

**ITEM 11. SECTION 96 APPLICATION: 33 SAUNDERS STREET PYRMONT**

**FILE NO: D/2005/348**

**SUMMARY**

**Date of Submission:** Application lodged 18 July 2008, amended 3 September and additional information received on 19 September 2008

**Applicant:** Eye Corp

**Summary:** This section 96 application seeks to modify condition 6 of the Development Consent to allow the 'eye' sign to be displayed for a further 3 years.

The application has been amended to reduce the hours of illumination from the approved 8.00am to 12 midnight, to 8.00am to 10.00pm.

The 'eye' sign was approved by delegation on 5 May 2005, after being amended. The amendment included a reduction in the size of the sign and the lettering was changed from acrylic with internal illumination to metal letters with neon tube lighting behind.

Condition 4 of the consent restricts hours of illumination to between 8.00am and 12 midnight, every day. Condition 6 of the consent restricts the sign to a 3 year period, which expired on 5 May 2008.

Notwithstanding the expiration of the 3 year period for the sign (condition 6), the consent is valid as it was activated by the installation of the 'eye' sign in 2005. Therefore, this application to modify the consent can be considered by Council.

The application was called in on the request of 3 Councillors.

One submission has been received relating to the size and illumination of the sign, loss of residential amenity and visual outlook and non compliance with planning controls, including Council's Signage and Advertising Structures Development Control Plan 2005 and State Environmental Planning Policy No. 64 – Advertising and Signage.

**Summary Recommendation:** The Section 96 application is recommended for approval, so as to allow the display of the 'eye' sign for a further 3 years.

It is also recommended that the hours of illumination be restricted to between 5.00pm and 10.00pm, 7 days a week.

**Development Controls:**

- (i) Sydney Local Environment Plan (LEP) 2005
- (ii) Urban Development Plan (UDP) for Ultimo – Pyrmont 1999
- (iii) City of Sydney Signage and Advertising Structures Development Control Plan (DCP) 2005
- (iv) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005
- (v) State Environmental Planning Policy 64 – Advertising and Signage
- (vi) City of Sydney Exterior Lighting Strategy

**Attachments:**

- A - Development Consent D/2005/348
- B - View from balcony of adjacent residential property at 120 Saunders Street, Pyrmont

**RECOMMENDATION**

It is resolved that consent be granted and Development Consent D/2005/348 be modified as shown in **bold italics** and ~~strikethrough~~ below:

(A) amend condition 4. to read:

4. The illumination of the sign ~~must cease at midnight is restricted to~~ **between 5.00pm and 10.00pm**, seven days a week. ~~No illumination may take place between midnight 10.00pm and 8am 5.00pm, on any given day.~~

(B) amend condition 6. to read:

6. The sign and any associated structure must be removed and the building/site reinstated, within a period of 3 years from the date of **this Section 96 modification** consent or on the termination of the subject lease of the premises whichever is the lesser. If the sign is to be retained after this **3 year** period, a new development application must be lodged **before** the expiration of the **3 year period consent**, for Council's consideration.

## **BACKGROUND**

### **The Site**

1. The site is located at the intersection of Saunders Street and Quarry Master Drive within an office park comprising of 2 x 5 storey commercial buildings at 33 Saunders Street, Pyrmont. The site is bounded by Saunders Street to the north, a 5 level commercial building to the east, Bank Street and the Western Distributor to the south and Quarry Master Drive to the west.



**Figure 1. Site Location Plan**

2. The commercial buildings immediately to the east and south of the subject building have illuminated building name signs identifying the main occupants as Network 10 to the east and Nova 96.9 FM to the south.
3. The site is situated at the interface of a mixed use area with residential developments to the north and west, including a 14 storey residential development known as 120 Saunders Street located opposite the sign to the west and approximately 25 metres away.
4. The site is not identified as a heritage item and is not situated within a heritage conservation area.



