



Building Code of Australia

Compliance Capability Statement

**Project Address: Pilu Restaurant, 80 Undercliff Road,
Freshwater**







Client: Marilyn Anecchini

Report Number: 220643

Revision: 02

10 August 2023

REPORT REVISION HISTORY

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1. INTRODUCTION

The property, the subject of this report, is located at 80 Undercliff Road, Freshwater. Development on the site consists of existing three storey building (primary building), which is listed as a local heritage item and has been used as Pilu licensed restaurant for many decades. The site also contains a single storey kiosk building and associate deck used as a café and a pavilion building and terrace area used for event services ancillary to the primary restaurant use.

This report has been prepared in respect to a proposed development application intended to formalise the following aspects of the longstanding operation

- To formalise the use of the site and its existing improvements as a restaurant with ancillary event services being permitted.
 - To update the site’s operating hours for consistency with the existing liquor licence to 10am – 12am (midnight, Monday to Saturday and 10am – 10pm Sundays).
 - To increase the maximum occupancy of the restaurant with a maximum of 50 patrons in the pavilion and a maximum of 100 patrons indoors but must not cumulatively exceed 130 patrons.

The restaurant includes an existing pavilion structure and terrace area. This area is proposed to be used for wedding ceremonies on an as booked basis. During a ceremony, the pavilion building is proposed to host up to 100 patrons with the majority standing.

The existing kiosk is approved under DA2015/1048 and it is proposed that this use will remain without any changes to the current approved operating conditions. This report does not specifically deal with the kiosk building except as mentioned.

It is understood that the restaurant has operated under consents DA1980/311 and DA1983/177 which approved the current indoor and outdoor restaurant use, respectively.

This report serves as an assessment for compliance capability with the Building Code of Australia (NCC/BCA 2019 Volume One, Amendment 1) for the proposal to formalise the existing improvements.

2. BCA DESCRIPTION

2.1. Classification (A6)

Primary building	Class 6 Restaurant (The upper level office is secondary to the primary use)
Pavilion building	Class 9b Function
Kiosk building	Class 6 Café

2.2. Type of Construction (C1.1 inter-alia Table C1.1)

Primary building	Type “C” construction is applicable
Pavilion building	Type “C” construction is applicable
Kiosk building	Type “C” construction is applicable

2.3. Effective Height (Schedule 3)

Effective height means the vertical distance between the floor of the lowest storey included in the calculation of rise in storeys and the floor of the topmost storey

Primary building	Less than 12m
Pavilion building	Less than 12m
Kiosk building	Less than 12m

2.4. Rise in Storeys (C1.2)

Primary building	2 (NB: the building contains three levels: Lower ground entry, ground floor restaurant/kitchen and upper floor office: but has a RIS of 2)
Pavilion building	1
Kiosk building	1

2.5. This report is based on:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2021.
- Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021
- The Building Code of Australia 2019 Amendment 1, inclusive of NSW variations (current version).
- Relevant Australian Standards, as referenced within the BCA.

2.6. Plans Assessed

Site plans prepared by McIntosh & Phelps Lo1 Issue B dated 11 October 2022 (see Appendix 1).

2.7. Relevant Considerations

Clause 62 of the Environmental Planning & Assessment Regulation 2021 requires a consent authority to take into account:

62 Consideration of fire safety

- (1) This section applies to the determination of a development application for a change of building use for an existing building if the applicant does not seek the rebuilding or alteration of the building.
- (2) The consent authority must—
 - (a) consider whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use, and
 - (b) not grant consent to the change of building use unless the consent authority is satisfied that the building complies, or will, when the development is completed, comply, with the Category 1 fire safety provisions that are applicable to the building's proposed use.
- (3) Subsection (2)(b) does not apply to the extent to which an exemption from a provision of the *Building Code of Australia* or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

Category 1 fire safety provision means the following provisions of the Building Code of Australia—

- (a) EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume 1,
- (b) P2.3.2 in Volume 2.

class, in relation to a building or part of a building, means—

- (a) in a provision of this Regulation that imposes requirements in relation to a development consent—the class to which the building belongs, as identified by the development consent, or
- (b) otherwise—the class to which the building or part of a building belongs, as ascertained in accordance with the Building Code of Australia.

3. BCA COMPLIANCE CAPABILITY

It is our opinion that the proposed use is capable of complying with the Building Code of Australia 2019 Amendment 1, as identified below.

The following table provide a general overview of compliance and identifies any areas of non-compliance with the deemed-to-satisfy provisions of the BCA, which are intended to be addressed by performance justification or via design modifications at the construction certificate stage, as relevant.

