

OUTDOOR
MEDIA
ASSOCIATION

Submission to Draft Amendment to North Sydney DCP

Advertising & Signage

**OUTDOOR
MEDIA
ASSOCIATION**



“The Out-of-home industry can play a role in enhancing, not detracting from, the visual amenity of NSC’s streetscapes. The OMA encourages the NSC to guide positive outcomes and allow sufficient flexibility to promote creativity, innovation and utility in signage.”

CHARMAINE MOLDRICH
CEO, OUTDOOR MEDIA ASSOCIATION

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EXECUTIVE SUMMARY

The Outdoor Media Association (OMA) appreciates the opportunity to provide comments on the draft amendment to the North Sydney Development Control Plan (DCP) 2013 — Advertising and Signage (the draft amendment).

The OMA has undertaken a detailed review of the draft amendment, and finds that its adoption is compromised by Council's failure to 'consult with the advertising industry and local businesses'.¹ Furthermore, many of the provisions in this draft amendment are outside the scope of a DCP, the purpose of which is to 'provide guidance on development' and 'facilitate development'.² In fact, the proposed development controls:

- Are inconsistent with higher planning instruments and policies
- Place at risk the successful commercial operation of businesses in North Sydney
- Do not adequately respond to emerging technology and industry best practice, and fail to incorporate the flexibility to respond to urban change over time.

On 13 February 2017, the OMA met with representatives from the North Sydney Council (NSC) Planning Team on this matter. At that meeting, the Planning Team acknowledged that certain planning controls within the draft amendment were not adequately justified by evidence or precedence. It was further acknowledged that references made to the *City of Sydney 2015 DCP – Signs and Advertising* related to a draft version of this document, despite it being changed significantly before its final release. While the OMA understands that NSC's intention is to provide improved guidance for digital advertising signs, it is the strong view of the OMA that the controls included will not achieve positive outcomes for the Local Government Area (LGA).

The Out of Home (OOH) industry can play a role in enhancing, not detracting from, the visual amenity of NSC's streetscapes. The OMA encourages the NSC to guide positive outcomes and allow sufficient flexibility to promote creativity, innovation and utility in signage. The OMA is confident that by modifying the draft amendment in line with its recommendations, the updated DCP can meet the needs of all community members.



While the NSC has assessed the financial implications of this DCP to be 'Nil', the OMA strongly disagrees. OMA members are significant contributors to the Australian economy. The OOH industry adds approximately \$646.8 million to Australian GDP each year,³ and supports 3,100 full-time equivalent jobs.⁴ Not only does this signage provide a revenue stream to governments in rent and taxes, OMA members save NSC money, through the construction and maintenance of essential community infrastructure such as bus shelters.

As the peak national industry body representing 90% of Australia's OOH industry, the OMA and its members are vital stakeholders in any move by the NSC to redraft this DCP. We look forward to engaging closely with Council to ensure that this DCP provides positive guidance on signage development in the North Sydney LGA.

¹ SEPP 64 Clause 29 (2) – requirements for an 'advertising design analysis'

² NSW Environmental Planning and Assessment Act 1979

³ Deloitte Access Economics, *Out-of-Home Adds Value*, February 2017

⁴ Deloitte Access Economics, *Out-of-Home Adds Value*, February 2017

EXECUTIVE SUMMARY (continued)

The OMA considers the following modifications to the draft amendment necessary in order for the industry to continue to operate successfully in the North Sydney LGA.

Overarching Recommendations

- 1 Modify the draft amendment to align with higher level planning instruments. It is currently inconsistent with *State Environmental Planning Policy No. 64* (SEPP 64) and associated guidelines, and NSC's *Local Environment Plan* (LEP) 2013. This presents a legal issue for NSC (refer Attachment 1).
- 2 Assess the impact of the draft amendment on the OOH industry and the economy, and revise the NSC assessment of 'Nil' financial implication.
- 3 Modify the approach of the draft amendment to focus on merit based controls to enable the Council to benefit from emerging technology and opportunities presented by the industry. Vision led, future focused guidelines will ensure NSC does not deter upgrades to existing signage and embraces the smart city movement.

Specific Recommendations

- 1 Change the wording of Clause 9.1.1, General Objectives, to reflect the policy aims of SEPP 64 (Part 1, Clause 3(1)(a)) to ensure that signage:
 - (i) *is compatible with the desired amenity and visual character of an area, and*
 - (ii) *provides effective communication in suitable locations, and*
 - (iii) *is of high quality design and finish*
- 2 Delete the negative language in Clause 9.2.2 regarding General (third-party) advertising signage, labelling it as having '*adverse impact upon the streetscape*' and as '*undesirable*'. Replace this with positive guidance on opportunities for general signage to contribute to the economy and the community.
- 3 Amend height restrictions in Clauses 9.6 and 9.12 to add flexibility, clarifying '*that the height of an advertising sign should be appropriate for its position and location*'.
- 4 Change Clause 9.6, P7 to 15 years for the duration of consents for advertising signs for consistency with SEPP 64 (Part 3, Division 2, Clause 14).

- 5 Delete new Clause 9.6, P8 which states that strata subdivision is not permitted. This prohibition upon subdivision cannot be imposed by a DCP as such a provision is inconsistent with the LEP (Clause 2.6) and, as such, has no effect.
- 6 Delete Clause 9.10, P1 and adopt the draft transport corridor guidelines for luminance controls. *The Disability Discrimination Act* (DDA) requires bus shelters to be illuminated at night.
- 7 Delete Clause 9.12, P1 which states '*general advertising is generally not permitted*' as this provision is not sanctioned by s74c(1)(a) of the EPA Act. Moreover, it is inconsistent with the LEP which renders signage as permissible development in a number of land use zones.
- 8 Change Clause 9.12, P4 to match the provisions for the size of advertising signs in SEPP 64 (Part 3, Division 3, Clauses 17-19).
- 9 Amend Clause 9.12, P8 to reflect the dwell times recommended by The Draft Transport Corridor Guidelines as follows:
 - 10 seconds under 80km/hr.
 - 25 seconds over 80km/hr.The industry will not accept the current proposal for a five minute dwell time.
- 10 Delete Clause 9.12, P10 for a minimum of 15% of messages displayed on digital signs over a one month period dedicated to community messaging. Council cannot lawfully impose, as a condition of granting development consent, such a requirement. The industry is prepared to challenge this requirement in Court.
- 11 Delete Clause 9.12, P11 which states that advertising on bus shelters is only permissible if it meets a public benefits test. Bus shelters are constructed and maintained by OOH companies free of charge to local councils in return for the right to place advertising on the structures. Their very existence meets a public need so this provision is extraneous.

UNLIMITED UNLEASHED

“Advertising and signage is a prominent feature of the skyline and streetscape in North Sydney... and... is an integral part of the streetscape in commercial centres, shopping villages and mixed use areas, providing information to people on business locations, products and services.”

NORTH SYDNEY DCP
NORTH SYDNEY COUNCIL

01 INTRODUCTION

1.1 About Out of Home

Outdoor Media Association (OMA) members advertise third-party⁵ products on digital and traditional signs across a variety of Out of Home (OOH) formats and locations, including airports, bicycle stations, billboards, buses, bus stations, cafés, doctors’ surgeries, free-standing advertisement panels, medical centres, office buildings and lifts, pedestrian bridges, railway stations, shopping centres, taxis, trains, trams, universities and street furniture (bus/tram shelters, public toilets, telephone booths and street kiosks). The OMA does not represent companies displaying on-premise⁶ advertising signage.

1.2 Economic Contribution of the OOH Industry

OMA members make significant economic contributions to government and the community:⁷

	Each year, OOH contributes close to \$647 million to Australia’s GDP and supports 3,100 jobs.
	Most OMA members are Australian owned and operated, with profits going back to the Australian economy.
	The industry provides a revenue stream to government, returning \$1 in every \$2 of revenue in rent and taxes.
	In 2015, OMA members donated \$34 million across 160 charities.
	The industry delivers essential services and savings; OOH built and maintains \$352 million of public infrastructure.
	The 17,664 pieces of public infrastructure delivered by OOH make our cities more user-friendly – the industry is investing in innovation and providing digital utility such as Wi-Fi and wayfinding services.
	The OMA’s members operate a gold standard of safe and well-designed signs, which only display appropriate advertising content that complies with the self-regulatory codes such as the Australian Association of National Advertisers Code of Ethics and the Alcohol Beverages Advertising Code.

1.3 About the Outdoor Media Association

The OMA is the peak national industry body that represents 90% of Australia’s traditional and digital OOH media display companies and production facilities, as well as some media display asset owners.

Part of the role of the OMA is to develop constructive relationships with State and Local Governments and to help develop policy and regulation for Outdoor advertising that is fair and equitable to governments, the community and the industry.

On behalf of its members, the OMA advocates for planning systems across Australia which deliver the following outcomes:

- The recognition of OOH advertising signage as a legitimate land use.
- Provision of proactive, fair and reasonable development standards that are appropriate for signage land use.
- Provision for the responsible display of OOH advertising signage within urban centres and along transport corridors.

OMA members currently have 12 large format advertising signs within the NSC LGA and only two of these are digital signs. OMA members also advertise on non-heritage bus shelters within the LGA.

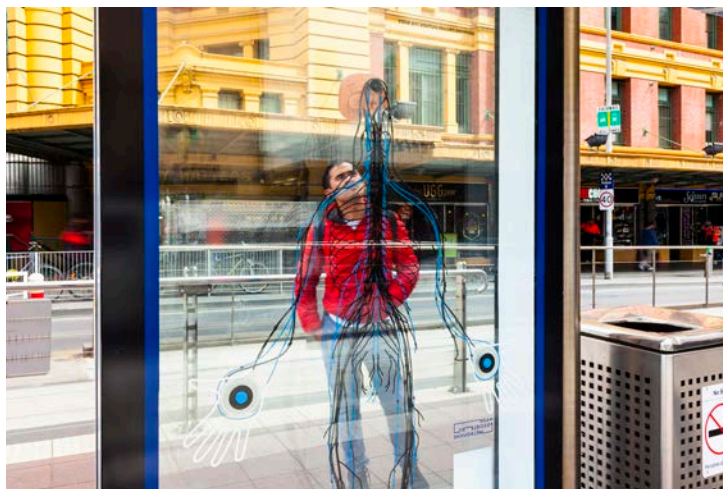
The industry’s aim is to deliver high quality, well designed and innovative signage that provides economic and utility benefits to communities. It is not in the interest of OMA members to have a proliferation of signs in any one area.

