

STATEMENT OF ENVIRONMENTAL EFFECTS
‘PILU AT FRESHWATER’ - 80 UNDERCLIFF ROAD, FRESHWATER
DA TO USE THE SITE AS A RESTAURANT
AND TO CARRY OUT FIRE + ACCESS UPGRADES



Prepared by Planning Lab

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1 Summary

This Statement of Environmental Effects (SEE) has been prepared by Planning Lab in support of a development application (DA) concerning an existing restaurant known as 'Pilu at Freshwater' at 80 Undercliff Road, Freshwater ('the site'). The site is a locally listed heritage item known as "Freshwater Restaurant" which has a longstanding use as a restaurant.

Pilu at Freshwater is an award-winning fine dining a-la-carte restaurant which has operated on the site since 2004. During that time, the restaurant operated under consents DA1980/311 and DA1983/177 which approved the current indoor and outdoor restaurant use, respectively.

The site includes a kiosk which operates under DA2015/1048. This application does not pertain to the kiosk and does not seek to make any changes that would impact its operation under the existing consent.

A previous DA was lodged in 2022 but later withdrawn by the applicant.

The DA seeks approval for the following:

Proposal	To authorise the use of the site as a restaurant, and to formalise the detailed operations of the existing venue under an accompanying Plan of Management.
Operating Hours	<ul style="list-style-type: none">• 10am – 12am (midnight), Monday to Saturday• 10am – 10pm Sundays.
Maximum Indoor Capacity	<ul style="list-style-type: none">• 50 patrons in the Pavilion.• 100 patrons in the Main Building.• 130 patrons maximum may be hosted on the site (at any time).

Having assessed the proposal against the relevant matters outlined in section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), this SEE finds that the proposal satisfies the relevant objectives and provisions of the Warringah Local Environmental Plan 2011 (Warringah LEP 2011) and the Warringah Development Control Plan 2011 (Warringah DCP 2011). No other State legislation requires consideration.

This SEE demonstrates that the proposal does not give rise to any unacceptable environmental effects and accordingly, the application is recommended for approval by the Northern Beaches Council.

2 Accompanying Design and Reports

This SEE relies on the following Architectural Drawings and specialist consultant reports. These reference documents are to be read in full as the relevant primary source of advice for that specialist area of expertise and in conjunction with this SEE. Each of these referenced attachments are lodged with this DA.

- Architectural Drawings and Site Plan – McIntosh and Phelps
- Heritage Impact Statement – Urbis
- Acoustic Assessment Report – Pulse White Noise Acoustics
- Fire Protection Report for Pavilion Building – Bureau SRH
- Waste Management Plan – Planning Lab
- Review of Accessibility Matters Letter – City Plan
- Traffic and Parking Assessment Report – TTPP Transport Planning
- Plan of Management – Planning Lab

3 Site Context

The proposal relates to 80 Undercliff Road, Freshwater ('the site') which is legally known as Lot B DP329073. The site is approximately 977.4m² and is rectangular. It is occupied by a two-storey residential federation style building with timber weatherboard walls and a tiled multi-gabled roof. The site is a heritage item known as "Freshwater Restaurant" and the site has had a long-standing use as a food and drink premises. It is currently occupied by Pilu at Freshwater Restaurant and a kiosk.

It has a southern frontage to Undercliff Road with a pedestrian entrance. The western, eastern and northern boundaries of the site are adjacent to public open space known as the Undercliff Reserve, which surrounds the adjacent Freshwater Beach.

To the north of the site is a Council car park that is accessible from Moore Road. Vehicle access to the building is provided via a driveway from the Council car park.

The site is located in the vicinity of detached residential dwellings which are located to the south and west of the site. To the south, they are separated by Undercliff Road and to the west, they are separated by the public open space.

