

10 February 2017

The Honourable Jackie Trad MP
Deputy Premier, Minister for Infrastructure, Local Government and Planning and
Minister for Trade and Investment

c/- State Interest Feedback
Planning Group
Department of Infrastructure, Local Government and Planning
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Dear Deputy Premier

Submission on the draft Planning Regulation, State Planning Policy and State Development Assessment Provisions

01 INTRODUCTION

The Outdoor Media Association (OMA) is pleased to participate in the planning reform process for Queensland.

The OMA is the peak national industry body representing 90% of Australia's Out-of-Home (OOH) advertising industry. Part of the role of the OMA is to develop constructive relationships with state and local governments and advocate for reasonable, evidence-based regulation for outdoor advertising.

02 BACKGROUND

The OMA has had a long-term engagement with planning policy in Queensland, providing comments on:

- Draft Planning Instruments in January 2016
- Draft Planning Bills in October 2015
- Draft Planning and Development Bill in October 2014
- submissions to numerous local councils' Planning Schemes and Local Laws

Furthermore, the OMA's Senior Policy Adviser attended the 2015 Planning Summit in Brisbane in July 2015 and the OMA.

The OMA has an established relationship with the Local Government Association of Queensland and in March 2012, the OMA finalised 'Model Advertising Devices Codes' for Queensland as best a practice guideline. Updated Model Codes have been developed for all States but QLD as the OMA wait on finalisation of Planning system. I include as an attachment the WA Code.

03 ISSUE: TREATMENT OF ADVERTISING DEVICES UNDER QUEENSLAND PLANNING LEGISLATION

The Planning Act 2016 amends the definition of operational work which leads to uncertainty as to whether advertising devices will be operational works or building works.

3.1 Sustainable Planning Act 2009

- Under the current *Sustainable Planning Act 2009 (SPA)*, “development” is defined¹ as:
 - carrying out building work
 - carrying out plumbing or drainage work
 - carrying out operational work
 - reconfiguring a lot
 - making a material change of use of premises (MCU).
- Generally, advertising devices are treated as operational work, which is defined² as including “*placing an advertising device on premises*”.

Positives	Negatives
<ul style="list-style-type: none"> • Advertising devices are generally understood as operational works, due to the specific definition. 	<ul style="list-style-type: none"> • There is a broad discretion for local governments to treat advertising devices differently.

3.2 Planning Act 2016 and draft Planning Regulation 2017

- Upon commencement, the Planning Act 2016 (Planning Act) will amend the definition of operational work to remove reference to “*placing an advertising device on premises*”. Operational work will only be defined as “*work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of premises*”.
- The draft Planning Regulation 2017 (Draft Reg) contains use terms that must be included in all local government planning schemes.³ “Advertising device” is not a defined use term, but is listed as an administrative term.

Positives	Negatives
<ul style="list-style-type: none"> • Simpler regulations generally. 	<ul style="list-style-type: none"> • Uncertainty on whether advertising devices will be operational works or building works. • Uncertainty on whether advertising devices will “materially affect” premises. • Lack of clarity could lead to confusion and potentially litigation to clarify how new legislation treats advertising devices.

04 RECOMMENDATION: TREATMENT OF ADVERTISING DEVICES

The OMA makes the following recommendations seeking more clarity regarding the treatment of advertising devices under the new Planning Act:

¹ Section 7 of the SPA

² Section 10 of the SPA

³ Section 7 and Schedule 3 of the Draft Reg

4.1 Recommendation 1 – ensure clarity that advertising devices are operational work

- Amend the Planning Act definition of operational work to read as follows:
 - operational work means:**
 - (a) work, other than building work or plumbing or drainage work; or
 - (b) work that is placing an advertising device on premises, that materially affects premises or the use of premises.

