

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0209
Responsible Officer:	Hugh Halliwell
Land to be developed (Address):	Lot 1 DP 668492, 2 Beach Road PALM BEACH NSW 2108 Lot A DP 341607, 2 Beach Road PALM BEACH NSW 2108
Proposed Development:	Modification of consent N1044/99 for the additions to golf clubhouse
Zoning:	E4 Environmental Living E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Palm Beach Golf Club
Applicant:	Hot House Studio
Application lodged:	27/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	02/05/2018 to 16/05/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Refusal

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;

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- 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

Pittwater 21 Development Control Plan - 2014 - C2.10 Pollution Control

SITE DESCRIPTION

Property Description:	Lot 1 DP 668492, 2 Beach Road PALM BEACH NSW 2108 Lot A DP 341607, 2 Beach Road PALM BEACH NSW 2108
Detailed Site Description:	The site is known as 2 Beach Road, Palm Beach and comprises three allotments with the following legal descriptions:
	 Lot 1 DP 1127631; Lot 1 DP 668492; and Lot A DP 341607.
	Across the three (3) allotments is situated the Palm Beach Golf Club ("the Club"). The total area of the site is 2216.2m² and has a primary frontage to Beach Road of 32.5m, facing the northern side of Beach Road facing Palm Beach Golf Course, whilst the site has a secondary frontage to Barrenjoey Road. Vehicular access is gained via both the Beach Road and Barrenjoey Road frontages. The site contains an existing two storey clubhouse located towards the Beach Road frontage with off-street parking located to the rear. The site contains limited landscaping with a small area of hedging to the front and a strip of landscaping to the
	south at the rear. The slope of the site is moderate from the rear of the site adjoining 1178 Barrenjoey Road and levelling to the Beach Road frontage.

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SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development application N1044/99 for works to the existing clubhouse was approved under the delegation of the Development Unit on 27/04/2001;
- Modification application N1044/99/S96/1 was lodged with Council and subsequently approved on 16/11/2017:
- Modification application N1044/99/S96/2 was lodged with Council due to an error in the original assessment as part of N1044/99/S96/1 and subsequently approved on 5 December 2017.

Since the lodgement of the subject modification application, two requests were made by Council to the applicant to withdraw the application (dated 2 May 2018 and 31 May 2018). Following the first withdrawal request, the applicant responded with confirming that the application was to be withdrawn. This was immediately followed by correspondence from Palm Beach Golf Club's solicitor and the applicant immediately following requesting that the withdrawal confirmation is to be rescinded.

PROPOSED DEVELOPMENT IN DETAIL

The initial modification application sought to modify the development consent in the following manner:

- Amend condition D234 which restricts the number of patrons to use the alfresco/alcove area to 50. The modification seeks consent to allow for up to 120 patrons;
- Amend condition D238 relating to the hours of operation of the temporary bar in the alfresco area. The current hours of operation (12:00pm-5:00pm, Saturday Sunday) are to be amended to 10:00am 10:00pm seven days a week; and
- Amend condition D239 to alter the operating hours of the alfresco/alcove area. The hours of operation are to be 10:00am - 10:00pm seven days a week.

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Following the initial lodgement of the application and correspondence issued to the Applicant from Council with concerns relating to the application, the hours of operation were revised to reflect the following:

- 10:00am-6:00pm Australian Eastern Standard Time (AEST); and
- 10:00am-8:30pm Australian Eastern Daylight Time (AEDT).

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 N1044/99, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other	Comments
Modifications	
A consent authority may, on application being made	de 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	No
is of minimal environmental impact, and	Insufficient information has been provided to
	enable Council to ascertain environmental
	impact.
(b) it is satisfied that the development to which	The development, as proposed, has been found
the consent as modified relates is substantially	to be such that Council is satisfied that the
the same development as the development for	proposed works are substantially the same as
which consent was originally granted and before	those already approved under DA N1044/99.
that consent as originally granted was modified	
(if at all), and	
(c) it has notified the application in accordance	The application has been publicly exhibited in
with:	accordance with the Environmental Planning and
	Assessment Act 1979, Environmental Planning
(i) the regulations, if the regulations so require,	and Assessment Regulation 2000, Pittwater

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Section 4.15(1A) - Other Modifications	Comments
or	Local Environment Plan 2011 and Pittwater Development Control Plan.
(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	
(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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.
	Clause 50(1A) of the EP&A Regulation 2000 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.
	Clauses 54 and 109 of the EP&A Regulation 2000, Council

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Section 4.15 'Matters for Consideration'	Comments
	requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.
	Clauses 93 and/or 94 of the EP&A Regulation 2000 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 in the original consent.
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.
economic impacts in the locality	(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.
	(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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the clause C2.10 Pollution Control of P21 DCP and relevant industrial noise policies, and will result in a

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Section 4.15 'Matters for Consideration'	Comments
	development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

The application seeks approval under Section 106 and 108 of EP&A Act 1979.

