

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0946
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot B DP 329073, 80 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	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:	Symaco Pty Ltd The Trustee For Cirillo Planning Trust

Application Lodged:	25/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	01/08/2024 to 15/08/2024
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 49,500.00
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### EXECUTIVE SUMMARY

This development application seeks consent for use of the site as a restaurant, including hosting up to 20 single bookings a year at 80 Undercliff Road, Freshwater - Pilu Restaurant.

The subject site is listed as a Heritage Item under Warringah Local Environmental Plan (**WLEP**) 2011- Heritage Item No. 176 "Freshwater" Restaurant' located at 80 Undercliff Road, Freshwater. The works proposed in the application include internal works to the bathroom and new access door to the eastern side of the pavilion for accessibility purposes which will include minor demolition works. Given the heritage listing of the site, the works are categorised as 'sensitive development' and the application is therefore required to be determined by the Northern Beaches Local Planning Panel (**NBLPP**).

The public exhibition of the application resulted in 16 submissions being received by Council, 5 in objection and 11 in support.

Concerns raised in the objections predominantly relate to permissibility, noise, traffic and general impact upon amenity to neighbours. Each of the issues raised have been addressed in detail within this report.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining residential development to the south and west and the assessment finds the reasonable retention of amenity for these properties. The applicant has provided sufficient information from a qualified acoustic expert to address noise concerns for the proposed use. The recommendations of the acoustic report will be referenced in the proposed conditions, to ensure they are complied with if the application is to be approved.

On 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 development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application seeks consent for use of the site as a restaurant. The application also proposes through a plan of management to host 20 single bookings a year for purposes including weddings and birthdays where the whole restaurant is occupied under a single booking. The single bookings are proposed to be ancillary to the restaurant use.

The only physical works proposed under this application, involve building upgrade requirements including upgrades to the internal toilet facilities to provide accessible toilet facilities for patrons, entry path from Undercliff Road and a new external door opening and path to the 'Pilu pavilion'.

The proposed operational details are as follows:

- Hours of Operation
  - Monday to Saturday: 10am - 12am (Midnight)
  - Sunday: 10am - 10pm
- Patron Capacity
  - 50 patrons maximum at any one time in the Pavilion.
  - 100 patrons maximum at any one time in the Main Building.
  - 130 patrons maximum may be hosted on the site at any time being collectively the Pavilion and Main Building. The site currently has approval for 80 patrons.
- Single Bookings
  - Maximum occurrences 20 per annum.

Additionally, the application proposes to surrender historic consents 1980/311 & 1983/177, which are currently operational for the site.

## **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 Development Control Plan - D3 Noise

Warringah Development Control Plan - D18 Accessibility and Adaptability

## SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 329073, 80 Undercliff Road FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<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 977m<sup>2</sup>.</p> <p>The site is located within the RE2 Private Recreation zone.</p> <p>The site is nominated heritage item under the WLEP 2011, being <b>176 - 'Freshwater' Restaurant</b> - 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><b>Detailed Description of Adjoining/Surrounding Development</b></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:

**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.

## CURRENT APPLICATION

Following a preliminary assessment of the application, Council wrote to the applicant on 27 November 2024 raising concern with the proposed development on the heritage significance of the site. In response to the issues raised, the applicant provided additional information in the form of a Heritage Impact Statement.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;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><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Heritage.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;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 a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the

Section 4.15 Matters for Consideration	Comments
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including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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.
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 01/08/2024 to 15/08/2024 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 16 submission/s from:

Name:	Address:
Mr Blake James Dyer	37 Moore Road FRESHWATER NSW 2096
James Arthur Lowe Mrs Jennifer Helen Lowe	3 Redfern Parade DEE WHY NSW 2099
Prof Christopher John Griffiths	2 / 67 Undercliff Road FRESHWATER NSW 2096
Edward John Nathan	63 Undercliff Road FRESHWATER NSW 2096
Murray John Sheer	70 Undercliff Road FRESHWATER NSW 2096
Ms Glenda Rae Dunn	1 / 69 Undercliff Road FRESHWATER NSW 2096
Mr Denver John Beven	2 / 87 Crown Road QUEENSLIFF NSW 2096
Mr David James Morrisey	2 / 69 Undercliff Road FRESHWATER NSW 2096

