



statement of modification



MODIFICATIONS TO DA2023/1237

11 BOOLA PLACE
CROMER NSW 2099

September 2024

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introduction

This statement of modification has been prepared by Northern Beaches Planning on behalf of the Boola Place Trust to accompany the lodgement of an application to modify Development Consent DA2023/1237 which approved alterations and additions to the existing building at 11 Boola Place, Cromer (**site**) and for the use of the premises as a recreational facility (indoors).

This statement is informed and accompanied by the following documentation:

- Architectural Plans by Corben Architects
- Traffic Report by Transport and Traffic Planning Associates
- Letter from Stephen Beatty, Honorary Secretary of the Manly Warringah District Cricket Club

site details

The site is legally identified as Lot 12 of Deposited Plan 249310, and is commonly referred to as 11 Boola Place, Cromer. The site is slightly irregular in shape, with a 19.05m wide frontage to Boola Place to the south, a maximum depth of 58.5m and a total area of 1110m².

A one and two storey industrial building is located on the site, with vehicular and pedestrian access gained via the existing driveway to Boola Place. The site is generally level, with a slight fall between the frontage of the building and the roadway.

The surrounding area is characterised by industrial and warehouse type development of varying size and scale. Boola Place is a no through local road, terminating at a cul-de-sac to the west of the subject site.

Aerial images of the site and its surrounds is provided in Figures 1 and 2 on the following page. Images of the site, the existing building and the streetscape are also provided (Figure 3-6).

