


PLAN MAKING IMPLEMENTATION NOTES

Note 10

Advertising Devices

1.0 INTRODUCTION

This implementation note provides guidance to local governments about the role of planning schemes in managing outdoor advertising development.

Development that may be regulated under a planning scheme includes 'operational work'. Advertising devices are assessed as operational work under the *Integrated Planning Act 1997* (IPA), where 'placing an advertising device on premises' is assessable development under the planning scheme.

There are broad categories of outdoor advertising devices;

- temporary signage, such as 'For Sale' signs;
- mobile advertising, such as that appearing on buses and taxis;
- third party advertising, such as on billboards; or
- on-premises signs, such as business names attached to a building.

Outdoor advertising may also appear on bus shelters, railway stations and subways, and at sporting venues.

This Implementation Note is only concerned with managing the development impacts of those advertising devices requiring placement on premises. Schedule 10 of the IPA 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).

Outdoor advertising devices generally consist of both a built form or structure and the advertisement that appears on it. The advertisement placed upon the structure must not contravene any criminal laws, nor infringe laws generally. The Australian Association of National Advertisers (AANA) Advertiser Code of Ethics is the industry's overriding guideline regarding taste and decency in advertising material and content. The Advertising Standards Board reviews content (visuals and words) against this Code, when considering complaints from the public. Hence, the content of advertising signs is regulated by the industry standards and laws.

Advertising 'defined'

The AANA defines 'advertisement' as:

"matter which is published or broadcast other than via internet, direct mail, point of sale or direct distribution to individuals, in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct."

(AANA Advertiser Code of Ethics)

Each local government planning scheme may define 'advertising device' differently.

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2.0 DLGPSR OBJECTIVE

The State has an interest in ensuring there is a consistent, efficient, effective and accountable development assessment system. The Department's primary concerns with regulatory provisions applying to advertising devices relate to:

- regulatory duplication - currently there are instances where the same characteristics of advertising devices are regulated in both local laws and planning schemes (eg dimension, location, placement);
- inappropriate regulation – including
 - inappropriate level of assessment (e.g. impact assessment where it could be code, or self assessable or exempt). The level of assessment is not consistent across local governments;
 - regulation of content, which is not development and cannot be regulated under a planning scheme; and
- the complexity of operation – the use of 'sub definitions' of advertising devices. Currently, some local governments use a separate definition for third party advertising, and apply different levels of assessment for each of the separately defined advertising uses.

3.0 IPA PLANNING SCHEMES AND LOCAL LAWS

3.1 *Integrated Planning Act 1997* (IPA)

Matters which constitute development and which could manage the effects of development may be dealt with by the planning scheme. These matters could form elements of an advertising code and could address the following:

- size;
- height from ground level;
- illumination;
- other physical characteristics of the device;
- 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;
 - building on which it is placed;
 - other buildings; and
 - public thoroughfare;
- specific measures to ensure road safety (i.e. line of sight and avoiding driver distraction);
- public safety; and
- amenity (can include number, scenic amenity, character, streetscape) of advertising devices.

Where a council's first IPA planning scheme does not address advertising devices, the local law will remain the regulatory tool until the local government prepares a second IPA planning scheme that integrates regulation for advertising devices (refer to section on *Local Government Act 1993* below). As the intent of the IPA is to integrate development approvals under one system – the Integrated Development Assessment System (IDAS) - the planning scheme is the most appropriate regulatory tool for development matters associated with advertising devices, rather than a local law under the Local Government Act. As local governments make amendments to, or undertake reviews of, their planning schemes, the DLGPSR will recommend that councils make changes consistent with this intent.

3.2 *Local Government Act 1993*

Section 854(1A) allows local governments to continue to apply local laws about advertising devices until the local government makes a decision under the *Integrated Planning Act 1997*, schedule 1, section 1, to prepare its second IPA planning scheme.

This provision was intended to assist local governments to focus on finalising IPA planning schemes without the need to deal with advertising devices (and other matters stated in s854(1A)). It was not intended that both regimes continue to regulate the placement of advertising devices. However, those matters which do not constitute development may continue to be dealt with under local law.

During the local law redundancy review in 2008, it is recommended that local governments review the need to regulate advertising devices.

Local law content may primarily include the licensing components of advertising devices (which do not address the development impacts). This may cover items such as:

- requirement for a licence;
- application details;
- criteria for assessing a license application;
- conditions which may be imposed on a licence;
- maintaining the device in good order; and
- circumstances under which the device may require approval.

In general, an applicant may first obtain development approval through the planning scheme for placement of the advertising device before applying for a licence through the local law. The local law criteria for assessing the licence application will include compliance with any relevant development approval.

If councils choose to develop a local law addressing this matter the local law should also clearly identify the need for particulars of the licence to be consistent with, or comply with, the local government's planning scheme. A local government should not use a local law to overturn a development approval.

Since the content of advertising is regulated through the advertising industry code of ethics, and must not contravene any criminal laws, nor infringe laws generally, it is recommended that content not be regulated in the local law.

4.0 WHAT LOCAL GOVERNMENTS SHOULD DO NOW

4.1 For existing planning schemes, what has to be done now?

Nothing.

4.2 What actions will be requested by DLGPSR?

The following points will be considered by DLGPSR in the State interest review of planning schemes and local governments will be requested to make amendments where necessary to be consistent with this advice—

- For regulatory efficiency, regulate advertising devices as operational works without reference to content. Content of advertising signs is regulated by advertising industry standards and law and is not within the realm of either IPA or planning schemes to regulate, as it is not development.
- For regulatory efficiency and effectiveness of the development assessment system, a third party advertising device should be regulated as operational work and not defined as a separate use or regulated as a separate use.
- Remove existing provisions in the planning scheme contrary to the above during an amendment to the planning scheme.
- If the planning scheme includes an Advertising Code, or other codes which specify advertising signage, the scheme should be consistent with the above dot points.
- Ensure scheme provisions do not duplicate the Department of Main Roads (DMR) approval processes for advertising devices within the boundaries of State-controlled roads. DMR approval is not required for local roads. Scheme provisions also need to be consistent with DMR policy on signage beyond the boundaries of, but visible from, a motorway. A “*Guide to the Management of Roadside Advertising*” can be found at www.mainroads.qld.gov.au. (Look for links to ‘publications’ and then ‘Road Related’.)
- Remove any duplication of regulatory provisions between the planning scheme and local law when amendments to either of these documents are undertaken. Planning schemes and local laws should not regulate the same characteristics of advertising devices. Also, the local law does not influence the level of development assessment in the planning scheme. For instance, a planning scheme cannot state that an advertising device is exempt if there is a permit granted under a local law.

- Remove any provisions in a planning scheme which are inconsistent with Section 1.4.3 of IPA which specifically protects existing, lawfully constructed buildings or works. For instance, when the advertising device has been lawfully constructed, or is integral to structures or buildings that have lawful approvals, it is protected from any alteration or removal as a result of non-compliance with any later amendment of a planning instrument.
- During the local law redundancy review in 2008, if Council chooses to develop a local law addressing this matter, amend the local laws to be consistent with the advice in this implementation note.

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