Wayne Brorson	Address Unknown
Mr Denis Gregory Lynch	45 / 30 Moore Road FRESHWATER NSW 2096
Mr Frank Minnici	17 Bennett Street CURL CURL NSW 2096
Mr Michael Charles Moylan	10 Killawarra Road DUFFYS FOREST NSW 2084
Mrs Denise Faith Keeping	36 Ocean View Road FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Ms Diana Margaret Ryall	50 Undercliff Road FRESHWATER NSW 2096
Mr Tom Michael Oates Mr Daniel Barber Paro Planning Pty Ltd	71 Undercliff Road FRESHWATER NSW 2096

A total of 16 submissions have been received. **5** in objection, **11** in support.

The following issues were raised in the submissions:

- **Permissibility/Characterisation of use**
- **Parking**
- **Noise**
- **Alleged Unauthorised works**
- **Impact upon heritage significance.**
- **Support of application**

The above issues are addressed as follows:

- **Permissibility/Characterisation of use**

The submissions raised concerns that the proposed development is not permissible in the zone.

Comment:

As discussed in detail within the report, the primary/principle use of the site as a restaurant is permissible in the RE2 Private Recreation zone. The single bookings are deemed to be ancillary given in infrequency of occurrences proposed.

- **Parking**

The submissions raised concerns around the lack of onsite parking to accommodate the proposed use, noting the increase in number of patrons from 80 to 130 proposed.

Comment:

The proposal was referred to Council's Traffic Engineer for comment. The Traffic Engineer supports the proposal, subject to conditions. The full assessment can be found under the 'referrals' section of this report.

- **Noise**

The submissions raised concerns that the proposed development results in unreasonable

acoustic impacts to neighbouring residential development.

Comment:

This issue of noise is addressed under Clause D3 - Noise of the WDCP 2011 within this report and was referred to Environmental Health for comment. In summary, conditions have been recommended to be imposed to mitigate potential noise impacts. The following measures are proposed to be imposed as conditions:

- Hours of Operation restricted to 11:00pm Sunday - Saturday, and 10:00pm Sunday.
- Implementation of plan of management.
- Incorporation of recommendation imposed by the Acoustic Report (Prepared by PWNA Revision 5, dated 7 March 2025).

It is considered that adherence to the imposed conditions would effectively reduce unreasonable impacts upon the amenity of the neighbouring residential area and address the issues raised

- **Alleged Unauthorised works**

Concern has been raised in the submissions, noting unauthorised works that have occurred on site.

Comment:

A request for investigation has been sent to building control team (compliance) to investigate this matter.

- **Impact upon heritage significance**

The submissions raised concerns that proposal will have an unreasonable impact upon the heritage significance of the subject site (176 - 'Freshwater' Restaurant - 80 Undercliff Road).

Comment:

Council Heritage advisor have reviewed the application including supporting information and is supportive of the proposal, subject to conditions.

- **Support of application**

A number of submissions were received in support of the development application noting the positive social impact.

Comment:

The submissions of support have been noted.



## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, with conditions</i></b></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p> <p><b>Planner comment:</b> No owners consent has been provided for a path from Undercliff Road to the southern entry gate of the subject site proposed in the City Plan Accessibility Report. Therefore, a condition of consent has been imposed to ensure no approval is given for this path.</p>
Environmental Health (Industrial)	<p><b><i>Supported, with conditions</i></b></p> <p>General Comments</p> <p>The DA seeks approval for the following: 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.</p> <p>Operating Hours</p> <ul style="list-style-type: none"> <li>• 10am – 12am (midnight), Monday to Saturday</li> <li>• 10am – 10pm Sundays. Maximum Indoor Capacity</li> <li>• 50 patrons in the Pavilion.</li> <li>• 100 patrons in the Main Building.</li> <li>• 130 patrons maximum may be hosted on the site (at any time).</li> </ul> <p>This appears inconsistent with the Pulse White Noise Acoustics Pty Ltd Acoustic Assessment date 26 March 2024, which states Predicted noise levels from the operation of the venue in full operation with Live Music between (all patrons and background music) has been predicted. To ensure compliance is achieved, the following recommendations must be implemented:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> No more than 100 patrons in the venue at any one time</li> </ul> <p>a peer review of the acoustic assessment report by an external</p>

