

**OUTDOOR
MEDIA
ASSOCIATION**

SUBMISSION TO THE NSW DPE

CHAPTER 3 INDUSTRY & EMPLOYMENT SEPP 2021 REVIEW

Prepared on behalf of the
Outdoor Media Association

By
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INTRODUCTION

This document has been prepared on behalf of the Outdoor Media Association and its members by Norton Rose Fulbright and Urban Concepts.

The NSW Department of Planning and Environment (NSW DPE) has engaged the Planning Studio to review the advertising and signage provisions contained in Chapter 3 of the *Industry and Employment State Environmental Planning Policy 2021* (IESEPP). The provisions were formerly contained in State Environmental Planning Policy No. 64 Advertising and Signage (SEPP 64). SEPP 64 was repealed on 1 March 2022, and the provisions were incorporated into Chapter 3 and Schedule 5 of the IESEPP.

The former SEPP 64 was last reviewed and amended in 2017 to recognise the take-up of digital technology by the Out of Home (OOH) industry. The Transport Corridor Advertising and Signage Guidelines 2017 (The Guidelines 2017) were introduced at that time. Over the last 5 years, it has become evident that neither is keeping pace with the rate of technological change occurring within the OOH industry and the scaling up of digital technology. The policies are increasingly cumbersome for both small and large format static and digital signage applications. They are frequently misinterpreted when applied by consent authorities and government agencies. The result is inconsistent decision-making, unwarranted legal proceedings, and onerous assessment timeframes.

The statutory framework created by the current legislation is hindering the efficient development of digital OOH assets and the industry's economic growth. The OOH industry recommends a two-phased approach to reform, firstly addressing outdated provisions that do not reflect the current nature of the industry and then longer-term that wholesale change is required to the statutory framework that governs the development of OOH media assets in NSW.

This submission proposes a framework that aims to future-proof the OOH industry in NSW so that it is nationally and globally competitive.

The revisions proposed are discussed in more detail in Sections 1-3 as follows:

- **Section 1 discusses Quick Fix drafting changes to Chapter 3** that would improve its relevance and application to the OOH industry
- **Section 2 considers the need for statutory reform** within the statutory framework of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).
- **Section 3 suggests a way forward** by which the OMA and its members can collaborate with the NSW DPE and TfNSW to achieve the statutory and policy reform.

1. QUICK FIX CHAPTER 3 REVISIONS

This section explains the initial revisions the industry seek to Chapter 3 of IESEPP.

The aim of the revisions is to:

- Enable the OOH industry in NSW to effectively transition from old style less attractive static signs to modern better designed digital technology;
- Enable continued innovation and development producing high quality design outcomes within the NSW urban environment;
- Promote practical, equitable and consistent pathways and outcomes for signage on all sites (irrespective of landownership);
- Promote the economic and orderly development of land in accordance with the objects of the EP&A Act 1979; and
- Remove restrictive legislative requirements already established in the EP&A Act 1979.

1.1 Removal or Amendment of Time Limited Development Consent Durations

Recommendation: The removal of provisions imposing time limits on development consents for advertising. Alternatively changing the current limits of 10 and 15 years to a 25 year time-limitation to encourage the replacement of old signage to improved new signage.

Currently, clause 3.12 and 3.19 impose mandatory time limits on advertising signage (15 years) and roof and sky signage (10 years). These clauses act as a major disincentive to the removal of old and unattractive static signs and replacing them with well-designed modern integrated signage.

The mandatory imposing of time-limited consents is peculiar to the OOH industry and is not applied to other land uses that support the economy within a similar urban context, such as commercial and industrial land uses.

Many existing advertising signs have legal and valid consents granted before the gazettal of the former SEPP 64 in 2001. Many of these original signage structures date back to 1970s and '80s and are static formats. These consents are not time limited. That is, there is no condition applied in the consent instrument that limits their duration. For many of these older signs, the high cost of converting old signs to digital signage is simply not economic because the payback period can be longer than the 15 or 10 year consent period. In cases where old signs benefit from existing use rights, a new development application means that any new consent must be subject to a time limitation.

Not only is the digital technology a high cost (typically \$500,000 for a supersite sign), proposals for new signage frequently encounter requirements for additional works such as building and landscape improvements, works in kind and public benefits. In these instances, the capital investment made can escalate into the millions.

There is no incentive for OOH companies to convert these signs to digital technology as the new consents will apply a 15 year time limit. The current time limitations imposed under Clause 3.12 and 3.19 stifle innovation and discourage the industry from updating inventory for fear of losing their existing unlimited consent. Therefore the industry believes these provisions are counterproductive and should be removed.

In the alternative the industry believes a minimum period for time limited consents should be 25 years. This enables the industry to recover the very high capital costs of converting old static signs to modern digital format. This benchmark period is used in Victoria where a 25-year term applies to promotional signage to reflect the capital investment for each asset. This time limit provides a sufficient period to recoup the capital cost while providing consent authorities with the opportunity to re-examine the appropriateness of advertising as the urban context changes.

For particular sites that may warrant a time limitation in a consent, this can already be imposed by a consent authority under Section 4.17(1)(d) of the Environmental Planning and Assessment Act 1979 (EP&A Act). There is no justification for imposing a different statutory regime on signage development.

In addition other clauses imposing time limits for special promotional signs and building wraps appear to have no valid justification given consent authorities already have the power to apply a merit-based time restriction.

Associated Benefits

- Achieve clear and consistent state-wide guidelines for consents that reflect the capital investment of each asset.
- Acknowledgement of the role of OOH industry to supporting the economic prosperity and provision of social infrastructure for the state.
- Improved certainty of capital investments to OOH providers, encouraging high quality outcomes.

CASE STUDIES

oOh!MEDIA BRIDGEPOINT SIGNAGE PEDESTRIAN BRIDGE

When oOh!media introduced signage onto the Bridgepoint pedestrian bridge above Military Road in Mosman, the application involved an urban design upgrade to the pedestrian bridge, an associated facade upgrade to the shopping centre plus a public benefit payment to Mosman Council. These ancillary works were welcomed by Mosman Council and gave the Spit Junction a fresh new contemporary look.

The capital cost of the development therefore significantly extended beyond the cost of the signs alone, the urban design qualities of the surrounding precinct were greatly enhanced and the local Council receive associated financial benefits.



Bridgepoint Pedestrian Bridge with Digital Signage



Original Bridgepoint Pedestrian Bridge

JCDECAUX ANZAC PARADE, KENSINGTON

JCDecaux have recently acquired a large-format digital wall sign on a building located on Anzac Parade, Kensington with a Land and Environment Court approval. Following extensive consultation with Council and the Court, a Voluntary Planning Agreement was negotiated which requires:

- Development of a green landscaped wall that exceeds 100sqm, including supply, installation and maintenance for the duration of the permit;
- Public community WiFi;
- A portion of free content time for the use of the local chamber of commerce; and
- Ongoing annual financial contributions to Council.