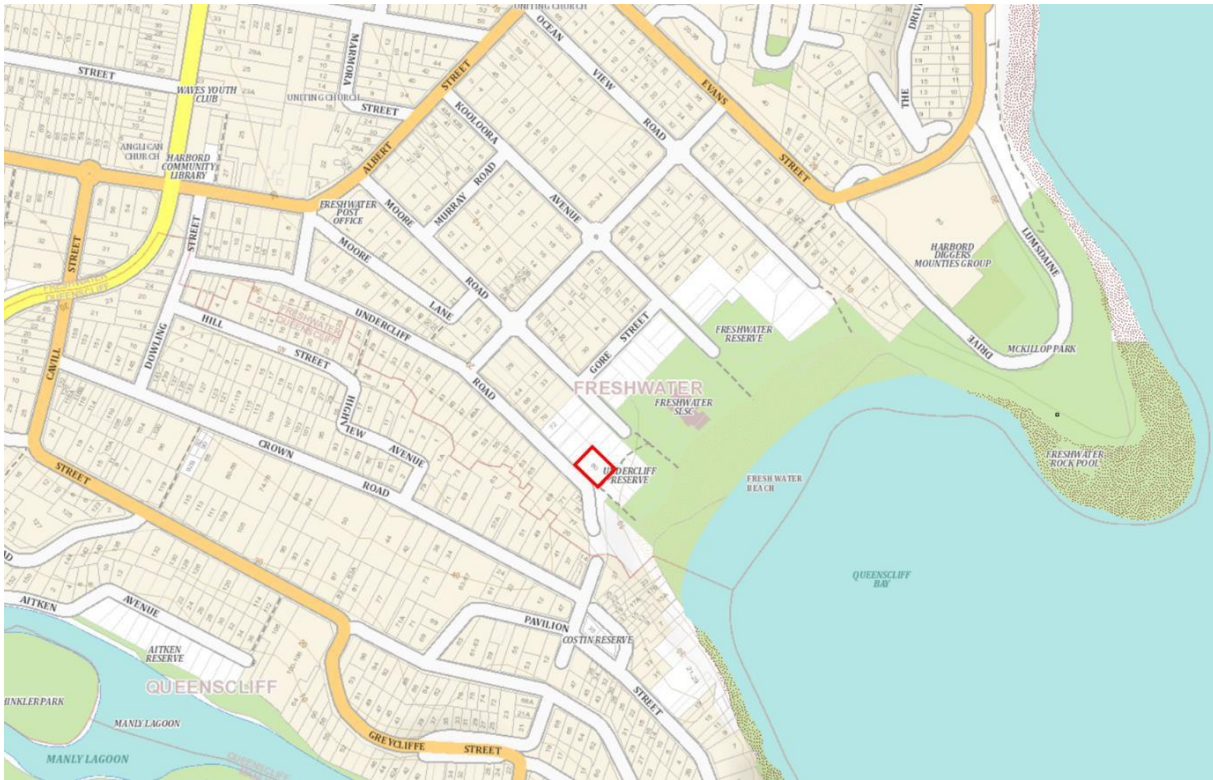


Figure 1 - Site location (Six Maps)



Figure 2 - Aerial image of the site (Six Maps)



Figure 3 - The site viewed from Undercliff Road



Figure 4 - Site viewed from the Council car park



Figure 5 - The site viewed looking north from Freshwater Reserve

4 Relevant Site History

Summary of Operation

The site has a longstanding historic and ongoing use as a restaurant. Pilu began operating a fine dining restaurant on the site in 2004 relying on the existing development consents 1980/311 and 1983/177 from the early 1980s. As part of its restaurant operations, Pilu has held private dining bookings at the premises since its establishment. Private dining bookings were also held by the former operators prior to 2004. Such bookings have been held as an ancillary offering to its primary use as a fine dining a-la-carte restaurant, for several decades.

Prior to its occupation by 'Pilu', a pavilion was erected in the eastern corner of the site without development consent. This structure has been in continual use by Pilu since it began operation in 2004. As noted above, consistent with the decision of *Ku-ring-gai Council v Buyozo* [2021] NSWCA 177 at [39] – [40], this development application seeks consent for the **prospective** use of the pavilion. Development consent is **not sought** for any works have already been carried out at the site.

In 2007, consent DA2007/0873 permitted the demolition of the existing brick storage shed and construction of a kiosk for use as a Café-Restaurant. The kiosk was subsequently modified under consent DA2015/1048 which continues to govern the operation of the kiosk.

