

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

File No:	S03/01304
Application Number:	DA 148-04-2003
Date of lodgement:	8 April 2003
On land comprising:	Roof of building at 84 Union Street, Pyrmont, Lot 3, DP 868728 Pyrmont
Application made by:	Kerry Nash 131 Darling Street BALMAIN NSW 2041
Application made to:	Minister for Infrastructure and Planning
Local government area:	Sydney City Council
State electorate:	Port Jackson, Sandra Nori The views of the Member are not known.
Notification:	Advertised in Sydney Morning Herald on 5 May 2003
Public Exhibition	Three public exhibition periods occurred: Start: 6 May 2003 End: 27 May 2003 Start: 8 July 2003 End: 23 July 2003 Start: 24 July 2003 End: 7 August 2003
For the carrying out of:	Construction of a single storey 2 bedroom residential unit on the roof of an existing 4 storey commercial building
Estimated cost of works:	\$300,000
FTE Jobs created:	6-8 full time equivalent construction jobs
Type of development:	Advertised Development
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	Not Integrated
Main Issues:	Refer to attached page.
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered. On balance, it is considered that the proposed development is acceptable and that development consent be granted.
Applicant views on draft conditions:	Applicant expressed general support for proposed draft conditions.

Recommendation

It is recommended that the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended), clauses 7 and 14 of Sydney Regional Environmental Plan (SREP) No 26 – City West and clause 7 of State Environmental Planning Policy No.1:

- (A) **agree** that a Master Plan is not required for this application;
- (B) grant **consent** to the application subject to conditions (tagged “A”), and
- (C) authorise the Department to carry out post-determination notification.

Approved:

Robert Black
Director
Urban Assessments

Diane Beamer
Minister assisting the Minister for
Infrastructure and Planning (Planning
Administration)

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

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SUPPLEMENTARY INFORMATION

Proposed Development in detail

The proposed development seeks consent for:

- Construction of a two bedroom residential unit on the roof of an existing 4 storey commercial building.

Summary of Significant Issues

(1) *Environmental controls*

<i>Issue:</i>	The proposal does not conform to the 15 metre height control under Sydney Regional Environmental Plan (SREP) No. 26. – City West.
<i>Raised by:</i>	Three private submissions
<i>Consideration:</i>	The applicant provided an objection to compliance with this height control under State Environmental Planning Policy No. 1 – Development Standards.
<i>Resolution:</i>	The issue was considered in terms of the intention of SREP No. 26 and found on balance to be reasonable in this instance. Details of this consideration are provided in the attached tagged “C”. However, further exceedence of the height control in this area is considered to be inappropriate and is unlikely to be supported.

Assessment of the development application was delayed while issues relating to SREP No. 26 and BCA requirements were being resolved.



Planning Assessment Report Development Application

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1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number **Error! Reference source not found.**

The application seeks consent for construction of a single storey two-bedroom residential unit on the roof of an existing four storey commercial building.

The Minister for Infrastructure and Planning is consent authority under clause 14 of Sydney Regional Environmental Plan No. 26 – City West with reference to clause 40 of SREP No 26 and clause 6 of State Environmental Planning Policy No.1.

It is recommended that the development application be granted **consent**.

2 BACKGROUND

2.1 Site Context

The site is located on the roof of a four storey commercial development at 84 Union Street Pyrmont in the City of Sydney local Government area. The existing development lies in Lot 3 DP 868728. A site locality plan and photographs of the site are provided at tag “B”.

This site is within the original Mirvac “Gateway Site” – Pyrmont Bay. The Gateway Site has frontages to Union Street, Murray Street, Pirrama Road and Edward Street. It comprises the subject site, the light rail Pyrmont Bay stop, “The Gateway Apartments” and commercial offices fronting Pirrama Road.

The development is located at the intersection of Pyrmont Bridge Road and Union Street, between the former Goodman Fielder site (currently vacant), the Gateway Apartments and a row of terraces. It has a frontage of 33.6m to Union Street and a 7 metre right-of-way on its western boundary.