⁵ A sign advertising goods and/or services not associated (sold, stored or manufactured) on the site/premise on which the advertising sign is located.

⁶ A sign advertising goods and/or services sold, stored or manufactured on the site/ premise on which the advertising sign is located.

⁷ Deloitte Access Economics, *Out-of-Home Adds Value*, February 2017

01 INTRODUCTION (continued)



1.4 North Sydney Council's Position

The Draft Amendment to the North Sydney DCP (draft amendment) relates specifically to Section 9 – Advertising and Signage of the 2013 DCP (the DCP).

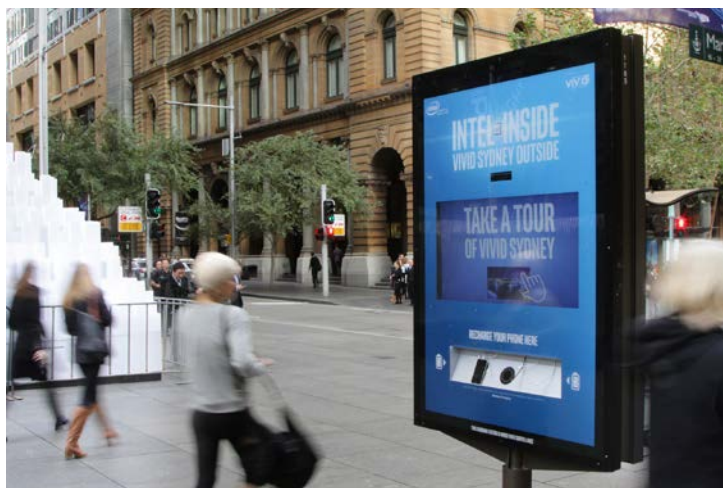
Section 9.1 of the DCP acknowledges that:

“Advertising and signage is a prominent feature of the skyline and streetscape in North Sydney... and... is an integral part of the streetscape in commercial centres, shopping villages and mixed use areas, providing information to people on business locations, products and services.”

The OMA supports the following General Objectives of the DCP (which are unchanged in the draft amendment) which are to ensure that signage:

- O2 Does not detract from significant views, vistas and sensitive streetscapes;
- O3 Adds character to the streetscape and complements the architectural style and use of buildings;
- O7 Minimises impacts upon the safety of drivers and pedestrians.

However, overall the draft amendment does not treat signage as ‘an integral part’ of the Council area. The OMA is greatly concerned with several sections of the draft amendment. In the following pages, the OMA details its concerns along with recommendations to address them.





“The economic and social contributions of the OOH industry are significant. The OOH industry returns 50% of its profits to government and other landlords through rent and taxes.”

CHARMAINE MOLDRICH
CEO, OUTDOOR MEDIA ASSOCIATION

02 OVERARCHING ISSUES WITH THE DRAFT AMENDMENT

2.1 The draft amendment is inconsistent with higher order planning regulations

The draft amendment is inconsistent with other higher level state and local planning instruments. This presents a legal issue for NSC and may lead to costly litigation for both Council and the industry through the Land and Environment Court. This is not in the interests of any of the parties involved. The industry believes such challenges to the lawfulness of the proposed draft amendment will be avoided if it is modified to reflect higher level planning instruments. The OMA has received legal advice about the lawfulness of the draft amendments (refer Attachment 1).

State Environmental Planning Policy No 64 (SEPP 64) provides the regulatory framework for the planning and development of Outdoor advertisements in State transport corridors in NSW. SEPP 64 clarifies that consent can only be given for roof or sky signage and for signage larger than 45sqm if there is a development control plan in place that has been prepared ‘on the basis of an advertising design analysis’. Council indicates in the draft amendment that it will ‘phase out’ these signage types. Yet this has no legal power given Council has failed to ‘consult with the advertising industry and local businesses’,⁸ a key requirement for an advertising design analysis.

The NSW EPA Act defines the scope of a DCP. Many of the provisions of the draft amendment are outside the scope of a DCP, the purpose of which is to ‘provide guidance on development’ and ‘facilitate development’.⁹ The controls also conflict with the *Transport Corridor Outdoor Advertising and Signage Guidelines* (the transport corridor guidelines) which were developed by the NSW Roads and Maritime Services (RMS) to provide additional guidance for the development and operation of roadside signs to protect the safety of drivers and pedestrians in NSW. The OMA worked closely with the NSW Government to develop SEPP 64 and the transport corridor guidelines, including the proposed 2015 update to address digital signage.

In addition, the draft amendment contradicts the *North Sydney Local Environmental Plan (LEP) 2013* which permits signage with consent in the following LEP zones:

- Zone B1 Neighbourhood Centre
- Zone B3 Commercial Core
- Zone B4 Mixed Use
- Zone IN2 Light Industrial
- Zone IN4 Working Waterfront

Signage is defined in the LEP as “any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following:

- (a) An advertising structure,
- (b) A building identification sign,
- (c) A business identification sign,

but does not include a traffic sign or traffic control facilities”.

Recommendation

Modify the draft amendment to align with the following higher level planning instruments: *State Environmental Planning Policy No 64 (SEPP 64)*, the *Draft Transport Corridor Outdoor Advertising and Signage Guidelines* (the draft transport corridor guidelines), and the *North Sydney Local Environment Plan (LEP) 2013*.

2.2 The NSC has not adequately assessed the financial implication of the draft amendment based on its impact on the OOH industry

In its current form, the draft amendment will detract from the ability for sign owners, landlords and businesses to maintain economically viable and sustainable business operations. By limiting the advertising spaces available, many integral community members will be affected including local businesses, tourism operators and charities.

The OOH industry in NSW employs over 525 full-time staff and indirectly employs many more including tradespeople, installers and printers.¹⁰

The economic and social contributions of the OOH industry are significant. The OOH industry returns 50% of its profits to government and other landlords through rent and taxes. The industry has also built, and continues to maintain, over 17,000 pieces of essential community infrastructure around Australia.¹¹ The provision of bus shelters, park benches and pedestrian footbridges is a substantial saving to local governments like NSC. These contributions are funded by the advertising concessions. Given the draft amendment will have significant impact on these advertising contracts, to assess its financial impact as ‘Nil’ is inaccurate and the OMA encourages NSC to correct this information.

Recommendations

Assess the impact of the draft amendment on the OOH industry and the economy, and revise the NSC assessment that it has ‘Nil’ financial implication.

⁸ SEPP 64 Clause 29 (2) – requirements for an ‘advertising design analysis’

⁹ NSW Environmental Planning and Assessment Act 1979

¹⁰ Deloitte Access Economics, *Out-of-Home Adds Value*, February 2017

¹¹ Deloitte Access Economics, *Out-of-Home Adds Value*, February 2017

02 OVERARCHING ISSUES WITH THE DRAFT AMENDMENT (continued)

2.3 Misunderstanding of digital technology and failure to recognise the positives of the Smart Cities movement

The draft amendment relies on the assumption that electronic signs have a more negative visual impact than traditional signage. In fact, digital signage can be more visually discrete than traditional signage as it adapts to ambient light levels. It is also more economically viable to make digital screens available for community messaging due to the incorporated changeability of the medium. In effect, one sign can take on the role of many in less space.

As our populations become more urbanised, technology is enhancing OOH, making it the primary media channel that connects people with places. The OOH industry is investing in innovation and smart city technology, with over 11,000 OOH panels fitted with digital technology. These panels provide digital connectivity to communities and can promote way finding and place making. Digital panels also provide opportunities for real-time emergency messaging.

Digital signage is a central feature of many of the world's leading urban centres, and the OMA sees that the OOH industry can help deliver the objectives of the Council's *North Sydney Centre Review*¹² to grow North Sydney Centre:

"...into a more attractive, sustainable and vibrant place for residents, workers, businesses and visitors."

The proposed Ward Street Precinct Masterplan¹³ demonstrates the NSC's positive approach to creating a vibrant and engaging urban hub (NOC Square) as a recreation and exhibition space, and a gathering place for the community. There is great potential for digital signage to contribute to the Council's plans to reinvigorate the heart of North Sydney. In fact, the OMA notes that the proposed Ward Street Precinct Masterplan features a colourful art/media wall in NOC Square.

"The important thing about advertising is this notion of connectivity. You're connecting, you're adding colour, you're adding messaging to that placemaking."

GARY WHITE — Chief Planner for NSW

In addition, the controls will not achieve best practice in terms of visual amenity and do not adequately respond to emerging technology and industry aspirations, nor do they incorporate flexibility to respond as streetscapes and precincts change. This could lead to a situation where signs within NSC are outdated.

In 2011, Nielsen conducted a survey¹⁴ on public sentiment regarding OOH, with respondents demonstrating positive attitudes towards signage. In light of these findings, the OMA requests that the NSC take note of the positive public sentiment towards OOH and reflect that people want to see modern signage in urban areas. In 2014, the City of Sydney conducted 'Perceptions Research', surveying residents, commuters, and tourists about OOH signage. This is a sample of responses from the participants on digital signage:

"Really modern."

"It'll get people off their mobile phones."

"Would make the city look alive."

"The New York ones are stunning."

"Those ones in Times Square were so clever."

"Better than going past the same poster all the time. At least it's changing all the time."

OMA's members contribute to the status of urban areas as vibrant and energetic places. The community expects to see advertising: Part of that expectation is the use of modern exciting signage and advertising that complements the feel of the city and adds to its energy.