Figure 2. View of the sign from Quarry Master Drive



Figure 3. View from pedestrian/cycleway bridge linking Quarry Master Drive and the Western Distributor



**Figure 4.** View of site from pedestrian/cycleway bridge on the Western Distributor.

#### **History of Development Applications Relevant to this Site**

5. A Building Application (B/1998/346) for the construction of 2 x 5 storey office buildings with 2 levels of carparking and retail floor space was approved by the Department of Planning on 28 May 1998.
6. The original development application (D/2005/348) for the installation of one building name sign on the roof of the building fronting Quarry Master Drive and one ground level sign fronting Saunders Street was approved under Council delegation on 5 May 2005. This consent was subject to conditions restricting the consent to a 3 year period (from 5 May 2005 to 5 May 2008) and restricting the intensity and hours of illumination. The consent is at **Attachment A**.

#### **PROPOSAL**

7. The application is seeking to modify the consent so as to allow the retention of the 'eye' building name sign for a further 3 year period. The applicant has also proposed to reduce the hours of illumination by two hours (from an approved 8.00am to 12midnight to a proposed 8.00am to 10.00pm, every day). However, an assessment of the proposal has resulted in the recommendation to restrict the hours of illumination to between 5.00pm and 10.00pm, 7 days a week.

## **IMPLICATIONS OF THE PROPOSAL**

### **Section 96 Evaluation**

8. A Construction Certificate for the installation of the ground level sign and building name sign was issued by an accredited private certifier on 1 September 2005. Although this application to modify condition 6 of the consent, for the retention of the sign for a further 3 years, was lodged after the expiration date in condition 6 (5 May 2008), the application is valid as the consent has been activated by the erection of the sign, therefore the whole consent has not lapsed.
9. Council's Solicitor has confirmed that the condition can be modified pursuant to Section 96 of the Environmental Planning and Assessment Act 1979.
10. For the same reasons, Council's Solicitor has advised that although condition 6 states that a "development" application must be lodged, the Environmental Planning and Assessment Act 1979 also allows the owner to lodge a Section 96 application to modify the condition.
11. An assessment of the application has been made in accordance with Section 96 of the Environmental Planning and Assessment Act 1979. The proposed modification is considered to result in a development substantially the same as that originally approved.

### **Section 79C Evaluation**

12. An assessment of the application under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:

#### **Section 79C(1)(a) Environmental Planning Instruments, Draft Instruments DCPS**

13. In addition to the assessment below, the previous assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 are still relevant.

#### **Compliance with Sydney Local Environmental Plan 2005 – Ultimo/Pymont**

14. The site is within the Residential – Business zone and is permissible with consent.

#### **Compliance with Urban Development Plan for Ultimo Pymont 1999 Update (UDP)**

15. The proposal satisfies the principles and controls under sections 3.4.2 of the Urban Development Plan (UDP) and will not detract from or reduce the existing views available to occupants of the residential flat building directly opposite the site at 120 Saunders Street.
16. The approved sign satisfies the principles and controls for signage under section 4.5 of the UDP as the sign does not detract from the architectural character of the building and allows appropriate identification of Eye Corp, the principle tenant currently occupying levels 4 and 5 of the building. The sign does not contribute to visual clutter as there are no other roof signs on the building and is separated from the nearest building name sign at Nova 96.9 FM by approximately 37 metres.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

17. Given that no physical changes are proposed to the approved sign, the application satisfies the assessment criteria under Schedule 1 of the State Environmental Planning Policy No. 64 (SEPP 64) as per the assessment of the original application.

**City of Sydney Signage and Advertising Structures Development Control Plan (DCP) 2005**

18. Although the DCP states that the letters must be individually fixed to the building, the letters of the 'eye' sign are fixed to a backing board, which is then fixed to the building. However, this is acceptable in this instance as the backing board appears as an integral part of the building and the letters still read as individual, separate entities.
19. In addition, Eye Corp are entitled to a building name sign as the principle tenants of the building and the location, design, size, material and quality of the sign complies with the DCP.

