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**Sent:** 19/03/2018 7:59:42 AM  
**Subject:** FW: Attention Luke Perry

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**From:** Judith Brain [mailto:jrbrain@tpg.com.au]  
**Sent:** Monday, 19 March 2018 12:22 AM  
**To:** Council Mailbox  
**Subject:** Re: Attention Luke Perry

Hi Luke

Further to our phone conversation last week, I have now copied the content of the attachment into the email itself because you were unable to open the 'Apple Mac' attachment. I hope that this format is now acceptable.

If my reasons for my personal details to be removed are not adequate then please include them rather than disregarding the submission.

Regards

Judy Brain

On 9 Mar 2018, at 2:09 AM, Judith Brain <[jrbrain@tpg.com.au](mailto:jrbrain@tpg.com.au)> wrote:

Hi Luke

The following is a cover letter regarding a submission and the submission itself is below.

Regards

Judy Brain

To: The General Manager  
Northern Beaches Council

8th March 2018

Dear Sir

**RE: Modification No: Mod2018/0065 to the DA 261/2008 for 38 Stuart St. Manly**

I have attached (see below) a document which is my submission regarding the above modification to the DA.

I request that my personal details are removed and not put on the website for the following reasons:

1. The steps conflict with Council's proposed board walk and so I feel that it is a Council matter to ensure the steps are not allowed as they would be in the way of the boardwalk. I am just drawing attention to this.
2. The DA condition to remove the steps has not been complied with and it is a Council matter to enforce compliance. I am just drawing attention to this.
3. My submission refers to public interest, public land and public access and use of the

beach. I feel that I am putting forward arguments from the public point of view. None of the issues I raised concern me as an individual they concern all of the public. The steps are not on or adjacent to my own property.

Your faithfully

Judith Brain

71 Stuart St  
Manly

**To: The General Manager  
Northern Beaches Council**

**8th March 2018**

**Dear Sir**

**Submission regarding: 38 Stuart St Steps  
Section 96AA Modification Application to DA 261/08 (NSW Land & Environment Court (LEC)  
Proceedings No. 10997 of 2008)**

The following is a submission made in opposition to the above Modification to DA 261/08.

1. On 27 June 2017 Northern Beaches Council resolved to make a boardwalk around 38 Stuart St connecting the two public areas of the beach at Little Manly. The steps at 38 Stuart Street are in the way and so conflict with Council's own plan. The following is taken from MINUTES OF ORDINARY COUNCIL MEETING 27 JUNE 2017:

#### **"5.2 BACKGROUND**

##### **ADMINISTRATOR'S MINUTE NO 07/2017 - LITTLE MANLY**

During my current term as Administrator, I have had the opportunity to meet with residents and staff as well as attend a number of site meetings to discuss the future use of the public reserve located at the beachfront on Little Manly Beach.

Earlier this year the Council completed an upgrade to Little Manly Reserve with better gardens, connections and dinghy racks. The reserve is separated on land by a private residential property, but access between the two areas of the reserve can only be achieved by walking along the beach which isn't accessible to people with poor mobility or the road which is a much longer route and not desirable. A number of stakeholders have been advocating for a contiguous link on the beach side to link the two parts of the reserve without walking on the beach or road.

In understanding the issue, I have considered a number of factors including the need to improve the amenity and public use of the area as well as the impact of the buildings that are adjacent to the foreshore.

There have been a number of attempts by the former Manly Council to find a solution to this complex matter given that there is a private residence situated in the middle of the sections of the reserve, both of which front the beach and divide the public open spaces of the Little Manly foreshore.

I believe the best solution is to create a harbour side accessible link between the two sections of the reserve by building a boardwalk in front of the residence to connect the public spaces as well as providing an accessible link for the Manly Scenic Walkway. Council would need to set the boardwalk at a suitable level to consider the amenity and privacy of the private residence and would work closely with the owners to ensure this.

Further to this, I believe Council should look closely at the usage of the buildings owned by Council to

make the most of these important assets and enhance the entire public space area. Proposals that should be considered include the incorporation of a public café into 40 Stuart Street and community use for 34 Stuart Street such as the creation of an indigenous culture and education centre.