This option would remove uncertainty in Planning Act and confirm that advertising devices are operational work. However, the OMA acknowledges that the State Government is unlikely to change Planning Act definition as it has already passed through parliament. As such we propose an alternative solution:

4.2 Recommendation 2 – create standardised planning framework and remove ability for local governments to separately regulate advertising devices through planning schemes

- Amend Schedule 10⁴ of the Draft Reg to identify when operational work for the placing of an advertising device is assessable, and the relevant assessment criteria (e.g. a State-wide code for assessment).
- Amend Schedule 8⁵ of the Draft Reg to identify who would be the assessment manager for any such development application (e.g. the relevant local government).
- Amend Schedule 6⁶ of the Draft Reg to include the following items:
 - “building work to the extent that the work is placing an advertising device on premises”;
 - “a material change of use of premises for an advertising device”; and
 - “operational work that is the placing of an advertising device on premises”.
- Amend Schedule 7⁷ of the Draft Reg to include:
 - “building work to the extent that the work is operational work for placing an advertising device on premises”.

Positives	Negatives
<ul style="list-style-type: none"> • Would create standardised planning framework across the State. • Clarifies that advertising devices are operational work not building work. • Would remove ability for local governments to regulate advertising devices in their planning schemes (and only local law licence would be required). • Approval for operational work would still be required in certain specified circumstances, but it would be applied consistently across the State. 	<ul style="list-style-type: none"> • State may not be willing to remove local governments’ ability to regulate advertising devices through their planning schemes.

⁴ Schedule 10 prescribes development as ‘assessable development’ which requires development approval
⁵ Schedule 8 prescribes the assessment manager for development applications
⁶ Schedule 6 prescribes development for which a local government cannot require approval
⁷ Schedule 7 prescribes development that is ‘accepted development’ and does not require approval

05 ISSUE: OTHER ADVERTISING DEVICE PLANNING ISSUES

The following are longstanding items as of concern for the industry.

5.1 Failure of the State to finalise its Practice Note re Advertising Devices Code

Under the former Integrated Planning Act (IPA) 1997, there was an Implementation Note for Advertising Devices that provided instructions and guidance for councils as to how to prepare their local planning schemes for outdoor advertising signs. While this was not a statutory document the industry relied on this as it stated that there could not be regulation of content in planning schemes.

The Department of State Development, Infrastructure and Planning (DSDIP) worked on a similar Practice Note following the introduction of the Sustainable Planning Act (SPA) 2009. Unfortunately, eight years later, the industry is still waiting on the finalisation and adoption of this Practice Note.

As a result, the OMA often sees Planning Schemes with no Advertising Devices Code, contrary to the advice in the DSDIP Draft User Guide. The absence of any Advertising Devices Code means advertising devices can only be assessed under Subordinate Local Laws which often heavily regulate or fail to provide provisions for third-party signage.

The OMA has a letter on file (copy attached), dated 27 January 2016, from Matt Collins, Chief of Staff, to the Deputy Premier, stating that a draft User Guide for Advertising Devices is intended to be released in early 2017. The letter further advised that the User Guide would be part of a package of best practice material to support the commencement of the new Planning Act. We understand that the new Planning Act will commence in early July 2017. The OMA has tried to speak with the Director of the New Act Team, for an update on the draft User Guide, as recommended by Matt Collins, but we have unfortunately not been able to receive an update at the time of writing this submission.

5.2 Inconsistency in treatment of third-party advertising devices

The DSDIP Draft User Guide specified that the use of 'sub-definitions' for advertising devices should be avoided within Planning Schemes, as should the application of different levels of assessment for each sub-definition. However, this is often not the case. For example, Sunshine Coast Regional Council prohibits third party advertising, whereas its provisions relating to on-premise advertising are reasonable.

Subordinate Local Laws may be used to regulate the content of third-party advertisements. For example, the City of Gold Coast did not include an Advertising Code within the Draft City Plan and in its 2008 Subordinate Local Law No 16.8 (Advertising) only permitted third-party advertising devices promoting major tourist attractions.

5.3 Failure of planning policy to prevent unauthorised advertising devices

The OMA has witnessed growing concerns about the unauthorised placement of third party advertising devices along approach roads to Queensland towns. The concerns have come from OMA members and local councils. These unauthorised signs take the form of wrapped shipping containers and trailer signs. The OMA is concerned that these unauthorised signs portray a bad image for the OOH industry and its members, whose signs are designed to a high standard and are constructed with full approvals in place.