Recommendation

Modify the approach of the draft amendment to focus on merit based controls, to enable the Council to benefit from emerging technology and opportunities presented by the industry. Signage can play an important part in modern society, particularly in way-finding, placemaking and urban renewal. Vision led, future focused guidelines will ensure NSC does not deter upgrades to existing signage and miss out on the smart city movement.

¹² https://www.northsydney.nsw.gov.au/Building_Development/North_Sydney_Centre/North_Sydney_Centre_Review

¹³ https://www.northsydney.nsw.gov.au/Projects_Infrastructure/Planning_frameworks/Ward_Street_Precinct_Masterplan

¹⁴ Nielsen Independent Study Results Summary 2011, prepared for OMA by Nielsen



SONY

Colour is the new black

Television with incredible contrast, real-life colours and exceptional 4K detail

4K HDR
HIGH DYNAMIC RANGE

LOW CLEARANCE
4.7m

DAILY MINIMUM

“Signage should be visually interesting and integrated with the architecture of the building.”

NORTH SYDNEY DCP
NORTH SYDNEY COUNCIL

03 SPECIFIC ISSUES WITH THE DRAFT AMENDMENT

This section identifies specific issues with the draft amendment that the OMA has identified as requiring further consideration by NSC.

This submission provides the OMA's comments primarily on the draft amendment only although some comments on the adopted Section 9 – Advertising and Signage of the DCP are also made.

The OMA has recently developed a Model Advertising Devices Code for NSW (Model Code). This is a best practice guideline for local governments to use to develop policy and regulation for Outdoor advertising signage in NSW. Many of the recommendations below are drawn from the Model Code and a copy of the Code is included as Attachment 2 to this submission.

3.1 Clause 9.1.1 General Objectives

The General Objectives in Clause 9.1.1 should be reworded to reflect the policy aims of SEPP 64 (Part 1, Clause 3). This will provide consistency between the General Objectives of the draft amendment and the SEPP.

Recommendation

Change the wording of Clause 9.1.1, General Objectives, to reflect the policy aims of SEPP 64 (Part 1, Clause 3(1)(a)) to ensure that signage:

- (i) is compatible with the desired amenity and visual character of an area, and
- (ii) provides effective communication in suitable locations, and
- (iii) is of high quality design and finish.



3.2 Clause 9.2.2(b) Crows Nest and 9.2.2(d) Cremorne and Neutral Bay

The draft amendment states that the three large rooftop signs displaying general advertising at the major intersection of Falcon Street, Shirley Road and the Pacific Highway have an adverse impact on the streetscape. For this reason, new or intensification of existing roof top signs is discouraged in the Crows Nest area.

The OMA objects to this policy as there are no reasons given to qualify the statement that the signs have an adverse impact on the streetscape. It is a subjective view of Council without consultation with local businesses or the community.

The OMA presents the same argument for the Cremorne and Neutral Bay area. The draft amendment states that there are “two undesirable forms of signage that have an adverse impact on the streetscape including large illuminated advertising signs attached to both sides of the pedestrian bridge located over Military Road...and a large wall mounted general advertising sign on Military Road near Wycombe Road”. Again there are no reasons given to qualify the statement that the signs have an adverse impact on the streetscape. This is a subjective view of Council without consultation with local businesses or the community.

Recommendation

Delete the negative language in Clause 9.2.2 about General (third-party) advertising signage and replace this with positive language about the opportunities general signage can create for governments, the economy and the community.



03 SPECIFIC ISSUES WITH THE DRAFT AMENDMENT

(continued)

3.3 Clause 9.6 Restrictions

The OMA does not support P2 (i) that large signs (>20sqm or higher than 8m) are inappropriate within the NSC area. This clause is also inconsistent with the provision for a maximum height of 12m above ground level for digital signs in Clause 9.12, P5.

The OMA does not support Clause 9.6, P7 that consent granted by Council for advertising signs is valid for a maximum of three years. This cost of designing, building and seeking necessary approvals for an advertising sign is significant for OMA members and a three year approval time does not reflect the investment made in planning, design and construction by the industry.

The OMA refutes Clause 9.6, P8 which states that strata subdivision is not permitted as this provision is inconsistent with the LEP (clause 2.6) and as such can have no effect.

Recommendations

- Amend Clauses 9.6, P2 and 9.12, P5 to state that the height of an advertising sign is appropriate for its position and location.
- Change Clause 9.6, P7 to 15 years for the duration of consents for advertising signs to reflect Part 3, Division 2, Clause 14 (a) of SEPP 64.
- Delete new Clause 9.6, P8 which states that strata subdivision is not permitted. This prohibition upon subdivision cannot be imposed by a DCP as such a provision is inconsistent with the LEP (clause 2.6) and as such has no effect.

“A city’s sense of ‘character’ is informed by a myriad of things – it may be the architecture, the quality of light, the sounds or even the colour.”

STEPHEN BANHAM — Creativity on our streets contributes to the character of a city

3.4 Clause 9.10 Illumination

The OMA does not support Clause 9.10, P1 that “...all signs, including digital signs, must not be illuminated between 1.00am and 7.00am.”

The OMA believes these luminance requirements are overly prescriptive. They do not reflect that digital signage technology automatically responds and adjusts to changing lighting levels throughout the day and at night time.

The OMA notes that Clause 9.10, P6 states that digital signs must comply with the luminance levels for digital signs as identified under the NSW draft transport corridor guidelines (refer to Table 3 of the Draft Transport Corridor Guidelines) and any subsequent endorsed final version of those guidelines.

Adoption of the Draft Transport Corridor Guidelines for luminance will eliminate potential for conflicting development controls across NSW. This will result in a safe and consistent set of luminance controls for the NSC area.

In addition, the *Disability Discrimination Act* (DDA) requires bus shelters to be illuminated at night.

Recommendation

- Delete Clause 9.10, P1 and adopt the draft transport corridor guidelines for luminance controls as the *Disability Discrimination Act* (DDA) requires bus shelters to be illuminated at night.

TABLE 3: Luminance Levels for Digital Advertisements*

Luminance Levels			
Luminance means the objective brightness of a surface as measured by a photometer, expressed in candelas per square metre (cd/m²). Levels differ as digital signs will appear brighter when light levels in the area are low. Luminance levels should comply with Australian Standard AS4282 Control of the Obtrusive Effects of Outdoor Lighting which recommends the following levels:			
LIGHTING CONDITION	ZONE 1	ZONES 2/3	ZONE 4
Full Sun on face of Signage	No limit	Maximum Output	Maximum Output
Day Time Luminance		6000 cd/m²	6000 cd/m²
Morning and Evening Twilight and Inclement Weather		700 cd/m²	500 cd/m²
Night Time		*350 cd/m²	

Zone 1 covers areas with generally very high off-street ambient lighting, e.g. display centres similar to Kings Cross, central city locations.

Zone 2 covers areas with generally high off-street ambient lighting e.g. some major shopping/commercial centres with a significant number of off-street illuminated advertising devices and lights.*

Zone 3 covers areas with generally medium off-street ambient lighting e.g. small to medium shopping/commercial centres.

Zone 4 covers areas with generally low levels of off-street ambient lighting e.g. most rural areas, many residential areas.

*Source: Draft Transport Corridor Guidelines

03 SPECIFIC ISSUES WITH THE DRAFT AMENDMENT

(continued)

3.5 Clause 9.12 Controls for General Advertising Signs

The OMA does not support separate controls for the application of 'General Advertising' and 'Identification Signs' within the draft amendment and in particular Provision P1 that:

"General advertising is generally not permitted".

General advertising is defined as third-party signs which usually display commercial and promotional advertising not directly related to the use of the land on which the sign is situated.

No sound reasoning has been provided as to why this new control has been included.

This blanket restriction sets an improper planning precedence of inflexibility. SEPP 64 provides assessment criteria that encourage flexibility to ensure a proper merit based assessment (rather than blanket prohibitions). Under section 74BA of the EPA Act, the purpose of a DCP is to facilitate development that is permissible under an environmental planning instrument such as a Local Environmental Plan. However, the language and spirit of Clause 9.12 Provision P1 in the draft amendment does not reflect that of a guideline and clearly does not facilitate development.

The OMA has undertaken research of driver behaviour in the presence of advertising signage, using eye-tracking devices and a vehicle recording device. The research found that:

- Drivers spend the same amount of time (average 78%) with their eyes on the road whether in the presence of digital, traditional or on premise signs.
- There is no significant difference in the length of time people look (fixation duration) at digital signage compared with traditional signage.
- Drivers maintain the same safe average vehicle headway (distance between themselves and the car in front) in the presence of all signage types.
- Over 99% of all glances towards advertising signage were less than 750 milliseconds, which is the minimum time needed by a driver to perceive and react to an unexpected event.



Recommendation

Delete Clause 9.12, P1 and reword the draft amendment to establish performance based criteria to guide positive signage outcomes and reinforce the following principles for all advertising signage:

- High quality design: Signage that embodies clarity, simplicity and efficiency.
- Responsive to the location and context: Signage that is appropriate to the setting, character and activity of a place, space or precinct.
- Appropriate scale: Signage appropriately scaled to its context or the building on which it is located.
- Safety: Signage that is sound of construction and does not create any unnecessary hazards or obstructions for motorists and pedestrians.

3.6 Clause 9.12 Digital Signs

The OMA does not support the Clause 9.12, P4 for digital signs in the draft amendment:

"Where a digital sign is to replace an existing static general advertising sign, the new sign should result in no net increase to the advertising area..."

The OMA recommends treating signs on their individual merit rather than applying this restrictive policy will allow for new innovative signage types.

Recommendation

Change Clause 9.12, P4 to match the provisions of SEPP 64, Part 3, Division 3, Clauses 17 to 19 for the size of advertising signs.



03 SPECIFIC ISSUES WITH THE DRAFT AMENDMENT

(continued)

3.7 Clause 9.12, P8 Dwell Time

The proposed dwell time of five minutes for third-party electronic advertising structures contradicts the draft transport corridor guidelines.

