

30 June 2017

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Dear Department of Planning and Environment

## **NSW Draft Changes to planning rules for outdoor advertising 2017**

### **Submission from Outdoor Media Association**

#### **1. INTRODUCTION**

The Outdoor Media Association (OMA) welcomes the opportunity to comment on the 2017 update to the State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64). As the peak industry body representing the majority of Australia's Out of Home (OOH) media display companies and production facilities, the OMA is an important stakeholder for signage regulations.

The OMA is generally supportive of the changes to the SEPP 64 and congratulates the Department of Planning and Environment (DPE) for making these changes. Included in this draft is one of the key changes required to stop NSW lagging behind other States without clear policies for the safe and fair operation of roadside signs.

The OMA supports a NSW planning system that balances community and commercial interest and provides certainty, transparency and simplicity for its members. To achieve this, the OMA considers a successful planning system will incorporate:

- Recognition of OOH advertising signage as a legitimate land use.
- Provision for the responsible display of OOH advertising signage within urban centres and along transport corridors.
- Objective and fair development standards for signage land use that provide clarity to applicants and minimise subjective decision-making.
- Provision for advertising and signage to embrace new digital technologies.

As outlined in the OMA's March 2017 submission to the Planning Legislation Updates, its 2015 submission to the Draft transport corridor outdoor advertising and signage guidelines (the Guidelines), and its submissions to the White Paper (June 2013) and the Green Paper (Sept 2012), the OMA has consistently raised key concerns with the planning system in NSW. While the SEPP 64 update addresses one key issue raised, the OMA is at pains to ensure it will address all the industry's major concerns (see Section 3).

## 2. THE OOH INDUSTRY

The OMA is the peak body representing most of Australia's OOH advertising industry. Part of the role of the OMA is to develop constructive relationships with governments to promote policy for outdoor advertising that is reasonable and evidence-based.

OMA members advertise 'third-party'<sup>1</sup> products on digital and traditional signs across a variety of OOH formats and locations.<sup>2</sup> In 2016, Deloitte Access Economics published economic modelling<sup>3</sup> on the OOH industry, finding that:

- The OOH industry provides a revenue stream to government, returning \$1 in every \$2 of revenue in taxes and rent to government and other landlords.
- OOH delivers essential services and savings; OMA members have built and continue to maintain 17,664 items of public infrastructure including bicycles, bins, bus shelters, kiosks, park benches, pedestrian bridges, public toilets and telephone booths. With a replacement value of \$352 million, these items are provided at no cost to governments, as they are paid for by the advertising concessions.
- Governments use OOH to broadcast messages to the community and raise awareness. In 2016 the NSW Government was in the top 5 advertisers on OOH.
- OOH contributed \$647 million to Australia's Gross Domestic Product (GDP).
- OOH businesses are significant employers, directly employing 903 full-time equivalent workers and about 2,200 additional workers through the supply chain.

A summary of the Deloitte Access Economics findings is provided at Attachment 1.

## 3. ISSUES

The OMA has consistently raised concerns with aspects of the NSW Planning System that cause uncertainty and significant delays for members. These issues are discussed in the OMA's submission to the Guidelines (refer Attachment 2) and have been relayed in numerous meetings with government and are summarised below:

1. The continued delayed adoption and formalisation of the Guidelines meaning there is no official guideline for the operation of digital signage in NSW.
2. The prohibition of new advertising signage in most transport corridor land in NSW as a result of Clause 16(4)(b) of SEPP 64.
3. The lack of clarity regarding the approval pathway when upgrading an existing traditional sign (be it fixed, scrolling or tri-vision) to a digital sign.
4. The lack of consistency for approvals and the inappropriateness, poor execution of acceptable risk practices and excessive subjectivity of proposed safety assessment criteria currently under discussion within the RMS.
5. Greater need for signage Development Applications, referred to the RMS for concurrence, to be considered on an independent basis and in accordance with agreed criteria.

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<sup>1</sup> A sign advertising goods and/or services **not** associated with the premises on which the sign is located.

<sup>2</sup> Including airports, billboards, medical centres, office buildings, pedestrian bridges, public transport infrastructure, shopping centres, universities and street furniture.

<sup>3</sup> Deloitte Access Economics 2016, *Out of Home Adds Value: Out of Home Advertising in the Australian Economy*. Figures are calculated for 2014 calendar year and expressed in 2016 dollars.