Internal Referral Body	Comments
	<p>consultant states:  PWNA's methodology, establishment of noise criteria and noise levels used for calculation purposes are not satisfactory for the assessment of noise for this type of venue. The findings of PWNA's report show that under their proposed scenarios the licensed venue has the potential to comply with the noise criteria. This is based on the incorrect noise criteria used (Refer to Section 2.1). The noise levels used for the assessment of the licensed venue must be based on the AAAC guidelines.</p> <p>It is our opinion that new noise assessment must be carried out. The noise criteria must be revised to reflect the correct time periods as per LG's requirements. The new assessment should be based on the noise levels contained in the AAAC guidelines for activities taking place at the venue while operating at full capacity. The resulting noise levels from the use of the licensed venue must be compared to the relevant noise criteria including sleep arousal, patrons and vehicle movements. Clarification on the use of background music/PA system must be provided. It can be difficult to control noise from live performances taking place outdoors as musicians are likely to bring their own equipment that will not be connected the in house sound system. Details of the types of live performances allowed i.e, duets, string quartets, etc. must be provided, all instruments and microphones must be connected to the in house sound system. The in house system must be calibrated to ensure compliance to noise criteria. Any noise mitigation measures required for such performances must be clearly detailed.</p> <p>Section 6.1.3 of PWNA's report provides a number of recommendations, these must be reviewed and updated</p> <p>Council accepts that acoustic assessments on yet to be operated venues/areas are theoretical assessments usually to be certified at operational time and adjustments made if necessary to operations; however the issues raised in the Pier Review should be referred back to the applicant for clarification.</p> <p>We further note that we express concerns about any "outdoor " activity past 10pm any day due to neighbouring residential receivers and that restriction of activities inside the building and managing leaving guests (particularly following a wedding) will be difficult to manage and</p>

Internal Referral Body	Comments
	<p>enforce. This is mainly in regard to "offensive noise" from potential shouting, yelling from an event which is sporadic and difficult to adequately manage.</p> <p>Therefore, Environmental Health cannot recommend approval or conditions at this time.</p> <p>Further Review - 20th September 2024</p> <p>Environmental Health has considered information provided within this proposal, including the statement of environmental effects, acoustic report with minor amendment and the plan of management.</p> <p>Both current and previous public submissions and referral responses from the Environmental Health team have also been considered.</p> <p>It is considered that the proposal should be supported however Environmental Health recommends conditions of consent (similar to those previously recommended) to regulate the night-time trading hours in the interests of maintaining the residential amenity of the community.</p> <p>Recommendation</p> <p>SUPPORTED - with conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b><i>Supported, with conditions</i></b></p> <p><b>General Comments</b></p> <p>The proposal seeks approval for the following operational changes to the existing approved operation:</p> <ul style="list-style-type: none"> <li>• Use of the external pavilion for general dining or gatherings (see location below).</li> <li>• Increase in the number of patrons permitted, currently 80 and seeking 130. <ul style="list-style-type: none"> <li>o A maximum of 100 patrons in the indoor areas of the main building.</li> <li>o A maximum of 50 patrons in the indoor area of the pavilion.</li> <li>o However, no more than 130 patrons at any one time.</li> </ul> </li> <li>• Use of live music inside and outside during a booking.</li> </ul> <p>The SEE and Plans do not appear to change the kitchen, kiosk or other food preparation areas</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Parks, reserves, beaches, foreshore	<p><b><i>Supported, with conditions</i></b></p> <p>The proposal aims to amend the operational hours and capacity of the venue, and as such no physical works are proposed. Public</p>