The relevant development consents are described in more detail below.

1980/311

On 19th December 1980, a proposal for the restoration of the site and continued use as a restaurant was approved. It contained the following conditions of direct relevance to this application:

13. *The entranceway fronting Undercliff Road not to be used by restaurant patrons for access. All vehicular, pedestrian and service access to be from the northern access.*
14. *Hours of operation of the indoor restaurant on weekdays to be limited to 11p.m. and 12p.m. on weekends. The use of the refreshment room to be confined solely to the building as required by Clause 6 of Interim Development Order 143.*
15. *No live music or entertainment to be permitted in the restaurant and any music or noise emanating from the restaurant not to exceed 5dBa above ambient.*
16. *Satisfactory arrangements to be made for car parking. These are to be comprised in the Deed prepared by Council's solicitors at the applicant's expense and separately approved by Council as required by Clause 98 of the Interim Development Order 143 for the Shire of Warringah*

It should be noted that, in this consent, 12pm is a typographical error and the consent intended to refer to 12 midnight. The conditions of consent did not include any maximum occupancy figure.

The stamped plans depicted a dining area on the Lower Ground Floor and the main dining area on the Upper Ground Floor.

A Deed was created on the 19th of December 1980 whereby the applicant paid a contribution of \$50,000 towards the creation of the adjacent Council carpark. The deed provided that [1]:

Such public car park shall provide accommodation for at least twenty-eight (28) motor vehicles in accordance with Council's current car parking requirements and no objection will be taken by the Council to patrons of said Refreshment room parking their motor vehicles in such Public Carpark along with other members of the public.

The Deed then states:

5. The Applicant and the Council acknowledge that they are entering into this Deed in lieu of providing off street parking appurtenant to the said refreshment room within the premises in accordance with the Council's usual requirements in that regard and the Council acknowledges that it accepts that execution and implementation by the Parties of this Deed comply fully with the Council's requirements as to off-street parking for the premises.

Accordingly, the premises has operated with consent since 1980, and has funded the provision of 28 parking spaces in the adjacent Council car park.

1983/177

Consent was granted on 17 May 1983 for the establishment of an outdoor dining area for the existing restaurant. It contained the following conditions of direct relevance to this application:

2. *Outdoor eating hours to be restricted to 11.00am to sunset, 7 days a week.*
5. *The area shown on the consented plans as outdoor dining area are not to be used for the purposes of increasing the patron capacity of the restaurant. Without affecting the generality of*

this condition, specifically no eating facilities for dining patrons are to be provided in this area additional to seating facilities consented to in the existing restaurant.

The site plan approved as part of this DA shows a combination of 14 tables in the outdoor dining area with a notation stating “total seating this level 80”. The outdoor dining area is on the lower ground level indicating a total maximum occupancy of 80 applying to the Lower Ground Level (ie, “this level”). No maximum occupancy is stated in relation the Upper Ground floor or the premises as a whole.

DA2007/0873

Consent was granted on 15 July 2008 for:

“Demolition of the existing brick storage shed and construction of a kiosk for use as a Café-Restaurant”

DA2007/0873 was subsequently modified by MOD2008/0356 which approved installation of a hotplate and mechanical ventilation. It also deleted consent condition 39 prohibiting cooking in the kiosk.

DA2015/1048

Approval was granted on the 17 December 2015 for alterations and additions to the Kiosk area including:

- New roof extension to existing kiosk and proposed new bench seating area;
- Covered deck area to accommodate 14 patrons;
- Outside eating area to accommodate 22 patrons, including an eat up bench area;
- Covered deck area that comprises 20sqm of floor area and the outdoor paved area is of a similar size and scale;
- Operation Monday to Sunday: 6am - 9pm;
- Three (3) staff (and casuals on needs basis); and
- External materials and finishes comprising timber batten screening to the outdoor seating area and timber balustrade.

5 Proposal

The purpose of this DA is to supersede the existing 40-year-old consents under 1980/311 & 1983/177 which continue to govern the operations of the restaurant on site but require updating.