The five minute dwell time is arbitrary and no evidence is provided to support it. Most State governments in Australia require dwell times of 10 seconds under 80km/h and 25 seconds for 80km/h and above (NSW and QLD). In Victoria, dwell times range from full animation to 30 seconds with merit-based assessment determining individual signs.

The OMA worked closely with the RMS to develop guidelines around digital signage in NSW. In 2014, the Draft Transport Corridor Guidelines were released to include provisions regarding digital advertising structures. The Draft Transport Corridor Guidelines have been applied (in accordance with advice from the NSW Department of Planning and Environment) to approve a number of signage applications in NSW. They are consistent with dwell times implemented in Queensland.

The Draft Transport Corridor Guidelines stipulate the following dwell times in NSW:

- 10 seconds under 80km/h.
- 25 seconds 80km/h and over.

The proposed five minute dwell time does not align with State guidelines and will cause conflicts and administrative burden in the assessment and approval process. This will also add barriers to potential for uniformity in industry national advertising campaigns.

Recommendation

Amend Clause 9.12, P8 to reflect the dwell times recommended by the draft transport corridor guidelines as follows:

- 10 seconds under 80km/hr.
- 25 seconds over 80km/hr.

The industry will not accept the current draft amendment proposal for a five minute dwell time.

3.8 Clause 9.12,P10 – Community Messaging

There is no provision the EPA Act to suggest a local council is authorised to obtain development contributions through a DCP.

The EPA Act makes clear that the purpose of a DCP is to provide guidance on development and to facilitate development.

A DCP cannot lawfully be used to require a developer to make developer contributions to a Council. Further, there is a strict regime in the EPA Act for the preparation and content of section 94 contribution plans.

Furthermore, this requirement was taken from an old version of the *City of Sydney DCP 2015 Signs and Advertisements*. The requirement for 15% of advertisements dedicated to community purposes was reduced significantly before it was considered by the Council.

The draft amendment does not meet these criteria.

The OMA is supportive of the OOH industry providing advertising space free of cost for community use and public benefit. However, it is important that the Council and the draft amendment recognise the current community benefits facilitated by the OOH industry, which include:

- Donations of around \$34 million in 2015 in free advertising space.
- Cash donations and sponsorships for charities and not-for-profit organisations. (A large proportion of this is in NSW, representing up to 5% of OMA members’ advertising space – this equates to more than 15% of the time of a digital sign).
- Provision and maintenance of public infrastructure including bus stops and public seating.

The OMA is supportive of a system that delivers direct benefits to the community. However, it is concerned that a requirement of 15% for the NSC area alone could impact the existing contributions and services that the OOH industry provides to charitable organisations and initiatives.

The OMA is prepared to challenge the lawfulness of this requirement in the Courts.

Recommendation

Delete Clause 9.12, P10 for a minimum of 15% of messages displayed on digital signs over a one month period dedicated to community messaging.

03 SPECIFIC ISSUES WITH THE DRAFT AMENDMENT

(continued)



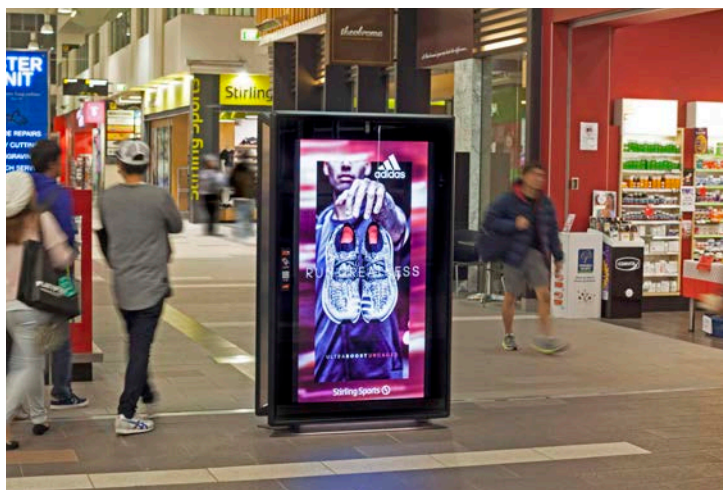
3.9 Clause 9.12, P11 Bus Shelters

The OMA does not support the current draft amendment provision for General (third party) advertising on bus shelters to meet a public benefit test to ensure the advertising will result in a positive gain or benefit for the community.

Clause 9.12, P11 provides insufficient information. There needs to be further detail about the requirements and the quantifiable objectives of the public benefit test to make this a meaningful DCP policy. Bus shelters are provided and maintained by OOH companies free of charge to local councils in return for the right to place advertising on the structures. The very provision of a bus shelter is a public benefit.

Recommendation

Delete Clause 9.12, P11 (Bus shelters) which states that advertising on bus shelters is only permissible if it meets a public benefits test.





“The OMA and its members propose to work closely with the NSC to develop an amended DCP that meets best practice standards for the industry and also continues to contribute to a variety of public benefits for the Council and the community.”

CHARMAINE MOLDRICH
CEO, OUTDOOR MEDIA ASSOCIATION

04 RECOMMENDATIONS

The OMA is concerned that the draft amendment in its current form fails to reflect NSW policies for the display of OOH advertising and signage, and do not meet the operational requirements of the industry. Consistency with higher planning policies including road safety guidelines will ensure safety, reducing confusion and administrative burden. Furthermore, the draft amendment fails to embrace the positive outcomes that signage and the industry can deliver to North Sydney.

Overarching Recommendations

1

Modify the draft amendment to align with higher level planning instruments. It is currently inconsistent with the *State Environmental Planning Policy No. 64* (SEPP 64), the *Transport Corridor Outdoor Advertising and Signage Guidelines* (the draft transport corridor guidelines), NSC's *Local Environment Plan (LEP) 2013*. This presents a legal issue for NSC and may lead to costly litigation for both Council and the industry. The OMA has received legal advice about the lawfulness of the draft amendments (refer Attachment 1).

2

Assess the impact of the draft amendment on the OOH industry and the economy, and revise the NSC assessment of 'Nil' financial implication.

3

Modify the approach of the draft amendment to focus on merit based controls, to enable the Council to benefit from emerging technology and opportunities presented by the industry. Signage can play an important part in modern society, particularly in way-finding, placemaking and urban renewal. Vision led, future focused guidelines will ensure NSC does not deter upgrades to existing signage and embraces the smart city movement.

Specific Recommendations

1

Change the wording of Clause 9.1.1, General Objectives to reflect the policy aims of SEPP 64 (Part 1, Clause 3(1)(a)) to ensure that signage:

(i)

is compatible with the desired amenity and visual character of an area, and

(ii)

provides effective communication in suitable locations, and

(iii)

is of high quality design and finish

2

Delete the negative language in Clause 9.2.2 about General (third-party) advertising signage, labelling it as having '*adverse impact upon the streetscape*' and as '*undesirable*'. Replace this with positive guidance on opportunities for general signage to contribute to the economy and the community.

3

Amend height restrictions in Clauses 9.6, P2 and 9.12, P5 to add flexibility, clarifying '*that the height of an advertising sign should be appropriate for its position and location*'.

4

Change Clause 9.6, P7 to 15 years for the duration of consents for advertising signs for consistency with SEPP 64 (Part 3, Division 2, Clause 14(a)).

5

Delete new Clause 9.6, P8 which states that strata subdivision is not permitted. This prohibition upon subdivision cannot be imposed by a DCP as such a provision is inconsistent with the LEP (clause 2.6) and as such has no effect.

6

Delete Clause 9.10, P1 and adopt the draft transport corridor guidelines for luminance controls. *The Disability Discrimination Act* (DDA) requires bus shelters to be illuminated at night.

7

Delete Clause 9.12, P1 which states '*general advertising is generally not permitted*' as this provision is not sanctioned by s74c(1)(a) of the EPA Act. Moreover, it is inconsistent with the LEP which renders signage as permissible development in a number of land use zones.

8

Change Clause 9.12, P4 to match the provisions for the size of advertising signs in SEPP 64 (Part 3, Division 3, Clauses 17-19).

9

Amend Clause 9.12, P8 to reflect the dwell times recommended by the draft transport corridor guidelines as follows:

— 10 seconds under 80km/hr.

— 25 seconds over 80km/hr.

The industry will not accept the current proposal for a five minute dwell time.

10

Delete Clause 9.12, P10 for a minimum of 15% of messages displayed on digital signs over a one month period dedicated to community messaging. The OMA is unaware of any power available to Council to impose, as a condition of granting development consent, such a requirement and is prepared to challenge the lawfulness of this requirement in Court.

11

Delete Clause 9.12, P 11 which states that advertising on bus shelters is only permissible if it meets a public benefits test. Bus shelters are constructed and maintained by OOH companies free of charge to local councils in return for the right to place advertising on the structures. Their very existence meets a public need so this provision is extraneous.

05 CONCLUSION



The OMA is confident that a draft amendment for advertising and signage policy in the DCP can be achieved to give good outcomes for the North Sydney LGA that also enables the OOH industry to deliver well designed, safe and innovative signage for the community. This will also facilitate a viable commercial environment where business can continue to thrive. The OMA strongly believes that by making the recommended changes, the OOH industry will remain confident in its role in enhancing, not detracting from, the visual amenity of NSC’s streetscapes.

By taking on board the recommendations outlined above, the OMA believes that the NSC will achieve an amended DCP that includes development controls that are consistent with higher planning instruments and policies as well as reflecting best practice in terms Outdoor advertising signage design and safety.

The OMA and its members propose to work closely with the NSC to develop an amended DCP that meets best practice standards for the industry and also continues to contribute to a variety of public benefits for the Council and the community.

We look forward to the Council’s review of our submission and welcome the opportunity to meet and discuss our key points raised.





PANDORA



TALK THE TALK WITH NEW PANDORA RING

LIST OF ATTACHMENTS

Attachment 1:
Legal advice on the lawfulness of the NSC DCP draft amendment
.....

Attachment 2:
Outdoor Media Association: NSW Model Advertising Devices Code
.....