Internal Referral Body	Comments		
	access to the reserve is not impacted by the proposal nor is the proposal detrimental to the landscape character within the Reserve. Parks, Reserves and Foreshores raise no concerns.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<b><i>Supported, with conditions</i></b> The land subject to the proposal is a heritage item		
	<b>I76 - 'Freshwater' Restaurant</b> - 80 Undercliff Road		
	Details of heritage items affected		
	<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	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A		
Consideration of Application			
The proposal seeks consent to continue the use of the site as a restaurant and supersede previous consents on the site, but also change its operating hours and capacity. Asides from some minor fire and accessibility upgrades such as to the bathrooms and footpath outside Undercliff Street, no physical works are proposed. Heritage notes that an updated Heritage Impact Statement that considers the current proposal has now also been prepared and submitted.			
The site is a significant local heritage item, that has been listed both for its physical character, as well as its historical and social			

Internal Referral Body	Comments
	<p>values as an early recreational venue. The proposal to continue the use of the site as a restaurant will retain the historical uses of the site and this is supported by Heritage. However, as the site is a significant heritage item with both tangible and intangible values and this proposal effectively seeks a 'fresh' consent is it important and necessary that there is an overarching heritage management strategy for the site. In this regards Heritage will condition a Heritage Asset Action Plan (HAAP) for the site to ensure the ongoing maintenance and protection of the heritage significance of the site.</p> <p>Heritage also notes that there has been some unauthorised works to the site, such as the creation of the garden room on the southern side of the building. Heritage does not agree with the Heritage Impact Statement that this room is without heritage impact, and this addition is considered works that will need to be properly rectified under a future proposal that deals with physical works noting that this application is only for the use of the site and limited accessibility and fire upgrades. Heritage will recommend a condition on the consent making it clear that unapproved physical works (beyond the accessibility and fire upgrades) are not approved under this consent.</p> <p>Therefore, Heritage recommends approval of the proposal, subject to conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? No, but a HAAP has been conditioned.</p> <p>Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>
Traffic Engineer	<p><b>Supported, with conditions</b></p> <p><b>Proposal description:</b> Use of the premises as a restaurant</p> <p>This DA proposes to update the existing restaurant's operating hours 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.</p> <p>It is noted that a Development Application (DA2022/2281) was previously lodged with Council to formalise the existing on-site uses and operation of the Pilu at Freshwater restaurant (Pilu) and it was approved.</p>

Internal Referral Body	Comments
	<p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>• <i>Traffic and Parking Impact Statement</i>, Ref 23148, prepared by TTPA transport planning dated 26 March 2024,</li> <li>• The <i>Statement of Environment Effects DA to use the site as a Restaurant and to carry out Fire + Access Upgrades</i> prepared by PLANNING LAB dated 12 July 2024,</li> <li>• Amended Plans (Master Set) – Revision B, designed by McINTOSH&amp;PHELPS Architecture Landscape Architecture, dated 12/03/2024,</li> <li>• <i>Plan of Management</i> prepared by PLANNING LAB dated 12 July 2024, and</li> <li>• Traffic Engineer Referral Response to DA2022/2281, dated 17/4/23 &amp; 22/08/2023.</li> </ul> <p><b><u>Notes/comments</u></b></p> <ul style="list-style-type: none"> <li>• The traffic and parking impact statement prepared by TTPA Transport Planning dated 26 March 2024 responded to concerns raised in the original traffic referral comments.</li> <li>• As outlined in the Traffic Engineer Referral Response to DA2022/2281 dated 22/08/2023, under the original consent, the developer was required to pay a contribution towards the construction of the adjacent public carpark, with the contribution calculated to be equivalent to the cost (at the time) to construct 28 parking bays. These parking bays were deemed to meet the off-street car parking requirements associated with the approval for the restaurant on the site.</li> <li>• The developer's Traffic consultant has undertaken a travel mode survey of patrons attending the restaurant for a Mother's Day event at a time when the restaurant was fully booked; this would also be expected to be a time when parking demands on surrounding streets and carparks would be high. On the same day, the traffic consultant also reviewed parking occupancy levels in publicly available parking in adjacent carparks and on streets within 200m walking distance of the restaurant.</li> <li>• The parking surveys demonstrated that there was a peak demand of some 45 parking spaces occupied out of 50 spaces in the Moore Road carpark, representing little parking availability; however, the parking surveys also</li> </ul>