BCA Clause	Title	Assessment and Comment	Status
PART B1	Structural Provisions		
B1.2	Determination of individual actions	The buildings are existing and present as structurally adequate.	Compliant
B1.4	Determination of structural resistance of materials and forms of construction	<p>The structural resistance of materials and forms of construction are to be suitable for its use.</p> <p>Confirmation from a structural engineer verifying the fire resistance & structural capacity of the existing structure to be suitable for the proposed use.</p> <p>Email confirmation to be provided followed by a structural adequacy certificate during the certification phase.</p>	Capable of Complying
PART C1	Fire Resistance		
C1.1	Type of construction required	<p>The pavilion, café/kiosk and restaurant buildings are all capable of satisfying Type C construction.</p> <p>The pavilion is located within 3m of a fire source feature including the Restaurant and the allotment Northern and Eastern Boundary.</p> <p>It is understood that the surrounding land, including Lot22/SEC01/DP7022, could be reasonably concluded that future development will not occur in proximity to the boundary given the zone is primarily for public space purposes.</p> <p>This has been confirmed by a Town Planner and as such it is reasonably determined that there is no added risk to being located within 3m of the boundary on the North and East boundaries as it is not envisioned to experience development and is not considered as a fire source feature.</p> <p>It is also noted that the restaurant building & pavilion building are operated in association with each other and therefore the lack of fire resistance</p>	Suitable for the proposed use

BCA Clause	Title	Assessment and Comment	Status
		separation between the buildings does not represent a fire safety concern.	
PART C2	Compartmentation & Separation		
C2.2	General floor area and volume limitations	The buildings are well within fire compartmentation limits for Type C: Maximum Floor area 2,000 m ² Maximum Volume 12,000 m ³	Compliant
PART C3	Protection of Openings		
C3.2	Separation of external walls and associated openings in different fire compartments	Openings to both buildings are not exposed to boundaries. The restaurant building & pavilion building are operated in association with each other and therefore the lack of protection of openings between the buildings does not represent a fire safety concern.	Suitable for the proposed use
PART D1	Provisions for Escape		
D1.2	Number of exits required	The buildings exceed the minimum number of exists.	Compliant
D1.4	Exit travel distances	The buildings achieve minimum exit travel distances.	Compliant
D1.5	Distance between alternative exits	The buildings achieve minimum travel between alternative exits where required.	Compliant
D1.6	Dimensions of exits and paths of travel	The buildings generally achieve minimum dimensions of exits and paths of travel.	Suitable for the proposed use
PART D2	Construction of Exits		
D2.3	Non-fire-isolated stairways and ramps	The non-fire-isolated stairs and ramps would generally comply.	Suitable for the proposed use
PART D3	Access for People with a Disability		
D3.1	General building access	The buildings are not generally compliant with access for persons with disabilities. An existing path is provided to the restaurant building that would facilitate accessibility. The pavilion building would not be accessible due to its landscape setting.	Existing constraints
PART E1	Fire Fighting Equipment		
E1.3	Fire hydrants	The Hydraulic Engineer has confirmed that Street Hydrants can be used and are compliant for use of Fire Hydrant	Suitable for the proposed use

BCA Clause	Title	Assessment and Comment	Status
		Coverage for the Associated buildings. Fire Hydrant Coverage Complies	
E1.4	Fire hose reels	<p>The buildings are not required to be served by a fire hose reel system as they are less than 500m². Notwithstanding, the total floor area of all three buildings is 513m².</p> <p>The primary building is provided with fire hose reels that are included on the fire safety schedule and certified annually via a fire safety statement.</p> <p>It is considered that additional FHR's are not necessary given the total area above 500m² is minimal (13m²), the pavilion has low fire load due to no storage and the whole property has compliant hydrant coverage. Further, the pavilion building is provided with portable fire extinguishers that are proven to provide suitable first responder suppression.</p>	Suitable for the proposed use
E1.6	Portable fire extinguishers	<p>Each building is required to be provided with portable fire extinguishers in accordance with this provision.</p> <p>Portable fire extinguishers are to be included on the fire safety schedule for each building and certified annually via a fire safety statement to verify they are maintained.</p> <p>Portable fire extinguishers were not installed within the pavilion building and therefore installation is recommended.</p>	Recommendation to install PFEs to Pavilion Building
Part E2	Smoke Hazard Management		
E2.2	General requirements	<p>The restaurant building is provided with a smoke detection and alarm system, however the performance standard of the system was not established at the time of the inspection and the system is not identified on the current annual fire safety statement.</p> <p>Given the heritage nature of the main building and other areas where strict dts compliance is not achieved - It is recommended that the standard of performance of the existing smoke detection and alarm system be established, that the fire measure be added to the fire safety schedule for the building and that the system be maintained certified annually via the fire safety statement.</p>	Compliant