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ATTACHMENT 1:

Legal advice on the lawfulness
of the NSC DCP draft amendment

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**OUTDOOR MEDIA ASSOCIATION AND
PROPERTY COUNCIL OF AUSTRALIA:
DRAFT AMENDMENTS TO NORTH SYDNEY DCP**

ADVICE

Henry Davis York
Lawyers
44 Martin Place
Sydney NSW 2000

Attention: Dr Nicholas Brunton

**OUTDOOR MEDIA ASSOCIATION AND PROPERTY COUNCIL OF
AUSTRALIA:
DRAFT AMENDMENTS TO NORTH SYDNEY DCP**

ADVICE

1. North Sydney Council is proposing to amend its development control plan so far as it relates to advertising and signage in its local government area. To that end, it has adopted a draft amendment to the present development control plan and has placed the draft on public exhibition. The Outdoor Media Association (**the OMA**), whose members are companies involved in the outdoor media signage industry, together with the Property Council of Australia (**the PCA**) are each opposed to the changes reflected in the draft amendment to the development control plan.
2. I am asked, on behalf of the OMA and the PCA, to provide advice upon the lawfulness of the proposed amendments. In so doing, I am asked to comment upon:
 - "(i) the amendments in general;
 - (ii) the proposed changes which purport to prohibit various types of signage;
 - (iii) the lawfulness of clause 9.12(P8) which aims to introduce a control relating to road safety that does not conform with the Draft Transport Corridor Advertising Signage Guidelines; and
 - (iv) the lawfulness of clause 9.12(P10) requiring a public benefit contribution of 15% of advertising time."
3. In addressing the first of those questions my response will, of necessity, be in general terms. Not only is the draft amendment a detailed document extending over almost 18 pages, its content is directed to

diverse forms of advertising in a number of identified areas that are differently zoned under the primary planning instrument, namely the North Sydney Local Environmental Plan 2013 (**the LEP**) governing the use of land in the North Sydney local government area. The consideration of every nuance of control in each area and land use zone would require an extensive exercise that I apprehend is beyond the reach of the present brief. However, the general observations that I make will, I believe, assist the OMA and the PCA in formulating the submissions they wish to make to the Council in support of their opposition to the draft control plan in its present form. References that I will make to specific provisions of the draft, including those given in response to items (ii)-(iv) of the matters to which my attention has been directed, may also assist in the content of that submission.

Overview of planning control

4. As a general proposition, the erection of new advertising structures and display of an advertisement on land to which the draft control plan applies, will require development consent under the *Environmental Planning and Assessment Act 1979* (**the EPA Act**). This is because “signage” is identified in the LEP as a form of development that is permissible with development consent in those land use zones of present relevance. The term “signage” is defined in the Dictionary to the LEP as:

“**signage** means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following:

- (a) an advertising structure,
- (b) a building identification sign,
- (c) a business identification sign,

but does not include a traffic sign or traffic control facilities.”

5. The term “advertising structure” is defined in s 4 of the EPA Act to mean “a sign, notice, device, or representation in the nature of an

advertisement visible from any public place or public reserve or from any navigable water.” That definition also applies to the same expression used in the LEP.

6. The expressions “building identification sign” and “business identification sign” are also defined in the LEP. Their respective definitions are as follows:

“building identification sign means a sign that identifies or names a building and that may include the name of the building, the street name and a number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.

...

business identification sign means a sign:

- (a) that indicates:
 - (i) the name of the person or business, and
 - (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and logo or other symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.”

7. Apart from the LEP, there are two further environmental planning instruments that are of present relevance. State Environmental Planning Policy No.64 – Advertising and Signage (**SEPP 64**) contains provisions directed to signage that can be displayed with or without a requirement to obtain development consent by reference to another planning instrument.
8. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (**the Codes SEPP**) also contains provisions directed to aspects of advertising and signage.
9. Each of those State Policies contains a provision that, in substance, requires that where there is inconsistency between a provision of the State Policy and a local environmental plan, the provisions of the State

Policy prevail to the extent of inconsistency. That proposition is subject to exceptions in the case of the Codes SEPP but those exceptions are not presently relevant.

Statutory requirements for amendment of the DCP

10. Section 9 of the North Sydney Development Control Plan 2013 (**the DCP**) is headed "Advertising and Signage". It is that section of the DCP that is the subject of the Draft DCP presently being exhibited. A development control plan is not a planning instrument: it is subordinate to such an instrument. So much is apparent from the provisions of the EPA Act that authorise the making of a development control plan by a planning authority.
11. Because of the importance that the relevant statutory provisions have in considering the matters upon which I am asked to advise, it is necessary to quote some of them. The purpose of a development control plan is identified in s 74BA. Relevantly, it provides:

"74BA Purpose and status of development control plans

- (1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:
 - (a) giving effect to the aims of any environmental planning instrument that applies to the development,
 - (b) facilitating development that is permissible under any such instrument,
 - (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.
- (2) The other purpose of a development control plan is to make provisions of the kind referred to in section 75C(1)(b)-(e)."

12. Section 74C(1) authorises the preparation of a development control plan by a planning authority to “provide the guidance referred to in s 74BA(1)” and also to identify development that is required to be notified or advertised. Subsection (5) of s 74C is of present significance because it provides:
- “(5) A provision of a development control plan (whenever made) has no effect to the extent that:
- (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or
- (b) **it is inconsistent or incompatible with a provision of any such instrument.**” (Emphasis added.)
13. Sections 74BA and 74C in their present form were inserted into the EPA Act by amending legislation that commenced in March 2013. The terms of the earlier provisions directed to the making of a development control plan were different prior to the 2013 amendment. A body of case law had emerged as to the meaning and operation of those former provisions, assigning to them a high level of significance when determining an application for development to which that development control plan applied.
14. In *North Sydney Council v Ligon 302 Pty Limited* [No.2] (1996) 93 LGERA 23, the Court of Appeal observed that under the provisions then being considered, a development control plan that was “restrictive or prohibitive unless certain conditions are met” was not contrary to the provisions of the EPA Act directed to the making of a development control plan. In *Zhang v Canterbury Council* (2001) 51 NSWLR 589; [2001] NSWCA 167 at [75] Spigelman CJ said that a relevant development control plan was a “fundamental element” in or “focal point of” the decision-making process when determining a development application. That jurisprudence can no longer be applied to the present provisions of ss 74BA and 74C.

15. The intended operation of the current provisions, when compared with the operation of the provisions they replaced, is articulated in the Second Reading Speech of the Minister for Planning when speaking to the amending legislation in the NSW Parliament. Relevantly, the Minister said (Hansard, 24 October 2012):

“Councils have always been able to provide additional guidance – I stress ‘guidance’ – through development control plans. The problem this bill addresses is twofold. First, development control plans have gone from guiding development to being given the same weight, and sometimes seemingly more weight, than the relevant local environmental plans. This follows Court decisions that had determined greater weight will be given to plans that are consistently – that is, repeatedly – applied. As a result, Councils have become increasingly unwilling to depart from the guidance provided in the development control plan when assessing applications.

...

The bill will redress the imbalance and ensure that consent authorities will be able to continue assessing development against their existing development control plans, but they must adopt a more flexible performance-based approach. The law makes it clear that development control plans are guidelines, and have less status than local environmental plans and State environmental planning policies in the assessment process. The bill also makes clear that development control plans implement planning instruments rather than the other way around.”

16. The amending legislation also added an additional subsection to s 79C of the EPA Act. Subsection (1) of that section identifies matters required to be considered by a consent authority when determining a development application. One such matter is “any development control plan”. The amendment added in 2013 was a new subsection (3A) that provides:

“(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards – is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with

- those standards – is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.”

Prior to the insertion of subsection (3A), no qualification was expressed in the section as to the way in which an applicable development control plan was to be applied when determining a development application.

17. I have addressed ss 74BA and 74C and the background to their operation in the EPA Act at some length because that background informs the manner in which I have addressed the legality of the provisions of the Draft DCP. It will be apparent from what I have already written that the focus I give is to reflect upon whether a particular provision provides “for guidance” referred to in s 75BA(1) and whether a provision is “inconsistent or incompatible” with any other environmental planning instrument within the meaning of s 74C(5).

The impact of SEPP 64 on the draft DCP

18. It will be apparent from my discussion thus far that the Draft DCP cannot override the provisions of SEPP 64. To the extent that a provision of the Draft DCP is inconsistent with and incompatible with SEPP 64, that provision is of no effect.
19. The Draft DCP acknowledges at para 9.1.4 that SEPP 64 contains “specific provisions relating to all forms of signage.” After referring to other codes or external policies, the Draft DCP proceeds to undertake an “advertising design analysis” for a number of areas so as “to provide guidance” on desirable forms of advertising.

20. Parts 1 and 2 of SEPP 64 apply to all signage. Clause 8 requires that consent must not be granted to a development application to display signage unless the consent authority is satisfied that the signage is consistent with the objective expressed in cl 3(1)(a) of the Policy and that the signage satisfies the assessment criteria specified in Sch 1. The objective found in cl 3(1)(a) is expressed –

“(a) to ensure that signage (including advertising):
 (i) is compatible with the desired amenity and visual character of an area, and
 (ii) provides effective communication in suitable locations, and
 (iii) is of high quality design and finish...”

I will not refer, at present, to the assessment criteria set out in Sch 1.

21. The expressions “signage”, “building identification sign” and “business identification sign” in SEPP 64 have definitions that are substantially the same as those found in the LEP.
22. Part 3 of SEPP 64 applies to all signage other than a building identification sign, a business identification sign, exempt development and signage on a vehicle. Clause 19 in that Part applies to signs having a display area greater than 45m² while cl 21, also in Pt 2, applies to a “roof or sky sign”, defined as being an advertisement displayed or erected above the parapet or eaves of a building. In each case, consent can only be given if there is a development control plan in place that has been prepared “on the basis of an advertising design analysis.”
23. Clause 29(1) of SEPP 64 identifies matters that are to be included in the preparation of an advertising design analysis for the purpose of cll 19 and 21. Subclause (2) of cl 29 relevantly provides:

“(2) In undertaking an advertising design analysis...**the council must consult with the advertising industry and local businesses.**”
 (Added emphasis.)