Internal Referral Body	Comments
	<p>found that there were some 161 parking spaces unoccupied in publicly accessible areas within 200m walking distance of the restaurant.</p> <ul style="list-style-type: none"> <li>• The travel mode survey also found that for the requested 130 patron maximum, there was likely to be a generated parking demand of some 30 spaces. This slightly exceeds the 28 spaces provided under the original DA approval for a restaurant on the site; however, it is considered acceptable given the demonstrated parking occupancy levels in nearby public parking areas consistent with DCP requirements, which allow for a reduced level of off-street parking to be provided if there is available parking nearby.</li> <li>• The application of the DCP bicycle parking rates to the proposed Pilu GFA of 497.3m<sup>2</sup>, would equate to the provision of 2-3 secure (staff) and 1 customer bicycle parking space. It is noted that a secure space for bicycle parking for staff is provided on-site inside the locked gate to Undercliff Road adjacent to the service vehicle bay. This area accommodates approximately 4 bicycles.</li> <li>• The report has provided an analysis of traffic generation associated with the restaurant which is considered reasonable.</li> <li>• It is noted that servicing for the restaurant will be accommodated on the existing servicing/loading bay accessed off the Moore Road carpark. This is considered acceptable.</li> </ul> <p>On the basis of the above, the traffic concerns outlined in the original referral comments have been addressed and the development can be supported subject to conditions.</p>

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p><b><i>Supportive, with conditions</i></b></p> <p>The Northern Beaches Licensing Police have reviewed the application, and are supportive, subject to conditions relating to public safety.</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 (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 2 Coastal Vulnerability Area**

##### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

#### **Comment:**

The eastern-most portion of the site is classified as coastal use area. No works are proposed within this portion of the site. The proposed development is of acceptably low risk in relation to the matters above at (a). As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact to the matters above at (b).

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed



- development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposal does not result in the removal of native vegetation and does not preclude access to and along the foreshore area. Based off the above, Council can be satisfied that the proposal has been designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subclause (1).

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

## **Division 4 Coastal use area**

### **2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an
    - ii) adverse impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed,

sited and will be managed to minimise that impact, or  
if that impact cannot be minimised—the development will be managed to  
mitigate that impact, and

- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

As noted above, the proposal does not preclude access to and along the foreshore. The proposal does not result in a loss of views towards Freshwater Beach and does not result in overshadowing of the foreshore. The proposed development is consistent with surrounding development in terms of bulk and scale. Based on the above, Council can be satisfied that the proposal satisfies the requirements of Clause 2.11.

**Division 5 General**

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Given the nature of the works proposed and the conditions included to negate coastal hazards, Council can be satisfied that the proposal is not likely to cause an unacceptable level of risk on adjoining properties or the subject site

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1) (b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

**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

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
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes

### Detailed Assessment

#### **2.5 Additional permitted uses for particular land**

Section 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 proposed subject site. The proposed use for a restaurant is therefore permissible.

#### **SURRENDER OF CONSENTS**

The application proposes to surrender 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 consents. A review of these consents has been undertaken, all operational conditions from these consents have been considered as part of this assessment, and where relevant incorporated into the recommended conditions of this current application.

A condition has been imposed to ensure both consents are surrendered prior to the issue of a construction certificate for this application.

#### **Zone RE2 Private Recreation**

The site is zoned RE2 Private Recreation under the WLEP 2011. The proposal seeks development consent for use of the building as a restaurant.

As part of the application, it is proposed for part of the site to be utilised for single bookings of the whole restaurant for a maximum of twenty occasions throughout a calendar year.

Development may be considered to be 'ancillary' in circumstances where the use in question is subordinate or subservient to the primary purpose, and therefore not an independent land use. In this circumstance, the subordinate/subservient land use can be characterised by the nature of the dominant use. An ancillary use can therefore be carried out lawfully even if it is prohibited in a zone, as it is characterised as part of the dominant use for permissibility purposes.

