

Queensland Planning Provisions User Guide

Advertising Devices

Providing greater clarity about the role of planning schemes in regulating
Advertising Devices

The Department of State Development, Infrastructure and Planning is responsible for driving the economic development of Queensland.

© State of Queensland, Department of State Development, Infrastructure and Planning, **November 2013**, 100 George Street, Brisbane Qld 4000. (Australia)



License: This work is licensed under the Creative Commons CC BY 3.0 Australia licence. To view a copy of this licence, visit www.creativecommons.org/licenses/by/3.0/au/deed.en. Enquiries about this licence or any copyright issues can be directed to the Senior Advisor, Governance on telephone (07) 3224 2085 or in writing to PO Box 15009, City East, Queensland 4002

Attribution: The State of Queensland, Department of State Development, Infrastructure and Planning.

The Queensland Government supports and encourages the dissemination and exchange of information. However, copyright protects this publication. The State of Queensland has no objection to this material being reproduced, made available online or electronically but only if it is recognised as the owner of the copyright and this material remains unaltered.



The Queensland Government is committed to providing accessible services to Queenslanders of all cultural and linguistic backgrounds. If you have difficulty understanding this publication and need a translator, please call the Translating and Interpreting Service (TIS National) on telephone 131 450 and ask them to telephone the Queensland Department of State Development, Infrastructure and Planning on telephone (07) 3227 8548.

Disclaimer: While every care has been taken in preparing this publication, the State of Queensland accepts no responsibility for decisions or actions taken as a result of any data, information, statement or advice, expressed or implied, contained within. To the best of our knowledge, the content was correct at the time of publishing. Any references to legislation are not an interpretation of the law. They are to be used as a guide only. The information in this publication is general and does not take into account individual circumstances or situations. Where appropriate, independent legal advice should be sought.

An electronic copy of this report is available on the Department of State Development, Infrastructure and Planning's website at www.dsdiqld.gov.au To obtain a printed copy of this report, please contact us via the contact details provided at the end of this report.

Insert Source number

Introduction

The purpose of this user guide is to:

- outline and provide guidance to stakeholders about the role of planning schemes in regulating the development impacts of advertising devices.
- provide a summary of the relationship between advertising device provisions in planning schemes, local laws and industry standards and laws such as Australian Association of National Advertisers (AANA) Code of Ethics
- provide guidance on how advertising device provisions can be successfully incorporated in QPP compliant planning schemes.

Note: Users are advised to refer to the most up to date legislation and instruments when using the user guide to inform planning scheme drafting.

How is advertising regulated in Queensland?

Development that may be regulated under a planning scheme includes 'operational work'. Operational work is defined in section 10 of the *Sustainable Planning Act 2009* (SPA) as including 'placing an advertising device on premises'.

Schedule 3 of the SPA defines 'Premises' as:

- a) a building or other structure: or
- b) land, whether or not a building or other structure is situated on the land

The content of an advertising device is regulated by the industry standards and laws and should not be further regulated under a planning scheme. The Australian Association of National Advertisers (AANA) Code of Ethics is the industry's key guideline regarding the self-regulation of advertising material and content. The Advertising Standards Board reviews content (both visual and text) against this Code, when considering complaints from the public.

The content of an advertising device upon the premises must not contravene any criminal laws, nor infringe laws generally.

Types of advertising devices

The QPP are the standard planning scheme provisions made under the SPA that provide a consistent format and structure for local governments across Queensland when preparing their planning scheme. Advertising device is a defined administrative definition in the QPP as follows:

Any permanent structure, device, sign or the like intended for advertising purposes. It includes any framework, supporting structure or building feature that is provided exclusively or mainly as part of the advertisement.

An advertising device as defined under QPP may include:

- a freestanding sign, such as a pylon sign or billboard
- a sign attached to a building, such as an awning sign, a projecting wall sign or a roof sign.

The following types of advertising devices do not require regulation under a planning scheme:

- temporary advertising devices, such as a 'For Sale' sign, a construction site wrap or mobile advertising
-

- advertising on bus shelters, railway stations or subways that are covered under individual contracts with local governments.

Objective

The Queensland Government is committed to streamlining assessment and approval processes and removing unnecessary red tape.

The primary objectives of the Department of State Development, Infrastructure and Planning (DSDIP) with regard to regulatory provisions that apply to an advertising device are:

- ensure there is no regulatory duplication (e.g. same aspects of advertising devices regulated in both local laws and planning schemes)
- ensure there is no inappropriate regulation under a planning scheme, such as:
 - setting an inappropriate level of assessment (e.g. impact assessment where code assessable, self-assessable or exempt may be more appropriate)
 - an inconsistent level of assessment between local government planning schemes
 - regulating content of the advertising device
 - the complexity of operation (e.g. the inappropriate use of additional sub definitions of advertising devices and applying different levels of assessment for each sub definition).