24. According to the information provided to me, there has been no consultation with “the advertising industry” in the Council’s preparation of the “advertising design analysis” referred to in cl 9.2 of the Draft DCP. So far as is known, no “local businesses” have been consulted in the process. Certainly, the planner’s report accompanying the Draft DCP gives no recognition to the requirement of cl 29(2) of SEPP 64.
25. Not every circumstance in which a consent authority fails to consult identified entities, contrary to the requirement of a planning instrument, leads to invalidity of action taken in contravention of the instrument. However, in the present circumstance, I am of the opinion that the Council’s failure to consult does found a substantial argument that the action taken thus far is of no legal effect. Expressed differently, if the Council proceeded to adopt the Draft DCP as operative, there would be a case to be made that it should be restrained from applying that Draft as being an exercise beyond power.
26. I reach that conclusion on two broad bases. First, the provisions of cl 29(2) are expressed in mandatory terms. So much follows from the use of the verb “must”.
27. Secondly, the requirement is that the consultation take place in the process of undertaking the design analysis. While I see no difficulty in the Council consulting the industry and local businesses by indicating what its analysis suggests, the apparent purpose is to ensure that before concluding that analysis there is taken into account the opinions of those who have a particular interest, beyond that of the general public, in the outcome of that analysis. This would require consideration of the views of those consulted upon the four topics that the Council is required to consider in its analysis by reference to cl 29(1) of SEPP 64.

28. I doubt that the failure of the Council to observe the requirements of cl 29(2) of SEPP 64 are cured by the public notification of the draft DCP presently being undertaken by the Council. As the report leading to the decision of the Council to publically notify the draft DCP indicates, community “engagement” is being undertaken in accordance with the Council’s Community Engagement Protocol. It seems to me that the intent of cl 29 is to require consultation with the industry and local businesses so that their respective input can, at the very least, be reflected in the analysis before that analysis is exposed to public exhibition. In deciding to adopt the draft DCP in its present form, the Council, as the collegiate entity, has not had the benefit of knowing what those required to be consulted might contribute to the analysis.
29. For these reasons, the process thus far adopted by the Council is, in my opinion, vulnerable to challenge as to its validity. Having so indicated, I recognise that any successful challenge can only result in the process being stalled until appropriate consultation has been undertaken so that, subject to what follows, the Council’s capacity to make a number of amendments to the DCP cannot be constrained indefinitely.

Phasing out or prohibiting signage

30. The observations that I am about to make are directed to land within a zone under the LEP upon which signage is permissible with consent. As I am sure is appreciated, the circumstance that land is zoned so that a particular purpose of land use is permissible does not have the consequence that every parcel of land within that zone may appropriately be used for that purpose or every iteration of the form that implementation of that purpose may involve.
31. A development control plan may identify factors to be considered when determining whether a given parcel of land is suitable for the particular

purpose of use in contemplation. As the purpose of a development control plan is to give effect to the aims of the environmental planning instrument that “applies to the development”, as well as facilitating development that is permissible under any such instrument, what a development control plan cannot do, so it seems to me, is to stipulate that development, otherwise permissible, may not be carried out.

32. Section 9.2.2 of the draft DCP states that rooftop building identification signs are to be phased out and removed. As a statement of general application, I do not see how it can legally achieve the result that is its apparent purpose. To the extent that it is understood to impose a prohibition upon roof signs, it would be a provision that I see as being “inconsistent or incompatible” with the LEP. Of course, it would be within the power of the Council to identify considerations to be brought to bear upon a determination of an application for a roof sign but not in the terms of prohibition.
33. I note also that in paragraph 9.2.4, addressing the North Sydney Centre, the Draft DCP states that building identification signage is to be restricted to buildings “solely used for business purposes to reflect their overall use”. The paragraph continues by indicating that signage is to be limited to “small scale business identification signs at ground floor level to convey messages to potential customers in preference to large scale roof signs.”
34. While I can accept that a provision may be included to reflect preferences, for reasons already stated I do not accept that it is within the power of the Council, through the DCP, to impose, in terms, a restriction on building identification signage to buildings solely used for business purposes. This seems to be a conflation of definitions of building identification signage and business identification signage.

35. In the context of purported prohibitions, I note cl 9.6, paragraph P8 which states that stratum or strata subdivision to create a lot or lots for signage “is not permitted”. To state that a purpose of development “is not permitted”, is tantamount to stating that it is prohibited. The purported prohibition upon subdivision for the identified purpose cannot be imposed by a development control plan. Such a provision is inconsistent with the cl 2.6 of the LEP and, as a consequence “has no effect”.
36. Provisions of the kind found in cll 9.2.2 and 9.2.4 were clearly intended to have a prohibitory effect, as is exemplified in cl 9.11 which is headed “Controls for Identification Signs”. The clause is expressed to apply to building identification and business identification signs. Paragraph P1 states “[s]ky signs are not permitted”. Paragraph P2 stipulates that roof signs are generally not permitted but then proceeds to identify circumstances in which the Council may consider approving a new roof sign. To fall within the exception, the sign has to be a building identification sign, located on a building used solely for non-residential uses in the B3 Commercial Core Zone under the LEP, and the message of the sign has to “relate to an owner or a major tenant of the building.” The constraints continue but I need not recite all of them for present purposes.
37. There are two observations to be made upon these constraints. By inference, there is a prohibition upon business identification signs if they are roof top signs. An absolute prohibition in those terms cannot, in my opinion, be sustained.
38. Secondly, there is an inconsistency between the reference to “a building identification sign” and the constraints that follow. This inconsistency arises from the definition of building identification sign, it being assumed that the expression is defined by reference to the definition of that

expression in the LEP. The definition does not include either the requirement that the building be used solely for non-residential uses or that that sign relate to an owner or a major tenant of the building to which it is affixed.

39. In short, cl 9.11, paragraphs P1 and P2 cannot, to my mind, be sustained as lawful provisions of the DCP, at least in the terms in which they are currently expressed.
40. Also in cl 9.11, paragraphs P8 to P12 impose limits upon digital signs. Expressed in mandatory terms ("must"), those paragraphs purport to restrict such signs to a location within a building, at ground floor level, no greater than a total area "of 4m squared per tenancy" and be static in nature.
41. I accept that not every form of signage is necessarily appropriate for every site simply because "signage" is permissible under the zoning applicable to that site. For that reason, I accept that "guidance" may be included in the DCP, identifying the basis upon which digital signs may be appropriate in a generic location.
42. Applying the requirements of s 74BA and s 74C(1)(a) it would be appropriate to include matters that identify criteria that address the aims expressed in cl 1.2 of the LEP as well as provisions that are directed to the objectives of a particular zone. Without traversing the objectives of each zone, I could accept as being appropriate criteria within the DCP, provisions identifying the basis upon which the location and aspects of signage address "compatible land uses" in, for example, the B4 Mixed Use zone whose first objective is the provision of "a mixture of compatible land uses." However, I do not accept that statements in mandatory terms such as P8-P12 of cl 9.12 qualify as provisions that also facilitate permissible development (s 74BA(1)(b)).

Clause 9.12 of the Draft DCP

43. Clause 9.12 of the Draft DCP propounds provisions that are new to the present DCP. The clause is expressed to relate “to signage which generally comprises the displaying of commercial and promotional advertising not directly related to the use of the land on which it is situated.” I assume that the clause is intended to relate to general advertising and does not apply to a building identification sign, a business identification sign, or signage on vehicles.
44. Provisions directed to general advertising are found in Pt 3 of SEPP 64. Several provisions of that Part make clear that the terms of a development control plan may be a necessary prerequisite to the grant of a consent to new signage for general advertising as well as requiring compliance with the (lawful) terms of that development control plan. It follows, in my opinion, that the DCP may include provisions that address general advertising provided it does so in a way that is not inconsistent or incompatible with the provisions of SEPP 64. That position is confirmed when regard is had to the terms of Sch 1 to the Policy, being the terms by reference to which determination of a new application for general advertising is to be made.
45. In the present context, reference to Sch 1 of SEPP 64 is important because that Schedule identifies the assessment criteria for all signage: cl 8. Consideration of that criteria includes assessment of the compatibility of the proposed signage “with the existing or desired future character of the area or locality” in which the signage is proposed. There is no reason why the character, existing or desired future, cannot be reflected in the terms of a development control plan. The formulation of that character falls within the broad discretion of the Council and its determination would not ordinarily be subject to legal challenge. The

appropriate description of existing or desired future character can, of course, be the subject of merit representation to the Council.

46. Further, I see no reason why the Council cannot lawfully include in its DCP the criteria or factors that may make particular signage more or less compatible with the character of the area. However, what the DCP cannot do is what it purports to do in cl 9.12 para P1, namely state that “general advertising is generally not permitted.” That provision applies throughout the North Sydney local government area. A provision in those terms is not a provision sanctioned by s 74C(1)(a) of the EPA Act. Moreover, it is a provision that is inconsistent and incompatible with the LEP which renders signage as a permissible form of development in a number of land use zones.

Paragraph P8 of cl 9.12

47. Paragraph P8 of cl 9.12 is included among a number of paragraphs directed to digital signs. The paragraph provides:

“Messages on the sign may be changed electronically without additional development consent, but must not have a dwell time of less than 5 minutes.”

48. Although cl 3(1) of SEPP 64 articulates the aims of the Policy, cl 3(2) appears to be expressed as a plenary provision of the Policy. The latter subclause provides:

“(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.”

The subclause is hardly an example of pellucid expression. It appears to encompass two concepts. First, the subclause makes apparent that it is not the purpose of the Policy to impose any controls upon the content of “signage”. That is, the Policy is expressly silent on content, leaving it open for some other form of control to “regulate” content. The concept

would appear to confirm what is already stated as an aim of the policy in cl 3(1)(b).