#### Comment:

Per the Department of Planning's Practice Note relating to definition of land uses (PN 11-003) and Planning Circular on characterisation of development (PS 21-008), a use is ancillary to another use if it is incidental or subservient. If a use is ancillary, then it is to be characterised as being for the dominant purpose.

The proposed single bookings are considered to be ancillary to the existing restaurant use. Given the restaurant is operational 7 days a week, and on average over a year single bookings would occur less than once a fortnight, the frequency and operationally this is considered to be subordinate and

subservient to the dominant land use. The single bookings are intermittent and utilised within the existing restaurant dining area. The single bookings could not be characterised as an independent use, as it integrates spatially and operationally with the primary functions of the restaurant and is incidental to the primary use as a restaurant.

This is based on:

- The single booking is still consistent with the 'principal purpose' of a restaurant which is for the preparation of food and drink on a retail basis.
- The proposed single bookings are limited to 20 defined occasions throughout a calendar year, compared to the restaurant which is utilised year-round. As such, the bookings are irregular/temporary/incidental and subservient to the principal land use.
- The single bookings use will only occur during approved hours for the restaurant.
- The nature and extent of the use for single bookings is not sufficiently independent to render it a separate planning purpose from the restaurant use.

Conditions of consent have been included in the recommendation of this report to ensure the single bookings operate in accordance with the consent and remain ancillary. The single bookings are also subject to the supporting plan of management, to ensure their orderly operation.

## **Warringah Development Control Plan**

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

### Detailed Assessment

#### **D3 Noise**

Submissions received which object to the proposal complain that the use, as it currently operates, creates unreasonable noise impacts generated by patrons both inside and outside the premises and amplified music.

The application seeks consent to allow for 130 patrons. The site is currently approved for 80 and is permitted to operate the following hours:

#### **Indoor restaurant**

Weekdays: 11pm

Weekends: 12pm (Note: *The consent notes 12pm, however this is an error, with the correct time being 12am*)

### Outdoor dining

Monday - Sunday: 11am - Sunset

The application is supported by an acoustic assessment (prepared by Pulse White Noise Acoustics, dated March 2025) which provides an acoustic assessment of the proposal and the acoustical impact on neighbouring residential development. The noise receiver for the sake of the acoustic assessment has been taken from 69 Undercliff Road, as depicted below.



**Figure 1 - Subject site, neighbouring residential and surrounding Receivers**

**Source: Acoustic Assessment, Pulse White noise acoustics**

The Pulse White Noise Acoustic Report states:-

*Predicted noise levels from the operation of the venue in full operation with Live Music between (all patrons and background music) has been predicted. To ensure compliance is achieved, the following recommendations must be implemented:*

- *No more than 130 patrons in the venue at any one time, staff not included. Breakdown of patrons are as follows:*
  - *For general dining:*
    - *Up to 100 patrons located inside.*
      - *No more than 50 permitted in the External Pavilion.*
    - *Up to 20 patrons located outside.*
  - *For an ancillary outdoor function:*
    - *100 patrons outside in the middle and upper terrace.*
- *Operation hours are:*
  - *Monday to Saturday: 5:00am to 12:00am (midnight).*
  - *Sunday: 10:00am to 10:00pm.*
- *An ancillary outdoor function 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.*

Council's Environmental Health officer has reviewed the proposal and is supportive subject to reducing the operating hours of the restaurant to 10pm from Monday to Thursday and 12am on Friday, Saturday and New Years Eve. This will allow for appropriate respite for neighbouring development. The rest of the recommendations proposed within the acoustic report are conditioned to be imposed as part of the operation of the restaurant.

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:

The recommended condition for operational hours is considered to be an acceptable solution that aligns with the other restaurants in the local area and guidelines and based on the technical reports and opinion of Council's Environmental Health Officer to result in an acceptable outcome for both the restaurant and the surrounding urban and natural environment.

