30 Moore Road FRESHWATER NSW 2096
Ms Jennifer Anson Nathan	C/- Mccoy Grove & Atkinson Level 10 46 Market Street Sydney NSW 2000
Murray John Sheer Mrs Julie Margaret Sheer	70 Undercliff Road FRESHWATER NSW 2096
Mr David James Morrissey	2 / 69 Undercliff Road FRESHWATER NSW 2096

The following issues were raised in the submissions. Submissions list summary below includes objection to the proposed modification and eight (8) other submissions in support of the modification, received from nearby neighbour's to the "Pilu" restaurant:

- 1. Noise management
- 2. Acoustic impact on public space
- 3. Category of modification
- 4. Incidental use
- 5. No concerns with noise or restaurant operation's
- 6. No concerns with amenity and hours of operation
- 7. No concerns with functions or use.

The above issues are addressed as follows:

- 1. *Concern that noise management is not satisfactory, including the acoustic report that has been peer reviewed by a consulting acoustic engineer (and submission included).*

Comment:

Council's Environmental Health section has considered the submission documents (including peer review by *Day Design*) and response also made by the applicant, including revision of the modification to condition 24 initially proposed. Suitable management conditions have been proposed including the use of an extended trial period and conditions to address, monitor and manage noise concerns. It is noted that other residential property owners nearby have made submissions in support of the proposal and have identified that they do not have any ongoing concerns with outdoor music, hours of operation or general management of 'Pilu' restaurant. On balance and in consultation with the applicant and advice from Council's environmental health officer, a revised condition is recommended to address this issue. Detailed consideration is also provided under the heading "D3 Noise" within this report.

- *2. Concern that the modification will interfere with the amenity of the adjacent reserve*

Comment:

The proposal has been referred to NSW Police for advice and consideration of CPTED / licensing matters, including public amenity / safety. Generally the restaurant is located at the southern end of the Freshwater Reserve and on the high side of the southern carpark within the open space adjacent Undercliff Road. The site is fully fenced to define the public areas from the private space around the restaurant. The restaurant is of a 'boutique' style with its outlook directed toward the ocean and beachfront reserve. Therefore the modifications proposed are not considered to lead to any unreasonable interference with the broader area and facilities of Freshwater beach reserve.

- *3. Concern that the proposal is not a 'type 1a' modification and is seeking to 'unravel' previous conditions by NBLPP.*

Comment:

The modification application is consistent with a type '1a' and includes only partial change to existing condition in the context of its current use. The proposal was previously determined by NBLPP and therefore Council's assessment procedures appropriately ensure the NBLPP will consider the modifications as it is referred directly to the panel to enable the application to be fully considered in context with the original DA conditions imposed.

- *4. Concern that the proposal has incidental use as a function centre.*

Comment:

The parent DA considered this issue in detail and specific conditions apply to ensure the restaurant is not transformed into a function centre by incidental use. No change is proposed to condition 3 or 4 of the consent. The use as restaurant or café is permitted by Schedule 1 of Warringah LEP 2011.

- *5. Submission of support that the restaurant is well managed and there is no unreasonable noise for restaurant customer gatherings there, night lighting, outdoor music, or other amenity concerns and no reasonable problems for adjacent residents living nearby "Pilu" including for use of outdoor areas or late at night.*

Comment:

Restaurant operation's and the modification to the DA have been considered in detail, including all submissions. Submissions of support are considered on balance with the relevant planning controls (including clause 5.20 of WLEP 2011), submitted documents and objections also raised.

- *6. Submission of support that there are no amenity concerns and management of 'Pilu' are considerate of any neighbours for the hours of operation's including noise or amenity and respond to neighbours if there are operational matters.*

Comment:

Details of this submission are noted for the purpose of the proposal and considered on balance with referral responses, other submissions of objection and discussions with the applicant during the assessment period. The applicant is agreeable to the revised changes to condition no.24 "Noise management".