BCA Clause	Title	Assessment and Comment	Status
		It is understood that IGS have provided feedback and confirmation on the performance standard of the current smoke detection system of AS1668.1-2015.	
Part E4	Visibility in an Emergency, Exit Signs and Warning System		
Part E4	Emergency lighting & Exit signage	The restaurant building is provided with emergency lighting & exit signage. Provisions are not required within the pavilion building. Emergency lighting & exit signage are included on the fire safety schedule for the primary building and maintained and certified annually via a fire safety statement.	Capable of Complying
General			
Part F2	Sanitary and other facilities	In general, the restaurant building has sufficient amenities to cater for the cumulatively maximum population of 130 patrons.	Suitable for the proposed use

4. FIRE SAFETY SCHEDULE

The following table is a list of the required fire safety measures for this development. This list is to be based on the current annual fire safety statement – see Appendix 2.

It is recommended that the current fire safety schedule be modified to:

1. Identify the three separate buildings on the site
2. Include smoke detection & alarm system as a fire safety measure within the primary building
3. Identify the requirement for portable fire extinguishers within the pavilion building.
4. Identify portable fire extinguishers and fire blanket within the kiosk building.

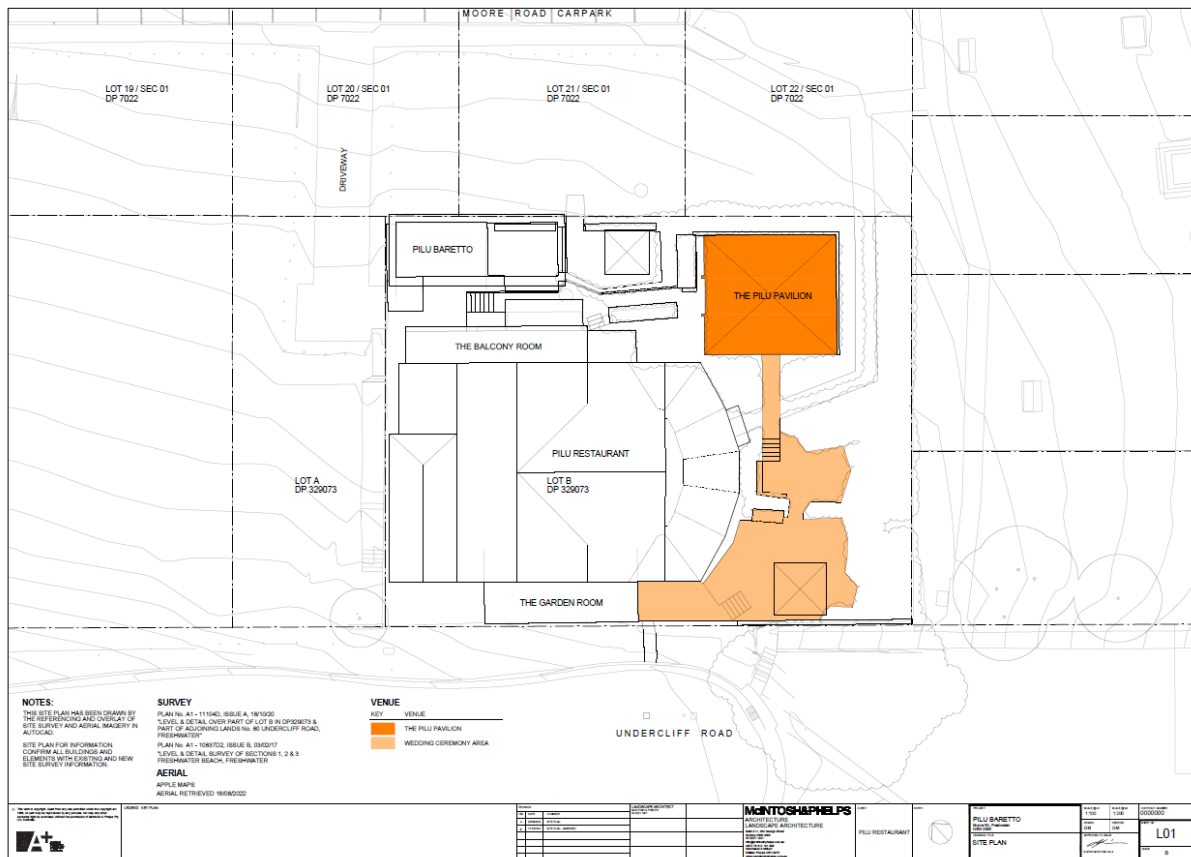
NO	FIRE SAFETY MEASURES (AS SET OUT UNDER CLAUSE 166 OF EP&A ACT REGULATIONS)	STANDARD OF PERFORMANCE	EXISTING	PROPOSED
Primary Building				
1.	Automatic smoke detection and alarm system	AS1668.1-2015	Yes	No
2.	Emergency lighting	BCA E4.2, E4.3, E4.4 & AS 2293.1-2005	Yes	No
3.	Exit signs	BCA E4.5, E4.6, E4.8 & AS 2293.1-2005	Yes	No
4.	Fire blankets	AS 2444-2001	Yes	No
5.	Fire hose reels	BCA E1.4 & AS 2441 – 2005	Yes	No
6.	Portable fire extinguishers	BCA E1.6 & AS 2444-2001	Yes	No
Pavilion Building				