Section 4.65 of the Environmental Planning and Assessment Act, 1979 defines 'existing use':

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and
- (b) the use of a building, work or land:
 - (i) for which development consent was granted before the commencement of a provision of an
 - (ii) that has been carried out, within one year after the date on which that provision commence

Further, the applicant seeks consent to alter the existing golf clubhouse under the provisions of s4.67 of the Act and clause 42 and 43 of the Environmental Planning and Assessment Regulations 2000. Section 4.67 (1)(a) and (c) are as follows:

- 1) Development consent is required for any enlargement, expansion or intensification of an existing use.
- 2) The enlargement, expansion or intensification:
 - a) must be for the existing use and for no other use, and
 - b) must be carried out only on the land on which the existing use was carried out immediately

Clause 42 of the Environmental Planning and Assessment Regulations 2000 states the following:

- 1) Development consent is required for any enlargement, expansion or intensification of an existing use.
- 2) The enlargement, expansion or intensification:
 - a) must be for the existing use and for no other use, and
 - b) must be carried out only on the land on which the existing use was carried out immediately

Clause 43 of the Environmental Planning and Assessment Regulations 2000 states the following:

- 1) Development consent is required for any alteration or extension of a building or work used for an existing use.
- 2) The alteration or extension:
 - a) must be for the existing use of the building or work and for no other use, and
 - b) must be erected or carried out only on the land on which the building or work was erected o.

The application seeks consent to modify conditions of consent relating to the use of an existing alcove/alfresco area, particularly relating to the maximum number of permitted patrons and the hours of operation for the area. With respect of the subject site, the modifications will allow for the continuing use as a commercial premises and club, and will not alter the use.

Existing use rights have been established through the 1999 development application, and the subject

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modification is consistent with s4.65/4.67 and clauses 42 and 43 of the Environmental Planning and Assessment Regulation 2000.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Stephen Jones	3 Waratah Road PALM BEACH NSW 2108

The following issues were raised in the submissions and each have been addressed below:

• Noise impacts associated with the change of hours to the alfresco/alcove area.

The matters raised within the submissions are addressed as follows:

Noise impacts

Comment:

The noise impacts associated with the proposed modifications are discussed in further detail under the relevant clause of this report.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments	
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia, in particular to enable adequate facilities for the public.	
Environmental Health		
(Industrial)	Is the proposal for an industrial use?	YES
	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential	YES

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Internal Referral Body	Comments	
	pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal Mechanical ventilation	
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	NO
	General Comments	
	Environmental Health has review the acoustic re Outdoor Area - Noise Assessment prepared by N Service, report no. nss22820 dated April 2018.	•
	Environmental Health is not satisfied with the Acadditional information and accurate representation being generated is required, the following clarific	on of the noise
	Background noise - why is the background noise between the hours of 1:00 pm and 4: 00 pm on S Sunday, if the proposed extended hours are goin the hours of 10:00 am and 10:00 pm for 7 days a noise representation is required (i.e. weekday, we day and evening assessment)	Saturday and ng to be between a better background
	Duration of the assessment - the noise assessm undertaken for 2 days, to have a more accurate determine if the proposal will meet the requires on noise policy / Noise Policy for Industry, it is recorterm assessment to be undertaken.	representation to of the Industrial
	Recommendation	REFUSAL - additional information required
	Comments completed by: Mary Shimon	
	Date: 22 May 2018	
NECC (Stormwater &	This modification for a change to the hours of ope	eration is not
Floodplain Engineering –	considered to increase flood risk.	0.0001101100
Flood risk)	No flood related controls apply.	

External Referral Body	Comments

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External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police - Local Command (CPTED)	Development Officer comments: Referral comments from NSW Police - Local Command (CPTED)
	have not been received. The following assessment and recommendation has proceeded without these comments.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes

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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	<8.5m	Unaltered	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan - 2014

Compliance Assessment

Clause	-	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
C2.10 Pollution Control	No	No

<u>Detailed Assessment</u>

C2.10 Pollution Control

A submission has been received from a nearby property owner at 3 Waratah Road, Palm Beach raising concerns with regards to the impacts created by additional patrons and extended hours of operation.