- *7. Submission of support that functions are generally small events and respectful of the urban surroundings and there is more background noise and disturbances from other general use of the parkland, other commercial premises, ocean noise, traffic, local development works or the like.*

Comment:

Details of this submission issue is noted and has been considered in context with all other submissions, the relevant Warringah LEP provisions, relevant DCP matters and referral responses provided.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Supported with condition (as recommended)</p> <p>Revised Referral Response 6.11.2025</p> <p>Amendment to Condition 24 (as revised / agreed with applicant following RFI [dated 1.10.2025]).</p> <p><i>The restaurant is to be operated in accordance with the following:</i></p> <ul style="list-style-type: none"> Any amplified music is only permitted during the hours of 10:00am to 11:00pm. Noise levels for amplified music must be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level. <p><u>For the outside terraces:</u></p> <ul style="list-style-type: none"> Exclusively in association with a ceremony, for up to two occasions per day, being held between 11:00am and 1:30pm AND between 4:30pm and 7:00pm. Music is limited to 73dBA @ 3m LA10 from any speaker (equal to Sound Power 90dBA). The times and noise levels approved for the lower and middle outdoor terrace areas are subject to a trial period of 24 months, commencing at the date of issue of the Occupation Certificate for DA2024/0946. At the end of this trial period, a further modification application may be lodged to make these times and noise levels permanent. <p><u>For indoor dining areas:</u></p> <ul style="list-style-type: none"> 90dBA LA10 (Sound Pressure Level) during all permitted trading times. Until 11pm daily (except for New Years eve). All doors and windows must be closed during amplified music, doors and windows are permitted to be open during background music as per below. Background music must be no more than 65 dBA for dining areas, all measured as a sound pressure level. All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows and doors open. Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am. Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise. <p>A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:</p> <ul style="list-style-type: none"> Amended Operating Hours Amplified and non-amplified and background music requirements Opening of windows and doors

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <i>A contact number must be displayed for the purposes of receiving any complaints if they arrive.</i> <i>A copy of PoM to be available on restaurant's webpage.</i> <p><i>The PoM must be sent to Council and approved prior to operating under this consent.</i></p> <p><i>The PoM is to be reviewed at least once per year and any required updates must be approved by Council.</i></p> <p><i>Reason: To maintain reasonable levels of amenity to residential neighbouring properties and surrounding public spaces."</i></p> <p>Previous General Comments 8.9.2025 Environmental health has considered the original conditions of consent and planning panel assessment report, information provided with the modification proposal as well public submissions to date.</p> <p>It is considered that the proposal would unreasonably impact on the reasonable enjoyment of residential receivers in a number of ways.</p> <p>1. The extension of amplified music to be permitted until 11pm has the high potential to create sleep disturbance and is largely inconsistent with the intention of the original development that this modification seeks to modify - It is notes with the planning panel assessment report (when assessing noise limitations which seek to "...allow for appropriate respite for neighbouring development...")</p> <p>2. <i>"The use of amplified music on the external terraces ... solely be for the purposes of a ceremony (typically accompanying weddings)":</i></p> <p>Up to twice a day, as follows:</p> <ul style="list-style-type: none"> Time slot one (1); between 11:00am and 1:30pm. Time slot two (2); between 4:30pm and 7:00pm. <p>The broad description of "ceremony" does not provide confidence that the amenity of the surrounding properties can be maintained as the nature and intensity of such ceremonies, from a noise standpoint, cannot be readily defined.</p> <p>At its worst, this represents the overall potential for a large number of outdoor daily "ceremonies" at the premises, seemingly ancillary to the main use, however having the potential to be for the entire duration of times proposed (by power of consent if approved), and create noises issues that has the potential to unreasonably affect the amenity of the surrounding area.</p> <p>Other than the possible ability to noise limit any "house" sound equipment, there is also the potential for musical artists and entertainers to bring their own sound amplification equipment, resulting in high potential to create offensive noise, with the limiting factors of</p>

Internal Referral Body	Comments
	<p>behavioral noise control measures as outlined in any <i>Plan of Management</i> being the main method available to potentially mitigate noise in an outdoor environment, as opposed to any definitive sound attenuation achieved by building design or built form controls.</p> <p>Accordingly, the proposal is not supported by Environmental Health [at this stage].</p> <p>Previous Recommendation 8.9.2025 Not Supported [previously]. (Note: reviewed following RFI response by applicant)</p> <p><u>Planning Comment on revised referral response:</u> The above H&B assessment has been considered and following details consideration and response provided by the applicant and their consulting experts changes to condition No.24 have been adjusted to reach an agreed outcome. This includes further (extended) trial period and clarity in the condition for the operator. Referral response from NSW Police is also included as an updated review as referenced in condition No.2 "Compliance with Other Department, Authority or Service Requirements".</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported without change to conditions.</p> <p><u>General Comments</u> The proposal seeks consent to alter permissible times of amplified music and does not alter previous recommendations by Environmental Health in relation to the fit out of the food premises.</p> <p>Accordingly, the proposal is supported.</p> <p><u>Recommendation</u> APPROVAL - no conditions</p>
NECC (Development Engineering)	<p>Supported without change to conditions.</p> <p>No engineering concerns regarding the proposal.</p>
Parks, reserves, beaches, foreshore	<p>Supported without change to conditions.</p> <p>No concerns are raised regarding the proposed modification.</p>