### **3.1 The Guidelines**

In December 2015, DPE released on exhibition the update to the Guidelines worked on by the OMA with Roads and Maritime Services (RMS), Transport for NSW and the DPE which includes guidance on the operation of digital advertising signage in NSW. At the time of this submission, the Guidelines are yet to be formally adopted.

The OMA collaborated with NSW Government agencies on the update to the Guidelines to improve the 2007 version by incorporating controls for digital signs. The adoption of the Guidelines is critical, given the increasing use of digital signage across a range of formats. Their adoption will support NSW state priorities – particularly by encouraging business investment and creating jobs.

The Guidelines have a direct commercial impact on the NSW Government which profits from the OOH industry through taxes paid, estimated to be \$49 million in 2014, and also through rents paid on leasing inventory stock from roads, railways and buildings. Government is the OOH industry's largest landlord, and in 2015, RMS reported \$22 million in revenue from this advertising and Sydney Trains just over \$25 million.

The adoption and appropriate interpretation of the Guidelines is vital to provide a clear and objective framework for signage assessments. In the absence of finalised Guidelines, local governments in NSW are creating their own road safety rules. It is the strong view of the OMA that this presents an administrative burden and a potential risk to road safety.

The updated Guidelines define the safe operation of digital signs in NSW, and in their absence signage approvals in NSW are inconsistent. As a result, OMA members are increasingly being driven to challenge determinations through the NSW Land and Environment Court which is costly for government, industry and ultimately tax-payers. OMA members are becoming reluctant to work in NSW – other states have formal digital guidelines in place, making them more attractive markets.

NSW has identified the importance of developing resilient businesses and encouraging them to be responsive to the needs of a digital economy. Accordingly, NSW needs to have guidelines which cover digital signage in place to demonstrate that the state is not closed to opportunities for private investment.

The delayed adoption is unjustified. The DPE website notes the following:

#### **What consultation has been undertaken?**

- From 11 December 2015 to 7 February 2016, the Department of Planning and Environment conducted community consultation on the draft updated Transport Corridor Outdoor Advertising and Signage Guidelines.
- Submissions received during the consultation generally noted that the guidelines urgently needed to be updated to address digital technology, and industry groups supported making advertising permissible with consent in transport corridors.
- In response to submissions, minor amendments to the guidelines are proposed, although these will not need to be put out for further community consultation before finalisation.

Furthermore, the draft Guidelines are in use, and the OMA estimates that they have been successfully utilised by the NSW Government to progress approvals for 59 of its own digital signs (refer Attachment 3). The OMA believes that work must be done to ensure the Guidelines are objective and fairly implemented but there is no reason that this work should delay their adoption for any longer.

### **3.2 The SEPP 64**

While the SEPP 64 makes it clear that generally advertising signs on transport corridor

land should be 'permissible with development consent'<sup>4</sup>, Clause 16(4)(b) allows Local Councils to disregard this intention. The OMA supports the DPE's move to repeal this Clause, which led to 40 of the 43 metropolitan Sydney councils<sup>5</sup> adopting Local Environmental Plans (LEPs) which override the intention of SEPP 64 by prohibiting advertising in all transport corridors.

The repeal of Clause 16(4)(b) still provides councils with adequate control, as evidenced by the three LEPs (Holroyd, Lane Cove and Kogarah) that permit signage with consent in SP1 and SP2 zones, using Development Control Plans (DCPs) to great effect to manage the development of signage in an appropriate and responsible way. The deletion of Clause 16(4)(b) would allow SEPP 64 to operate as it was originally intended, while allowing councils the ability to responsibly plan for signage development through DCPs.

### **3.3 Approval Pathway for modification of signs from traditional to digital**

The OMA considers that the planning approval pathway for the conversion of a traditional sign to a digital sign is an important element to be included in the Guidelines. There are varied approval pathways for such a conversion which include a fresh development application or s96 modification application (Modification Application) made under the Environmental Planning and Assessment Act 1979. The OMA considers that a Modification Application approval pathway is appropriate in circumstances where the essential characteristics of the signage do not change.

An alternative would be to modify State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow a simple conversion from a traditional sign to a digital sign to be approved via a Complying Development Certificate (CDC). This would reduce administrative burden on consent authorities by avoiding the need for a full merits assessment for a simple signage conversion (refer Attachment 2).

### **3.4 Proposed Road Safety Assessment criteria**

The OMA understands that the RMS and the Centre for Road Safety are collaborating on an additional update or inclusion to the Guidelines, the *Road Safety Assessment Criteria*. The OMA has reviewed this document, provided to the OMA on 1 June 2017, and finds it to be subjective and not a reasonable tool to use in the signage application and assessment process.