NO	FIRE SAFETY MEASURES (AS SET OUT UNDER CLAUSE 166 OF EP&A ACT REGULATIONS)	STANDARD OF PERFORMANCE	EXISTING	PROPOSED
7.	Portable fire extinguishers	BCA 2019 E1.6 & AS 2444-2001	No	Yes
Kiosk Building				
8.	Fire Blankets	AS 2444-2001	Yes	No
9.	Portable fire extinguishers	BCA 2019 E1.6 & AS 2444-2001	Yes	No

5. CONCLUSION

Based on the findings and recommendations within this report the subject buildings are capable of complying with the Building Code of Australia suitable for the intended use.

6. APPENDIX 1






7. APPENDIX 2

Fire Safety Statement

Part 9 of the Environmental Planning and Assessment Regulation 2000



Section 1: Type of statement

This is (mark applicable box): an annual fire safety statement (complete the declaration at [Section 8](#) of this form)
 a supplementary fire safety statement (complete the declaration at [Section 9](#) of this form)

Section 2: Description of the building or part of the building

This statement applies to: the whole building part of the building

Address

80 UNDERCLIFF STREET FRESHWATER NSW 2096

Lot No. (if known)

DP/SP (if known)

Building Name (if applicable)

PILU AT FRESHWATER

Provide a brief description of the building or part (building use, number of storeys, construction type etc)

PART: WHOLE BUILDING

BUILDING USE: UNKNOWN (COMMERCIAL)

CONSTRUCTION TYPE: UNKNOWN

STORIES ABOVE GROUND: 2

STORIES BELOW GROUND: 0

Section 3: Name and address of the owner(s) of the building or part of the building

Name

Address

Section 4: Fire safety measures

Fire safety measure	Minimum standard of performance	Date(s) assessed	APFS*
EMERGENCY LIGHTING	AS 2293.1 - 2005	15/11/2021	F021673A
EXIT LIGHTS	AS 2293.1 - 2005	15/11/2021	F021673A
FIRE BLANKETS	AS 2444 - 2001	15/01/2022	F021673A
FIRE HOSE REELS	AS 2441 - 2005	15/11/2021	F021673A
PORTABLE FIRE EXTINGUISHERS	AS 2444 - 2001	15/11/2021	F021673A

Section 5: Inspection of fire exits and paths of travel to fire exits (Part 9 Division 7)

Part of the building inspected	Date(s) inspected	APFS*
PATH OF TRAVEL & DISCHARGE TO EXIT - EXITS FROM RESTAURANT TO STREET		

Section 6: Name and contact details of each accredited practitioner (fire safety) (APFS)

Full name	Phone	Email	Accreditation No.†	Signature
SEAN KIELY	02 8669 9100	SEAN.KIELY@BETTAFIREPROTECTION.COM.AU	F021673A	

80 Undercliff Street Freshwater NSW 2096

Version 3.1 | Effective from 1 March 2021 | NSW Department of Planning, Industry and Environment | 1

Fire Safety Statement

Part 9 of the Environmental Planning and Assessment Regulation 2000



Section 7: Name and contact details of the person issuing this statement [#]

Full name ALBA SEVERINO

Organisation (if applicable)

Title/Position (if applicable)

Phone 9450 2000

Email alba@miramaregroup.com.au

* The person issuing the statement must not be an APFS listed in section 6 or their employer/employee or direct associate.

Section 8: Annual fire safety statement declaration

I ALBA SEVERINO (insert full name) being the: owner owner's agent

declare that:

- a. each essential fire safety measure specified in this statement has been assessed by an accredited practitioner (fire safety) and was found, when it was assessed, to be capable of performing:
 - i. in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
 - ii. in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
- c. the building has been inspected by an accredited practitioner (fire safety) and was found, when it was inspected, to be in a condition that did not disclose any grounds for a prosecution under Division 7 of Part 9 of the Regulation.

Owner/Agent Signature



Date issued

21/1/22

Section 9: Supplementary fire safety statement declaration

I _____ (insert full name) being the: owner owner's agent

declare that each critical fire safety measure specified in the statement has been assessed by an accredited practitioner (fire safety) and was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which this statement is issued.

Owner/Agent Signature

Date issued

Note

A current fire safety schedule for the building must be attached to the statement in accordance with the Regulation.