This outcome was seen as critical to ensure the proposed development aligns to the evolving urban character of Kensington and has resulted in extensive public benefits. Despite the significant capital investment and high quality design outcome, the consent authority was limited to providing a 15 year consent.



Montage Showing Approved Digital Signage Proposal Anzac Parade Kensington

1.2 Removal of Advertising Display Area Restrictions

Recommendation: The industry recommends deletion of Clause 3.17, enabling assessment of all sites (irrespective of advertising display area size) to be considered by a merits-based assessment.

The OOH industry has multiple commercial formats that are over 45 square metres in area. This includes 'spectacular formats' that measure 85 square metres in size and 'landmark formats' that are responsive designs to their urban location. There are many instances where utilising these larger formats is appropriate and desirable. For example:

- Signage structures along motorways that have long view lines require a larger display area to ensure the signage is legible when passed at speed on the highway;
- Shopping centre developments are ideally suited to incorporating these large formats given the scale of their built form. Large format digital signs contribute to these centres' vibrancy, streetscape appeal and economic performance
- Large format displays in urban centres and highly pedestrianised precincts contribute to place-making and support the 24-hour economy.
- At sporting venues, stadiums and registered clubs, digital screens can support valuable commercial sponsorships that are vital to the long-term viability of these uses.

The only spectacular and landmark signs in NSW currently are signs that benefit from existing use rights and predate the introduction of SEPP 64 in 2001. This is a result of the prescriptive and impractical nature of Clause 3.17, which has limited the take up on appropriate signage in important locations. The provisions are also no longer appropriate for the following reasons:

- Based on our experience, very few development control plans in NSW have been prepared based on advertising design analysis as prescribed in Clause 3.28 (formerly Clause 29 in SEPP 64), whether led by industry or government this is a result of the capital investment and lack of certainty.
- The emphasis on transport corridor land fails to acknowledge the vital contribution large format digital signs make to place-making.
- It is unwarranted, given the merit-based development assessment pathway prescribed under Part 4 of the EP&A Act 1979.

Retaining Clause 3.17 provisions will adversely impact the introduction of new digital formats now well advanced overseas and around Australia. The industry recommends deletion of Clause 3.17 and assessing the suitability of large format signs on a merits-basis.

Associated Benefits

- Achieve clear and consistent state-wide guidelines for all advertising assets, regardless of the size of the advertising display area
- Promote opportunities for industry to work closely with relevant government agencies to develop site designs
- Encourage high quality and site-responsive design outcomes of advertising assets
- Future-proofing the statutory framework to allow for continued innovation and research and development

CASE STUDY OF VICTORIAN LARGE FORMAT DIGITAL APPROVALS

JCDECAUX YOUNG & JACKSON

In 2008, JCDecaux worked closely with Melbourne City Council to obtain an approval for Young & Jackson, which is widely considered by the industry as an iconic site. Working within the flexibility of Victoria's merits-based assessment approach, JCDecaux obtain approval for an 85sqm large format digital billboard located on a well-regarded heritage item on a prominent CBD intersection in Melbourne.

Working closely with well-regarded specialist heritage consultant and architect, Melbourne City Council and Heritage Victoria, JCDecaux was able to deliver a tessellated LED effect to 40% of the advertising display area. The tessellated area does not impact the 'media portion' of the asset, but assists in softening the signs impact on the roof of Young Jackson's Hotel and provides an contemporary contrast to the heritage significant fabric.



Young and Jackson Digital Display Melbourne CBD

1.3 Consistency in the Permissibility of Advertising

Recommendation: A change is recommended to remove blanket prohibitions that currently exist in the SEPP and many LEPs. These provisions create inconsistencies, prevent the replacement of old signage and stifle innovation.

The Standard Instrument template LEP permits local councils to prohibit the use of land for signage across all zones, even business, commercial and employment zones. This creates major inconsistencies and also fails to recognise the importance of signage in key employment generating areas. Thus in many employment centres and retail precincts, advertising is prohibited development.

These blanket restrictions prevent local businesses using signage to promote their own business within their locality and thus is a barrier to the promotion of employment, retail activity and the general economic use of land. It also doesn't take into account the contribution of the OOH industry to general economic prosperity.

Currently, Clause 3.4 of the SEPP provides that the SEPP only applies to signage that '*can be displayed with or without consent under another environmental planning instrument*'. Accordingly, there is frequently an anomaly between the intent of Chapter 3 to provide state-wide controls for advertisements and the prohibitions contained in LEP's in place across NSW.

The only way private sector owners can advance a development application for an advertisement if it is a prohibited land use under an existing LEP is to progress a Planning Proposal to rezone the land to permit 'signage'. The cost and time associated with taking this action is not an effective use of resources nor is it indicative of a fit-for-purpose legislative framework.

Land use prohibitions are directly impacting the introduction of digital technology and the growth of the OOH industry as it is near impossible to secure approval for new greenfield advertisements. Further, as noted above, when small format digital signs are rolled out under Council street furniture contracts, signage prohibitions impact the legality of advertising on Council street furniture located on public roads. This is because a local road takes on the zoning of the adjacent land use. Some Councils overcome the impasse of prohibitions by making 'advertising on street furniture' exempt development in their LEP's.

The revised Clause 3.4 is proved below.

3.4 Signage to which this Chapter applies

1. *This Chapter applies to all signage that –*
 - a) *can be displayed with or without development consent under this or another environmental planning instrument that applies to the signage, and*
 - b) *is visible from any public place or public reserve,*

except as provided by this Chapter.

Associated Benefits:

- Achieve clear and consistent state-wide guidelines for the location of signage within the urban environment
- State leadership in providing practical and high quality outcome for signage across NSW
- Acknowledgement of the role of OOH industry to supporting the economic prosperity and provision of social infrastructure for the state
- Improved certainty on the principles and appropriate land use zones for a merits-based assessment for signage

CASE STUDY

HILLS SHIRE LEP 2019

Advertising and signage are prohibited land uses in all zones under the Hills Shire Local Environmental Plan 2019. Schedule 2 of the HSLEP 2019 deals with Exempt Development. Exempt Development is a development that does not require Development Consent. The following types of advertisements are recognised as Exempt Development in the LEP:

- Advertising on street poles undertaken for and on behalf of the Council;
- Advertising on bus shelters undertaken for and on behalf of the Council; and
- Advertising on the side of a road bridge undertaken for and on behalf of the Council.