Internal Referral Body	Comments		
Strategic and Place Planning (Heritage Officer)	Supported without change to conditions.		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as the site is a listed heritage item, being Item I76 - "Freshwater Restaurant" - 80 Undercliff Road, Freshwater , listed in Schedule 5 of Warringah LEP 2011.		
	Details of heritage items affected		
	Details of the heritage item, as contained within the Heritage Inventory, are: Item I76 - "Freshwater Restaurant" - 80 Undercliff Road, Freshwater		
	<u>Statement of Significance</u> A building with great social & historical significance as an early meeting place & recreation venue for the first settlers in Freshwater. Representative of the federation style, with high integrity. Prominent local landmark located above Freshwater Beach.		
	<u>Physical Description</u> Two storey building of residential form. Timber weatherboard walls and tiled multi-gabled roof. Gables contain a variety of detail from timber shingles & timber battened trim to a variety of window types. Wide segmented verandah, infilled with glazing.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			

Internal Referral Body	Comments
	<p>This application proposes to modify consent DA2024/0946, which formalised the use of the use of the site as a restaurant. Specifically this application proposes that <i>Condition 24 - Noise Management</i> be amended to extend the permissible hours that amplified music can be used, both internally and externally. This also necessitates an update of the approved Plan of Management. It is noted that the heritage report submitted with the application was a previous heritage letter prepared for the building in 2023, and does not address the changes proposed by this modification application.</p> <p>However, it is considered that the extended use of amplified music in the building is not a heritage issue as there will be no impact upon the physical fabric or setting of the heritage item. As a result, this proposal will not have an adverse impact on the heritage significance of the heritage item.</p> <p>Therefore, no objections are raised on heritage grounds, and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? 2023 heritage letter.</p>

External Referral Body	Comments
NSW Police - Crime Prevention Office (Local Command matters)	<p>The modification was referred to NSW Police - Local Command for consideration of Crime Prevention Through Environmental Design (CPTED). A referral was provided on 14 October 2025 with recommended CPTED conditions (which includes matters relating to licensed premises).</p> <p>The referral response is included as a modified condition "2. Compliance with Other Department, Authority or Service Requirements".</p>
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p>The modification was referred to NSW Police - Local Command and a referral response was provided on 14 October 2025 with recommended management conditions. The referral response is included as a modified condition "2. Compliance with Other Department, Authority or Service Requirements".</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions

contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The modification proposal was not required to be referred to *Ausgrid* as the proposal relates to acoustic noise issues (no building works). The application was not required to be referred to Transport for NSW or Sydney Water. No other service infrastructure authority issues are raised.

SEPP (Resilience and Hazards) 2021

The modification seeks adjustment to existing noise management conditions and operational requirements and does not impact any coastal processes or natural hazards in the coastal zone. The requirements of the SEPP were considered in detail under the parent DA and no further assessment is required pursuant to the SEPP for the modification of consent proposed.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

The modification relates to noise and operational management conditions only. Therefore no detailed assessment is required for the Warringah LEP principal development standards (Height of buildings).

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.10 Heritage conservation	Yes
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

Schedule 1 (*Additional permitted uses*), Clause 15 of the WLEP 2011 states that development for the purposes of "restaurants or cafes" is permitted with consent for the 80 Undercliff Rd Freshwater. The approved use for a restaurant is therefore permissible.

Development Application DA2025/0946 considered the surrender of historic consents 1980/311 & 1983/177, to re-establish the use of the site as a restaurant and to ensure there are no inconsistencies between the 45 year old consents and current controls. A condition was imposed to ensure both older consents are surrendered prior to the issue of the construction certificate, to be completed. The modification does not affect these conditions.

Zone RE2 Private Recreation

Proposed Use	Permitted or Prohibited
Restaurant or cafe	Permitted with consent - by way of Schedule 1 - Additional Permitted Uses.