- *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, users or visitors.*

Comment:

As noted above, the level of noise associated with the proposal is not deemed to be unreasonable subject to the conditions recommended by Council's Environmental Health Officer. In addition, various conditions have been recommended to ensure the amenity of nearby residents and users, and natural significance of the area are not unacceptably impacted.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

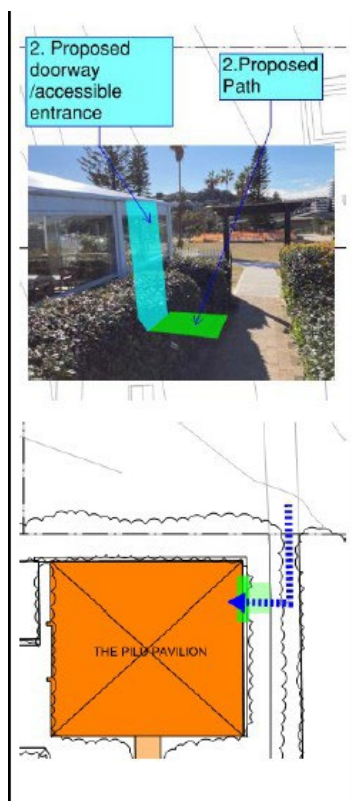
## D18 Accessibility and Adaptability

The proposal has been reviewed by Council's Building Control Officer in relation to BCA and Accessibility compliance. No objection has been raised subject to compliance with conditions to provide details of the implementation and compliance with Accessibility Report

The application proposes upgrade works to improve accessibility for the subject site. The works include

- Upgrade of internal bathrooms
- Door opening to the Pilu Pavilion
- Upgrade of entrance door and pathway

No owners consent has been provided for a path from Undercliff Road to the southern entry gate of the subject site proposed in the City Plan Accessibility Report. Therefore, a condition of consent has been imposed to ensure no approval is given for this path.



**Figure 1** - Proposed access door and path to the Pilu Pavilion.

The proposed door and path have not been detailed on the proposed architectural plans. A condition of consent has been imposed to ensure that further detail is provided to Council's heritage advisor to ensure that the proposed door is sympathetic to the heritage significance of the site.

## 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 inconsistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2024**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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**

This proposal, for use of the subject site as a restaurant at 80 Undercliff Road, Freshwater has been referred to the Northern Beaches Local Planning Panel due to the application being deemed as a 'sensitive development'.

The concerns raised in the objections have been addressed and resolved by way of additional information and operational conditions of consent.

The critical assessment issues regarding land use permissibility, noise, traffic and impact upon the



heritage significance of the site have been addressed/resolved as follows:

- The proposed 20 single bookings per calendar year is ancillary to the principle/primary restaurant use given that it is subordinate and subservient to the dominant land use, which is permissible within the RE2 zone. The 20 single bookings could not be characterised as an independent use, as it integrates spatially and operationally with the primary functions of the 'Pilu' Restaurant.
- The proposal has been conditioned to directly mitigate potential unreasonable noise and traffic impacts including restricting the hours of operation.
- Council's heritage advisor has conditioned a heritage asset action plan to ensure proper maintenance of the site going forward.
- Existing alleged unauthorised works referred to building control to investigate.

Overall, the application has demonstrated that the proposed use is suitable for the site, with acceptable documentation being provided demonstrating that the site could be utilised for the purposes of a restaurant without unreasonably impacting upon the amenity of the surrounding public open space and residential properties.

The 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2024/0946 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:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
L01	B	Site Plan	McIntosh and Phelps	11 October 2022
L02	B	Upper Ground Floor Plan	McIntosh and Phelps	11 October 2022
L03	B	Upper Ground Floor Plan 2	McIntosh and Phelps	11 October 2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Revised Review of Accessibility Matters	220643.01	City Plan	23 October 2024
Traffic and Parking Assessment	23148	TTPP	26 March 2024
Plan of Management	V.2	Planning Lab	12 July 2024
Waste Management Plan	-	Giovanni Cirillo	-
Acoustic Assessment	R5	PWNA	7 March 2025
Acoustic Assessment Memorandum	-	PWNA	7 March 2025

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Northern Beaches Police - Licensing	N/A	29 October 2024

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **restaurant or cafe**, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

**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, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

Up to a maximum of 20 single bookings are permitted per calendar year (January to December).

