

## Briefing note

**From:** Helen Willoughby, Chief Executive Officer, OMA  
**To:** Sam Haddad, Yolande Stone and Sarah McGirr, Department of Planning  
**Date:** 3 September 2008  
**Subject:** Regulation of outdoor advertising in NSW.

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### Issue

1. Matters arising from last year's amendments to the *State Environmental Planning Policy No 64 – Advertising and Signage* (SEPP 64) and the associated *Transport Corridor Outdoor Advertising and Signage Guidelines*.
2. Unresolved matters concerning SEPP 64.

### Background

The Outdoor Media Association (OMA) met with the Department of Planning (DoP) on 20 August 2008 to discuss the upcoming review of SEPP 64. At this meeting, the OMA identified a number of new matters that had arisen since the legislation was amended in August 2007, as well as identifying other issues that remained unresolved from the previous review.

At this meeting, the DoP requested that the OMA separate out the matters arising from the amended legislation from those that remain unresolved but have been previously raised by the industry in earlier submissions.

This information is provided below. Recommendations have been provided where appropriate for the DoP's consideration as requested. Please note that this is not an exhaustive list as further issues are likely to arise during the review process and with broader consultation of OMA members.

### Comment

#### 1. New matters arising from 2007 amendments:

Described below are the key issues that members of the OMA have been experiencing with the amended SEPP 64 and the associated transport guidelines since they were made in August 2007.

A. *Relationship between amended SEPP64 and Local Environmental Plans with regards to transport corridors.*

Clause 16(4)(b) of SEPP 64 and Section 1.4 of the Guidelines states that an advertisement is not permissible on transport corridor land if it is prohibited by a LEP developed **after** the SEPP 64 amendments take effect.

The OMA is concerned of the precedence that will be set if a local council is permitted, through a new LEP, to prohibit advertising on sections of transport corridor land and ultimately to override SEPP 64. This would create inconsistency in the application of the policy and cause conflict between the various parties impacted by this Clause. It also has the potential to impair the aesthetic outcome and commercial viability of any outdoor signage applications on transport corridors.

Proposal: That Clause 16(4)(b) be removed from the legislation and associated text be removed from Section 1.4 of the Guidelines.

B. *Permissible use of outdoor advertising in rural/regional areas.*

An error was identified in the drafting of the amended legislation whereby references to the permissibility of outdoor advertising in rural and regional areas were inadvertently made more stringent by replacing the word 'or' with 'and' after the sentence in Clause 15(2)(b)(i). This has the effect of only allowing outdoor advertising if the content of any advertisement is related to the activity on or adjacent to the site, which was not the original intention of this Clause.

The DoP acknowledged this error in prior correspondence with the OMA and advised it would be corrected to return to the original wording (that is, instating the word 'or' and removing the word 'and' from this sentence). However, the error remains in the current legislation which was last modified in December 2007.

Proposal: Remove the word 'and' and insert the word 'or' at the end of the sentence in Clause 15(2)(b)(i).

C. *Size of company logos on signs.*

Clause 20 of SEPP 64 regulates the size and location of company logos on signs. The legislation states that the size of the logo sign must not be greater than 0.25 square metres and is to be included in calculating the size of the advertising display area.

While this Clause was introduced into the original SEPP 64 without any consultation with the industry, it has been identified as an issue in recent assessments under the amended legislation. The same problem remains in that the dimensions are inadequate, making compliance virtually impossible for operators, particularly those with longer names. Company logos need to be large enough for consent authorities to be able to identify the owner of the sign for approval controls and to notify the owner of the sign if there has been any emergency damage to the sign. They need also to be large enough to be easily identified by passing drivers who wish to complain about the content of an advertisement.

Company logos also should not be included within the size parameters of the actual advertising face as they are there for identification purposes, not third party advertising. They should be located in the most appropriate viewing position from the roadside, and have a maximum size limit sufficient to accommodate the longest of company names.

Proposal:

1. Amend Clause 20(2)(b) to read: "according to the most appropriate viewing position from the roadside."
2. Amend Clause 20(3) to read: "The area of any such name or logo must not be greater than 2.5% of the total display area of the advertisement."

D. *Concurrence role of the Roads and Traffic Authority (RTA).*

Clause 16 of SEPP 64 provides that the Department of Planning is the consent authority for the display of an advertisement by or on behalf of RailCorp on a railway corridor. Clause 18 of SEPP 64 states that a consent authority must not grant development consent for an advertisement for a sign that is greater than 20 square metres and within 250 metres of, and visible from, a classified road without the concurrence of the RTA. However, it also states that this Clause does **not apply** when the Minister is the consent authority.

Some OMA members have advised that the RTA has played an active role in the assessment of DA's for signs where the Minister is the consent authority, and/or where the sign has been less than 20 square metres and/or are on RailCorp land. In one particular case, the RTA is alleged to have rejected a DA for a sign on a railway bridge (RailCorp land) due to driver distraction concerns, yet approved the development of a sign on a road bridge further along the road. If this occurred it is unclear, given the legislation, why the RTA was granted a concurrence role in the first place.