Best Practice for NSW risk management reflects *AS/NZS ISO 31000: 2009 Risk management – principles and guidelines*. This standard follows a process where the likelihood of a risk and its potential consequence determine the severity of the risk, and in turn, the appropriate mitigation strategy. The focus of the process is to define a range of balanced approaches for a given level of risk.

The *Road Safety Assessment Criteria* instead employs a pass-gate process, which is subjective, has little flexibility and no analysis of mitigation. Furthermore, it is a departure from the Draft Guidelines approved by the Minister for Planning and gazetted in December 2015. The OMA strongly opposes any move to introduce it.

The OMA commissioned a traffic engineer to develop an appropriate Advertising Sign Risk Assessment Matrix, which aligns with NSW Best Practice, and has provided this to the RMS for its consideration (refer Attachment 4).

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<sup>4</sup> State Environmental Planning Policy No 64—Advertising and Signage, Clause 16(1)

<sup>5</sup> Figure based on the 43 metropolitan councils prior to amalgamation in 2016.

### **3.5 Process for Consideration of Development Applications**

The OMA perceives a greater need for the RMS to apply objective principles in considering whether to grant concurrence to applications for signage within transport corridors. These principles, outlined in Recommendation 3, must be applied consistently to both privately and publicly controlled land. The OMA considers that current processes which disadvantage private proponents of signage developments must be addressed.

### **3.6 Benefits of Flexibility and Social Contribution**

In addition to the extensive efforts by the industry to assist charitable causes and important public campaigns such as National Missing Persons Week, the potential for OOH to assist governments with messaging and promotion of events is evident.

During festivals, such as the Vivid Light Festival in Sydney, flexibility to standard controls is afforded and to great effect. The OOH industry sees that there is a great opportunity for digital advertising signs to contribute during festivals such as Vivid and the Mardi Gras and it advocates for greater flexibility to be afforded to the industry during events where motor vehicle access is reduced.

## **4. RECOMMENDATIONS**

By adopting the recommendations below, the NSW government will facilitate the achievement of positive road safety outcomes, while supporting the OOH industry, including NSW transport authorities, police and emergency services, local councils, small businesses and charities.

1. The urgent adoption and implementation of the Guidelines by DPE. Supported by a commitment that if further changes are made to the Guidelines exhibited in December 2015, that prior to their release, the Guidelines will be provided to the OMA for consideration, comment and approval.
2. In relation to upgrades of traditional signage to digital signage, we recommend:
  - a. That guidance as to the approval pathway for digitisation of signage be provided in the Guidelines to ensure appropriate conversions are not considered as new development but modification to existing development; OR
  - b. That the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be modified to allow a simple conversion from a static sign to a digital sign to be approved via a CDC.
3. With a commitment to greater objectivity in the consideration of the granting of concurrence to development applications for signage, the NSW Government will:
  - a. Allow proponents of signage on private land the same access to relevant road safety information as that allowed to proponents of signage on transport corridor land owned by the NSW Government;
  - b. Institute an independent panel of experts to consider development applications for signage on transport corridor land that are referred to the RMS for concurrence, including an industry-nominated representative;
  - c. A clearly articulated and consistently applied process for a pre-Development Application assessment meetings with the RMS;

- d. Utilisation of a fair risk assessment matrix which re-assesses risk based on any risk-mitigation implemented. As per the OMA's proposed risk assessment matrix (provided at Attachment 4);
- e. An impartial and expedient appeals process

## 5. CONCLUSIONS

The OMA is open to establishing a working group with the RMS, DPE and other key stakeholders to ensure successful resolution to the abovementioned issues.

We look forward to the DPE's review of our submission and welcome the opportunity to meet and discuss the key points raised. Please contact the OMA's General Manager, Tess Phillips, if you require any further information or would like to arrange a time to meet. Tess Phillips' contact details are telephone 9357 9900 or email [tess.phillips@oma.org.au](mailto:tess.phillips@oma.org.au)

Yours sincerely



Tess Phillips  
**General Manager, Government Relations**  
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## 5. ATTACHMENTS

Attachment 1: *Signs of Growth* – a summary of the Deloitte Access Economics findings

Attachment 2: OMA Submission to Draft transport corridor outdoor advertising and signage guidelines

Attachment 3: Sydney Digital Sign Approvals on Public Land

Attachment 4: OMA proposed Advertising Sign Risk Assessment Matrix