The Schedule 2 provisions give Hills Shire Council a monopoly on advertising in the Shire. This is neither fair nor equitable and means that OMA members who compete for Council contracts are paying above market prices to secure limited advertising opportunities. There is no urban design, environmental or road safety considerations that warrant the blanket prohibition of signage across all land use zones. Particularly in centres such as the Castle Hill CBD that is home to Castle Towers, owned by QIC and one of the largest regional shopping centres in Australia. If QIC wanted to construct a digital wall advertisement at Castle Towers they would have to progress a Planning Proposal.

1.4 Amendment to Prohibitions

Recommendation: It is recommended that Clause 3.8 be modified to remove blanket prohibitions in certain areas and signage proposals to be assessed and determined on a merits basis.

Clause 3.8 prohibits the display of third-party advertisements on land under an environmental planning instrument identified as a heritage item or heritage conservation area as well as open space (such as a public park). The advent of digital media is resulting in the development of many new and innovative forms of digital signage, such as mesh and translucent screens. These new products provide for the preservation of the heritage significant fabric and landscaped treatments that integrate the design of the structure and display within the site's context facilitating high-quality design outcomes.

Local Environmental Plans contain provisions that must be considered when a proposal involves development on a heritage item within or adjacent to a heritage conservation area. The provisions require the preparation of a Heritage Impact Statement and the consideration of heritage issues in the assessment of the development application under Section 4.15 (1) of the EP&A Act 1979. Given this statutory framework, the blanket prohibitions currently contained in Clause 3.8 restrict the opportunity for a merit-based assessment of innovative proposals in heritage and other areas.

Another problem is that signage on public roads, such as bus shelters and street furniture is often prohibited development because other than freeways, motorways and other major roads, roads are zoned the same way as adjoining land. Thus if a road is within a residential area, the road is zoned for residential purposes. Roadside street furniture with third party advertising thus (often unwittingly) becomes prohibited development.

It is recommended that Clause 3.8 be modified such that advertising and signage is permissible with consent but subject to appropriate merit assessment. The revised Clause 3.8 is below. The amendment to terminology of various land use descriptions is suggested to update the SEPP in line with descriptions used in the Standard Template and other more recent planning instruments.

The revised Clause 3.8 is provided below.

3.8 Prohibited advertisements

1. *Despite the provisions of any other environmental planning instrument, the display of an advertisement is permissible with consent except in the following zones or descriptions where it is prohibited development:*
 - *environmental conservation*
 - *Waterways*
 - *Residential (but not including public roads, a mixed residential and business zone or similar zones)*
 - *national park*
 - *nature reserve*

2. *This Section does not apply to the following –*
 - a) *the Mount Panorama Precinct*
 - b) *the display of an advertisement as a public sporting facility situation on land zoned public recreation under an environmental planning instrument*

Associated Benefits:

- Promote consistent, clear and equitable pathway that enables considered growth and merits-based growth for OOH industry
- Promotes architectural innovation and site-responsive design within NSW
- Reinforces established principles for merits-based assessment within the NSW Planning Framework

1.5 Amendment of Wall Sign Provisions

Recommendation: Amend Clause 3.20 Wall Sign provisions to remove restrictions based on the size of the display area and amend prescription of depths to reflect industry occupational health and safety standards.

We propose that Clause 3.20 Wall Advertisements be amended to recognise all large format wall advertisements. Two changes are proposed:

1. The provisions in Clause 3.20 (2)(b) would be amended to remove the limitation that is placed on the advertising display area of an advertisement relative to the area of the building elevation on which it will be displayed. The schedule 5 Criteria, in association with the Guidelines 2017, provide for the scale and proportion of a wall advertisement to be considered on merit.
2. We recommend that the depth of a sign prescribed under (2) (c) be increased from 300 mm to 1.2 metres. This will accommodate occupational health and safety standards that require a gantry to be provided behind a digital screen for maintenance purposes. It is also desirable for a screen to sit proud off the wall so that air can circulate and ventilate the screen. The viewing context of a wall advertisement provides for a vertical separation between the sign and footpath/road carriageway below. We contend that an increase of 900 mm in depth would not be discernable.

The revised Clause 3.20 is provided below.

3.20 Wall advertisements

1. *Only one wall advertisement may be displayed per building elevation.*
2. *The consent authority may grant consent to a wall advertisement only if—*
 - a) *the consent authority is satisfied that the advertisement is integrated with the design of the building on which it is to be displayed, and*
 - b) *the advertisement does not protrude more than 1.2 metres [Note; This is required for workplace health and safety reasons] the wall, unless occupational health and safety standards require a greater protrusion, and*
 - c) *the advertisement does not protrude above the parapet or eaves, and*
 - d) *the advertisement does not extend over a window or other opening, and*
 - e) *the advertisement does not obscure significant architectural elements of the building, and*
 - f) *a building identification sign or business identification sign is not displayed on the building elevation.*
3. *In this Section, **building elevation** means an elevation of a building as commonly shown on building plans.*

Associated Benefits:

- Consistent outcomes on all sites, regardless of land ownership, that reflect industry occupational health and safety standards
- Reinforces established principles for merits-based assessment for all advertisements within the NSW statutory framework
- Promotes innovation and site-responsive design resulting in high quality outcomes

CASE STUDY

JCDECAUX WICKHAM TERRACE, SPRING HILL, BRISBANE

JCDecaux worked with Brisbane City Council to obtain an approval for a 5.3m x 8m portrait digital asset on Wickham Terrace. In working through detailed design considerations, it became evident that internal for service and maintenance of the screen was a key issue and reducing the risk for working at heights was critical.

A series of design and maintenance approaches were considered, including front servicing working from heights via cherry pickers or the use of ladders requiring road closure – however, this would require road closures, road authority permits and result in significant delays and costs to servicing requirements impractical for a development of this nature. As such, a 1.2m depth was agreed to ensure maintenance could proceed within best practice occupational health and safety requirements.



Wickham Terrace Digital Wall Sign

1.6 Revision to Sky or Roof Signs

Recommendation: Amend Clause 3.19 Roof and Sky Sign to remove restrictions that require the replacement of existing signage, the requirement for a development control plan to be prepared based on the advertising design analysis, and time limited consents.

To maintain flexibility and design options, the industry recommends that Clause 3.19 roof and sky sign provisions be amended to remove Clause 3.19(1)(a)(i). It is overly restrictive as it stipulates a new roof sign must replace an existing roof sign.

It is proposed to retain sub-clause (1) (a) (ii) as this requires that a roof/sky advertisement must improve the finish and appearance of the building in the streetscape. This would be assessed on the merits of each proposal.