To the south of 84 Union Street (on the opposite side of Pyrmont Bridge Road) is 1 Pyrmont Bridge Road, a 9 storey residential apartment building, with retail at street level.

The Gateway site was the subject of a Master Plan adopted by the then Minister for Planning on 14 March 1995. The Master Plan expired on 14 March 2001 after being extended for 12 months past the original 5 year period. The development application was lodged with the Department on 8 April 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

2.2 Relevant approvals

Approval was granted by the former Minister on 1 May 1997 (DA 55/97) for a four storey commercial building with associated car parking and public domain. Mirvac sold the site to Chi Wan Development Pty Ltd, who lodged a subsequent DA (No. 222-10-99) for the

construction of a four storey commercial building for use as a restaurant and health club with associated services and car parking. This development was approved on 2 February 2000. In general, the bulk, scale and form of the building remained the same as that of the building approved under DA 55/97 apart from some minor changes to the design of the facades and the layout of the building. The proposed uses for the building were substantially different.

A s.96 modification was approved on the 18 April 2002 (to amend DA 222-10-99) for the conversion of the approved health centre over Levels 2 & 3 of the 4 storey commercial building for use as commercial office space. The restaurant function room on Level 1 was also converted for office use however the approved restaurant on ground floor level was retained. Other minor internal modifications included changes to lift lobbies & fire stair and layout modifications of toilet and kitchen amenities.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for construction of a single storey two-bedroom residential unit on the roof of an existing four storey commercial building at No. 84 Union Street, Pyrmont.

3.1 Amended plans and submission

On 24 March 2004 the applicant submitted amended plans the application incorporating: -

- adjustments to the eastern façade in response to Council concerns.

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken, and it was confirmed with the applicant that the amended plans had been accepted.

A submission was also received from the applicant regarding a request to waive the need for a master plan. The original master plan had incorporated the Gateway Site of which the site of the present application is one allotment. This submission was reviewed as described in more detail in section 4.3. On balance it is recommended that a master Plan be waived in this instance.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The proposal lies with Sydney Regional Environmental Plan (SREP) No. 26 - City West in the Ultimo-Pyrmont Precinct. The land over which this proposal is made is zoned residential-business.

Permissibility within this zone is dependent on a number of factors identified in clause 18 of the SREP:

1. permissible uses within this zone are those which the consent authority is satisfied are generally consistent with one or more of the zone objectives;
2. consent is to be granted to development within this zone only if the consent authority is satisfied that carrying out the proposed development will be

consistent with the planning principles for the relevant precinct and for City West, particularly residential provision and amenity;

3. residential development within this zone is not to be located or designed so that the amenity of the development is adversely affected, by adjoining or nearby use, to a level that is considered inappropriate by the consent authority due to excessive noise or odour or any similar environmental impact;
4. residential development (other than for the purpose of dwellings for employees of a business use located on the same site) is prohibited on land within this zone that is identified by the words "Non-Residential Development" on Map 6.

In terms of these requirements:

1. the proposed development is generally consistent with the following zone objectives from clause 18 of SREP No. 26 as the proposal would accommodate residential development to a level compatible with adjoining business uses and consistent with the objective of creating a mixed use area;
2. the proposal within this zone would be consistent with the planning principles for the relevant precinct and for City West, particularly residential provision and amenity. A full discussion is provided in the attachment tagged "C";
3. There is no adjoining or nearby use that would adversely affect this development;
4. The proposal would be the residence of a paid employee Mr Lepouris of Mathew Lepouris Pty Limited. In support of the claim that Mr Lepouris is an employee of that company, the applicant has supplied:
 - a copy of the Certificate of Incorporation on Change of Name of Company from Glarmon Pty Ltd to Matthew Lepouris Pty Ltd dated 21 April 1971; and
 - a copy of Australian Tax Office PAYG Payment Summary for the year ending 30 June 2003 for Matthew Lepouris indicating gross salary and income tax paid as an employee of Matthew Lepouris Pty Ltd.

The development application would therefore fall within the exception to the prohibition on residential development in the last paragraph of clause 18 and could be determined by consent.