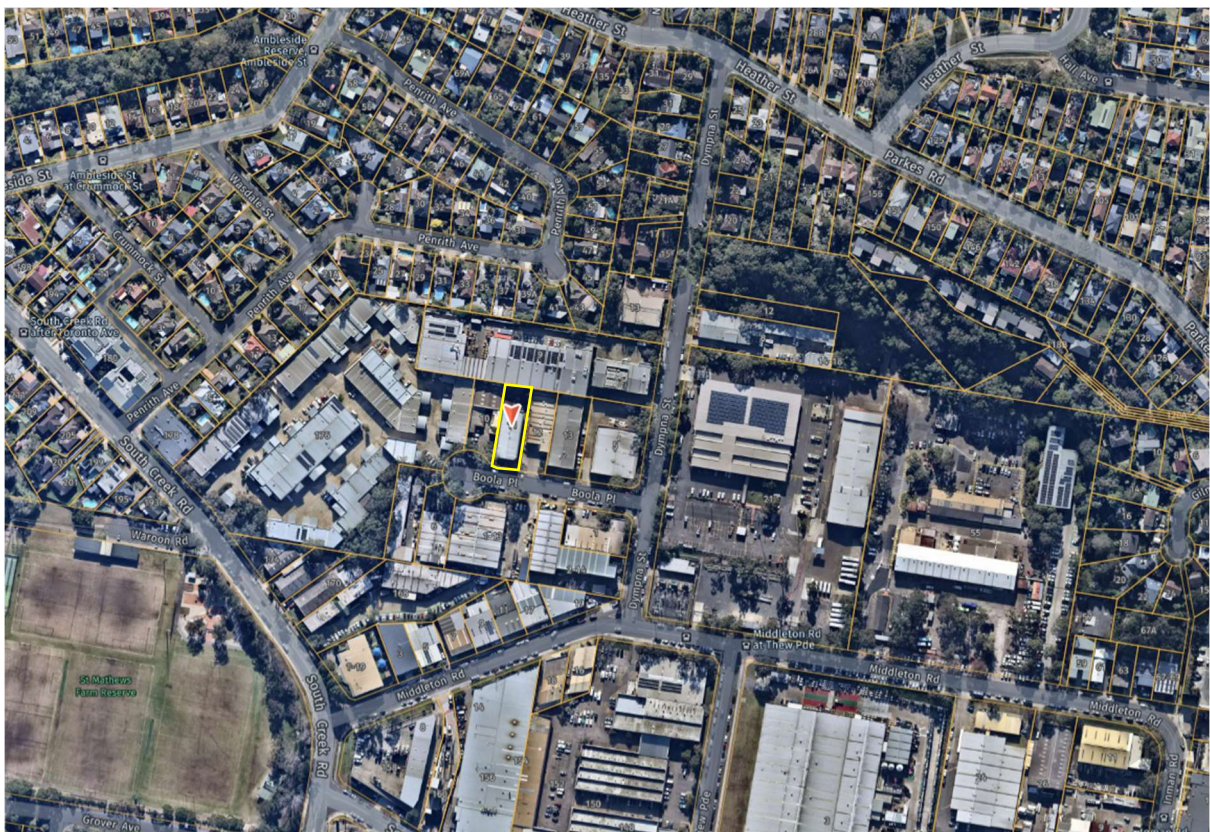


Figure 1 – Aerial image with site bordered in yellow
Source: Nearmap

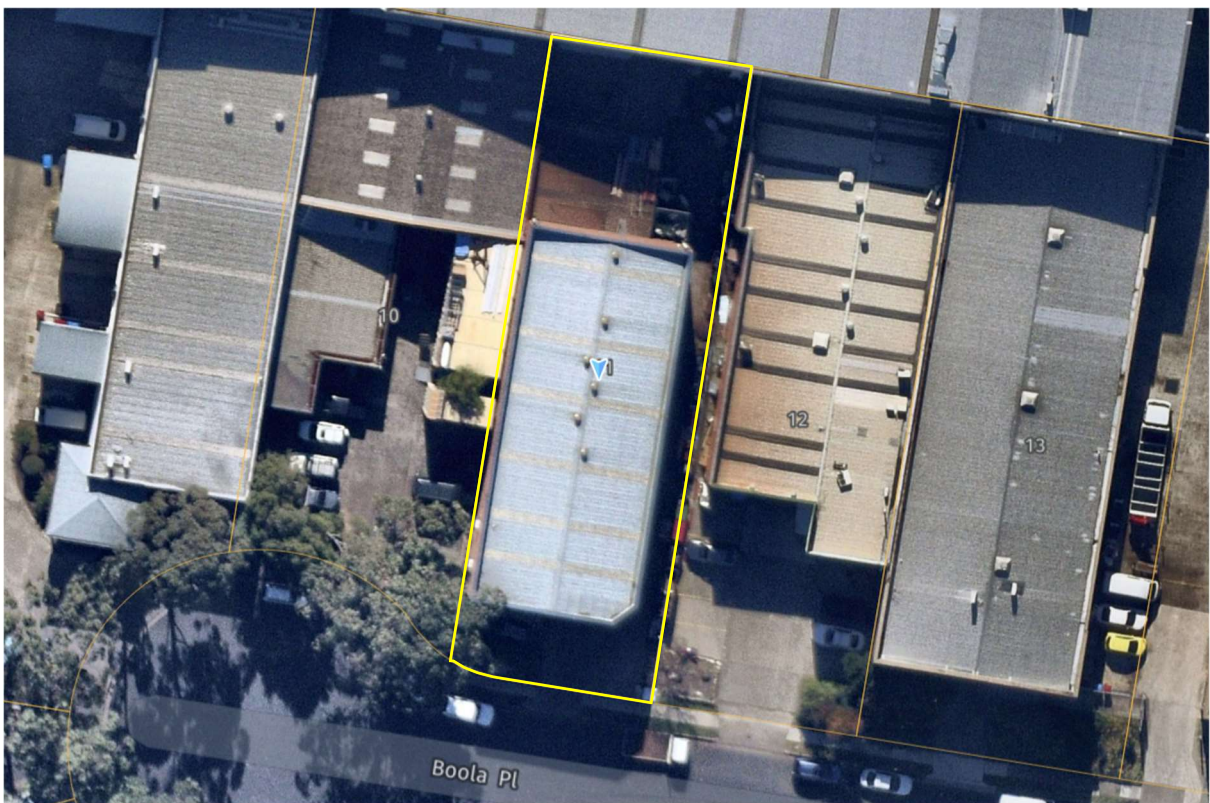


Figure 2 – Aerial image (zoom) with site bordered in yellow
Source: Nearmap



Figure 3 – The subject site as seen from Boola Place
Source: NBP



Figure 4 – The eastern side of the building as seen from the front carpark of 12 Boola Place
Source: NBP