49. However the second concept to which cl 3(2) is directed, namely change in the content of signage, is expressed in different terms. There are clearly intentional linguistic differences between the statement that the Policy **"does not regulate"** content, having the potential consequence to which I have already referred, and the statement that the Policy, otherwise directed to signage, **"does not require consent"** to change the content of signage. The "consent" that is not required must, in context, be "development consent" under the EPA Act. If the intent had been to leave open the change in content to another form of control under the EPA Act, the subclause could easily have been expressed in or to the following effect:

"This Policy does not regulate the content of or a change in content of signage."

The circumstance that the subclause is not expressed in those or similar terms strongly suggests that the drafter of the Policy intended different consequences under the Policy, depending upon whether regulation of content was being considered or a change in content, initially sanctioned, was being addressed.

50. The effect of s 76(1) of the EPA Act is to authorise the carrying out of specified development without development consent where an "environmental planning instrument" so provides. In my opinion, there is a respectable argument that the second concept expressed in cl 3(2) of SEPP 64 (an "environmental planning instrument"), so far as the subclause is directed to the change in content of "signage", is such a provision. It follows that not only is consent not required to change the content of signage for general advertising, the constraint upon "message" change, purportedly imposed in para P8 by reference to the

"dwell time" of any message, is inconsistent with cl 3(2) of SEPP 64 and is therefore of no effect: s 74C(5) of the EPA Act.

51. My attention has been drawn to the fact that para P8 does not conform to the controls for a digital sign identified in the Draft Transport Corridor Advertising Signage Guidelines. However, that circumstance does not identify any additional basis upon which para P8 does not conform with the law. Relevantly, it is not inconsistent with the provisions of SEPP 64 because to the extent to which that Policy makes reference to the "Guidelines", it is a reference to the particular document identified in cl 4 of the Policy, being the Guideline "in force and as published in the Gazette" on the date there nominated. The Draft Guideline does not fall within that definition. Until such time as it replaces the existing Guideline by publication in the Gazette, it cannot be said that the requirement proposed in para P8 is inconsistent with a provision of SEPP 64.

Paragraph P10 of cl 9.12

52. Paragraph P10 of cl 9.12 provides:

"A minimum of 15% of the messages displayed over a 1 month period must be dedicated to community messages."

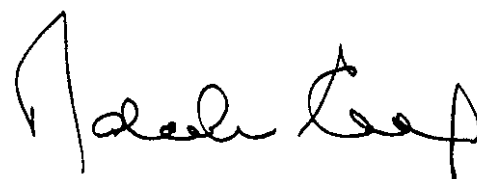
53. The report accompanying the draft DCP when presented to the Council stated that the DCP presently contains public benefit tests for other signage types. It proposes that such a "test" be imposed when digital signs are the subject of an application.
54. Whatever may be the present provision under the DCP, I am unaware of any power available to the Council to impose, as a condition of granting development consent, a requirement that a nominated time over a nominated period be devoted to advertising for community information.

Certainly, no source of power is identified in the report to which I have referred.

55. In my opinion, para P10 involves the imposition of a requirement that is beyond power and therefore is of no legal effect.

Chambers

20 March 2017

A handwritten signature in black ink, appearing to read 'Malcolm Craiq', with a stylized flourish at the end.

MALCOLM CRAIQ QC

ATTACHMENT 2:

Outdoor Media Association:
NSW Model Advertising Devices Code

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OMA MODEL ADVERTISING DEVICES CODE

NEW SOUTH WALES



**OUTDOOR
MEDIA
ASSOCIATION**

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01 Purpose of the Model Advertising Devices Code

The Model Advertising Devices Code New South Wales (Model Code) is a best practice guideline for the regulation of Outdoor advertising devices. This guideline can be used by New South Wales local governments in the design of planning schemes, planning policies and local laws. The Model Code relates primarily to third party¹ advertising signage, but its provisions can also be applied to on-premise² advertising signage.

The Model Code provides a set of practical and effective planning controls for advertising devices. Overall, the Model Code aims to balance placement, design and utility outcomes for local government and the community with the commercial requirements of the Out-of-Home advertising industry.

The Model Code has been prepared to apply to advertising devices situated in both urban and rural settings. The Model Code applies to both large format (billboard style) advertising devices as well as small format styles (including bus shelter advertising panels and street level portrait advertising panels). It is not intended to apply to temporary advertising devices such as building wraps (structures installed to cover construction sites) and trailer signs, although the Outdoor Media Association (OMA) recommends that these advertising devices should be closely regulated by government.

The OMA works closely with state planning departments, state road authorities and local governments across Australia to ensure that planning controls promote safe, high quality signage and advertising that is well integrated with the surrounding environment. The OMA supports the reasonable regulation of Outdoor advertising signage and advocates for planning systems within Australia that:

- Recognise Outdoor advertising signage as a legitimate land use.
- Provide a fair and reasonable set of development standards for advertising signage.
- Allow for the evolution of the industry, including new styles of digital signage.
- Protect the industry's existing signage investments.

In Australia, advertising content is self-regulated. The OMA works closely with the Advertising Standards Bureau, the Australian Association of National Advertisers, The Communications Council and the Alcohol Beverages Advertising Code Scheme to ensure that members only display advertising that meets acceptable community standards. The Model Code includes a new provision developed by the OMA that requires signage operators to comply with the determinations of these self-regulatory bodies regarding content.

The Model Code applies to both large format (billboard style) advertising devices as well as small format styles (including bus shelter advertising panels and street level portrait advertising panels).

¹A sign advertising goods and/or services **not** associated (sold, stored or manufactured) on the site/premise on which the advertising sign is located.

²A sign advertising goods and/or services sold, stored or manufactured on the site/premise on which the advertising sign is located.

02 The Outdoor Media Association



The Outdoor Media Association (OMA) is the peak industry body representing 90% of Australia's Outdoor media display companies, production facilities and some media display asset owners. The organisation operates nationally, and prior to July 2005, traded as the Outdoor Advertising Association of Australia (OAAA). It was first incorporated in 1939.

OMA members display third party advertisements across static and digital signs, including signs on buses, trams, trains, pedestrian bridges, billboards, freestanding advertising panels and street furniture (bus/tram shelters, public toilets, bicycle stations, telephone booths and kiosks), as well as in office buildings, cafes, bus stations, railway stations, shopping centres, universities and airports.

Members of the OMA adhere to an industry Code of Ethics to ensure they operate their businesses responsibly and abide by the industry's regulatory framework.

03 Investing in our Community



Advertising and marketing play a fundamental role in the Australian economy and are significant drivers of economic growth, contributing some \$40 billion of value in 2014. This means advertising is responsible for contributing approximately 2.5% of the Gross Domestic Product. For every person directly employed by advertising another three people are reliant upon advertising for their jobs. Over 200,000 people in the workforce are there due to advertising³.

In 2015, the Out-of-Home (OOH) industry in Australia provided more than 17,600 items of infrastructure for use by the community, including pedestrian bridges, bus shelters, retail kiosks, telephone booths, park benches and bicycles. The total replacement value for this infrastructure was estimated to be more than \$350 million in December 2014⁴.

The OOH industry also plays an important role in the community, supporting the arts, sports and charitable organisations. It is also widely used by government bodies to advertise community messages such as road safety messages and health awareness campaigns. In 2015, the OOH industry donated advertising space valued at more than \$34 million to over 160 organisations.



³ 2016, Deloitte Access Economics, Advertising Pays – The economic and business value of advertising

⁴ 2016 Deloitte Access Economics, Out-of-Home Adds Value: Out-of-Home advertising in the Australian economy

04 Digital Signage



In recent years, the use of digital signage has grown across Australia. As of August 2016, nearly 40% of the industry's advertising revenue came from digital media and this percentage will continue to grow. As our cities work to improve connectivity, digital signage will play a vital role in communication, messaging and way-finding.

Digital signage can be innovative and entertaining and is becoming one of the ways that people interact with their cities. Digital signs also contribute to placemaking by adding vibrancy, colour and lighting, which are seen as part of the make-up of a contemporary global city. Public attitude testing undertaken for the City of Sydney found that 67% of people 'expect any large city to promote the use of new technology in advertising'⁵.

Digital signage offers a number of benefits to the Out-of-Home industry and the community including:

- **Community benefit** — digital advertising is more cost efficient for charities and governments. One digital sign can display many advertisements on a rotation without the cost of printing.
- **Utility** — digital screens can be used at short notice for emergency messaging and to provide up to date community information. They can also act as Wi-Fi hubs and charging stations.
- **Vibrancy** — digital technology allows for signage that is vibrant, has high image quality and is visually interesting, contributing to placemaking and the creation of exciting and lively urban spaces.
- **Environment** — digital screens produce no PVC or vinyl waste and can be designed to be energy efficient.

⁵Sweeney Research, City of Sydney Outdoor Communication Report - July 2014

05 Road Safety



The Outdoor Media Association has undertaken research on driver behaviour in the presence of advertising signage, using eye-tracking glasses and a vehicle recording device. The research found that:

- Drivers spend the same amount of time (average 78%) with their eyes on the road whether in the presence of digital, static or on premise signs.
- There is no significant difference in the length of time people look (fixation duration) at digital signage compared with static signage.
- Drivers maintain the same safe average vehicle headway (distance between themselves and car in front) in the presence of all signage types.
- Over 99% of all glances towards advertising signage were less than 750 milliseconds, which is the minimum time needed by a driver to perceive and react to an unexpected event.

06 OMA Model Advertising Devices Code: New South Wales

Introduction

The *State Environmental Planning Policy No 64* (SEPP 64) provides the regulatory framework for the planning and development of Outdoor advertisements in State transport corridors within NSW. The *Transport Corridor Outdoor Advertising and Signage Guidelines* (the Guidelines), prepared by the NSW Department of Planning and Environment, provide additional guidance for the development and operation of roadside signs. An update to the Guidelines to address digital signage was released for public consultation in December 2015.

