

STATEMENT OF ENVIRONMENTAL EFFECTS
DA FOR OPERATION OF A RESTAURANT AND FUNCTION CENTRE
‘PILU AT FRESHWATER’ - 80 UNDERCLIFF ROAD, FRESHWATER



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 historic use as a restaurant.

Pilu at Freshwater is an award-winning fine dining a-la-carte restaurant which has traded 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. Pilu also hosts private dining events and large group bookings which are ancillary to its primary restaurant use including weddings, birthdays, and the like.

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.

This DA seeks to formalise the use of the site and its existing improvements as a restaurant with ancillary event services being permitted. This DA also proposes to update the restaurant's operating hours for consistency with the existing liquor licence to 10am – 12am (midnight), Monday to Saturday and 10am – 10pm Sundays. It also seeks to increase the maximum patron occupancy of the restaurant to a maximum of 50 patrons in the pavilion and a maximum of 100 patrons indoors but which must not cumulatively exceed 130 patrons at any one time.

The restaurant includes an existing outdoor pavilion and terrace area. This area is proposed to be used for private wedding ceremonies. During a ceremony, the outdoor area is proposed to host up to 100 patrons with the majority standing.

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 strongly recommended for approval by the Northern Beaches Council.

2 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.

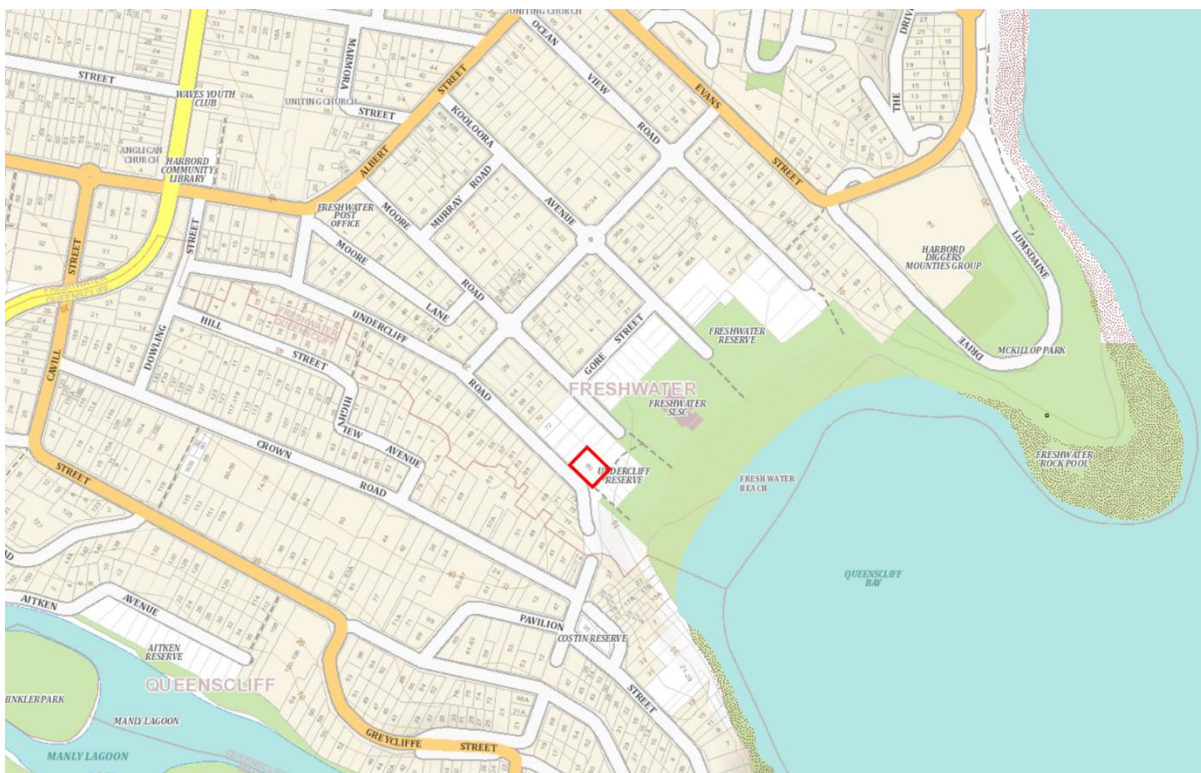


Figure 1 - Site location (Six Maps)