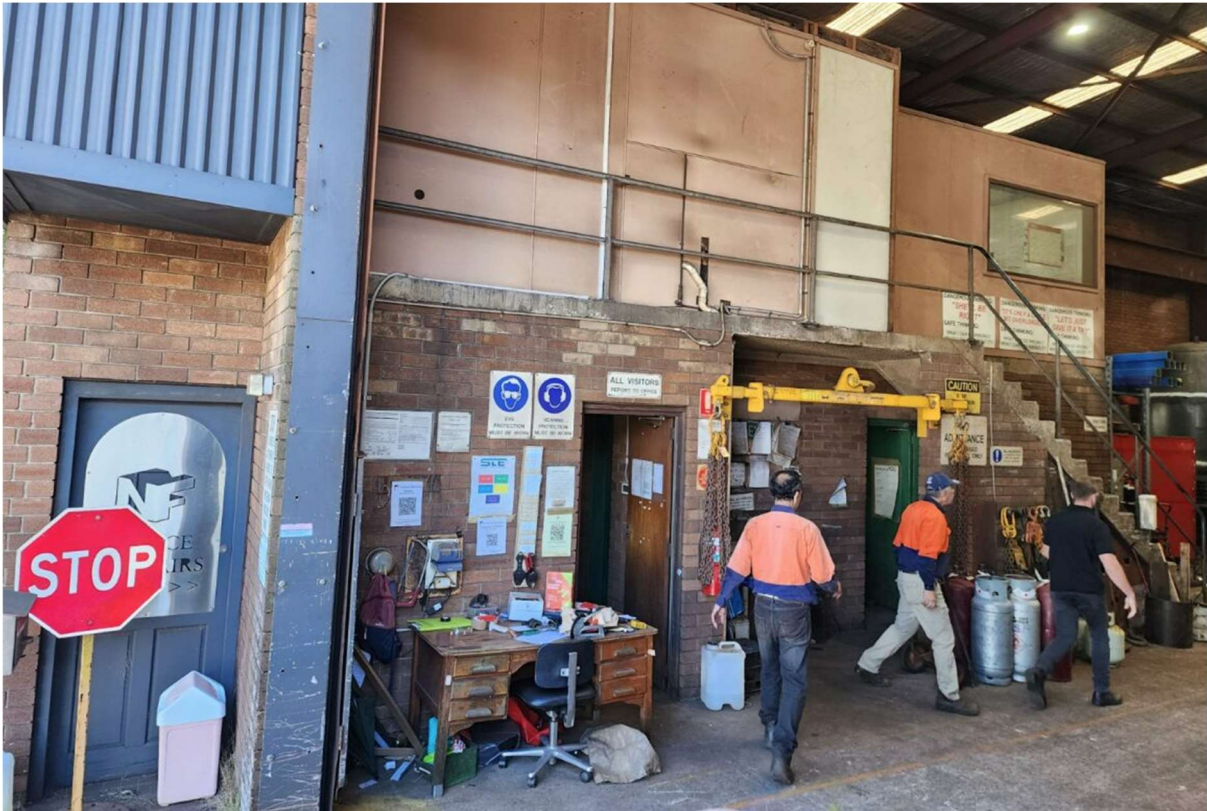


Figure 5 – Looking into the entrance of the existing building
Source: Corben Architects



Figure 6 – The rear of the site, looking towards Boola Place
Source: Corben Architects

background

On 6 September 2023, DA2023/1237 was lodged with Council, seeking consent for alterations and additions to the existing building and for the use of the premises as a recreational facility (indoors).

On 14 December 2023, DA2023/1237 was approved by Council, under Manager delegation.

A Construction Certificate has not been issued with respect to DA2023/1237 and neither the approved works nor the use have commenced on site.

proposed development

The application seeks to modify the development approved pursuant to DA2023/1237 as depicted in the Architectural Plans prepared by Corben Architects, and as described as follows:

- Minor relocation of the front entrance door,
- Replacement of approved windows in front façade with glass block windows, and
- Removal of louvred window adjacent to entrance doorway (to be infilled with brick wall).

The application also seeks to modify Condition 41, which currently reads as follows:

41. Hours of Operation

The hours of operation are to be restricted to:

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

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.

As outlined in the accompanying letter from Stephen Beatty, Honorary Secretary of the Manly Warringah District Cricket Club, the tenant seeks to alter the approved hours of operation to 7am to 10pm daily.