06 RECOMMENDATION: OTHER ISSUES

6.1 Recommendation 1: State to formally adopt advertising devices practice note

Unless the State Government elects to wholly implement the OMA's recommendation at Item 4.2, it is imperative that the State adopts a Practice Note or User Guide to provide clarity and consistency over the regulation of advertising devices.

The DSDIP's Draft User Guide provided clarity about the role of planning schemes in regulating advertising devices. The OMA participated widely in the consultation process for the User Guide. The primary objectives of the User Guide were as follows:

- to ensure no regulatory duplication (e.g. same aspects of advertising devices regulated in both local laws and planning schemes); and
- to ensure there is no inappropriate regulation under a planning scheme, such as:
 - Setting an inappropriate level of assessment (e.g. impact assessment where code assessment may be more appropriate);
 - An inconsistent level of assessment between Council planning schemes;
 - Regulating the content of advertising devices; and
 - Using sub-definitions of different types of advertising devices, and applying different levels of assessment for each sub-definition.

The OMA recommends that these objectives should be renewed, and believes the adoption of such a User Guide/Practice Note will improve planning regulations across the State.

6.2 Recommendation 2: more consistent treatment of advertising devices

It is important that the planning system recognises outdoor advertising signage as a legitimate land use. The Draft Planning Regulation defines an advertising device as an Administrative term rather than an actual land use. The OMA considers that an advertising device should be a defined land use.

Over a number of years, the OMA has advocated for Councils to use planning schemes rather than local laws to assess applications for advertising devices. Section 37 of the Local Government Act 2009 allows Councils to address advertising devices through a local law. The OMA believes that it was originally the intent of the Queensland Government to regulate advertising devices under planning schemes. Section 37 of the Local Government Act makes provision for local government to use a local law for the regulation of advertising devices "*until the local government decides to prepare its next IPA planning scheme.*"

The OMA would generally support the use of planning scheme rather than a local law for the assessment of advertising devices, although it acknowledges that in some cases the use of a local law works effectively, as in the case of Brisbane City Council. This is because planning schemes can provide a more consistent approach across Council areas for the assessment of advertising devices.

What the OMA is really seeking is more clarity and consistency. To achieve this, the OMA recommends that the State adopt the OMA's recommendation at Item 4.2, Item 6.1 or by giving consideration to a change to Section 37 of the Local Government Act 2009 to stop the control of advertising devices through a local law.

6.3 Recommendation 3: work to deter unauthorised advertising devices

OMA members take their statutory planning and development responsibilities seriously and comply with government planning regulations, including the payment of development application fees and compliance with planning permit conditions.

The OMA is concerned if Councils approve shipping containers as legitimate advertising devices, this will threaten the safety of the public, visual amenity and the economic viability of our members who strive to construct high quality advertising signage that complies with all relevant council building and planning codes and regulations.

The OMA recommends that the User Guide/Practice Note provide clear directions regarding this type of advertising.

o7 VALUE OF THE OOH INDUSTRY IN QUEENSLAND

The OOH industry plays a considerable role in the Queensland economy. In 2014, the industry in QLD:

- employed 146 full time equivalent staff
- raised revenue of \$119 million
- made a value-added contribution to the Queensland economy of \$51.6 million.

The OOH industry has built and maintains over 17,600 items of community infrastructure across Australia, including pedestrian bridges, bus shelters, park benches and bicycles. The replacement value for this infrastructure is estimated at \$352 million.

The industry in Queensland differs from other states in that there are more independent members working in a range of different regional and metropolitan areas. Queensland has a much higher rate of local and regional advertising campaigns compared to other states, indicating that outdoor advertising has a considerable positive impact for local business owners and operators in the state.

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

o8 FINAL COMMENTS

Thank you for the time that you have taken to review this submission. Should you wish to discuss any of the issues raised in more detail, please contact me on tess.phillips@oma.org.au or (02) 9357 99 22.

The OMA would be pleased to meet with you to discuss the best way to ensure the new Planning System does not negatively impact our industry in Queensland.

Yours sincerely

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