Local councils also regulate Out-of-Home advertising signage in local planning instruments (including Local Environmental Plans and Development Control Plans) for land outside of State transport corridors. However, some signs also require concurrence with the Guidelines and in the event of an inconsistency in regulation, SEPP 64 and the Guidelines take precedence.



Overall outcomes sought for advertising devices

CHARACTER, AMENITY AND VIEW CORRIDORS
To promote innovative, unique and creative signs that contribute positively to the character and vibrancy of the council area and integrate well with local buildings, streetscapes, the urban skyline and also the natural setting if placed within a rural zone.
Advertising devices should be compatible with the existing or proposed streetscape, present a visually attractive appearance and provide for a functional purpose in public spaces.
Where placed on buildings, advertising devices should be compatible with the design of the building and with the type, nature and scale of development within the locality.
Advertising devices should not compromise access to key vistas and view corridors or excessively block sunlight and breeze flows.
Newly placed advertising devices should not unreasonably obstruct existing advertising devices that are lawfully installed.

CHARACTER AND AREAS OF HERITAGE SIGNIFICANCE
If the advertising device is located in an area of heritage significance its design should be sensitive to the heritage features of the building or place.

HEALTH AND SAFETY
Advertising devices, even if for temporary use, must be safely secured and not pose a physical hazard or obstruction to motorists, pedestrians, cyclists or residents.
Agreements should be in place to manage and maintain vegetation around advertising devices for visual amenity purposes and driver safety purposes, including tree trimming.

ECONOMIC BENEFITS OF ADVERTISING DEVICES
Advertising devices should cater for the needs of local and national businesses and governments, giving them a communication platform to share information about their brand, products and services with the public. In this way, advertising signage drives competition and is an important source of information for the community.

06 OMA Model Advertising Devices Code: New South Wales

Performance criteria and acceptable outcomes for advertising devices

Advertising devices should be assessed against the Model Code. Compliance with the Model Code can either be assessed by the applicant (self-assessable) or by the local council (council-assessable). Advertising devices will comply with the Model Code if the 'Performance Criteria' and 'Acceptable Outcomes' listed below are addressed and achieved.

Advertising signs are an essential part of the fabric of our cities and towns. They provide critical information for the identification of local businesses, for promoting local goods and services, for informing the public about local community events and for national safety messages (e.g. driver fatigue and missing persons). Advertising signs also create a sense of place and with the application of good design can provide vibrant and active meeting places and centres of connectivity for the community.

LOCATION AND ZONING			
Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P1	Advertising devices to be located in appropriately zoned areas and are of a scale and nature that is compatible with both existing and/or proposed development in the zone.	A1	Advertising devices are usually located within the City Centre/Town Centre, Business/Commercial, Industrial, Mixed Use or Rural Zones. Street furniture is also located in Residential Zones.
P2	Advertising devices do not detract from an identified heritage place or the overall character and amenity of the locality (such as an open space, streetscape, town entrance, landscape feature and vista or view corridor).	A2	The sign face area is an appropriate size for its position and location.
		A3	Freestanding signs are supported on single or multiple pylons or on architecturally designed structures.

FREESTANDING SIGNS – HEIGHT AND SIZE			
Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P3	The height* of an advertising device complements and reflects the surrounding character and amenity of the locality and environs.	A4	The height of the advertising device is appropriate for its position and location.
P4	Freestanding advertising devices are of a size and scale which is considered appropriate for both the natural and built environment and does not create a physical hazard or obstruction to motorists, pedestrians, cyclists or residents.	A5	The sign face area is an appropriate size for its position and location.
*The height is measured from finished road level to the uppermost projection of the device.			

An important design consideration for advertising signage is the optimum height needed to obtain effective visibility of the advertising face.

06 OMA Model Advertising Devices Code: New South Wales

FREESTANDING SIGNS (≥ 18M²) – SEPARATION DISTANCES

Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P5	Advertising devices are separated by distance in all zones so that the character and amenity of the locality and existing view and vista corridors are not adversely impacted.	A6	For all freestanding signs, a separation distance is required within the same direction of travel.
		A7	Where the topography of the environment creates a natural visual separation between two advertising devices, the separation distance in A6 does not apply.

The purpose of an advertising sign is to be noticed and safely read by the audience. A requirement for a reasonable spacing between signs can achieve this goal.

When signs are well spaced, the audience has the ability to absorb each advertising message and this increases its effectiveness.

ADVERTISING WALL SIGNS

Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P6	Advertising wall signs are designed to cover unused or unsightly wall spaces.* <small>*Advertising wall signs do not include building wraps, which are temporary structures.</small>	A8	The sign face area is an appropriate size for its position and location.
		A9	Advertising wall signs must not cover architecturally prominent building design features or other architectural elements that feature in the façade of the building.
		A10	Advertising wall signs should be contained within the outermost projection of the wall of the building and should be designed and positioned to ensure integration with the design of the existing building and character and amenity of the surrounding area.

ADVERTISING DEVICE ROOF SIGNS

Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P7	The advertising device is compatible with the design of the building and is consistent with the type, nature and scale of development in the locality.	A11	Advertising device roof signs must not cover architecturally prominent building design features or other architectural elements that feature in the façade of the building.

The Outdoor Media Association does not recommend a specific sign size for advertising wall signs and roof signs as this may restrict the optimal design outcomes for the space.

06 OMA Model Advertising Devices Code: New South Wales

BUS SHELTERS & STREET FURNITURE

Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P8	The advertising face is compatible with the design of the bus shelter/street furniture and does not impact on the amenity of nearby residents.	A12	<ul style="list-style-type: none"> Advertising sign not to extend above height of bus shelter structure. Luminance of the advertising sign not to impact on local residents.

Advertising faces on bus shelters and street furniture require a different set of controls compared to large format signs as they are generally smaller, are often located closer together and can also be located in residential areas.

DIGITAL ADVERTISING DEVICES

Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P9	Digital advertising devices, including Liquid Crystal Display (LCD) and Light Emitting Diode (LED) are allowed in appropriate zones.	A13	Digital advertising devices permitted in: <ul style="list-style-type: none"> The City Centre, Commercial, Mixed Use and Industrial Zones; and/or Locations where there is a high flow of pedestrian or vehicular traffic.
P10	Digital advertising devices do not create a road safety risk or hazard.	A14	The static images on LCD and LED advertising devices have a minimum dwell time of 6-8 seconds per advertisement.
		A15	There is an instantaneous transition from one message to the next (approximately 0.1 seconds). No transitional effects such as fly-in or fade-out are supported.
		A16	Advertisements on digital advertising devices are designed so that the amount of text is kept to a minimum and is no more than a driver can read at a short glance.
		A17	Advertisements are designed so that content cannot be mistaken for a traffic control device.
P11	Illumination of digital advertising devices does not create a safety risk to motorists or detract from the amenity of the local community.	A18	The luminance of digital advertising devices is modified according to location, time of day and ambient light conditions (refer to luminance levels table on page 11).
		A19	LCD and LED advertising devices use light sensors to adjust illumination levels according to the ambient light levels.
P12	Digital advertising devices minimise energy consumption where possible	A20	Where possible, digital advertising devices will be designed to minimise energy consumption.

06 OMA Model Advertising Devices Code: New South Wales

Digital advertising devices differ from conventional signs in that they have the capacity to display changing digital messages. The digital effect can contribute to the vibrancy of cities, streetscapes and contribute to placemaking. The Outdoor Media Association (OMA) advocates for a 6–8 second dwell time in all speed zones and for instantaneous transition from one message to the next avoiding transition effects (generally approximately 0.1 seconds). The 6–8 second dwell time is based on international best practice and is long enough for the change not be mistaken for animation.

Advertising devices may be illuminated either externally or internally. Either method is appropriate provided that the illumination does not cause glare to surrounding residences nor impact upon the safety of drivers.

LCD and LED advertising devices can appear to be too bright if the light is not dimmed during twilight, night time and inclement weather. Luminance levels can be controlled with light sensors that adjust the illumination according to the surrounding ambient light level. If there is full sun on the face of a digital sign, it can become difficult to read and maximum luminance output is needed to ensure that the advertising message is clear to the eye, to avoid distraction. The OMA has developed the following best practice guidance for luminance levels for different locations and time of day in conjunction with a lighting expert.

OMA members will work with the community to alleviate any concerns in relation to new digital signage, particularly in relation to luminance levels.

LIGHTING CONDITION	ZONE 1	ZONE 2	ZONE 3
Sun on face of signage	Maximum Output	Maximum Output	Maximum Output
Day time (full light conditions)	6,000–7,000 cd/m ²	6,000–7,000 cd/m ²	6,000–7,000 cd/m ²
Day time (dawn, dusk and inclement weather)	1,000 cd/m ²	700 cd/m ²	600 cd/m ²
Night time	500 cd/m ²	350 cd/m ²	300 cd/m ²

Zone 1 covers areas with generally very high off-street ambient lighting, e.g. central city locations.

Zone 2 covers areas with generally high to medium off-street ambient lighting.

Zone 3 covers areas with generally low levels of off-street ambient lighting e.g. most rural areas, many residential areas.

VEGETATION MANAGEMENT			
Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P13	Legal advertising devices are not obscured by vegetation.	A21	A Vegetation Management Plan is in place to enable the pruning and maintenance of trees and shrubs adjacent to the advertising device, to ensure the sign continues to be legible for driver safety reasons.

06 OMA Model Advertising Devices Code: New South Wales

CONTENT MANAGEMENT			
Performance Criteria Development demonstrates compliance with the following performance criteria (P)		Acceptable Outcomes Development satisfies the following deemed-to-comply requirements (A)	
P14	Advertising devices should display content that is compliant with the Australian Association of National Advertisers (AANA) Code of Ethics and must comply with any decisions by the Advertising Standards Board (Ad Board).	A22	<p>A system of content management and complaint handling arrangements for the content displayed on advertising structures must be in place.</p> <p>Advertising content should be compliant with the AANA Code of Ethics. Where an advertisement is found by the Ad Board to be in breach of the AANA Code of Ethics, the determination of the Ad Board must be complied with and the advertisement removed.</p>

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