**City of Sydney Exterior Lighting Strategy**

20. The sign is constructed of individual metal letters with two rows of neon tube lighting located behind each letter. This gives the effect of halo lighting around the edge of the letters, rather than the letters being wholly internally lit. The intensity of the illumination is generally acceptable as it does not result in the emission of direct light, detract from the architectural character of the building or adversely affect the amenity of surrounding residential properties.
21. The illuminated sign satisfies the objectives and provisions of the Strategy in that the lighting is integrated with the design of the sign, does not detract from the architecture of the building and the hours of illumination are restricted to minimise impact on the amenity of the adjacent residential development.
22. A lighting report prepared by Vince Cariola & Associates dated 18 September 2008 was lodged. This report assessed the level of illumination and impact against the relevant standards, such as AS4282 1995 for outdoor lighting for mixed use and residential areas. The standard permits a maximum level of light falling on surrounding residential windows of 1 lux. The illumination of the sign was measured at 0.032 lux which is approximately 30 times lower than the lux level permitted under the standard.
23. The lighting report was reviewed by Council's Lighting Contract Co-ordinator who supported the findings of the report and raised no objection to the application.
24. The original consent had taken into consideration the proximity of residential units at 120 Saunders Street and restricted hours of illumination to between 8.00am and 12midnight, 7 days a week. This application seeks to further reduce the approved hours to between 8.00am and 10.00pm, 7 days a week. However, given that illumination during the day is unnecessary and that the sign is easily visible without day-time illumination, it is recommended that the hours of illumination be further reduced to between 5.00pm and 10.00pm.

**Issues**

**Visual impact and residential amenity**

25. An objection has been received from a residential unit at 120 Saunders Street. The main issue from the objector appears to be the visual impact of the sign as viewed from the lounge room and balcony. The two photographs below show this view, both day and night.

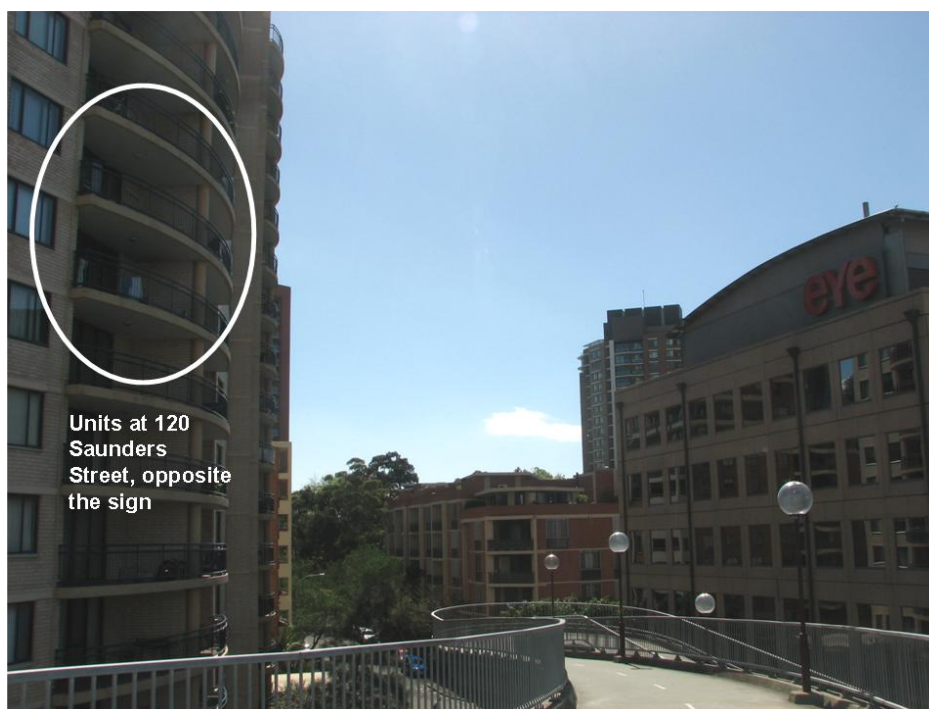


**Figure 5.** View of sign from main living area of adjacent residential property.



**Figure 6.** View of sign from adjacent residential property at night (photo provided by occupant)

26. The sign is approximately 25 metres from this unit. The photograph below shows the separation between the unit and the site. Although there is an impact, the photomontage at **Attachment B** shows that there is a wider, more expansive outlook and view enjoyed from the affected unit. The unit also has 2 habitable rooms with outlook to the east and south-east that do not have direct sightlines of the sign.



**Figure 7.** Separation between sign and 120 Saunders Street viewed from pedestrian/cycleway linking Quarry Master Drive and the Western Distributor.