As it is intended that this DA will supersede development consents 1980/311 & 1983/177, it is recommended that a condition be imposed on the development consent under section 4.17(1)(b) of the *Environmental Planning and Assessment Act 1979* requiring that those consents be ‘surrendered’.

This DA does not relate to the kiosk which will continue to operate under DA2015/1048 and which is not subject to this DA.

The DA seeks approval for the following:

Proposal	To authorise the use of the site as a restaurant, and to formalise the detailed operations of the existing venue under an accompanying Plan of Management, including any necessary BCA and fire-related upgrades.
Operating Hours	<ul style="list-style-type: none">• 10am – 12am (midnight), Monday to Saturday• 10am – 10pm Sundays.
Maximum Indoor Capacity	<ul style="list-style-type: none">• 50 patrons in the Pavilion.• 100 patrons in the Main Building.• 130 patrons maximum may be hosted on the site (at any time).

Site Access

Condition 13 of DA consent 80/311 requires that “*the entranceway fronting Undercliff Road not to be used by restaurant patrons for access. All vehicular, pedestrian and service access to be from the northern access*”. To limit impacts on nearby residential development, it is considered appropriate that a similar condition be applied to the current DA for restaurant patrons, with the exception of providing at grade access for persons with a disability

Architectural and Site Plans

Extracts from the accompanying Architectural Drawings prepared by McIntosh Phelps are provided in **Figures 6 to 8** Below:

6 Planning Framework

6.1 Warringah Local Environmental Plan 2011

The proposal does not involve any physical works and is limited to authorising the prospective use of the existing structures on site as part of the restaurant.

The development is permissible.

The site is zoned “RE2 Private Recreation” under the LEP. Whilst the current restaurant use of the site is not identified as being permissible in the Land Use Table, Clause 2.5 Additional permitted uses for particular land identifies the subject site as having an exception under Schedule 1, Clause 15, which specifies additional permitted uses for the site as “*development for the purposes of restaurants or cafes is permitted with consent*”. The subject proposal seeks consent for the prospective use of the site as a restaurant.

‘Restaurant or café’ is defined in the LEP as follows:

... a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

It is considered that the holding of occasional exclusive (up to a maximum of 20 per annum) and non-exclusive private bookings and associated activities is ancillary to the restaurant use having regard to established principles of characterisation of development set out in *Foodbarn Pty Limited v Solicitor-General* (1975) 32 LGRA 157 and subsequent cases.

Further detail regarding the operation of the restaurant, including the occasional hosting of private bookings, is set out in the Plan of Management accompanying this development application.

Heritage

The site is identified as local heritage item ‘I76’ known as “Freshwater Restaurant” under Schedule 5 of the LEP.

Clause 5.10 (4) of the LEP requires the following assessment of the subject proposal:

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

The proposal does not involve any physical works or change of use. The historical use of the site as a restaurant is retained by the proposal.

A Heritage Impact Statement has been prepared by Urbis to accompany this application.

The Urbis Assessment concludes:

It is assessed that the continued use of the two structures located on the site to the east of the principal restaurant building known as the 'Pilu Pavilion' and 'Wedding Ceremony Umbrella' will have no adverse impact on the significance of the identified item and will facilitate its ongoing use as a meeting place and restaurant, thereby ensuring that its contribution to the Freshwater foreshore continues. On the basis of this assessment, it is recommended that Council view this application favourably on heritage grounds.

6.2 Warringah Development Control Plan 2011

The proposal does not involve any physical works other than BCA, access, and fire related upgrades and continues the existing approved use of the site as a restaurant. Other than in relation to parking, the Warringah DCP 2011 is of limited application to the proposal as it does not involve significant physical works. This SEE considers the impacts of the proposal against the relevant considerations under S4.15 of the *Environmental Planning and Assessment Act 1979*.

6.2.1 Parking

Chapter C3 of the DCP relates to parking facilities and requires compliance with the applicable parking Australian Standards.

The current standard requires the provision of 1 parking space per 3 patrons at a restaurant. The proposed maximum occupancy is 130 patrons and would require 43 parking spaces at that rate.