The industry also seeks the deletion of sub-clause (1)(c) as very few development control plans have been prepared and adopted in NSW based on an advertising design analysis. The only DCP we have identified that was prepared following advertising design analysis was prepared by the NSW DPE on behalf of the NSW Port Authority to support the display of sky signage on the Glebe Island Silos. This DCP was drafted and adopted in 2004.

As noted, above, the industry seeks the deletion of time limited consents in this clause, or as an alternative, a 25-year time limit be applied for all signage formats as is currently allowed in Victoria.

The revised Clause 3.19 is below.

3.19 Roof or Sky advertisements

The consent authority may grant consent to a roof or sky advertisement only if—

- a) the consent authority is satisfied—*
 - i. that the advertisement improves the finish and appearance of the building and the streetscape, and*
- b) the advertisement—*
 - i. is no higher than the highest point of any part of the building that is above the building parapet (including that part of the building (if any) that houses any plant but excluding flag poles, aerials, masts and the like), and*
 - ii. is no wider than any such part.*

Associated Benefits:

- Reinforces established principles for merits-based assessment for all advertisements within the NSW statutory framework
- Streamlines the planning process, improving impacts on resourcing from industry and consent authorities
- Promotes innovation and site-responsive design resulting in high quality outcomes

CASE STUDY

JCDECAUX 77 MILLIGAN STREET, PERTH

JCDecaux worked with the City of Perth, a heritage expert and architect to enable a conversion from an existing vinyl sign to a digital conversion with a substantially improved design outcome. The result was a 12m x 3m digital sign with a curve aligned to the existing building façade. The modernisation of the sign with illumination was integrated to the building façade with decorative lighting that improves the façade of a prominent corner.



Previous Roof Sky Sign, Permanently Removed



Digital Format Designed In Collaboration With City Of Perth And Industry Experts

1.7 Amendment to TfNSW Concurrence Provisions

Recommendation: Seek clear and consistently applied principles, assessment methodology and process for review of all TfNSW concurrence referrals.

The TfNSW concurrence provisions that apply to OOH advertisements are the most contentious area and a significant cause for concern for OMA members. The provisions require substantial reshaping to accommodate practical, equitable and consistent outcomes.

OMA members are concerned over the inconsistent application of the digital criteria in the Guidelines 2017 to OOH applications referred to TfNSW under Clauses 3.15 and 3.16 for concurrence.

For example, the Guidelines specify a digital screen can operate at a 10-second dwell time when adjacent to a road with a posted speed limit under 80Km per hour and 25-seconds when adjacent to a road with a posted speed limit above 80Km. However, OMA members frequently have dwell times applied that deviate from the stated criteria. It is not unusual for a TfNSW concurrence approval to stipulate a 30, 45 or 60-second dwell time, and there are examples of 24-hour dwell times being applied.

It is essential to understand that all OOH applications are accompanied by Traffic Safety Assessments and Lighting Impact Assessments prepared by leading professional consulting firms.

These firms are:

- Experienced in the assessment of digital screens;
- Well-versed in the research that has been undertaken both in Australia and overseas about driver distraction;
- Recognised as experts in their field in Land and Environment Court proceedings;
- Level 3 Road Safety Auditors (the highest level of auditor); and
- Frequently advise Government and TfNSW on their own internal traffic safety reviews for digital development applications.

OMA members are public and privately incorporated companies whose directors are legally required to ensure statutory processes are followed. When any OOH site is selected and advanced to a development application, it is only done so with the knowledge that it can be supported on traffic safety grounds. OMA member companies are only interested in developing safe and compliant digital screens.

We cannot underplay the inconsistency of the TfNSW concurrence process. To highlight this, we refer to a matter recently approved by the Land and Environment Court in the Wollongong Local Government Area. The application involved the digital conversion of a static wall sign adjacent to Crown Street, a classified road in the Wollongong CBD. This application was initially granted concurrence by TfNSW.

Some weeks later, TfNSW advised Wollongong Council that it revoked concurrence. The applicant advanced Class 1 proceedings in the Land and Environment Court, where it was upheld, and approval was subsequently granted by the Court. This is not an isolated event.

There is often a conflict between the advice provided by accredited road safety auditors to proponents and, on the other hand, auditors within TfNSW. To resolve technical debates around road safety, it is suggested a panel of experts be established by the Department who can review matters where there is a difference of opinion.

Accordingly as discussed below, a significant overhaul of Clause 3.15 and 3.16 is required to recognise one concurrence pathway for all OOH applications and establish a more consistent and balanced approval pathway for signage applications from both government and private land owners.

SUGGESTED REVISIONS

Clause 3.15 and 3.16 of the IESEPP establish TfNSW concurrence requirements for advertisements with an advertising display area greater than 20 metres or higher than 8 metres above ground and within 250 metres of a Classified Road.

In determining whether to grant concurrence, TfNSW applies the traffic safety provisions set out in the Guidelines 2017 (Section 3 Road Safety and Table 3 in Section 2.5.8). In addition, it is widely known that TfNSW also consider compliance against a document known as the Road Safety Matrix. This document is not referred to in the SEPP or the Guidelines.

It is suggested that the concurrence provisions expressly include consideration of the TfNSW Road Safety Matrix.

We recommend that Clause 3.15 be deleted from Chapter 3. It is not required as the matters it addresses are already set out in Clause 3.11 Matters for Consideration. This makes Clause 3.15 superfluous.

We recommend that Clause 3.16 be redrafted to require:

- a) A development application for a digital or static sign that is greater than 20 square metres in area or higher than 8 metres above ground level and within 250 metres of a Classified Road be accompanied by a Traffic Safety Assessment.
- b) The Traffic Safety Assessment must consider the impact of the advertisement on traffic safety as required in the Guidelines.
- c) The Traffic Safety Assessment must be certified by a Level 3 Road Safety Auditor that the proposed advertisement complies with the traffic safety requirements of the Guidelines;
- d) Within 21 days of receiving the development application, the Consent Authority must forward the application inclusive of the Traffic Safety Assessment to TfNSW for concurrence.
- e) If provisions (a) to (d) are satisfied, TfNSW must grant concurrence within 21 days after receiving the application. If TfNSW has not informed the consent authority within 21 days that concurrence is granted, TfNSW is taken to have granted concurrence.
- f) If TfNSW declines concurrence, the application is referred to the NSW Minister for Planning to convene an independent Traffic Safety Review Panel or equivalent body to review the application led by industry recognised experts (similar to a Local Planning Panel).

The clause 3.16 is provided below.

