



OUTDOOR MEDIA ASSOCIATION

SUBMISSION TO DRAFT TRANSPORT CORRIDOR OUTDOOR ADVERTISING AND SIGNAGE GUIDELINES

February 2016

EXECUTIVE SUMMARY

The Outdoor Media Association (OMA) and its members congratulate the Department of Planning and Environment (DPE) on releasing on exhibition the updated Transport Corridor Outdoor Advertising and Signage Guidelines (the Guidelines). The OMA is supportive of the Guidelines and believes it is essential they are adopted, given the substantial role that they will play in supporting NSW state priorities – particularly by encouraging business investment and creating jobs.

The OMA is concerned, however, that two overarching issues stand in the way of a successful implementation of the updated Guidelines. These are:

1. The prohibition of any new advertising signage in most transport corridor land in NSW as a result of Clause 16(4)(b) of SEPP 64 and the wording of the current Standard Instrument for Infrastructure Zoning in LEPs that has been adopted by 40 of 43 metropolitan Sydney¹ councils.
2. The lack of clarity regarding the approval pathway when upgrading an existing fixed, scrolling or tri-vision sign to a digital sign.

At present, the Standard Instrument for Infrastructure Zoning in LEPs does not expressly permit signage with consent in SP1 or SP2 zones – including arterial roads, railways, airports, tollways, transport interchanges and light rail. Accordingly, councils that adopt the Standard Instrument and do not specifically amend this provision effectively prohibit the development of new signage these zones.

At present, 40 of the 43 metropolitan Sydney councils have adopted LEPs based on the Standard Instrument in relation to that provision. The result is that, due to the operation of Clause 16(4)(b) of SEPP 64, the overall intention of SEPP 64 in respect of signage in transport corridors is overridden throughout the vast majority of metropolitan Sydney.

The three metropolitan councils that permit signage with consent in SP1 and SP2 zones use their DCP 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 their DCP.

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, local councils, small businesses and charities.

Recommendations

1. The timely adoption and implementation of the Guidelines by DPE.
2. In relation to advertising signage in transport corridor land, the OMA recommends:
 - a. That the Standard LEP Instrument be revised to expressly permit advertising signage with consent on transport corridor land.
 - b. That Clause 16(4)(b) be deleted to reflect that advertising signage should be permissible with consent on transport corridor land.
 - c. That Clause 16(1)(a) and 16(1)(b) be revised to treat signage developed by private land owners equitably to signage developed by or on behalf of the RMS, Sydney Trains and NSW Trains.

¹ NSW Office of Local Government: <https://www.olg.nsw.gov.au/content/download-council-contact-details>

3. In relation to the upgrading of existing static signage to digital signage, the OMA recommends:
 - a. That guidance as to the approval pathway for digitisation of signage be provided in the Guideline to ensure appropriate conversions are not considered as a new development but a modification of an existing development;
 - b. That the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be modified so that a simple conversion from a static sign to a digital sign can be approved via a Complying Development Certificate (CDC).
4. That the OMA's proposed minor amendments to the Guidelines be adopted to streamline the application of the Guidelines. These minor amendments to the Guidelines are designed to ensure they are applied appropriately which will help facilitate compliance and good road safety outcomes.

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

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01 INTRODUCTION

The Outdoor Media Association (OMA) and its members congratulate the Department of Planning and Environment (DPE) on updating the Transport Corridor Outdoor Advertising and Signage Guidelines (the Guidelines). The update to this important guideline was worked on by the OMA together with the Roads and Maritime Services (RMS), Transport for NSW, the Centre for Road Safety and the DPE. Its approval and implementation is critical to ensure that NSW provides guidelines for the development and display of digital signage. Given the increasing use of digital signage across a range of formats, it is imperative that the Guidelines be introduced. Adoption of the Guidelines is essential, given the substantial role that they will play in supporting NSW state priorities – particularly by encouraging business investment and creating jobs.

02 ABOUT THE OMA

The OMA is the peak national industry body representing most of Australia's Out-of-Home (OOH) media display companies and production facilities, as well as some media display asset owners, including the RMS.

Part of the role of the OMA is to develop constructive relationships with Federal, State and Local Governments with the aim of ensuring that new laws and regulations for outdoor advertising are fair and equitable.