The proposal is therefore considered to be consistent with the relevant criteria of SREP No. 26 regarding permissibility and is considered to be permissible with consent.

4.2 Instrument of consent and other relevant planning instruments

Under clause 14 of SREP No. 26, the Minister for Infrastructure and Planning is the consent authority for the proposal.

SEPP 1 Objection

Under State Environmental Planning Policy (SEPP) No. 1 – Development Standards, the applicant lodged an objection to a height control contained within SREP No. 26 which applies to the site.

In accordance with section 79B(2) of the *Environmental Planning and Assessment Act*, the Minister as consent authority must consult the Director-General. As the Sydney Region East team has delegation to address issues relating to SEPP No. 1 objections on behalf of the Director-General, the team was consulted on this proposal. The

Sydney Region East team indicated that the proposal would need to be justified on the basis of urban design principles as it did not conform to the original Gateway Masterplan (tag “D”).

Also, with reference to the SEPP 1 objection, certain matters are to be considered. These matters and their consideration are set out in the attachment at tag “C”.

In summary, it was considered that:

- There is no matter raised through this proposal that is of State or regional significance; and
- strict compliance with relevant planning controls in this instance would be unreasonable however, further exceedence of the height control in this area is considered to be inappropriate and is unlikely to be supported.

In consultation with the Director-General, it is therefore recommended that an objection under SEPP 1 may be accepted in this instance.

4.3 Planning context

The proposal is located in an area for which a Master Plan is required. The original Master Plan for this area has lapsed. The Applicant provided a request to waiver the requirement for a new Master Plan.

Master Plan waiver

A Master Plan was adopted by the then Minister for Planning on 14 March 1995 and expired on 14 March 2001 after being extended for 12 months past the original 5 year period under the then in force clause 46.

The Applicant requested that the requirement for a Master Plan be waived for this application. The DA seeks that the master plan requirements be waived in this instance as:

- the proposed development is relatively minor in nature; and
- complies generally with the applicable zone objectives.

Under clause 40 of SREP No. 26, the Minister may waive compliance with the requirement that a Master Plan exists “because of the nature of the development concerned, the adequacy of other guidelines that apply to the proposed development or for such other reason as the Minister considers sufficient”.

The proposal has been assessed through the objectives of SREP No. 26 (tag “C”). In general, the proposal conforms to the majority of the objectives except the height control. Similarly, with reference to the lapsed Master Plan for the Gateway Site, the proposal would generally conform except for the height control. This issue has been considered under the SEPP 1 objection above. It is therefore recommended that the need for a Master Plan be waived in this instance.

4.4 Public consultation

The application was notified, in accordance with the Regulations and cl.51 of SREP No. 26:

Notifications – landowners/occupiers	Written notification was made to 36 local property landowners identified as within an area in the vicinity of the proposal together with a letter box drop made on 9 May 2003 to the blocks bounded by Edward Street, Pirrama Road, Murray Street and Bridge Road and
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	development on the southern side of Bridge Street with views to the north east.
Newspaper advertisements	Advertised in Sydney Morning Herald on 5 May 2003
Site notices	Site notice was placed on at ground level at No. 84 Union Street on 9 May 2003.
Exhibition dates	Three public exhibition periods occurred: Start: 6 May 2003 End: 27 May 2003 Start: 8 July 2003 End: 23 July 2003 Start: 24 July 2003 End: 7 August 2003
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ City of Sydney One Stop Shop, 456 Kent Street Sydney

Five submissions were received regarding the Application. A summary of submissions is at the attachment tagged “E”. Issues are considered in Section 5.2 of this report.

4.5 Referrals

4.5.1 Integrated Approval Bodies

The application is not integrated.

4.5.2 Council

The application was referred to the City of Sydney Council on 6 May 2003 in accordance with cl. 52 of SREP No. 26. Council responded on 23 June 2003. Issues raised by Council as building requirements are discussed in Section 5.2 of this report. Council’s full submission is at the attachment (tagged “F”).

4.5.3 Other Agencies

Sydney Water Corporation

Sydney Water indicated the Applicant would be required to obtain a section 73 Compliance Certificate under the Sydney Water Act 1994 (file phone note 13 February 2004). This requirement has been incorporated in the recommended conditions.