The underlying objectives of the RE2 Private Recreation zone

- *To enable land to be used for private open space or recreational purposes.*

Comment:

The outdoor areas of the building are utilized as alfresco private open space for outdoor dining and landscaped area as part of the setting for the building in connection with internal operational areas.

- *To provide a range of recreational settings and activities and compatible land uses.*

Comment:

The history of the building has been established for many years to operate as restaurant and cafe in the coastal setting overlooking the reserve and beachfront / ocean. The position of the building maintains connectivity with the adjacent carpark and Freshwater reserve.

- *To protect and enhance the natural environment for recreational purposes.*

Comment:

The site is fully fenced to define the surrounding space from being private use adjacent the public recreation areas of Freshwater reserve.

5.20 Standards that cannot be used to refuse consent – playing and performing music

(1) The consent authority **must not refuse consent** to development in relation to licensed premises on the following grounds:

(a) the playing or performance of music, including the following—

- (i) the genre of music played or performed, or
- (ii) whether the music played or performed is live or amplified, or
- (iii) whether the music played or performed is original music, or
- (iv) the number of musicians or live entertainment acts playing or performing, or
- (v) the type of instruments played,

(b) whether dancing occurs,

(c) the presence or use of a dance floor or another area ordinarily used for dancing,

(d) the direction in which a stage for players or performers faces,

(e) the decorations to be used, including, for example, mirror balls, or lighting used by players or performers.

(2) The consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.

(3) In this clause— *licensed premises* has the same meaning as in the Liquor Act 2007.

Comment:

The proposal is supported and refusal is not recommended to the modification. The changes proposed to condition No.24 remain consistent with the provisions of this clause and allow for the playing or performance of music, the use of licensed premises and likely associated noise and activity for groups using the restaurant for special occasions / celebrations. The applicant has provided detailed outline of the restaurant operations to address this clause and be consistent with particular location, use and surrounding environment.

Additional guidelines are also provided by "Planning Circular PS 24-003 Noise complaint management at licensed premises", dated 1 July 2024. The circular advises councils, applicants and venue owners of how certain development consent conditions that manage sound apply to licensed premises under Section 97A of the *Environmental Planning and Assessment Regulation* (EP&A Regulation) 2021. The circular advises councils on the condition types that cease to have effect, how to condition future development applications, and how complaints will be managed. The circular has been considered a part of the modification assessment.

Warringah Development Control Plan

Built Form Controls

The modification relates to noise and operational management conditions only. Therefore no detailed

assessment is required for the Warringah DCP built form controls (setbacks, wall height, landscaping, building envelope and the like that normally relate to building works).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D20 Safety and Security	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D3 Noise

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- To encourage innovative design solutions to improve the urban environment.*

Comment:

No design changes are proposed to the restaurant and the modification relies on minor change to existing noise management conditions. The site is within recreation zoned land adjacent the urban residential area and therefore has spatial separation to assist noise amenity for dwellings nearby.

- To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, user's or visitors.*

Comment:

The site is occupied by a boutique style restaurant that has an outlook toward Freshwater Beach from within the reserve. Surrounding background noise occurs from the ocean surf, Harbord Hotel, carpark traffic and public reserve area, Freshwater SLSC and other residential development nearby. In addition to past development consent, the existing restaurant operates using a Plan of Management, as well as seating capacity, noise controls and liquor licence conditions. The site is subject to conditions to ensure that noise emissions do not unreasonably diminish the amenity of the area and cause unreasonable noise intrusion to adjacent dwellings, or public amenity. Submissions of support for the modification from adjacent / nearby residents indicate that the restaurant use is consistent with this objective (see "submissions" heading within this report).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The modification does not impact the siting or design of the building. The coastal outlook of the restaurant is shown in the image below with residential land on the opposite side of Undercliff Road that overlooks the roofed area and landscape buffer adjacent the road reserve which assists to provide visual and acoustic privacy.