In association with 1980/311, a development contribution of \$50,000 was paid to Council and a Deed made providing the use of 28 car parking spaces in the adjacent Council public carpark. The Deed states [6] that the execution and implementation of the Deed allows the site to comply fully with the Council's requirements as to off-street parking for the premises.

As noted in section 3 of this SEE in describing the existing consents, the restaurant use was approved in 1980 under 1980/311 with no stated maximum occupancy. The current occupant of the premises, Pilu, have operated on site since 2004. The proposal as submitted does not represent an unreasonable intensification in terms of occupancy from that approval under 1980/311 in which the execution of the Deed satisfied the off-street parking requirements at that time.

The requirement to provide off-street parking has been met by the execution and implementation of the Deed in accordance with the 1980 consent. Accordingly, all required parking is available within the Council public carpark to the west of the site. A Traffic and Parking Assessment Report was prepared by TTPP Transport Planning to accompany this application.

The Report notes the following aspects of the current site operations:

- *The Pilu site currently has no designated on-site car parking spaces. A loading / service vehicle bay is provided on site with access via the Moore Road Car Park.*
- *No changes to the loading / service vehicle bay are proposed, nor is it proposed to provide any on-site car parking as part of the development application.*

- *It is noted that as part of the 1980 consent, a development contribution was paid to Council and a Deed was executed providing the restaurant use of 28 car parking spaces in the adjacent Council car park (Moore Road).*
- *Through the execution of the Deed, it is understood that Council would consider the 28 car parking spaces as satisfying the off- street parking obligation of the restaurant premises.*

The Report documents the parking demand and travel behaviour surveys be undertaken, specifically those issues to be addressed as part of a traffic and parking assessment, including:

- *On-street parking demand survey and assessment against parking capacity*
- *Site patron and staff travel behaviour (mode of travel)*
- *Bicycle parking provisions*
- *Service vehicle arrangements*

The Report concludes:

In summary the on-street parking demand surveys and travel mode surveys have indicated that the parking demands and traffic generation associated with the existing (and proposed) peak operation of the Pulu restaurant / event facility can be adequately accommodated by the surround road network.

7 Consultant Reports

7.1 Acoustic Assessment

An Acoustic Assessment has been undertaken by Pulse White Noise Acoustics to accompany this application. The Assessment has considered the proposed uses, maximum occupancy levels and hours of operation of the restaurant.

The Acoustic Assessment has provided a range of recommended operating parameters which would permit the restaurant to operate in accordance with the proposed hours of operation and maximum occupancies while achieving the NSW Liquor and Gaming acoustic requirements.

The restaurant will comply with all recommendations of the Acoustic Report. The recommendations have been included within the attached POM.

7.2 Heritage Impact Statement

A Heritage Impact Statement has been prepared by Urbis to accompany this application.

The Urbis Assessment concludes:

It is assessed that the continued use of the two structures located on the site to the east of the principal restaurant building known as the 'Pulu Pavilion' and 'Wedding Ceremony Umbrella' will have no adverse impact on the significance of the identified item and will facilitate its ongoing use as a meeting place and restaurant, thereby ensuring that its contribution to the Freshwater foreshore continues. On the basis of this assessment, it is recommended that Council view this application favourably on heritage grounds.

7.3 Fire Protection Report for Pavilion Building

A Fire Protection Report for Pavilion Building has been prepared by Bureau SRH to accompany this application.

The report concludes that:

The majority of the Pavilion structure is greater than 3m from any boundary. In accordance with the NCC, structure beyond 3m requires 0min fire resistance period. Consequently, the majority of the Pavilion structure complies with the fire requirements of the NCC.

Four columns on the north side of the Pavilion, plus connected header beams are within 1.5m of a boundary and so are required by NCC to achieve 90min FRL. This section of structure is not fire rated and so does not achieve the fire requirements of the NCC.

7.4 Waste Management Plan – Planning Lab

A Waste Management Plan has been prepared by Planning Lab to accompany this application.

The Plan has been prepared in the template form and in accordance with Council's Waste Management Guidelines.