Being located in primarily a residential area, the proposal and supporting acoustic report has failed to appropriately consider the impact on residential amenity of adjoining and nearby properties in the area through inadequate information. It is considered likely that the development and proposed hours of operation of the alcove/alfresco area will have an adverse impact upon adjoining and nearby residential accommodation from the generation of an unreasonable level of noise generated by patrons in the front alfresco/alcove area. For these reasons, the proposal cannot be supported and is recommended for refusal. See Environmental Health's comments for further detail.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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The proposal will not significantly effect 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.

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 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2018/0209 for Modification of consent N1044/99 for the additions to golf clubhouse on land at Lot 1 DP 668492,2 Beach Road, PALM BEACH, Lot A DP 341607,2 Beach Road, PALM BEACH, subject to the reasons outlined as follows:

1. The supporting information, including acoustic report is deficient and has not adequately demonstrated that the development will not adversely impact public health, the environment or other lands with regards to relevant noise policies, including compliance with the NSW Environment Protection Authority Industrial Noise Policy and Noise Policy for Industry (2017).

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

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Signed

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Hugh Halliwell, Planner

The application is determined under the delegated authority of:

Anna Williams, Manager Development Assessments

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ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

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ATTACHMENT C

Reference Number	Document	Date
<u>III</u> 2018/260709	Report - Liquor licence	26/04/2018
<u>></u> 2018/260708	Report - Acoustic	27/04/2018
2018/260710	Report - Statement of Modification	27/04/2018
MOD2018/0209	2 Beach Road PALM BEACH NSW 2108 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	27/04/2018
2018/260395	DA Acknowledgement Letter - Hot House Studio	27/04/2018
2 018/260705	Development Application Form	27/04/2018
2 018/260706	Applicants Details	27/04/2018
2 018/260707	Fee Form	27/04/2018
2018/266207	Environmental Health (Industrial) - Assessment Referral - Mod2018/0209 - 2 Beach Road PALM BEACH NSW 2108	27/04/2018
2018/266220	Environmental Health (Food Premises, Skin Pen.) - Assessment Referral - Mod2018/0209 - 2 Beach Road PALM BEACH NSW 2108	27/04/2018
2018/263785	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2018/0209 - 2 Beach Road PALM BEACH NSW 2108 - PR	27/04/2018
2018/262763	DA Acknowledgement Letter (not integrated) - Hot House Studio	30/04/2018
2018/262984	Notification Letter - Mod	30/04/2018
2018/265349	Request for Withdrawal of Development Application - Hot House Studio	01/05/2018
2018/266676	Environmental Health Referral Response - commercial use	01/05/2018
[] 2018/272651	Natural Environment Referral Response - Flood	03/05/2018
2018/280870	Withdrawal confirmation - Re: 2 Beach Road, Palm Beach	08/05/2018
2018/286473	Rescind withdrawal	08/05/2018
2018/282341	Shaw Reynolds Lawyers - Response re Modification of Consent - Mod2018/0209 - Palm Beach Golf Club - 2 Beach Road Palm Beach	08/05/2018
I 2018/290244	Building Assessment Referral Response	11/05/2018
<u>></u> 2018/290251	Building Assessment Referral Response	11/05/2018
2018/296014	Submission - Jones	15/05/2018
2 018/307445	Applicant response to Council re propose use.pdf	15/05/2018
2 018/298483	Submission - Jones	15/05/2018
2018/295870	Email from Applicant - RE: Mod2018/0209 - modification of consent N1044/99 - Palm Beach Golf	15/05/2018

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	Club, 2 Beach Rd, Palm Beach	
2018/308440	Email to Dee Why Police - 2 Beach Road PALM BEACH NSW 2108	22/05/2018
2018/311686	Environmental Health Referral Response - industrial use	23/05/2018
2018/313503	Flooding comments - RE: Mod2018/0209 - 2 Beach Road PALM BEACH NSW 2108	24/05/2018
2 018/318325	Letter from applicant (Section 4.55 test and outlining changes to approval).pdf	25/05/2018
2018/323963	Shaw Reynolds Lawyers - Response re Use of Outdoor Area - Mod2018/0209 - 2 Beach Road Palm Beach	25/05/2018
2018/322727	Request for Withdrawal of Development Application - Hot House Studio	28/05/2018
2018/338261	Response from PBGC solicitor - RE: Mod2018/0209 - Palm Beach Golf Club	02/06/2018
2018/338264	Response from PBGC solicitor - RE: Mod2018/0209 - Palm Beach Golf Club	04/06/2018
<u>> 2018/342141</u>	Submission Acknowledgement Letter - Stephen Jones - SA2018/296014	05/06/2018
2 018/349593	Notice of Determination	07/06/2018

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