Proposal: The DoP meet with the RTA and RailCorp to seek resolution of these issues, and define roles under the amended legislation.

E. *Documentation required for assessments of DAs.*

The OMA has been advised by its members that the documentation required under the amended legislation is particularly onerous and time consuming to prepare, particularly where duplication exists with the provisions required under Section 79(A) of the *Environmental Planning and Assessment Act*.

Proposal: That the documentation requirements under all State planning legislation for outdoor advertising signage applications be reviewed with the aim of minimising duplication.

F. *Application of public benefit test to advertisements on private land and bridges.*

Clause 13(3) of the SEPP 64 states that public benefits must be provided for those signs that are greater than 20 square metres and are within 250 metres of, and visible from, a classified road.

It is unclear in this Clause as to whether the RTA has the authority to determine the public benefits from a sign that is to be located on private land. Whilst it is logical for the RTA to have a role in assessing any safety impact of advertising signs on private land, the OMA does not see that they are in a position to establish public benefits for these signs which otherwise comply with local and state planning provisions.

The industry also questions the RTA's role in determining the public benefit for bridges. This should remain a role for the planning authorities such as the Department of Planning or local councils.

Proposal: Either the Department of Planning or local councils be responsible for assessing the public benefit of advertising signs on private land and on bridges.

G. *Environmental conditions for DAs.*

One of the OMA's members recently advised of a new condition that was included in one of their approved DAs. The condition reads that "all future advertising skins installed on the signage structure shall employ the use of a biodegradable PVC material (Bioflex or similar) to ensure that the signage satisfies environmental design and performance requirements."

The OMA is concerned that the industry is not in a position to enforce the use of biodegradable PVC skins at this time due to a lack of supply of suitable products. It is, however, trialling certain materials to test their performance and biodegradability. The OMA has been advised that these materials are currently being sourced in limited amounts from the United States.

The outdoor media industry is, in the meantime, implementing a number of other environmental initiatives, including the recycling of skins, and would be pleased to provide a more comprehensive briefing on the subject to the DoP.

Proposal:

1. Signage approval should not be conditional upon specific environmental considerations such as biodegradable skins until industry trials are completed.
2. The OMA meet with the Department of Planning to discuss the industry's environmental initiatives in more detail.

H. *Application of exempt and complying development provisions.*

Clause 33(b) of the SEPP 64 states that advertisements undertaken by or on behalf of the RTA and RailCorp are exempt development when undertaken at a railway station or bus station and only visible from that location, or if existing signage is being removed from rail or bus stations. Clause 34 of the SEPP 64 states that new billboards in transport corridors and OH&S modifications to existing billboards in transport corridors shall be classified as complying development when carried out by or on behalf of the RTA or RailCorp.

These parts of SEPP 64 create an unnecessary discrepancy in rules between private and RTA or RailCorp applications for development on the same type of infrastructure. It is particularly the case that OH&S upgrades to existing and approved advertising infrastructure should be complying development when those upgrades do not increase the size of the advertisement, regardless of which organisation is performing the upgrade.

Proposal: Clauses 33(b) and 34 apply to both private and public sector organisations. This would have the added benefit of not tying up council planning resources for routine maintenance works.

I. *Visibility and visual catchment issues.*

- i. Clause 33(1)(b) of the SEPP 64 and Section 1.3.2 of the Guidelines propose that the display of an advertisement which is only visible from a railway station or bus station be exempt development.

Proposal: The OMA requests that the SEPP 64 and the Guidelines contain a clearer definition of 'visible from' and 'bus station'. Specifically, the definitions need to:

- Address situations such as when a billboard advertisement is visible from a rail platform but the back of the structure is visible from the street; and
  - Provide further clarification about the term 'bus station', as no examples could be identified where an advertisement at a bus stop would be visible only from the bus stop and not the adjoining road. Does this refer to infrastructure such as bus terminals and bus interchanges?
- ii. Section 1.4 of the Guidelines states that advertisements must not be placed in transport corridors adjacent to, or visible from, areas where advertising is prohibited. While to OMA has no objection to advertising being prohibited within such areas as environmentally sensitive, residential or heritage precincts, particular concern is derived from the banning of advertising which is visible from these precincts. The visibility reference in the land use compatibility test could be used to prohibit advertising in most city locations.

Proposal: This reference be removed from the Guidelines.

- iii. Clause 23 of the SEPP 64 and Section 2.5.4 of the Guidelines state that freestanding advertisements may not protrude above the dominant skyline when viewed from ground level within a visual catchment of one kilometre. The industry is concerned that this reference is too broad and could incorporate advertisements visible up or down sloping ground.

Proposal: That 'visual catchment' be specified in the legislation and guidelines as referring to a vehicle's approach only.