A log book detailing each single booking is to be kept up to date for inspection by Council at any time.

The maximum capacity for the restaurant use is 130 patrons.

The maximum capacity for a single booking is 100 patrons.

The maximum number of patrons utilising the pavilion shall not exceed 50 at any time.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

#### 4. **No Approval for Land Use**

No approval is granted under this consent for the use of the premises as a function centre, as defined by the Dictionary of the Warringah Local Environmental Plan 2011:

***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.

Reason: To ensure compliance with the terms of this consent.

#### 5. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

## 6. **Extent of Consent**

No approval is granted or implied under this Development Consent for any physical works beyond the fire and accessibility upgrades noted on the plans and review of accessibility matters (prepared by City Plan, dated 11 July 2024) and revised review of accessibility matters prepared by City Plan, dated 23 October 2024). Approval is given for the use of the site only.

Reason: To ensure compliance with the terms of this consent.

## 7. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the

development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## 8. **Approval of works**

No approval is granted under this Development Consent for any works outside of the subject site.

Reason: To ensure compliance with the terms of this consent.

## **FEES / CHARGES / CONTRIBUTIONS**

### **9. Security Bond**

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **10. Access Path - Undercliff Road**

No approval is given for the proposed pedestrian path to Undercliff Road, identified in the Accessibility Review report (Prepared by City Plan, dated 11 July 2024).

Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: Owners consent has not been provided by Council

### **11. National Construction Code (BCA) upgrade requirements and Fire Safety upgrade**

The National Construction Code works and fire upgrading measures to upgrade the building as detailed and recommended in the National Construction Code (NCC) Report prepared by City Plan, dated 15 March 2024, Report Ref No. 220643, are to be considered as part of the assessment of the Construction Certificate.

Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, Access & Fire Safety for building occupant health & safety.

### **12. Amendments to the approved plans**

The approved plans are to be amended to show the proposed Pavillion door with materials and finishes that complement the heritage significance of the site.



Details demonstrating compliance are to be submitted to Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**13. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

**14. Preparation of a Heritage Asset Action Plan**

A Heritage Asset Action Plan (HAAP) is to be prepared for the site in accordance with Heritage NSW *Statement of Best Practice for Heritage Asset Action Plans* and be provided to Council's Heritage Advisor for approval prior to the issuing of a Construction Certificate.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: Ongoing protection of the heritage item

**15. Compliance with standards (Demolition):**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

**16. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

**17. Surrender of Consent**

The applicant shall surrender to Council Development Consents No: 1980/311 & 1983/177, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To prevent inconsistencies between consents applying to the site (ref 4.17 & 4.63 EPAA & cl68 EPA Regulation 2021).

## **DURING BUILDING WORK**

**18. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

## **BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**19. Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

**20. Acoustic Design Recommendations**

Prior to the issuing of any Occupation Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the acoustic report and operational conditions have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

**21. Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

## **ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

### **22. Amenity**

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

### **23. Undercliff Entrance**

The existing entranceway/gate fronting Undercliff Road is not to be used by restaurant patrons for access.

Reason: In order to maintain privacy to the adjoining / nearby property.

### **24. Noise management**

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

- Any amplified music (assumed to be vocal and acoustic) must be 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.
- 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 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 be reviewed regularly to ensure any required updated proposed for approval by Council.

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

### **25. Implementation of Heritage Asset Action Plan**

The approved Heritage Asset Action Plan, including maintenance works and policies for the site, must be complied with at all times.

Reason: Ongoing protection of the heritage item

26. **Food Preparation**

Food is to be prepared in the existing approved restaurant kitchen and kept under temperature control and protected from contamination during delivery/service to the Pavilion or any other area.

Reason: To ensure food safety standards are maintained at all times

27. **Hours of Operation**

The hours of operation are to be restricted to:

- Sunday to Thursday: 10:00am - 10:00pm
- Friday and Saturday - 10:00am - 12:00am

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons are to be outside, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

28. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.