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

3 Relevant Site History

Summary of Operation

The site has a longstanding historic use as a restaurant. Pilu began operating a fine dining restaurant on the site in 2004 relying on development consents 1980/311 and 1983/177 from the early 1980s. The restaurant, which is the site's primary focus, is 'hatted' in the Sydney Morning Herald Good Food Guide. Pilu has conducted wedding ceremonies and the associated functions at the premises, ancillary to its primary use as a fine dining a-la-carte restaurant, for many years.

At an unknown point in time, prior to occupation by Pilu, a pavilion was erected in the eastern corner of the site without development consent. This area has been in use by Pilu since it began operation in 2004.

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 the provision of 28 parking spaces.

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 on 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.

4 Proposal

The purpose of this DA is to supersede the existing 40-year old consents under 1980/311 & 1983/177 which currently govern the use of the restaurant on site and which are no longer fit-for purpose. It also seeks approval for the use of the outdoor seating structure ('the pavilion') which was erected without consent before Pilu's occupation of the site. This DA does not relate to the kiosk which will continue to operate under DA2015/1048 and which is not subject to this DA.

This development application seeks approval for the use of the site (excluding the kiosk), and all of its existing improvements as a restaurant premises which hosts ancillary wedding ceremonies and receptions. Pilu is an award winning fine dining restaurant and the service of food and drink for consumption on the premises will remain its primary purpose. It is proposed that ancillary use of the site for wedding ceremonies and receptions be permitted in accordance with the Plan of Management. This DA does not propose any physical works.

Proposed Hours and Occupancy

The restaurant is proposed to operate with a total of 150 seats comprised of 100 seats inside the main building and 50 seats outside in the pavilion. The proposed maximum cumulative occupancy is 130 patrons which may be spread across the 150 seats in any configuration that does not exceed the seating capacity of each area. At full capacity, 20 seats would be unused. This is to be controlled by the restaurant's booking system which will ensure the maximum capacity of 130 patrons is not exceeded at any time.

The restaurant is proposed to operate 10am – 12am (midnight), Monday to Saturday and 10am – 10pm on Sundays.

Restaurant operation

The primary purpose of Pilu is to offer food and drink to customers for consumption on the premises. The restaurant provides an ancillary offering where it caters for wedding ceremonies and receptions on site and may also at times take large bookings related to a specific event (eg, a birthday or anniversary celebration). The catering of events on site is a vehicle for the restaurant to provide service of food and drinks on premises to large groups, which is not functionally dissimilar to servicing a fully booked restaurant.

Weddings

Wedding ceremonies are typically held either in the late morning (around 11am) or in the late afternoon (finishing by around 6:30pm). It is proposed that a condition of consent be applied requiring that all ceremonies will begin and finish within the hours of 10:30am – 7pm.

Wedding ceremonies will typically utilise amplified speech and pre-recorded music during the ceremony in accordance with the recommendations of the accompanying acoustic report.

Weddings involving 50 or fewer total patrons will be seated in the pavilion. During such a wedding, the indoor restaurant area may operate, ensuring the total maximum of 130 patrons is not exceeded.

Weddings involving more than 50 total patrons will be seated inside the main restaurant area. During larger weddings, the outdoor seating will not be in use while the wedding booking is on-site. Accordingly, weddings at Pilu will be limited to a maximum total of 100 participants.