27. The visibility of the sign from the objector's unit at 120 Saunders Street is increased during hours of illumination at night. However, the transmission of light from the sign does not result in an unreasonable amount of illumination as the letters are lit by halo lighting from behind the sign to prevent direct transmission of light through each letter.
28. These features, coupled with the recommended reduction in the hours of illumination (to between 5.00pm and 10.00pm) results in the sign being acceptable, on balance, and given that the area is a mix of residential and commercial uses.

#### **Section 79C(1)(b) Other Impacts of the Development**

29. The proposal will not result in any significant additional impacts other than those already identified and discussed above.

#### **Section 79C(1)(c) Suitability of the site for the development**

30. The site is suitable to host the sign.

#### **Section 79C(1)(e) Public Interest**

31. The proposal is generally consistent with relevant controls. The proposal will have no detrimental effect on the public interest, subject to conditions of consent.

## POLICY IMPLICATIONS

32. Not applicable to this report.

## FINANCIAL IMPLICATIONS/SECTION 94 CONTRIBUTIONS

### Section 94 Contributions

33. Not applicable to this report.

## PUBLIC CONSULTATION

### Section 79C(1)(d)

## EXTERNAL REFERRALS

34. Adjoining and nearby owners and occupiers of residential buildings were notified of the proposal and invited to comment in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications DCP 2005.

35. One submission was received. The grounds for objection are summarised as follows:

- (a) *The existing sign does not comply with the technical requirements or intent of section 3.3.14 (iii) of the City of Sydney Signage and Advertising Structures DCP 2005. The individual letters of the sign are not directly attached to the building.*

**Comment:** This concern has been addressed above.

- (b) *The existing sign does not comply with the assessment criteria under Schedule 1(2) of the State Environmental Planning Policy No. 64 (SEPP 64) and has an adverse impact on the visual quality and residential amenity.*

**Comment:** The existing sign was approved having consideration for the assessment criteria under Schedule 1 of SEPP 64. The sign has been erected and operating in accordance with the Consent granted on 5 May 2005. The approved sign and proposal to reduce the hours of illumination generally satisfy the requirements of SEPP 64 and will not have any additional impact on residential amenity.

- (c) *The illuminated sign is excessive, obtrusive and has an unacceptable impact on residential amenity.*

**Comment:** The size, design and scale of the sign is considered appropriate to the scale and architectural style of the host building. The sign will not have any additional adverse impacts on residential amenity as the metal lettering with neon tube lighting do not transmit direct light, complies with the illumination permitted under the Australian Standard AS 4282, and a further reduction in the permitted hours of illumination is recommended so that the sign can only be illuminated between 5.00pm and 10.00pm, every day.

(d) *The sign dominates the outlook from the residential unit opposite.*

**Comment:** A site inspection of the residential unit at 120 Saunders Street indicated that the main living areas and balcony of the unit are immediately opposite the sign, although the distance between the sign and the unit is approximately 25 metres. Notwithstanding this, the outlook from the unit and balcony extends beyond the roof level of the host building as shown in the photomontage at **Attachment B**. The sign does not unreasonably detract or reduce views of the city skyline and foreshore from this unit.

(e) *The subject application should be assessed by a full Council meeting.*

**Comment:** At the request of three Councillors, the application is being considered by Council's Planning Development and Transport Committee.

### **INTERNAL REFERRALS**

36. The application was referred to Council's Specialist Surveyor, Health Surveyor, Heritage Architect, Urban Designer, Building Services Unit and Lighting Contract Co-ordinator. No objection was raised to the retention of the sign.

### **RELEVANT LEGISLATION**

37. The Environmental Planning and Assessment Act 1979.

### **OPTIONS**

38. The Committee may or may not concur with the recommendation of this report.

### **CONCLUSION**

39. Although the sign is easily visible from the nearest affected unit, the distance between the sign and the unit is approximately 25 metres. Further, the sign only occupies a small portion of the whole outlook experienced from the balcony of the unit, as shown at **Attachment B**. Subject to the restriction of illumination to between 5.00pm and 10.00pm, the sign is acceptable. It is recommended that the consent is modified to allow the retention of the sign for a further 3 years.

### **GIOVANNI CIRILLO**

Director City Planning and Regulatory Services

(Peggy Wong, Specialist Planner)