SPA planning schemes and local laws

Sustainable Planning Act 2009

Placing an advertising device on premises may be regulated as assessable operational work under a SPA planning scheme and may be assessed against an advertising device code. The following matters may form key elements of an advertising device code:

- size
- height from ground level
- illumination
- other physical characteristics of the device such as display area and supporting structures
- location, for example:
 - zones to differentiate location and size of advertising devices and level of assessment
 - position of the device in relation to allotment boundary
 - separation distance between advertising devices
 - building on which it is placed
 - position in relation to public thoroughfare.
- specific measures to ensure road safety (i.e. line of sight and avoiding driver distraction)
- public safety
- character and amenity of surrounding area (spacing of devices to avoid visual clutter, scenic amenity, heritage and/or architectural features).

The planning scheme is the most appropriate regulatory tool for development matters associated with an advertising device, rather than a local law under the *Local Government Act 2009*.

Local Government Act 2009

Section 37(5) (a) of the *Local Government Act 2009*, allows local governments to continue to make local laws about an advertising device until the local government adopts a new planning scheme under the SPA.

This provision was intended to ensure that a local government is able to adequately regulate development associated with an advertising device until a SPA planning scheme is adopted. It is not intended that both regimes continue to regulate development impacts of advertising devices.

Following adoption of a SPA planning scheme, a local law may continue to include matters relating to the licensing components of an advertising device, such as:

- the requirement for a licence
- application details
- criteria for assessing a license application
- conditions which may be imposed on a licence
- maintaining the advertising device in good order.

If a local government chooses to develop a local law addressing this matter, the local law should clearly identify the need for particulars of the licence to be consistent with, or comply with, the local government's planning scheme.

For an assessable advertising device under the planning scheme, an applicant must first seek development approval before applying for a licence through the local law. The local law criteria for assessing the licence application should require compliance with any relevant development approval. A local government cannot use a local law to refuse a development application.

The content of an advertising device must not be regulated in the local law.

What should local government do now?

For existing SPA planning schemes, what has to be done?

A local government may have adopted a planning scheme prior to the QPP version 3 coming into effect on 25 October 2013. The planning scheme may therefore not reflect the requirement that an advertising device be included as an administrative definition rather than a use definition, as was required in QPP version 2.0. In these cases, local governments should make an amendment to the planning scheme to reflect the statutory version of QPP.

Where the planning scheme includes provisions that relate to the content of advertising devices, these provisions must be removed as part of this amendment.

When drafting or amending a SPA planning scheme, what has to be done?

The matters listed below should be considered by a local government when preparing a SPA planning scheme. DSDIP will consider these matters when undertaking the state interest review of the draft SPA planning scheme or when reviewing amendments to a SPA planning scheme:

- Regulate advertising devices as operational works without reference to content. The content of an advertising device is regulated by advertising industry standards and law and must not be regulated by the SPA or a local planning scheme.
 - If the local government seek to include an advertising device code in the planning scheme or another code that regulates advertising signage, the code should be consistent with the advice in this practice note.
 - Ensure the planning scheme provisions do not duplicate the approval processes of the Department of Transport and Main Roads (DTMR) for an advertising device within the boundaries of state-controlled roads. DTMR approval is not required for local roads. Planning scheme provisions should also be
-

consistent with DTMR policy relating to signage beyond the boundaries of, but visible from, a motorway. DTMR's "Roadside advertising guide: 2 August 2013" can be found at <http://www.tmr.qld.gov.au/business-industry/Technical-standards-publications.aspx>

- Remove any duplication of regulatory provisions between a planning scheme and a local law when amendments to either of these documents are made. A planning scheme and a local law should not regulate the same characteristics of an advertising device. A local law should not influence the level of development assessment in a planning scheme. For example, a local planning scheme cannot state that an advertising device is exempt from development approval if there is a license granted under a local law.
- Remove any provisions in a planning scheme that are inconsistent with Section 683 of the SPA which protects existing and lawfully constructed buildings or works. For example, when an advertising device has been lawfully constructed, or is integral to a structure or building that has a lawful approval, it is protected from any alteration or removal as a result of non-compliance with any later amendment to a planning scheme or local law.
- If a local government chooses to develop a local law for advertising devices, the local law should be consistent with the advice in this practice note.

DSDIP requires a local government to make any necessary amendments to ensure their planning scheme is consistent with this practice note.

Further information

Further information on advertising devices can be found in the *Sustainable Planning Act 2009* and from the Department of State Development, Infrastructure and Planning.