5 CONSIDERATION

5.1 The Environmental Planning & Assessment Act, 1979

5.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Environmental Planning and Assessment Act 1979 as attached at tag “C”. In particular, the proposal was considered in relation to the requirements of Sydney Regional Environmental Plan No. 26 – City West, State Environmental Planning Policy No. 1 (under clause 6) and Ultimo-Pymont Precinct Urban Development Plan. Issues are discussed below in Section 5.2, and, where relevant, a detailed assessment is provided as noted in the table below.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 5.2.

On balance, the proposed development is considered to be in the public interest.

5.2 Issues

5.2.1 Environmental controls

- Issue:** The proposal does not conform to the 15 metre height control under Sydney Regional Environmental Plan (SREP) No. 26. – City West.
- Raised by:** Three private submissions
- Consideration:** The applicant provided an objection to compliance with this height control under State Environmental Planning Policy No. 1 – Development Standards.
- Resolution:** The issue was considered in terms of the intention of SREP No. 26 and found on balance to be reasonable in this instance. Details of this consideration are provided in attachment “C”. However, further exceedence of the height control in this area is considered to be inappropriate and is unlikely to be supported.

5.2.2 Adverse effects of view from nearby residential flat developments

- Issue:** Views across the top of No 84 Union Street would be obstructed by the development
- Raised by:** Four private submissions
- Consideration:** The original approval for the building, DA 55/96, provided a plant room on the roof top. This room would cover the central third of the roof area when viewed from the front façade and extend from behind the parapet for most of the depth of the building. It is anticipated that the room would have affected the same nearby residential units as would be affected by the residential unit.
- Resolution:** The approved plant room was not built. The residential unit is marginally higher than the approved plant room and would affect the same nearby residential units. Minor changes to the footprint of the proposal to accommodate BCA requirements have marginally reduced this impact.

5.2.3 Effect on general amenity

- Issue:** The visual effect of the style of the proposal when viewed from nearby residential units and from the street may not be in keeping with the styles of nearby development
- Raised by:** Private submission
- Consideration:** The building proposed would vary in style from the plant room style originally approved. However, the building exterior would consist of repeated horizontal screens visually broken up with vertical bi-fold doors. Finishes would be in neutral tones.
- Resolution:** As well as addressing the visual effects in this manner, landscaping would be used between the residential unit and the edge of the parapet.

5.2.4 Privacy

- Issue:** View from the development would be directly into residential unit across Pyrmont Bridge Road
- Raised by:** Private submission
- Consideration:** This potential had been identified by the Applicant and landscaping was proposed to reduce access to the edge of the parapet and overlooking. Further reduction was achieved through compliance with BCA

requirements on the eastern side of the proposal.
Resolution: Some reduction of this impact was provided by the Applicant. Further reduction has been required in the recommended conditions accompanying this report.

5.2.5 Compliance with environmental controls

Issue: General requirements regarding compliance with Building Code of Australia provisions, finishes and certificate requirements were identified to ensure complying development was undertaken
Raised by: Sydney City Council
Consideration: The issues were integral to the development proposal
Resolution: The issues were passed to the Applicant and have been addressed. The recommended Conditions of Consent also address these issues.

6 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in s79C of the Act. The application is not for integrated development.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

A consideration has been made as to whether a master plan is required and it is recommended that no such plan is required in this instance.

On balance, it is considered that the proposed development is acceptable and should be approved.

7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 12 July 2004. The applicant responded on 12 July 2004 indicating that the draft conditions were acceptable.

8 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 14 of Sydney Regional Environmental Plan (SREP) No 26 – City West with reference to clause 40 of SREP No 26 and clause 7 of State Environmental Planning Policy No.1:

- (A) **agree** that a Master Plan is not required for this application;
- (B) grant **consent** to the application subject to conditions (Tagged “A”), and
- (C) authorise the Department to carry out post-determination notification.

For Ministerial Approval

Izlem Boylu
Team Leader, Urban Assessments

Robert Black
Director, Urban Assessments