3.16 Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road

1. *This clause applies to the display of an advertisement that is within 250 metres of a classified road any part of which is visible from the classified road.*
2. *Any development application to which this section applies must be accompanied by a traffic safety assessment prepared by a level 3 accredited road safety auditor.*
3. *The Traffic Safety Assessment must consider the impact of the advertisement on traffic safety as required in the Policy.*
4. *The Traffic Safety Assessment must be certified by a Level 3 Road Safety Auditor that the proposed advertisement complies with the traffic safety requirements of the Policy.*
5. *Within 21 days of receiving the development application, the consent authority must forward the development application including the Traffic Safety Assessment to TfNSW for concurrence.*
6. *If sub clause (3) and (4) are satisfied, TfNSW must grant concurrence within 21 days after receiving the application. If TfNSW has not informed the consent authority within 21 days that concurrence is granted, TfNSW is taken to have granted concurrence.*
7. *If TfNSW declines to grant concurrence, the applicant may refer the development to the Minister for Planning who is to convene an independent Traffic Safety Review Panel to determine whether concurrence be granted on behalf of TfNSW.*

Associated Benefits

- Improved consistency in process and outcomes for all site subject to TfNSW Concurrence
- State-led leadership on the review and approval of signage for road safety
- Improve planning assessment timeframes associated with a consistent and equitable process

1.8 Amendment of Clause 3.30

Recommendation: Amend clause 3.30 to ensure equitable outcomes for all advertising displays and to improve efficiency in approval processes.

We advocate that the exempt development provisions contained in Clause 3.30 be extended to apply to all advertisements, not just those on transport corridor land. Currently, occupational health and safety maintenance and demolition works require development consent when they are undertaken by a private applicant. To ensure equitable and consistent outcomes across the industry, it is critical that low-impact works of this nature can be completed as exempt development.

Another important recommendation is to address inconsistencies in how consent authorities and the Land and Environment Court deal with proposals to convert existing static signs to digital format. The problem has arisen because some consent authorities take the view that such proposals can be advanced via a modification to an existing consent under section 4.55 of the EP&A Act. Other consent authorities do not accept that approach and require a full development application.

The Land and Environment Court is also inconsistent in its approach. In [Outdoor Systems Pty Ltd v Georges River Council \[2021\] NSWLEC 1338](#), the Court accepted such a signage conversion was 'substantially the same development' and capable of being approved under a modification to an existing consent. Yet in [oOh!Media Limited v Willoughby City Council and anor \[2022\] NSWLEC 1332](#), the Court determined that a similar proposal was not substantially the same development.

This inconsistency in decision making, and the time and cost involved in converting old outdated signage to modern digital format, is proving to be a major disincentive to the rollout of new signage that reflects modern urban design principles. The effect is that old, visually intrusive and outdated signage remains as part of the streetscape.

Accordingly, it is recommended that the SEPP introduce a new category of complying development where that involves the conversion of static signs to digital format provided the proposal meets strict planning, safety and design standards.

The proposed new Clause 3.30 is set out below.

3.30 Exempt and complying development

1. *The following development is exempt development—*
 - a) *Display of an advertisement in an underground railway station or railway tunnel when carried out by or on behalf of RailCorp, NSW Trains, Sydney Trains, Sydney Metro or TfNSW,*
 - b) *Display of an advertisement at a railway station or bus station if the advertisement is visible primarily from within the railway corridor or bus station when carried out by or on behalf of RailCorp, NSW Trains, Sydney Trains, Sydney Metro or TfNSW,*
 - c) *Removal of existing signage,*
 - d) *Modifications to existing signage carried out to meet occupational health and safety requirements and that do not increase the advertising display area of the signage.*
2. *The change in content of any signage.*
3. *The following development is complying development provided it meets the standards in clause 3.30(4):*
 - a) *The conversion of an existing static sign to a digital display*
4. *The following standards apply to a development referred to in clause 3.30(3):*
 - a) *The application must be accompanied by a report from a level 3 accredited road safety auditor that certifies the proposal is acceptable in terms of road safety;*
 - b) *The application must comply with all relevant requirements in Schedule 5 and the 2017 Guidelines;*
 - c) *The application must comply with all relevant Australian Standards AS 4282-2019 Control of the Obtrusive Effect of Outdoor Lighting and other applicable Australian Standards; and*
 - d) *The proposed signage must be no greater in size than the existing signage and must improve the finish and appearance of the building and the streetscape.*

Associated Benefits

- Promote consistent, clear and equitable pathway for low impact and occupation health and safety requirements for advertising assets
- Streamlines the planning process and efficient leading occupational health and safety outcomes

1.9 Standardisation of Public Benefit Requirements

Recommendation: The standardisation of the public benefit requirements such as the provision of 5% of content time for public authorities or a standard monetary contribution based on the size of the sign for advertising located within or adjacent to transport corridors.

In accordance with the aims and objectives of Chapter 3, public benefits may be derived from advertising in and adjacent to transport corridors.

Although the Guidelines provide a direction on the public benefit requirements and tests for consideration, the uncertainty over the final requirements for a public benefit makes it difficult to determine project feasibility without extensive engagement with consent authorities. The lack of a consistent approach also results in inequitable outcomes between consent authorities. In addition, some consent authorities also seek an addition contribution through the use of 7.11 and 7.12 contributions.

The industry seeks changes that promote a more consistent, fair and equitable outcome where public benefits are required by the SEPP. It is suggested that the SEPP prescribe that a public benefit should be:

- A defined amount of digital time be provided to public authorities being 5% of total digital signage time;
- The provision of a monetary contribution of \$250 per square metre of signage (indexed to CPI) and capped at an appropriate maximum amount.

