



northern  
beaches  
council

## Delegated Authority Report

2017/455763

<b>DA #</b>	212/2017
<b>Site Address</b>	9 The Corso, Manly. Lot 11 in DP 533958.
<b>Proposal</b>	Alterations and additions to the existing building.
<b>Officer</b>	Adam Croft

### **SUMMARY:**

**Application Lodged:**

11 September 2017

**Applicant:**

Chica Bonita Manly Pty Ltd

**Owner:**

Bresact P/L

**Estimated Cost:**

\$10,000.00

**Zoning:**

MLEP, 2013 – B2 Local Centre

**Heritage:**

Subject site is part of Heritage Item I106 and is located within the Town Centre Conservation Area.

**NSW LEC:**

N/A

**Notification:**

14 September 2017 to 3 October 2017

**Submissions received:**

No submissions received.

**Site Inspected:**

26 October 2017

**LEP (4.6) Variations proposed:**

N/A

**DCP Variations proposed:**

N/A

**Recommendation:**

Approval

**Subject Property and surrounding area**



The subject property is commonly known as 9 The Corso, Manly and legally known as Lot 11 in DP533958. The site is located on the south-eastern corner of Whistler Street and Market Place. The property has a frontage of approximately 9m to Whistler Street and Market Place. The property currently contains a multi-storey commercial building and is generally flat.

The surrounding area is characterised by commercial development.

### **Property Burdens and Constraints**

There are no burdens or constraints that would preclude the proposed development.

### **Site History/Background**

CD115/2016 – Fitout and change of use to restaurant – Chica Bonita – Approved.

DA46/2013 – Use of arcade area for outdoor eating area ancillary to existing Refreshment Room – Shops 9a and 9b – Approved.

DA318/2011 – Alterations and additions to an approved Café (Refreshment Room) including fit-out, increased number of seats from ten (10) to fifteen (15), removal of existing fixed window and installation of vertical bi-folding door, timber decking and signage – Shops 1 and 2 – Approved.

DA84/2010 – Part 2 – Section 96 to modify approved Shop fitout and change of use to a café (refreshment room) - Approved

DA84/2010 – Shop fitout and change of use to a Café (Refreshment Room) and signage – Shops 1 & 2 (also known as Shops 9A and 9B) – Approved.

### **Description of proposed development**

The proposal includes changes to windows and a removable timber deck.

### **Internal Referrals**

### **Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Heritage Comments**

Council's Heritage Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Environmental Health**

Council's Environmental Health Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Transport and Civil Infrastructure Assets**

Council's Road Assets Officer has commented on the proposal as follows:

*"Recommend refusal.*

*Proposal unnecessarily restricts access on pedestrian thoroughfare and creates pinch point at critical intersection of pathways. No details showing dimensions given hence unable to assess impact on accessibility for pedestrians.*

*Utilities (Telstra) located in proposed area to be covered by decking.*

*Assuming building façade is set back from property boundary to provide accessibilty for pedestrians."*

Following recent upgrades and widening of the footpaths around the subject site, Council's Road Assets Officer commented further as follows:

*"Widened footpath was done to accommodate pinch point. No objection to DA proposal proceeding. The structure may need to be designed in such a way to allow access to the Telstra pit under the decking."*

Assessing Officer's comment: A condition has been included to allow access to the telecommunication services pit to be retained.

### **Planning Comments**

#### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:**
  - (i) any environmental planning instrument, and**

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### **Manly Local Environmental Plan 2013**

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone B2 Local Centre**

##### **Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development retains the existing use.

- To encourage employment opportunities in accessible locations.*

The proposed development retains the existing employment opportunities.

- To maximise public transport patronage and encourage walking and cycling.*

Sufficient public transport options are available in the vicinity.

### **Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>4.</b>	<b>Principal Development Standards</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies Yes/No</b>	<b>Comments</b>
4.3	Height of buildings	10m	2.3m	Yes	N/A
4.4	Floor Space Ratio	2.5:1	No change proposed	N/A	N/A

### **Part 5 Miscellaneous Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>5.</b>	<b>Miscellaneous Provisions</b>	<b>Applies</b>	<b>Complies</b>	<b>Comment</b>
5.10	Heritage Conservation	Yes	Yes	Council's Heritage Officer had no objections to the proposed development.