The Plan confirms the following:

No physical works are proposed. The existing waste arrangement will continue to be used without change.

The site currently has 5 x 240L General waste bins (1,200L), 1 x 660L paper/cardboard and 1 x 660L comingle. Glass is processed through a glass crusher on-site and taken away once a week. Waste is collected 4 x per week.

The waste generation estimates provided under 5.4 of the Waste Management Guidelines are measured on a per m² basis. The proposal does not include the creation of any new floor space. Accordingly, there is no change to the estimated waste generation and no change is needed to the existing waste storage capacity or collection frequency.

7.5 Review of Accessibility Matters Letter

Following a peer review of an Accessibility Assessment Report of a previously withdrawn DA, the consultants City Plan conducted a comprehensive reinspection of the site and review, and have provided a letter of updated advice that identifies that a series of minor works will achieve the following results:

- compliant access to all three buildings across the site;
- provide equitable access sanitary facilities to the restaurant and catering for the population by providing an additional accessible sanitary compartment; and
- improvement to the accessibility to Council's existing walkways/footpaths and compliance with AS1428.1.

7.6 Traffic and Parking Assessment Report

A Traffic and Parking Assessment Report has been prepared by TTPP Transport Planning to accompany this application.

The Report notes the following aspects of the current site operations:

- *The Pilu site currently has no designated on-site car parking spaces. A loading / service vehicle bay is provided on site with access via the Moore Road Car Park.*
- *No changes to the loading / service vehicle bay are proposed, nor is it proposed to provide any on-site car parking as part of the development application.*
- *It is noted that as part of the 1980 consent, a development contribution was paid to Council and a Deed was executed providing the restaurant use of 28 car parking spaces in the adjacent Council car park (Moore Road).*
- *Through the execution of the Deed, it is understood that Council would consider the 28 car parking spaces as satisfying the off- street parking obligation of the restaurant premises.*

The Report documents the parking demand and travel behaviour surveys be undertaken, specifically those issues to be addressed as part of a traffic and parking assessment, including:

- *On-street parking demand survey and assessment against parking capacity*
- *Site patron and staff travel behaviour (mode of travel)*
- *Bicycle parking provisions*
- *Service vehicle arrangements*

The Report concludes:

In summary the on-street parking demand surveys and travel mode surveys have indicated that the parking demands and traffic generation associated with the existing (and proposed) peak operation of the Pilu restaurant / event facility can be adequately accommodated by the surround road network.

8 Environmental Planning and Assessment Act 1979 S4.15 Assessment

Section 4.15(A) Relevant Planning Instruments

The relevant planning instruments are the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011. Both have been considered in this SEE and compliance has been demonstrated.

Section 4.15(B) Other Impacts of the Development

The proposal continues the long standing and approved use of the site as a restaurant. The primary impacts of the proposal are acoustic impact attenuation. These will be mitigated in accordance with the acoustic recommendations discussed within this SEE.

Section 4.15(C) Suitability of the Site for the Development

The proposal continues the long standing and approved use of the site as a restaurant which includes ancillary private bookings. The use is permissible with consent and the site remains well suited to the proposed uses.

Section 4.15(E) Public Interest

The proposal is in the public interest as it:

- consolidates the existing 40-year old consents into a single consent;
- continues the historic use of the site as a restaurant;
- contributes to the range of quality food offerings in the LGA;
- allows the site to continue to employ a large number of staff, many of whom live in the LGA;
- ensures through acoustic conditions that there will not be any adverse amenity impacts on the residential dwellings nearby; and,
- complies with the RE2 zone objectives by providing a compatible recreational land use.

9 Conclusion

This DA seeks approval for the prospective use of the site and existing improvements as a restaurant under a single consent.

The site has a long-standing historical use as a restaurant and has operated under multiple consents dating from the early 1980s. The proposed application updates the permitted hours of operation, applies a stated maximum occupancy and clarifies the existing use which includes ancillary events. No physical works or upgrades are proposed or required to facilitate the ongoing use as a restaurant.

It is recommended that Northern Beaches Council approve the proposal to allow for the continued orderly operation of the site by 'Pilu at Freshwater' restaurant.