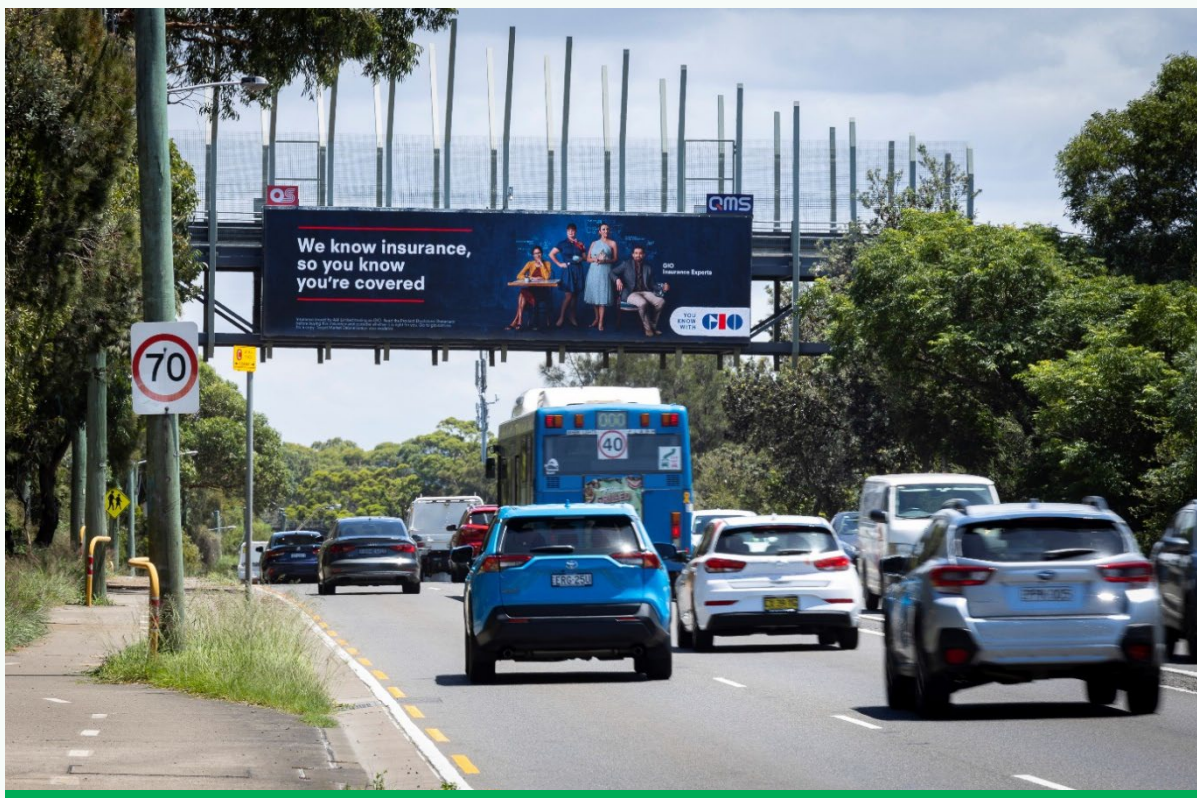
Associated Benefits

- Enabling government agencies to freely utilise modern technology to connect and communicate key messages with their constituents.
- Improved consistency and transparency of public benefits requirements within the NSW Planning System based on an accepted industry standard.

CASE STUDY

OUTDOOR SYSTEMS WENTWORTH AVENUE PEDESTRIAN BRIDGE

In 2006 Outdoor Systems were granted consent in Land and Environment Court to construct a bridge at Pagewood, Wentworth Ave with 2 static advertising signs attached. Prior to the construction of the bridge the public, golfers and golf course staff were required to cross 4 lanes of Wentworth Ave twice. The bridge has enabled Eastlake Golf Club to continue operation as an 18 hole golf course, as RMS at the time had flagged access to cross the road would no longer be permissible. The static advertising displays were converted to digital in 2017 at a cost of \$980,000 in addition to the initial capital investment by Outdoor Systems to develop the bridge. Advertising revenue derived from the digitals provides for all repairs and maintenance of the bridge and rental to Eastlake Golf Club.



Outdoor Systems Wentworth Avenue Pedestrian Bridge With Digital Signage

1.10 Siting Principles for Dynamic Electronic Displays

Recommendation: Improved flexibility of requirements for dynamic electronic displays within predominately pedestrian environments or in association with specific events, where capable of demonstrating satisfactory merits for urban design as well as pedestrian and road safety.

The Guidelines seek to prohibit dynamic electronic content, including animations, videos, flashing and active display changes where facing the road reserve and are visible to road users. This is an overly prescriptive requirement that stifles innovation and research and development of the industry, despite the continued evolution of technology and the urban environment.

Dynamic content is an emerging trend within the out of home industry internationally, providing opportunities for deeper engagement with audiences. In addition, dynamic displays are emerging in heritage areas and on heritage items, such as the Hyde Park Barracks in Sydney.

The industry contends that the current New South Wales framework is inhibiting the take up of innovative and well-designed signage. It is failing to provide a future proof framework and is lagging behind Victoria and Queensland in the assessment and approval of digital and dynamic advertisements.

A merits-based assessment that expands on Schedule 5 for dynamic electronic displays is critical to future-proof the SEPP and Guidelines and enable continued innovation and development.

Associated Benefits

- Enhance the vibrancy and global profile of New South Wales as a leader in contemporary, creative, innovative and cultural urban environments.
- Achieve clear consistent, state-wide guidelines that are easy to understand and provide guidance for local consent authorities navigating evolving technologies.
- Promote research and development within the industry, without compromising urban amenity and safety outcomes.

CASE STUDY

OOH! MEDIA BOURKE & SWANSTON ST, MELBOURNE

Launched in August 2015, this digital sign within Bourke St Mall is a 236 square metre screen that is permitted to run animation. Situated in a busy pedestrianised section of the Mall, the sign is high definition with full motion capability and can display news, sport, entertainment and weather updates, as well as digital advertisements. With the emergence of 3D anamorphic technology, in 2022, clients are regularly wanting to utilise the sign for engaging creatives given its location within Melbourne's CBD and one of the nation's busiest commercial and shopping precincts.

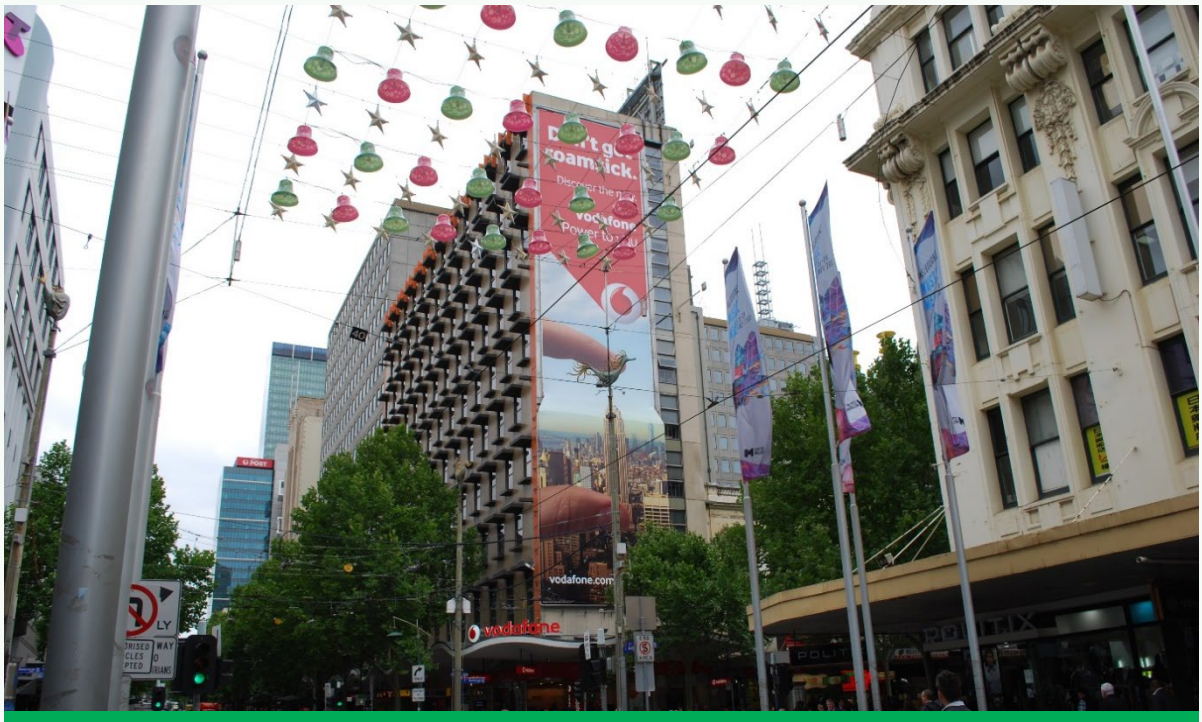
The site previously housed two separate classic signs, that had at different times over the years, been operated by different OOH companies. When oOh! secured the rights to both signs, they lodged a development application to combine the signs into one digital, decreased the total advertising area by 13 square metres, and invested in associated works to give the exterior of the building an updated look with contemporary cladding thus providing integration between the sign and host building.