As such, it is requested that Condition 41 be amended to read, as follows:

41. Hours of Operation

The hours of operation are to be restricted to 7am to 10pm, 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.

legislation, plans and policies

The following relevant state and local policies are applicable to the proposed development:

- Environmental Planning and Assessment Act (**EP&A Act**)
- Environmental Planning and Assessment Regulation 2021 (**EP&A Regulation**)
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Warringah Local Environmental Plan 2014 (**WLEP 2011**):
 - Lot Size Map: 4000m²
 - Land Zoning Map: E4 General Industrial
 - Height of Buildings Map: 11m
 - Landslip Risk Land Map: Area A
- Warringah Development Control Plan 2011 (**WDCP 2011**)

local environmental plan

The site is identified on the Land Application Map of WLEP 2011 and the provisions of this policy are applicable in relation to the site and the proposed development. The relevant provisions of WLEP 2011 are considered, as follows:

Clause	Standard	Approved	Proposal	Compliance
2.7 Demolition requires consent				Yes
Zone E4 General Industrial			No change.	Yes
4.3 Height of buildings	11m	8.78m	No change.	Yes
6.2 Earthworks			No change.	Yes
6.4 Development on Sloping Land			No change.	Yes

development control plan

WDCP 2011 is applicable to the site and the proposed development. The relevant provisions of WDCP 2011 are considered, as follows:

Clause	Control	Approved	Proposal	Compliance
B1 Wall Height				N/A
B2 Number of Storeys				N/A
B3 Side Boundary Envelope				N/A
B5 Side Boundary Setbacks	Merit	West: Nil East: 3.8m	No change.	Yes
B7 Front Boundary Setbacks	4.5m	No change.	No change.	Yes
B9 Rear Boundary Setbacks	Merit	North: Nil	No change.	Yes
C2 Traffic, Access and Safety	Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.	Existing driveway crossing to be retained.	No change.	Yes
C3 Parking Facilities		3 spaces	No change.	Yes
C4 Stormwater	The stormwater drainage systems for all developments are to be designed, installed and maintained in		No change.	Yes

Clause	Control	Approved	Proposal	Compliance
	accordance with Council's Water Management for Development Policy.			
C7 Excavation and Landfill	Excavated and landfill areas shall be constructed to ensure the geological stability of the work.		No change.	Yes
C8 Demolition and Construction	All development must comply with the appropriate sections of the Waste Management Guidelines and must be accompanied by a Waste Management Plan.		No change.	Yes
C9 Waste Management	All development must comply with the appropriate sections of the Waste Management Guidelines and must be accompanied by a Waste Management Plan.		No change.	Yes
D1 Landscaped Open Space			No change.	N/A
D3 Noise	Where possible, locate noise sources away from the bedroom areas of adjoining dwellings/properties to minimise impact.		The site is located in an established industrial area and is not located near any residential development. The proposed use is a relatively low intensity and low impact use, when compared to the range of development permitted and	Yes

Clause	Control	Approved	Proposal	Compliance
			anticipated within the E4 General Industrial Zone.	
D6 Access to Sunlight	Development should avoid unreasonable overshadowing of any public open space.		No change.	Yes
D7 Views	Development shall provide for the reasonable sharing of views.		No change.	Yes
D8 Privacy	Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.		No change.	Yes
D9 Building Bulk	<p>Orientate development to address the street.</p> <p>Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</p> <p>Articulate walls to reduce building mass.</p>		No change.	Yes
D10 Building Colours and Materials	The colours and materials used for alterations and additions to an existing structure shall complement the existing external building façade.		No change.	Yes

Clause	Control	Approved	Proposal	Compliance
D11 Roofs	<p>Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.</p> <p>Roofing materials should not cause excessive glare and reflection.</p>			Yes
D12 Glare and Reflection	Sunlight reflectivity should be minimised.		No change.	Yes
D14 Site Facilities	Site facilities including garbage and recycling enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for users and services and are to have minimal visual impact from public places.		No change.	Yes
D18 Accessibility and Adaptability	<p>There are to be continuous, independent and barrier-free access ways incorporated into the design of buildings.</p> <p>Access for people with a disability is to be provided at the main entrance to the development.</p>		No change.	Yes
D20 Safety and Security	Buildings are to overlook streets as well as public and communal places to allow casual surveillance.		No change.	Yes

Clause	Control	Approved	Proposal	Compliance
D22 Conservation of Energy and Water	All development must comply with Council's Water Management Policy			Yes
E1 Preservation of Trees or Bushland Vegetation			No change.	Yes
E2 Prescribed Vegetation			No change.	Yes
E6 Retaining Unique Environmental features				N/A
E10 Landslip Risk	Area A		No change.	Yes

*state environmental planning policy
(resilience and hazards)*

Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The site is not identified on the public register of contaminated sites and is not located in the vicinity of any. The application does not propose any site disturbance, with all existing ground floor slabs to be retained, with new topping to provide a level surface area.

The modifications proposed do not alter the treatment of the ground or result in any new or additional excavation. Council can remain satisfied that there is no contamination risk.