### **Part 6 Local Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>6.</b>	<b>Local Provisions</b>	<b>Applies</b>	<b>Complies</b>	<b>Comments</b>
6.1	Acid Sulphate Soils	Yes	Yes/No	Class 4. Proposal complies with the clause.
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed works are minor and will have no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour, the Pacific Ocean or the Manly foreshore.

6.11	Active street frontages	Yes	Yes	The proposed development retains the existing use.
6.12	Essential services	Yes	Yes	Existing at the site.
6.13	Design Excellence	Yes	Yes	See comment below.

**Comment:**

Design Excellence

As the development includes external changes to an existing building within the Zone B2 Local Centre, this clause is applicable. The proposal is consistent with the Objective of Clause 6.13 (1) and is compliant with the provisions of Clause 6.13 (4). The proposed façade design encourages increased casual surveillance, is sympathetic to the setting, and exhibits high standards of design, materials, and detail. Additionally, Council's Heritage Officer had no objections to the proposal.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Manly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

**Part 3 General Principles of Development**

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Heritage – In Vicinity	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

**Comment:**

3.1 Streetscapes and Townscapes

Townscape

*Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

No increase to parking provision is proposed or required.

*Objective 5) To assist in maintaining the character of the locality.*

The proposed works are minor in scale and will not unreasonably impact the character of the locality.

*Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

The proposed deck does not extend significantly from the existing building line and will not unreasonably impact the safe movement of pedestrians throughout the area.

*Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposed development will have no unreasonable visual impact and will add to the visual interest of the façade within the townscape.

### **3.2 Heritage Considerations**

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

The proposed works are limited to minor changes to windows and a small removable timber deck. As such, the proposed development will have no unreasonable impact on the heritage values of the item or the Town Centre Conservation Area. Council's Heritage Officer had no objections to the proposal.

### **Part 4 - Development Controls**

Site Area: m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Setbacks	0m	0m	Yes

### **Part 5 - Special Character Areas and Sites**

<b>Special Character Areas and Sites</b>	<b>Applicable</b>	<b>Not Applicable</b>
Conservation Area	✓	
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

#### **Comment:**

##### **Conservation Area**

The subject site is a heritage item and is located within the Town Centre Conservation Area. The proposed development is considered to be in keeping with the character of the Conservation Area and Council's Heritage Officer had no objections to the proposal, as modified by the conditions of consent.

#### Foreshore Scenic Protection Area

The proposed works are minor and will have no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour, the Pacific Ocean or the Manly foreshore.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed development.

#### **79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

#### **79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

#### **79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development as modified by the conditions of consent will not have any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

#### **79C(1) (c) - the suitability of the site for the development,**

The proposed development as modified by the conditions of consent is suitable for the site.

#### **79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with no submissions received.

#### **79C(1) (e) - the public interest.**

The proposed development as modified by the conditions of consent will not have any unreasonable impact on the public interest.

#### **S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- (a) the dedication of land free of cost, or
  - (b) the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

#### **Comments:**

In this case, the proposed development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the dedication of land free of cost and the payment of a monetary contribution are not required.

#### **CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development



Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **approval**, subject to conditions.

## RECOMMENDATION

That Development Application No. 212/2017 for Alterations and additions to the existing building at 9 The Corso, Manly be **Approved** subject to the following conditions:-

## GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 212/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
Site Reference Plan	5 September 2017	NYA Group Pty Ltd
Proposed Works Plan	5 September 2017	NYA Group Pty Ltd
Shop Front Section Detail	5 September 2017	NYA Group Pty Ltd
Proposed External Elevation	5 September 2017	NYA Group Pty Ltd

*Reference Documentation relating to Development Consent No. 212/2017:*

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

### 2. 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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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 (DACPLB09)

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

### **ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

### **1 (2AP03)**

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

### **2 (2CD01)**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

### 3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

### 4 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

## **CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

### 5 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

### 6 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **ANS02**

Food and food preparation/storage areas being adequately protected from potential contamination during building works

Reason: To ensure food cannot be contaminated

### 7 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

### 8 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

*Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.*

#### 9 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

*Reason: To prevent disturbance to the surrounding community.*

#### 10 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person

or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

## **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

### **ANS03**

The proposed deck structure is to be constructed in a manner that allows for access to the existing telecommunication services pit at all times.

Reason: To ensure access to services is retained.

### **11 (6MS02)**

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.