Wedding ceremonies occur under an existing outdoor umbrella (identified in the Site Plan extract in figure 6 where some chairs will be placed temporarily for the ceremony and then removed. The remaining wedding guests will stand during the ceremony in the garden areas identified in light orange in the Site Plan.

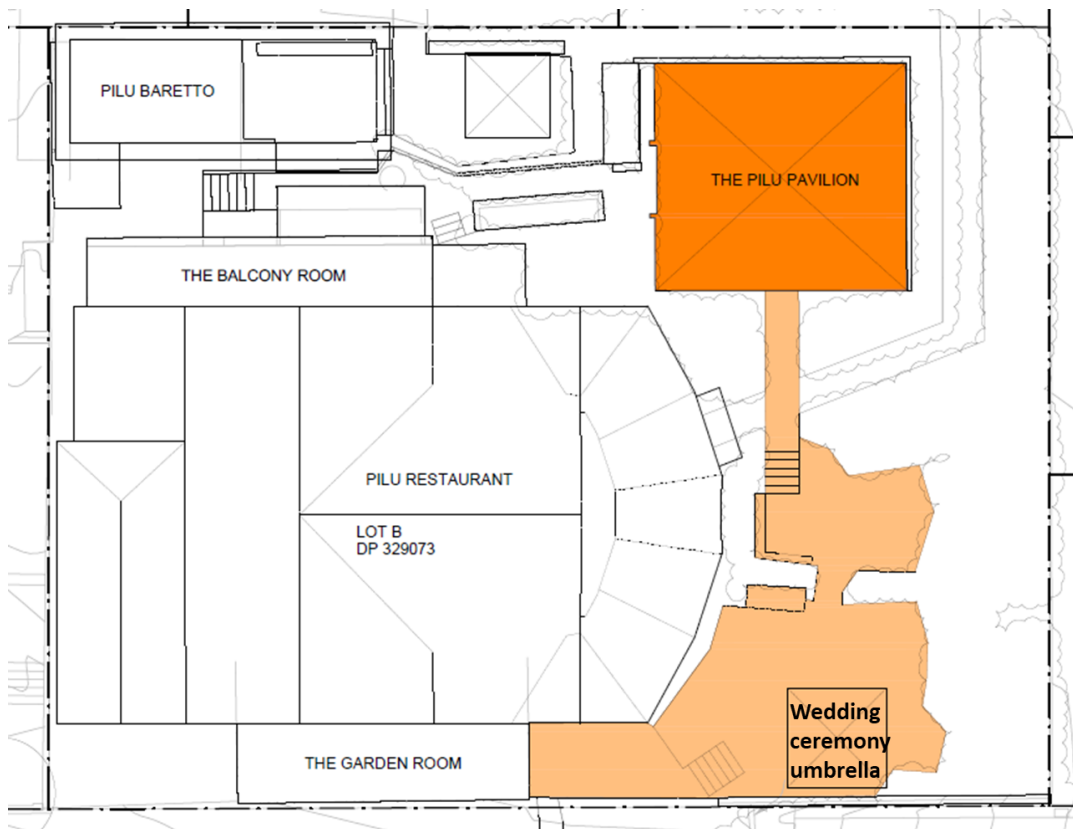


Figure 6 - Site Plan extract with the wedding ceremony location identified

Kiosk

The site includes a kiosk which is approved under DA2015/1048 and which is not the subject of this DA. This DA does not impact the operation of the kiosk which will continue operating under DA2015/1048 without influence from this application.

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 proposed that a similar condition be applied to the proposed DA. It is requested that the new condition specifically exempt deliveries and allow them to occur from Undercliff Road which is closer to the main building and kitchen. Only deliveries specific for weddings e.g., DJ and some florists all other restaurant deliveries through main driveway.

5 Planning Framework

5.1 Warringah Local Environmental Plan 2011

The proposal does not involve any physical works and is limited to the ongoing use of the existing buildings as a kiosk and restaurant. The relevant provisions of the Warringah LEP 2011 are limited to zoning and heritage controls under Clause 5.10.