To this end, I propose Council develop a Masterplan for the area and conduct extensive community engagement. In preparing the Masterplan, staff will also take into account all the previous plans, concepts and feedback from the community as well as the amenity of the owner of the private residence.

This is a unique and very popular area and I have been convinced that we need to not only maximise its accessibility for use by the community and visitors to the area but develop a long term plan that will secure the future of this public asset.

113/17 RESOLVED D Persson

That Council:

- A. Build a boardwalk along the beachfront between 36 and 40 Stuart Street, Manly connecting the two public spaces known as Little Manly Reserve with work commencing in 2017/18.
- B. Develop a Masterplan for the entire Little Manly Reserve area to ensure maximum accessibility and the future use of this public asset, including consideration of the incorporation of a public café into 40 Stuart St and community use for 34 Stuart Street such as the creation of an indigenous culture and education centre.
- C. Ensure funding for the project and the development of the Masterplan are available within the budget for 2017-2018.”

2. Save Little Manly Beach Foreshore Inc took Manly Council to the Land and Environment Court because they tried to sell 34 and 36 Stuart St which are Council-owned. The LEC established that they are community land and that this area is important to the public interest. The steps at 38 negatively impact the community amenity at the beach. Little Manly is a public beach, 38 is in the middle of it and surrounded by public land. The steps are not on 38's land, they are on the beach which is public land.

3. The steps are on public land. It seems wrong for a Modification to a DA to relate to land not owned by the applicant.

4. The removal of the steps was a condition of the overall consent and was made in the Land and Environment Court. The Land and Environment Court is the highest authority in planning so its decision should stand particularly as it was agreed. The intention was very, very clearly to not allow steps. It seems wrong to put in a Modification in order to avoid complying with an agreed DA condition. This could set a dangerous precedent. There is nothing different now that would change that condition. The conditions were agreed on in Court on 7 Oct 2009, as follows:

**“Conditions**

84 The conditions are as generally agreed to between the parties. It is to be noted the landscape plan must be amended prior to the issuing of a construction certificate to show the red markings on exhibit F.

85 I have deleted conditions AS20(i) and (ii) and incorporated the changes to condition No. DA 1 to include: the deletion of both the existing and proposed stairs from the subject property to the beach; the requirement for the side boundary fence with number 36 to be a maximum height of 1.2 m for a distance of 18 m from the corner adjoining the beach; and the deletion of the timber screen and curved portion of the deck in the vicinity of the common boundary with number 36.”

5. The steps are only there because of a combination of two failures . Firstly the Land and Environment

Court directed the owners of 38 to remove the existing steps and this has not been carried out. Secondly Manly Council did not enforce the condition regarding the removal of the steps. It would be wrong for the property to gain a benefit by taking advantage of these two failures. It doesn't mean they are now entitled to keep the steps, that would be simply compounding the wrong-doing. The new Council should enforce the removal of the steps as per the original DA conditions and rectify the errors.

7. The DA clearly instructed the removal of the steps. The steps had never received council approval before. They have not been subject to a lease. They are not properly engineered. I do not think any DA should be modified to allow an illegal structure.

8. Putting in this section 96AA is a way of avoiding the DA condition to remove the steps. As currently 38 Stuart St does not comply with its DA, this should be rectified before any further Section 96 is submitted.

9. The owners of 38 want steps and they also want Council's boardwalk to be set low so they are not overlooked. Neither of these things is in the public interest, however Council has taken the owners concerns into account in the design of the boardwalk and 38 will not be overlooked. So Council has already agreed to some of the requests of the owner of 38. Therefore it would be reasonable to compromise and to not allow the steps as well.

#### 10. Regarding the Statement of Environmental Effects

The SEE contains a number of statements that are either inaccurate or misleading or wrong. I address each of these below.

(i) In section 4.2 there are two images and a statement:

"The existing stairs to be retained are shown in Figure 2. The existing stairs are also shown alongside similar stairs servicing the adjoining property at 40 Stuart Street, Manly, in Figure 3."