Advertising and marketing plays a fundamental role in the Australian economy, contributing \$7.2 billion a year in revenue to the economy and employing 183,270 people throughout its industries.² The OOH industry is an important contributor to the NSW economy, employing almost 500 FTE staff in NSW and hundreds of contractors. In 2015, the Australian OOH industry's revenue grew by 17%, taking our net revenue to \$677.8 million. One of the drivers of this growth is digital advertising, which currently represents 27.3% of total OOH advertising revenue.³

The OOH industry in Australia contributes over 17,000 items of infrastructure to the community, including pedestrian bridges, bus shelters, kiosks, phones, park benches and bicycles. The replacement value of these items is estimated to be over \$275 million. The NSW Government also receives a direct economic benefit from OOH through rents paid on leasing inventory stock from roads, railways and buildings. In 2014 RMS reported just under \$23 million in advertising revenue and Sydney Trains just over \$12 million.

03 ISSUES FOR SUCCESSFUL IMPLEMENTATION OF THE GUIDELINES

The OMA is concerned that two key overarching issues stand in the way of a successful implementation of the improved guidelines. These are:

1. The provision in SEPP 64, Clause 16(4)(b), that allows Local Councils to disregard the intention of the SEPP 64 to permit with consent advertising in transport corridors.
2. A lack of clarity regarding the approval pathway when upgrading an existing fixed, scrolling or tri-vision sign to a digital sign.

3.1 The prohibition of new advertising signage in transport corridor land

In NSW the development of third-party outdoor advertising signage is regulated by the

² Valuing Australia's Creative Industries, Creative Industries Innovation Centre December 2013

³ http://www.oma.org.au/_data/assets/pdf_file/0005/12956/021215_November_double-digit_growth_underscores_migration_of_adspend_to_Out-of-Home.pdf

overarching state-wide environmental planning policy, the SEPP 64. SEPP 64 outlines provisions relating to the design, placement and development of advertisements, advertising structures and signs. It also outlines those zones in which advertising is prohibited; Clause 3(10) outlines nine zones in which advertising is prohibited. Transport corridor land is not a prohibited zone.

However, the rules that permit signage in transport corridors in SEPP 64 do not apply if a Local Council prohibits signage in its Local Environmental Plan (LEP) due to the application of Clause 16(4) (b) of SEPP 64.

Furthermore, the Standard Instrument for Infrastructure Zoning in LEPs (PN10-001, 14 December 2010) does not expressly permit signage with consent in the SP1 - Special Activities Zone or the SP2 - Infrastructure Zone, zones typically applied along State road and rail corridors. As a result, the vast majority of LEPs modelled on the Standard Instrument disregard the intention of the SEPP 64 to permit advertising signage with consent on State road and rail corridors, and instead, in some cases unintentionally, prohibit it.

It is commonly accepted that the most desirable locations for advertising are major arterial roads, railways, airports, tollways, transport interchanges and light rail. However, only three of the 43 Metropolitan Councils⁴ have adopted LEPs that permit advertising with consent within Zone SP2 transport corridors. These three Councils are Holroyd City Council, Kogarah City Council and Lane Cove Municipal Council.

Following are some examples of State controlled roads currently zoned SP2.

State Road	Length	LEP Zoning
Pacific Highway (from North Sydney to Hornsby)	20 kilometres (approx.)	SP2 – Classified Road – advertising prohibited
Pennant Hills Road (Wahroonga to North Parramatta)	42 kilometres	SP2 – Classified Road – advertising prohibited
Hume Highway (from Summer Hill to Casula)	35 kilometres (approx.)	SP2 – Classified Road – advertising prohibited

These roads, and numerous others zoned SP2, cover significant distances and traverse a range of land use zones, including industrial and commercial areas. The OMA considers that segments of these roads could accommodate advertising signage safely and with little impact on the character or amenity of the localities. Currently, large format advertising signage is prohibited under the LEPs for their entire length. Small format advertising, however, for example that is displayed on street furniture such as bus shelters, is permitted along many of these roads, and councils regularly establish, utilise and derive financial benefit from its display.

Planning controls are designed so that overarching state controls prevail over local controls. However, where appropriate, the lower order local development controls can still be taken into account in the assessment process.

⁴ Refer footnote 1.

Section 16(1) outlines the intention of the SEPP 64 that “despite [...] the provisions of any other environmental planning instrument, the display of an advertisement on transport corridor land is permissible with development consent” in many cases. However, Section 16(4)(b) allows Local Councils to wholly disregard this intention. The application of this clause by 93% of NSW Metropolitan Councils is having a direct economic impact on the OOH industry in NSW and is also impacting on government revenue, as development of RMS and Sydney Trains signage is also prohibited.

The three Councils that do not prohibit advertising within the SP2 zone, effectively control advertising signage by applying SEPP 64 regulations and a Development Control Plan (DCP).

