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**From:** DYPXCPWEB@northernbeaches.nsw.gov.au  
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**To:** DA Submission Mailbox  
**Subject:** Online Submission

11/08/2024

MR Blake Dyer  
ST  
NSW  
[REDACTED]

**RE: DA2024/0946 - 80 Undercliff Road FRESHWATER NSW 2096**

Dear General Manager

I am writing to object to the proposed development application 2024/0946 which is seeking development consent for the use of the premises as a restaurant including ancillary use as a function centre.

Use of the premises for a function centre is prohibited development within the RE2 Private Recreation Zone.

In the recent decision of Tweed Shire Council v Cooke [2023] NSWLEC 73, Pain J said at [98]:

The test of whether a purpose of development is incidental and subordinate to another purpose is whether the two purposes are not severable but are 'inextricably linked' such that they ordinarily occur together rather than are merely sometimes associated with each other as a matter of convenience: Scott's Provisions Stores Pty Ltd v Sydney City Council (1958) 3 LGRA 191 (Scott's) at 194-195. A purpose is ancillary only where a purpose of development is incidental and subordinate to another purpose, it is subsumed within that other purpose and it is ignored and treated as part of the other purpose for characterisation: Bonus Pty Ltd v Leichhardt Municipal Council (1954) 19 LGR 375, Foodbarn Pty Ltd v Solicitor-General (1975) 32 LGRA 157 (Foodbarn). If the Court found it necessary to apply the Scott's test, the growing and harvesting of cannabis plants on one hand and the production of hemp oil on the other are severable, separate and independent purposes. The activities on the Development Site could easily cease at the harvesting of plants rather than continue to the macerating, soaking, straining, separating, bottling phases and beyond.

Similarly to her Honour's observations above, the use of the premises as a restaurant are separate and independent purposes.

The premises are currently used for the purposes of a restaurant, and this use can continue separate and independent of the use of the premises for the purposes of a function centre. The use of the premises as a function centre is not incidental and subordinate to the use of the premises as a restaurant.

The primary objection to the proposed development is the impact of the proposed development on parking within the Freshwater area.

As a member of the Freshwater SLSC, parking is and continues to be an issue for the public and for patrolling members.

The proposed development does not provide any onsite parking, and despite assertions that there is some historical provision of parking adjacent to the site, this does not take away from the fact that there is insufficient parking in the immediate area, and the proposed development does not provide adequate parking for the development that is proposed.

Warm regards

Blake Dyer