## **2. Unresolved issues from previous submissions:**

### *A. Relationship between SEPP 64, Local Environmental Plans (LEPs) and Development Control Plans (DCPs).*

Clause 7 of SEPP 64 describes the relationship between SEPP 64 and other environmental planning instruments. SEPP 64 is the prevailing policy where there are any inconsistencies with DCPs and LEPs.

The OMA understands that the role of any State Environmental Planning Policy is to provide the over-arching regulatory framework for particular activities, be they commercial or otherwise, because they are in the State's interest. OMA members are very concerned at the prospect of a Local Council, through its LEP or DCP, being able to prohibit outright an activity that is permissible under State law.

Under SEPP64 (Clause 10), outdoor advertising signage is only permitted in certain zones, placing already quite stringent restrictions on the industry's business activities.

Proposal: That a clause be created in SEPP 64 preventing local councils from prohibiting outdoor advertising through their LEPs and DCPs, except in those areas prohibited in Clause 10 of SEPP 64.

### *B. Electronic Static Displays (ECDs) / New technologies.*

- i. The current SEPP 64 does not contain any clear provisions for the introduction of new technologies such as electronic static displays. These signs, sometimes referred to as digital billboards, are electronic signs that rotate through a sequence of static images approximately every eight seconds. These static images resemble standard printed billboards when viewed on the screen. They do not feature animation, flashing lights, scrolling or full-motion video.

ECDs have the capacity to reduce environmental impact and visual clutter as they can incorporate a number of advertisements into each sign, thereby reducing the amount of signage in some areas. They can also immediately display emergency information to the public (e.g. missing persons, serious incidents, etc) because content is changed remotely through wireless connections.

In Victoria, both ECDs and animated billboards have been approved by State and Local regulators, the most recent being an ECD on the Young and Jackson building on the corner of Flinders and Swanston Streets.

Proposal: That a Clause be created in the existing legislation permitting the introduction of ECDs in NSW.

- ii. Sections 3.2.2, 3.2.3 and 3.2.4 of the Guidelines define the appropriate use of Variable Message Signs (VMS), moving signs and video and animated electronic signs. Our members are concerned about the increasing number of portable VMS that are being used by businesses to advertise their products/services at the roadside. It is assumed that DAs have not been granted for these signs. Third party advertising is currently prohibited on these signs, even though individual businesses are using them for commercial purposes.

Proposal: If third party advertising is to be prohibited from portable VMS, all types of advertising should also be prohibited, except for important public messages such as traffic safety.

#### C. *Building wrap advertisements.*

Clause 26 of SEPP 64 regulates the display of a building wrap advertisement on land zoned for business, commercial or industrial purposes. Clause 26(2)(c) states that the consent authority may only grant consent to a building wrap advertisement if the “product image or corporate branding does not occupy more than 5% of the advertising display area and accords with the public art policy of the consent authority.”

Local councils are generally the consent authority for building wraps. In most cases where development applications have been rejected for these signs, the local council has cited that the building wrap conflicts with their public art policy. The City of Sydney recently went against a long standing practice of rejecting building wrap applications, approving two separate applications in the city centre (see images below). However, there still appears to be confusion over the intent and wording of the Clause.

Advertisements such as these pay for the building hoarding – a common practice in European cities to present an attractive image of how the building will appear post-construction activity. Since the erection of these building wraps, the OMA has not heard of any complaints about the use of advertising on these buildings.



**Figure 1: Building wrap corner George and Market Streets, Sydney**



**Figure 2: Building wrap corner of Pitt and Markets Streets, Sydney**

**Proposal:**

1. Clause 26(2)(a) and (c) be removed.
2. That building wraps be included as permissible use for outdoor advertising if they meet the conditions outlined in Schedule 1.

D. *Duration of consents.*

Clause 14(2)(a) of SEPP 64 states that consent authorities may specify consent periods of less than 15 years for an advertisement if the consent authority had already adopted a policy of granting consents to display advertisements for a lesser period. The industry is concerned that consent authorities may develop a policy for consent periods that is not released for public comment or subject to approval by the Department of Planning. Outdoor advertising signs require significant capital investment which can often take many years to amortise. Any policy which restricts the duration of consent for an advertising sign makes outdoor advertising unviable.

Proposal: Introduce a Clause in the legislation making it a requirement for councils to:

1. Publicly display any policy that restricts the consent periods for advertising signs for less than 15 years.
2. Notify the industry when they have released this policy for comment.
3. Seek approval from the Department of Planning for this policy to be implemented.

E. *Wall Advertisements.*

Clause 22 of SEPP 64 imposes size restrictions on wall advertisements (except on transport corridors if consistent with the Guidelines). While this may be necessary for permanent structures, OMA members have argued there have been times when a larger image would have produced a better aesthetic outcome for the community, particularly where a wall is prone to graffiti vandalism.

Proposal: That some provision be made to allow larger images on walls (even entire wall areas) within the boundaries of a council's LEP and DCP.

**Recommendation**

That you consider the above issues both in regards to existing assessments and the pending review of SEPP64.