To view animation display, click the image above or visit <https://vimeo.com/731922343>



Bourke Street New Digital Display



Bourke Street Display Before Digital Upgrade

Theatre Royal Dynamic Business Signage

In August 2021, the City of Sydney approved 3 digital pylon signs and 3 bollards with dynamic content signs in the forecourt of Theatre Royal, with frontage to King Street. Refer photograph below. Importantly,

- The promotional signage is restricted to events in association with the Theatre Royal – business identification signage;
- The MLC Centre complex including the Theatre Royal, commercial and retail buildings, interiors, plazas and artworks, is identified as heritage item of local significance;
- The site is also located in close proximity to other state and local listed heritage items;
- The proposal was considered by Council to be generally of a high-quality design standard that is innovative and utilises quality materials and detailing and complements the heritage significance of the building and local area;
- Conditions of consent could be imposed by the City of Sydney and TfNSW to mitigate potential illumination and road safety impacts under a merits-based assessment.
- Despite the impacts being consistent irrespective of content, the proposal is not subject to the blanket prohibitions under the Guidelines 2017 or Chapter 3 IESEPP 2021 that apply to ‘advertising signage’.

To ensure OOH industry policies can adapt with technological evolution, it is critical that a consistent and fair pathway for the merits-based assessment of dynamic content signage is available, and requirements prohibiting the uptake of the technology are removed from Chapter 3 & the Guidelines 2017.



Theatre Royal Dynamic Business Signage

2. STATUTORY REFORM

2.1 Introduction

The current statutory framework that applies to development applications for advertisements is outdated and is constraining the efficient performance of the OOH industry, its take up of digital technology and its future ability to keep pace with global technological advances, for example the introduction of animation or 3D display.

Statutory reform for the OOH industry will require policymakers and consent authorities to recognise that digital advertising signs are no longer two-dimensional billboards with one message to tell and sell. Digital screens display real-time curated content that incorporates alongside advertising, community and civic messaging, local business promotion, public art, news and weather, missing person and critical event amber alerts. They are able to collect valuable data sets that assist the planning of our urban centres, such as pedestrian and vehicle counts and to monitor environmental metrics such as air pollution.

While global cities such as London, New York, Seoul, Tokyo, Beijing and Hong Kong have been able to establish statutory frameworks that provide for the large-scale uptake of the technology inclusive of animation and 3D display in appropriate locations, it remains out of reach in NSW. The industry contends that NSW is now lagging behind Victoria and Queensland in its assessment of digital advertisements.

When NSW originally introduced SEPP 64 in 2001, it was a game changer for the OOH industry. It was the first time there was a clear statutory pathway that recognised and validated the land use of advertising. The 2007 and 2017 revisions of the SEPP have delivered a framework that is no longer workable for the OOH industry and which fails to support its evolution into the digital age.

A NEW STATUTORY FRAMEWORK IS URGENTLY REQUIRED

Statutory reform and a new statutory framework is urgently required for the following reasons:

1. **The framework uses blanket prohibitions, rather than enabling merit-based assessments.** The majority of approved digital screens in NSW have come about through the conversion of existing static sites that benefit from existing use rights. These prohibitions do not promote the orderly and economic development of land as required under the objects of the EP&A Act 1979, as they limit the ability of the OOH industry to secure approvals for advertisements at greenfield locations whilst rationalising existing assets.
2. **The framework fails to recognise the changing dynamic of urban areas** that occurs under local, district and regional plans. In NSW, these strategic plans drive the urban renewal and growth of the Sydney Metropolitan Area. These plans are not considering the growth of the OOH industry and the role that it plays in the digitisation of our urban areas.
3. **The 2017 Guidelines don't apply evenly across NSW and are limited to only transport corridors.**
4. **The framework needs to establish a fair and equitable process for the levying of a public benefit contribution for a static and digital advertisement** and specify the preferred legal vehicle under which it is to be provided. Public benefits are discussed in further detail in Section 3 of this submission.
5. **The existing framework fails to enable evolution of technology and design of the OOH industry. The OOH industry seeks improved flexibility in provisions to enable merit based assessment, ensuring policy does not stifle innovation. The OMA would like to work in collaboration with all levels of Government to develop consistent criteria of assessing dynamic content and other innovation design outcomes.**
6. **Greater consistency in assessment methodologies is required to establish equitable and quality outcomes across NSW.**