Overall, the proposed development is consistent with the relevant provisions of SEPP (Resilience and Hazards).

The application is made pursuant to s4.55(1A) of the EP&A Act, which provides:

Modifications involving minimal environmental impact 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*
- (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 was originally granted and before that consent as originally granted was modified (if at all), and*
- (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 that requires the notification or advertising of applications for modification of a development consent, and*
- (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.*

Minimal environmental impact

The physical changes proposed in this modification application are negligible, do not result in any new or intensified areas of non-compliance with WLEP 2011 or WDCP 2011 and will not result in any adverse impacts upon the surrounding environment.

The proposed changes to trading hours are also considered to result in minimal environmental impact, noting that the proposed modified trading hours generally align with those approved for trading “during cricket season”, and there is no reason as to why the suitability of trading hours in an industrial area would be altered simply due to the time of the year.

The site is not in the vicinity of any residential properties, and additional hour of evening trading until 10pm will not result in any adverse impacts upon surrounding industrial premises.

Substantially the same

In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 (and then endorsed in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWLR 468 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1992] NSWLEC 280 (**Moto Projects**)), the term “substantially” was said to mean “essentially or materially having the same essence”. Further, in *Sydney City Council v Ilenace Pty Ltd* [1984] NSWLR 414, the term “modify” was said to mean “to alter without radical transformation”.

Council can be satisfied that the proposed development will not result in a radical transformation of the development as approved and that the proposed modifications will result in a development that is essentially and materially the same as that which was originally approved, as follows:

- The description of the development remains unchanged.
- The footprint and form of the dwelling remain unchanged.
- The location and use of individual rooms remains unchanged.
- The driveway location remains unchanged.
- The impacts associated with the approved development with respect to solar access, views and privacy remain generally unchanged.
- The landscaped treatment of the site remains unchanged.
- The impact upon surrounding trees and vegetation remains unchanged.
- The visual impact of the dwelling as seen from the public domain remains generally unchanged.
- The general bulk and scale of the development and the perception of building height remains unchanged.
- The use of the site remains unchanged.
- The maximum daily hours of operation remain unchanged.
- The capacity of the premises remains unchanged.
- The maximum traffic generation remains unchanged.

As such, Council can be satisfied that the proposed development is substantially the same as that originally approved.

Section 4.15 of the EP&A Act

In accordance with section 4.55(3) of the EP&A Act, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The Notice of Determination states the following reasons for the approval of DA2023/1237:

The development proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the aforementioned Act. Consequently, the development is considered to be in the public interest, subject to conditions.

The modified proposal does not detract from these expressed reasons, as the modified development remains consistent with the original approval with respect to impacts upon adjoining properties and compliance with the objectives and outcomes of WLEP 2011 and WDCP 2011.

The matters prescribed by section 4.15(1) of the EP&A Act are considered, as follows:

Clause	Provision	Comment
(a)	<p><i>the provisions of—</i></p> <ul style="list-style-type: none"> <i>i. any environmental planning instrument, and</i> <i>ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been</i> 	<p>The relevant provisions of WLEP 2011, all relevant SEPPs, and WDCP 2011 have been considered and addressed in this statement.</p>

Clause	Provision	Comment
	<p><i>notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i></p> <p><i>iii. any development control plan, and</i></p> <p><i>iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i></p> <p><i>v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i></p> <p><i>that apply to the land to which the development application relates,</i></p>	
(b)	<p><i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impacts of the proposed development have been addressed with respect to relevant plans and policies in this statement. The proposed development will not result in any unacceptable impacts upon the natural or built environment, or any social or economic impacts in the locality.</p>
(c)	<p><i>the suitability of the site for the development,</i></p>	<p>The subject site remains suitable for the proposed development.</p>
(d)	<p><i>any submissions made in accordance with this Act or the regulations,</i></p>	<p>The application will be notified to all potentially affected properties, with any submissions received to be considered by Council.</p>
(e)	<p><i>the public interest.</i></p>	<p>The proposed development is in the public interest, in so far as it remains consistent with the objectives and outcomes of WLEP 2011 and WDCP 2011.</p>

conclusion

The proposed modifications are beneficial and facilitative, ensuring the viability and longevity of the premises into the future. The modified proposal does not result in any new or intensified adverse impacts upon the amenity of adjoining properties or the natural environment and remains substantially the same as that which was originally approved. As such, Council can be satisfied that the application can be appropriately addressed under the provisions of s4.55(1a) of the EP&A Act.



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