Zoning

The site is zoned “RE2 Private Recreation”. Schedule 1, Clause 15 specifies additional permitted uses for the site including “[d]evelopment for the purposes of restaurants or cafes is permitted with consent”. The proposal seeks consent for the continued use of the site as a fine dining restaurant which will also host ancillary events including weddings, birthdays and the like.

All events are to be held in compliance with the conditions of consent including maximum occupancies of indoor and outdoor areas and operating hours. The hosting of events is ancillary to the site’s primary purpose as a restaurant and is proposed to be limited in size to a maximum of 100 patrons by the conditions described in Section 4 of this SEE.

Functions centres are a prohibited use under the RE2 zone. Notwithstanding, an ancillary function use may be permitted as the integral relationship between the restaurant and function uses mean that it is appropriate to characterise the entire development as a restaurant premises. Planning Circular PS 13-001 issued on 21 February 2013 provides advice on the issuing of consent for ancillary development.

Relevantly, it states:

“Development is considered to be for a particular purpose if that purpose is the dominant purpose of the development. This purpose is the reason for which the development is to be undertaken or the end to which the development serves.”

...

“An ancillary use is a use that is subordinate or subservient to the dominant purpose. The concept is important when a development involves multiple components on the same land.

To put it simply:

- *if a component serves the dominant purpose, it is ancillary to that dominant purpose;*
- *if a component serves its own purpose, it is not a component of the dominant purpose but an independent use on the same land. It is a dominant use in its own right. In such circumstances, the development could be described as a mixed use development.”*

A “restaurant” and “function centre” are defined in the Warringah LEP 2011 as (emphasis added):

restaurant or cafe means 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.

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility

The dominant purpose of the development is the service of food and drink for consumption on the premises. The hosting of events, including weddings, is subordinate to the restaurant use as it is a vehicle for the service of food and drink for consumption on site. Accordingly, the purpose of the development is the service of food and drink and the whole development can be characterised as a restaurant which is a permissible land use under Schedule 1 Clause 15 and which has existing consent under DA1980/311 and DA1983/177.

Heritage

The site is identified as local heritage item '176' known as "Freshwater Restaurant". 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. The proposal has no negative heritage impact.

5.2 Warringah Development Control Plan 2011

The proposal does not involve any physical works 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 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*.

5.2.1 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 since 2004 in the manner proposed in this application without incident. Therefore, the proposal does not represent an intensification in terms of occupancy from that approval under 1980/311 in which the execution of the Deed satisfied the off-street parking requirements.

The requirement to provide off-street parking has been met by the execution and implementation of the Deed. Accordingly, all required parking is available within the Council public carpark to the west of the site.

6 Consultant Reports

6.1 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. These are:

- *Wedding ceremonies including the use of amplified music (assumed to be vocal and acoustic) and is permitted during the hours of 7:00am and 10:00pm. However, must be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.*
- *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 10:00pm and before 7:00am.*
- *A contact number must be displayed for the purposes of receiving any complaints if they arrive.*
- *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 additional trading hours. The plan should be reviewed regularly to ensure any required updates are captured.*

The restaurant will comply with all recommendations of the Acoustic Report. The recommendations have been included within the attached POM. It is recommended that a condition of consent be applied requiring adherence to the POM.

6.2 BCA Report

A BCA Report has been prepared by City Plan to accompany this application. The report has considered the existing building's ability to comply with the proposed maximum patron occupancy levels. The Report finds that the Pavilion is capable of compliance subject to the installation of portable fire extinguishers as part of the fire safety schedule.

The development is capable of compliance with the BCA at the proposed maximum occupancy levels.

7 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. 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 holds ancillary weddings. 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.

8 Conclusion

This DA seeks approval for the 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.

No additional parking is required as the use is not being intensified and off-street parking requirements for the site were satisfied by the implementation of a Deed under 1980/311.

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