This incorrectly implies there are other private steps. 38 Stuart S is the only private property at Little Manly Beach. 40 Stuart St is now owned by Council. The stairs at 40 are to be removed to make way for the boardwalk. Neither set of stairs are properly engineered, neither has ever been subject to a lease with Council so essentially both sets of stairs are illegal.

(ii) Section 5.1 states:

"5.1 Section 96AA – Modification by consent authorities of consents granted by the court  
In accordance with Section 96AA of the Environmental Planning and Assessment (EP&A) Act 1979, Council may consent to the modification of a Development Consent if:  
“(a) 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), “

I would dispute that “it is substantially the same development “ because already 3 Section 96 modifications have been made, as stated in section 3. Therefore the modification does not comply with the EP&A Act 1979.

(iii) Section 6.4 states:

“6.4 Manly Local Environmental Plan (MLEP) 2013

The relevant clauses of MLEP 2013 have been considered and the proposed modification to the approved development will not affect compliance with the MLEP 2013. The amended condition will retain an existing stair. The stairs sit within land zoned RE1 Public Recreation.

Permitted in this zone are “Recreation areas”. A recreation area includes a “public park, reserve, or garden and the like”. Minor stairs are not in conflict with this land use designation, and the design and location of the stairs as they exist do not hinder the community use of the beachfront reserve.”

Firstly, the “existing stair” is only existing because it hasn’t been removed by the owner, i.e. the DA has not been complied with.

Secondly, if a recreation area includes a “public park, reserve, or garden and the like”, the stairs are not “the like”! and do conflict with the land use because they are a private obstacle that restricts recreation in a designated recreation area. Therefore the modification does not comply with MLEP 2013.

Thirdly, the location of the stairs does hinder the community use of the beachfront because they are on public land on the beachfront and prevent the public from walking on that bit of beachfront or from having a boardwalk on that exact bit of public beachfront land.

(iv) Section 6.6 states:

“6.6 Other Impacts

The stairs in question that are proposed to be retained, have been in existence for many years, even preceding the original development application subject of this modification application. It is also noted that other similar nearby stairs have also historically serviced adjoining properties.

.....the stairs satisfactorily blend into the natural setting.

The positioning and integration of the stairs within the existing dunes system ensures that they pose no interruption to public access to the beach.....

..... the retention of the existing stairs will not give rise to any adverse impacts upon the environment, or any adverse social or economic impacts.”

38 Stuart St is the only private property on the beachfront. All other steps are public property and may be used by the public except for those at 40 which are to be removed.

The stairs do not blend in as stated because they are not natural, they are a construction.

As mentioned before the stairs do interrupt access to that bit of beach and they would interrupt the route of the boardwalk. This is an adverse social impact.

(v) Section 6.7 states:

“6.7 Suitability of the Site

Noting the above assessment of the proposal, the site is considered suitable for the proposed development, and will have little impact on the amenity of surrounding properties or the public domain.”

Clearly, the stairs are on public land so certainly they prevent access to that bit of land and take away the

amenity of that bit of land.

(vi) Section 6.8 states:

“6.8 Public Interest

As noted above, the proposed modification will not result in any adverse impacts on the natural and built environments, or any adverse social or economic impacts. Furthermore, noting their construction and integration into the existing dune system, the retention of the existing stairs will not impact upon the public domain, particularly public access to the beach. Accordingly, the proposed modification is not considered to be contrary to the public interest.”

Similarly this statement is wrong. As already mentioned, there is an adverse social impact, the stairs do impact the public domain and public access and so the proposed modification is contrary to the public interest.

(vii) Section 7.0 states:

“7.0 Conclusion

The proposal is consistent with the statutory and policy framework applying to the site, and will not have any significant adverse impacts on adjoining properties or the public domain.”

This conclusion is wrong because the proposal is not consistent with the EP&A Act 1979 (see(ii)) or with MLEP 2013 (see (iii)). Also, it does have significant adverse impacts on the public domain.

I therefore feel that the proposal to modify the DA should be refused.

Thank you for considering this submission.

Yours faithfully