2.2 A New Statutory Framework

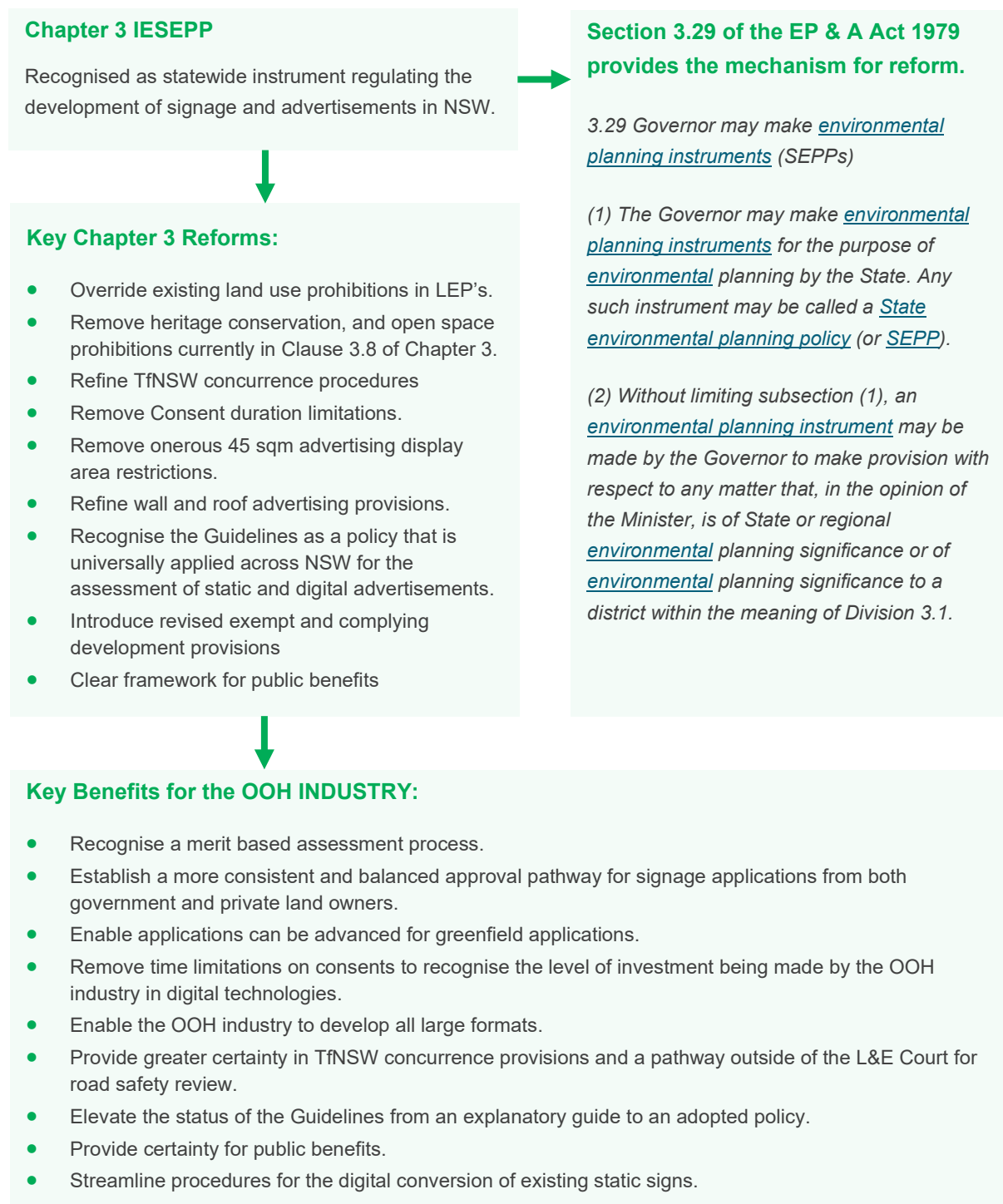
A practical statutory framework for the OOH industry requires:

1. **Chapter 3 of IESEPP to be recognised as the primary Environmental Planning Instrument governing the development of static and digital signage in NSW.** In Section 1 this submission, we have suggested a suite of drafting reforms that would improve the effectiveness of the SEPP and future proof for the OOH industry; and
2. **The Guidelines 2017 to be elevated from an explanatory guideline to an adopted state-wide policy.** This transition to a state-wide policy would see the Policy replace locally adopted development control plans, and they would apply to all land to which Chapter 3 applied. As a state-wide policy they would specify design, lighting, traffic safety, digital and public benefit criteria against which both Section 4.55 Modification Applications and Part 4 Development Applications are assessed.

Figures 2.1 and 2.2 illustrate the new statutory framework being proposed for Chapter 3 of IESEPP and the Guidelines 2017 respectively.

FIGURE 2.1

RECOMMENDED REFORM FRAMEWORK FOR CHAPTER 3 IESEPP 2021



Source: Compiled by Urban Concepts and Norton Rose Fulbright August 2022

FIGURE 2.2

REFORM FRAMEWORK FOR TRANSPORT CORRIDOR ADVERTISING & SIGNAGE GUIDELINES 2017



Source: Compiled by Urban Concepts and Norton Rose Fulbright August 2022

2.3 Is it time for a new definition for an advertisement

Under Chapter 3 of IESEPP an '*advertisement*' is defined as:

Signage to which part 3.3 applies and includes any advertising structure for the advertisement.

'*Signage*' is defined as:

All signs, notices, devices, representations and advertisements that advertise or promote any goods services, events and any structure or vessel that is principally designed for, or that is used for, the display of signage and includes –

- a) Building identification signs;
- b) Business identification signs, and
- c) Advertisements to which part 3.3 applies,

but does not include traffic signs or traffic control devices.

There is no doubt that the future of the OOH industry is digital. As we have already discussed, the application of the technology has expanded the role being performed by a digital screen beyond that of a visual display. The ability to display real-time 24/7 curated content that changes every 10 or 25 seconds, together with the ability to collect data sets, raises the question of whether digital signs should be categorised as 'advertisements' and 'signage'.

It may be that digital advertisements would be better defined as 'out of home media'. Changing the definition away from 'advertisements' may also help to address philosophical biases held by some planners and consent authorities about advertising.

It is an area of inquiry that we would encourage the NSW DPE to investigate this area of inquiry as part of the review. The OMA would be willing to conduct a survey of its members to explore industry attitudes and work collaboratively with all stakeholders to refine an appropriate definition.

3. THE WAY FORWARD

Statutory reform is urgently required if the OOH industry is to achieve growth through greenfield site expansion and the successful take-up of digital technology, inclusive of animation and 3D displays. The OMA would like to collaborate with the NSW DPE as part of a working group to critically examine and advance the options arising from the preliminary review.

This submission has suggested revisions to Chapter 3 of IESEPP and a new state-wide statutory framework that addresses OMA member concerns. We would welcome the opportunity to thoroughly discuss the approach and ideas we have presented within.

Dr Nicholas Brunton

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Norton Rose Fulbright

Belinda Barnett

Managing Director

Urban Concepts

**OUTDOOR
MEDIA
ASSOCIATION**

THANK YOU

SUBMISSION TO THE NSW DPE

**CHAPTER 3 INDUSTRY
& EMPLOYMENT SEPP
2021 REVIEW**

Prepared on behalf of the
Outdoor Media Association

By
Norton Rose Fulbright & Urban Concepts

16 August 2022