Image: Location of Pilu restaurant within Freshwater reserve. Dining / outdoor area faces the ocean and side setback area shown to the right hand side is along Undercliff Road (to the south) with the adjacent residential area.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The restaurant operates with detailed conditions of consent that include noise and operational management requirements that are enforceable. NSW government laws also apply pursuant to the liquor and and NSW Police referral response provides additional operational conditions. In summary, the applicant has reviewed their modification application (including submission concerns) and is in agreement to condition No.24 as recommended in this report.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal was referred to *NSW Police* for comment on CPTED matters and security. Recommendations and conditions are included as part of the modification. The site has good passive surveillance areas around the property for personal and property security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D20 Safety and Security

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment:

The modification has been subject to a review by NSW Police local command in consideration of CPTED matters and the consent maintains a Plan of Management to assist in safety and security for staff and patrons. The site is adjacent a public reserve and has good passive surveillance of the building and its surroundings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance, subject to conditions.

E7 Development on land adjoining public open space

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment:

Public access to public open space is not compromised by the modification changes to the noise management conditions. The building is located adjacent a public carpark and beachfront reserve area that forms part of the general outlook to public open space. Fencing around the building defines the restaurant for the public land without appearing to privatise public space.



Image: Restaurant entry area / café window and adjacent carpark and outlook toward ocean.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment:

The modification does not impact views to and from public open space and maintains opportunities for casual surveillance of the public open space with the existing landscape buffers retained. The historical setting of the building and its fabric is not adversely affected by the modification of conditions.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment:

The modification changes do not adversely impact the landscape character and public use and enjoyment of the adjoining parkland, bushland reserves and other public open space of the beachfront. The existing landscape elements to the south assist to screen development from houses that overlook the reserve. Noise management provisions are embedded into the conditions, including matters within the NSW Police referral response provided with the modification referral.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

Overall, the modification application has demonstrated that the change to hours of operation and music / amplification system to accompany outdoor dining (including special occasion bookings) is acceptable. Documentation provided, and discussion with the applicant regarding condition changes, ensure that the site can continue to be utilised for the purposes of a restaurant without unreasonably impacting upon the amenity of the surrounding public open space and residential properties nearby. The proposed modification is consistent with Warringah LEP and State noise controls for licensed premises.

The concerns raised in the objection received have been considered and addressed. It is also noted that eight (8) separate submissions from other neighbours living nearby express support for the proposed modification and ongoing restaurant use.

The critical assessment issues regarding land use permissibility, noise, amenity impacts, location and heritage significance of the site have been addressed.

The modification proposal has therefore been recommended for **approval**.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2025/0424 for Modification of Development Consent DA2024/0946 granted for Use of the premises as a restaurant on land at Lot B DP 329073,80 Undercliff Road, FRESHWATER, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
MOD2025/0424 PAN-557223	The date of this notice of determination	Modification to condition No.24 - Noise management
DA2024/0946 PAN-452276	19.3.2025	Use of premises as a restaurant

Modified conditions

A. Add Condition No.2A - Compliance with Other Department, Authority or Service Requirements, to read as follows:

2A. Compliance with Other Department, Authority or Service Requirements

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Other Department, Authority or Service	EDMS Reference	Dated
NSW Police - Local Command (CPTED and Licensing)	Referral Response NSW Police	14.10.2025

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

B. Modify Condition 24. Noise management, to read as follows:

The restaurant is to be operated in accordance with the following:

- Any amplified music is only permitted during the hours of 10:00am to 11:00pm. Noise levels for amplified music must be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.

For the outside terraces:

- Exclusively in association with a ceremony, for up to two occasions per day, being held between 11:00am and 1:30pm AND between 4:30pm and 7:00pm.
- Music is limited to 73dBA @ 3m LA10 from any speaker (equal to Sound Power 90dBA).
- The times and noise levels approved for the lower and middle outdoor terrace areas are subject to a trial period of 24 months, commencing at the date of issue of the Occupation Certificate for DA2024/0946. At the end of this trial period, a further modification application may be lodged to make these times and noise levels permanent.

For indoor dining areas:

- 90dBA LA10 (Sound Pressure Level) during all permitted trading times.
- Until 11pm daily (except for New Years eve).
- All doors and windows must be closed during amplified music, doors and windows are permitted to be open during background music as per below.
- Background music must be no more than 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows and doors open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.
- Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.

A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:

- Amended Operating Hours
- Amplified and non-amplified and background music requirements
- Opening of windows and doors
- A contact number must be displayed for the purposes of receiving any complaints if they arrive.
- A copy of PoM to be available on restaurant's webpage.

The PoM must be sent to Council and approved prior to operating under this consent.

The PoM is to be reviewed at least once per year and any required updates must be approved by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties and surrounding public spaces.