The DCPs for the Holroyd, Kogarah and Lane Cove Councils all include provisions for advertising and signage. The common objective of the DCPs is to provide policy to allow the Council to assess development applications for signage and advertising for which Council is the Consent Authority. The DCPs identify different precinct areas for signage assessment within the Council boundary, based on the characteristics of local buildings, streetscapes and vistas. Kogarah Council’s DCP states that billboard signage for example, is only permissible in Business and Industrial Zones. Similarly, Lane Cove Council’s DCP states that third party advertising will only be considered within the commercial core of St Leonards.

It is timely that changes be made to Section 16 of the SEPP 64 to align with the State’s priority to encourage business investment. Section 16(1) which outlines the cases in which advertisement on transport corridor land are permissible with consent does not include signage developed by private land owners. There is no rationale for this exclusion and the OMA provides a suggested alternative to ensure that different signage developers are treated equally.

3.1.1 Recommendations

The OMA proposes the following to address the issue of advertising signage prohibitions in transport corridor land:

- a) that the Standard Instrument be revised to provide for the mandatory inclusion of advertisements, advertising structures and signage as permissible uses with consent within the Special Infrastructure Zones as they relate to road and rail corridors and tollways, and extended to include light rail corridors, transport interchanges and ferry terminals.
- b) the deletion of Clause 16(4)(b) to reflect the intention of the SEPP 64 that advertising signage is permissible with consent on transport corridor land.
- c) The revision of Clause 16(1)(a)
from: ‘the display of an advertisement by or on behalf of RailCorp on a railway corridor’
to: ‘the display of an advertisement on a railway corridor’.
- d) The revision of Clause 16(1)(b)
from:
the display of an advertisement by or on behalf of the RTA on:
(i) a road that is a freeway or tollway (under the Roads Act 1993) or associated road use land that is adjacent to such a road, or
(ii) a bridge constructed by or on behalf of the RTA on any road corridor, or
(iii) land that is owned, occupied or managed by the RTA and that is within 250 metres of a classified road,
to:
the display of an advertisement on:
(i) a road that is a freeway or tollway (under the Roads Act 1993) or associated road use land that is adjacent to such a road, or
(ii) a bridge constructed on any road corridor, or
(iii) land that is within 250 metres of a classified road,

3.2 Approval pathway for the conversion of an existing sign to digital

As is acknowledged in the “Frequently Asked Questions” note issued by DPE, there has been a gradual change in signage technology so that digital sign technologies are increasingly being used in transport corridors. This has seen and will result in the conversion of existing static signs to digital signs across NSW.

The intent of the Guidelines is to address the emerging digital signs technology. While much of the Guidelines address technical issues, the planning approval pathway for the conversion of static signs to digital signs is an important element that should be expressly included in the Guidelines. Such an inclusion will ensure that all matters relevant to digital sign technologies are adequately addressed in the Guidelines for the benefit of both consent authorities and applicants.

The approval pathways for such a conversion are varied and may include a fresh development application (DA) or s96 modification application (Modification Application) being made under the Environmental Planning and Assessment Act 1979.

According to legal advice from Corrs Chambers Westgarth lawyers, a Modification Application approval pathway is appropriate in circumstances where the essential characteristics of the signage do not change and the proposed modifications result in a development that is “substantially the same” as that which is already approved under the original consent for the static sign. A Modification Application may be appropriate where:

- (a) only the delivery of the advertising content is changing from static to digital;
- (b) and any other consequential modifications to the size of the sign, luminance, footprint, location, structures and mountings of the advertising structure are not “radically transformed” when compared to that which was originally approved.

Currently, the Guidelines provide no guidance on the Modification Application approval pathway. Reference to Modification Applications and how they should be treated will resolve confusion amongst consent authorities and proponents of any such developments. The OMA notes that this pathway is currently used by some Councils to approve certain applications. An example of an application approved in this way is provided as **Attachment A**.

3.2.1 Recommendations

The OMA proposes that the approval pathway where the proponent pursues a Modification Application should be expressly addressed under Section 1 of the Guidelines. Section 1.6 SEPP 64 DEVELOPMENT APPLICATIONS IN TRANSPORT CORRIDORS, should be followed by a new Section 1.7 MODIFICATION APPLICATIONS IN TRANSPORT CORRIDORS.

The OMA notes that there is already special “savings” provisions in section 2.5.5(e) of the Guidelines which apply to the continuation of the display of existing advertising on bridges which were approved prior to State Environmental Planning Policy No 64 (Advertising and Signage) (Amendment No 2) in 2007. As with the provisions in clause 2.5.5(e), clarifying the application of the Guidelines to a Modification Application will ensure that the appropriate provisions of the Guidelines apply to the proposed modified sign (i.e. safety, dwell times, luminance). The OMA suggests a breakout-box is used to explain the process.

