

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0545
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 12 DP 249310, 11 Boola Place CROMER NSW 2099
Proposed Development:	Modification of Development Consent DA2023/1237 for Alterations and additions to an existing building and change of use
Zoning:	Warringah LEP2011 - Land zoned E4 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	The Trustee For Boola Place Trust

Application Lodged:	14/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/10/2024 to 04/11/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 14 December 2023 under Development Application DA2023/1237 for alterations and additions to an existing building including the use of the building as a recreation facility (indoor). The approved land use permits the premises to be used as an indoor cricket training facility and the facility would be confined to the following operational hours (which were proposed by the applicant) pursuant to Condition 41 of the consent:

- During cricket season (September to March): 6am to 9am and 2pm to 9pm.
- Outside cricket season (April to August): 2pm to 9pm.

This application has been lodged pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) seeking to make the following amendments to the approved

development:

- Minor relocation of the front entrance door.
- Replacement of approved windows on the front façade with glass block windows.
- Removal of louvred window adjacent to the entrance door and infill the void with brickwork.
- Provide an additional entry and exit doorway on the eastern side of the building.
- Change the approved operational hours to operate the premises from 7am to 10pm daily.

The modifications do not change the footprint or height of the approved building.

AMENDED PLANS

On 11 November 2024, the applicant amended the modification application pursuant to section 113 of the Environmental Planning and Assessment Regulation 2021 by submitting amended plans that provided the additional entry and exit doorway on the eastern side of the building, which was not proposed under the original modification application. No other amendments were proposed.

The amended application did not result in any additional environmental impacts to the original modification application. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

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 Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 12 DP 249310 , 11 Boola Place CROMER NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Boola Place.</p> <p>The site is irregular in shape with a frontage of 19.05m along Boola Place and a depth of 58.5m. The site has a surveyed area of 1110m².</p> <p>The site is located within the E4 General Industrial Zone under the Warringah Local Environmental Plan 2011. The site is currently occupied by a one and two storey industrial building, which is currently undergoing construction works pursuant to the consent granted under Development Application DA2023/1237.</p> <p>The site is relatively flat with a gentle fall from the rear boundary towards the street.</p> <p>Adjoining and surrounding development is characterised by industrial development of varying sizes and scales.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history for the site:

- **Development Application DA2023/1237** for alterations and additions to an existing building and change of use to occupy the premises as a recreation facility (indoor) approved by Council

on 14 December 2023. A Construction Certificate was issued for this development consent and the consent has been lawfully activated.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/1237, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modifications to the built form are cosmetic in nature and will not adversely impact upon the visual amenity of the area. • The changes to the approved operational hours will not result in adverse noise impacts to sensitive residential receivers and will not adversely impact upon the performance of the local road network in terms of traffic generation.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/1237 for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
consent was originally granted and before that consent as originally granted was modified (if at all), and	<ul style="list-style-type: none"> The modified development will not alter the land use. The modified development will not result in any additional material impacts in terms of noise, traffic and visual impacts when compared to the approved development.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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 'Matters for Consideration'	Comments
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&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>Clauses 62</u> and/or 64 of the EP&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&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, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 21/10/2024 to 04/11/2024 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 1 submission/s from:

Name:	Address:
Mr Nicolas Selby Mumford	5 Hill Street QUEENSCLIFF NSW 2096

One submission by way of objection was received during the public exhibition period. The submission raised concerns in relation to traffic impacts on the local road network.

The traffic impacts of the modification are assessed in detail within the section of this report relating to sections C2 and C3 of the Warringah Development Control Plan 2011. In summary, the proposed modification will not adversely impact upon the performance of the local road network.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>The current approved hours for the facility are:</p> <ul style="list-style-type: none"> • During cricket season (September to March): 6am to 9am and 2pm to 9pm • Outside cricket season (April to August): 2pm to 9pm <p>This proposal seeks to modify the above approved hours to the following hours:</p> <ul style="list-style-type: none"> • 7am to 10pm, daily <p>Based on a number of factors including, the land zoning, nature of neighbouring businesses, proximity to residential receivers and existing conditions of development consent, Environmental Health supports the proposal.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Traffic Engineer	the changes proposed to the access arrangements and hours of operation are not opposed subject to the retention of condition 40 relating to site occupancy patronage limits

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)

Nil

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	8.8m	8.8m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	East - Merit Assessment	3.8m - acceptable on merit	3.8m - acceptable on merit	Yes
	West - Merit Assessment	Nil - acceptable on merit	Nil - acceptable on merit	Yes
B7 Front Boundary Setbacks	4.5m	5m	5m	Yes

B9 Rear Boundary Setbacks	Merit Assessment	Nil - acceptable on merit	Nil - acceptable on merit	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

Condition 41 of Development Application DA2023/1237 limits the operational hours of the development to the following times:

- During cricket season (September to March): 6am to 9am and 2pm to 9pm.
- Outside cricket season (April to August): 2pm to 9pm.