If, for whatever reason, the Guidelines do not apply to a proposed sign subject of a modification application there should still be the same clarification in respect of the conversion from a static sign to a digital sign, i.e. that Councils are only to apply the safety, dwell times and luminance parameters when assessing the modification application rather than applying the entirety of the DCP controls.

In addition, the OMA recommends that DPE consider implementing the attached legal advice from Corrs Chambers Westgarth lawyers proposing an additional approval pathway. This pathway would reduce administrative burdens on consent authorities by avoiding the need

for a full merits assessment for a simple signage conversion. It would entail a change to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 so that a simple conversion from a static sign to a digital sign can be approved via a Complying Development Certificate (CDC). This legal advice is provided as **Attachment B**.

04 PROPOSED MINOR AMENDMENTS TO THE GUIDELINES

Digital signage, both on-premise and third party, is increasingly being used by businesses to advertise their products and services. OMA members comply with strict regulatory requirements when it comes to the development and display of digital signage. On-premise advertisers, and users of roadside variable messaging signs (VMS), are often not compliant with these regulations. It is imperative that all signage visible at the roadside be subject to the same road safety regulations to ensure positive road safety outcomes.

In this section of its submission, the OMA proposes a number of small amendments which, if adopted, would streamline the Guidelines in line with the Department’s objective to ‘promote and open and transparent planning system’.

4.1 Section 1 – scope of SEPP 64, required information for development applications for signage and application of the Guidelines

1.4.2 Exempt Developments

Under SEPP 64 the following development on transport corridor land is exempt development when carried out by or on behalf of RMS or Sydney Trains and NSW Trains:

- (d) modifications to existing to existing signage to meet occupational health and safety requirements and that do not increase the advertising display area of the signage.

The OMA submits that this provision should apply to any modification to signage for the purpose of WHS compliance, whether or not it is carried out by or on behalf of RMS or Sydney Trains and NSW Trains.

4.2 Section 2 – Design Issues including design criteria for digital signs

The OMA considers there to be an error in Table 3 displayed below:

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 meter (cd/m ²). 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:			
<i>Lighting Condition</i>	<i>Zone 1</i>	<i>Zones 2 and 3</i>	<i>Zone 4</i>
Full Sun on face of Signage	No limit	Maximum Output	Maximum Output
Day Time Luminance		6000 cd/m ²	6000 cd/m ²
Morning and Evening		700 cd/m ²	500 cd/m ²
Twilight and Inclement Weather			
Night Time		350 cd/m ²	
Night Time		350 cd/m ²	

It would appear that a repeated and unnecessary row has been included at the bottom of this table. The OMA recommends that the second row ‘Night Time’ be deleted.

2.5.10 Video and animated electronic signs

Video and animated electronic signs containing animated or video/movie style advertising or messages including; live television, satellite, internet or similar

broadcast; either permanent or portable; that face the road reserve and are visible to drivers are prohibited.

The OMA is concerned that this clause could prohibit live traffic safety or emergency messaging information to be displayed on digital signage. It is recommended that this clause is reworded to ensure this type of messaging is permitted.

4.3 Section 3 – Advertisements and Road Safety

The OMA has no comments on this section.

4.4 Section 4 – Public Benefit Test

The OMA has no comments on this section.

4.5 Section 5 – RMS Assessment of Advertisement Proposals

The OMA would like to raise significant concerns with the reference to the RMS Road Safety Assessment Matrix. This is not a publicly available document and the OMA does not believe that it has been properly developed, referenced or reviewed. If the Guidelines are to formally reference this document, the OMA is of the view that it requires independent review.

05 RECOMMENDATIONS

1. The timely adoption and implementation of the Guidelines by DPE.
2. In relation to advertising signage in transport corridor land, the OMA recommends:
 - a. That the Standard LEP Instrument be revised to expressly permit advertising signage with consent on transport corridor land.
 - b. That Clause 16(4)(b) be deleted to reflect that advertising signage should be permissible with consent on transport corridor land.
 - c. That Clause 16(1)(a) and 16(1)(b) be revised to treat signage developed by private land owners equitably to signage developed by or on behalf of the RMS, Sydney Trains and NSW Trains.
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The OMA is open to establishing a working group with DPE and other key stakeholders to ensure successful resolution to the abovementioned implementation issues.

06 CONCLUSION

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