The modification application seeks to expand the approved operational hours to enable the indoor cricket facility to operate between 7am and 10pm, daily. The applicant has stated that the increase in operational hours is required to cater for nearby schools that may wish to use the facility for school sporting purposes. The current hours, which do not operate during key school hours, would not cater for in-school activity purposes. The modification does not provide any additional off-street car parking, noting that the site currently provides for 3 off-street car parking spaces.

The increase in operational hours has the potential to adversely impact upon the local road network through additional patrons visiting the premises during the day.

The modification application has been accompanied by Traffic Assessment Letter (TAL) (prepared by Transport and Traffic Planning Associates, dated 25 September 2024) which assesses the potential traffic impacts through the increase to the operational hours. The TAA notes that the peak traffic rate will remain within the approved hours of operation and therefore, it can be assumed that traffic will be consistent with the approved hours of operation. Furthermore, the TAA further states that the extension of the operating hours will likely improve the traffic outcome with a greater spread of

movements throughout the entire day.

Council's Traffic Engineer has reviewed the modification application including the TAA and raises no objections, subject to the retention of Condition 40 of the Development Consent, which limits the number of customers/visitors/patrons at the premises to 25 and the number of staff to 2 at any one time. The applicant has not sought to increase the patron or staffing numbers under this modification application and the traffic generation rates based off the approved patron and staffing numbers was assessed as being acceptable under Development Application DA2023/1237.

Overall, it is considered that the increase to the operational hours will not adversely impact upon the performance of the local road network. Therefore, the traffic impacts are assessed as being acceptable.

C3 Parking Facilities

The approved development provided 3 off-street car parking spaces, which does not comply with the Warringah Development Control Plan 2011 (WDCP), which requires a total of 9 off-street car parking spaces for light industrial uses. However, during the assessment of Development Application DA2023/1237, Council's Traffic Engineer concluded that the 3 off-street car parking spaces would be acceptable for this type of use, being an indoor cricket facility with 4 separate netted areas.

The modification application does not increase the gross floor area or patronage limits at the facility. Therefore, it is considered that no additional car parking is required, notwithstanding the maintenance of the technical WDCP non-compliance.

D3 Noise

As detailed earlier within this report, the modification application seeks to increase the operational hours of the facility to operate between 7am-10pm, daily. The current approved scenario enables the facility to operate until 9pm, daily.

The increase in operational hours has the potential to result in adverse noise impacts at sensitive receiver locations.

Council's Environmental Health Officer has reviewed the modification application and concluded that the increase in operational hours would not result in adverse noise impacts at sensitive receiver locations, noting that the site is located within an established industrial precinct and sufficiently separated from sensitive land uses (i.e. low density residential areas). It is noted that the facility will operate within an enclosed building, which will mitigate noise emissions.

Overall, the modification application will not result in adverse noise impacts.

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 consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development 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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0545 for Modification of Development Consent DA2023/1237 for Alterations and additions to an existing building and change of use on land at Lot 12 DP 249310, 11 Boola Place, CROMER, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2024/0545	The date of this notice of determination	<p>The modifications involve minor amendments to operational hours. The modifications consent:</p> <ul style="list-style-type: none"> • Add Condition 1A. Modification documentation. • Modify Condition 41. Hours of operation.

Modified conditions

A. Add Condition 1A to read as follows:

1A. Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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
DA101	03	Level 1 & 2 Plans	Corben Architects	11 November 2024
DA201	03	Elevations	Corben Architects	11 November 2024
DA301	03	Sections	Corbet Architects	11 November 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Traffic Assessment Letter Ref: 23067	N/A	Transport and Traffic Planning Associates	25 September 2024

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

In the event of any inconsistency with 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.

B. Modify Condition 41 to read as follows:

41. Hours of Operation

The hours of operation are to be restricted to 7.00am to 10.00pm, daily.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, 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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Thomas Burns, Principal Planner

The application is determined on 25/11/2024, under the delegated authority of:



Steven Findlay, Manager Development Assessments