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Draft DCP - Signage and Advertisement

Submission from the Property Council of Australia

31 March 2017

Executive Summary

The Property Council has serious concerns about the proposed changes to the *North Sydney Development Control Plan (DCP) – Advertising and Signage.* Two key principles of good regulation are to clearly identify the problem to be addressed and to assess the impacts that proposed changes will have on stakeholders. Neither of these seem to have been adhered to in this instance. The proposed changes are a significant departure from current practice and will have wide reaching implications for building owners in the North Sydney Local Government Area.

If implemented, we estimate the changes will cause $61 million loss in the immediate value of signage infrastructure to industry in North Sydney, as well as cutting a valuable annual rental income stream. It will also cause an immediate valuation risk on buildings with roof signs that would no longer be compliant. This is because valuers would be likely to no longer capitalise the signage lease/licence fees when undertaking valuations or would capitalise the income at a higher rate to reflect the new risk associated with the income stream's uncertainty. This would have a flow on effect of wiping an estimated additional capitalised value of $302 million from the commercial value of buildings.

This loss of income and building value in North Sydney would have severe flow-on effects to the local economy. It may affect the underlying value of the land and have a negative flow-on effect on local business, trades and ultimately the number of jobs available in North Sydney. All this would be done in the absence of any evidence that warrants the changes being proposed to the DCP.

The rate of office space vacancy in North Sydney has increased over the past six months with tenants choosing the Sydney CBD and Parramatta as more attractive alternatives. Prohibiting digital and third party roof-signage will exacerbate this issue at a time when attention should be focused on making North Sydney more attractive to potential tenants.

Advice from Senior Counsel suggests the draft DCP has serious legal flaws. If progressed as is, these flaws would render the DCP liable to immediate legal challenge to protect the significant commercial interests it would undermine without a meaningful case being made for reform.

The Property Council urges the North Sydney Council to put the draft DCP on hold and engage in an in-depth consultation with industry to find a more acceptable outcome.

About the Property Council of Australia

The Property Council of Australia is the nation's peak representative of the property and construction industry.

The property industry underpins economic activity in North Sydney, contributing to the millions collected by the council in rates and charges.

In addition, our members contribute to local government infrastructure through significant development levies. Last financial year, the North Sydney Council collected $9.4 million via section 94 levies and $13.5 million in rates from local business in North Sydney.

The property and construction industry also underpins the health and prosperity of the broader NSW economy. The industry:

- generates over 311,000 jobs - one in ten workers
- provides $20.3 billion in wages to workers and their families
- pays $17 billion annually in State taxes to the NSW Government – the State's single largest tax payer
- is levied an additional $7.2 billion in local council rates and charges annually
- contributes $54.5 billion directly to Gross State Product – 11.1 per cent of total GSP, and creates $88.3 billion in flow on activity.

Our 2,000 member firms Australia wide and 55,000 active individuals span the entire property and construction industry, which includes all:

- dimensions of property activity — financing, funds management, development, ownership, asset management, transaction and leasing.
- major property types — offices, shopping centres, residential development, industrial, tourism, leisure, retirement, and infrastructure.
- major regions of Australia and international markets.
- four quadrants of investment — public, private, equity and debt.

Property Council Recommendations

Recommendation 1: Consideration and progress of the draft DCP be put on hold, until such time as the North Sydney Council has engaged in an in-depth consultation with those affected by its terms.

Recommendation 2: Retain the option to lease signage to a third party for top of building signs.

Recommendation 3: Retain provisions for subdivision for the purpose of creating separate lots for signage.

Recommendation 4: Allow the introduction of digital signage in a conservative and measured way.

Recommendation 5: Retain provisions allowing more than two roof signs to be attached to a building.

Recommendation 6: Retain provisions allowing top-of-building signage in B4 – Mixed use zones.

Recommendation 7: That North Sydney Council review the attached legal advice provided by the Property Council and the Outdoor Media Association which highlights the serious legal flaws contained in the draft DCP.

Recommendation 1: **Consideration and progress of the draft DCP be put on hold, until such time as the North Sydney Council has engaged in an in-depth consultation with those affected by its terms.**

The proposed changes to the *DCP – Signage and Advertising* (the DCP) will have repercussions that are both widespread and severe. It will eliminate millions of dollars of capital value and ongoing rental returns, make vacant office space less attractive, and slow economic activity. All this with no apparent justification for changing the existing DCP.

The proposed changes to the DCP were not notified to building owners, nor were they advertised widely and many directly affected by it were not approached for comment. This is not acceptable. Despite the time extension for the submission of feedback to the draft DCP, there has not been adequate engagement with industry by Council to fully explore mutually acceptable solutions.

Given the severity its impacts, the Property Council urges the North Sydney Council to suspend the DCP's development until such time as it has engaged in an in-depth consultation with those affected.

We also note that clause 29 of the State Environmental Planning Policy No 64 Advertising and Signage requires that the Council **must** undertake consultations with the advertising industry and local businesses in preparing advertising design analysis. This consultation has not occurred, a fact recognised in the planning officers' report to Council on the draft DCP. This failure to consult cannot be cured by the current exhibition of the draft DCP because clause 29 requires consultation in the formulation of the advertising design analysis before it is placed on public exhibition (refer to Attachment A).

Should the DCP be implemented, this lack of procedural fairness would be a ground for legal action.

Third party leasing of signage space

Recommendation 2: **Retain the option for building owners to lease signage space to third parties.**

<u>Estimate of impacts</u>

A survey[1] of 88 commercial buildings in North Sydney was conducted for the purpose of making a submission to this review process. Table 1 is a summary of findings from the research.

Total number of buildings surveyed	88
Total number of roof signs	91
Percentage of third party signs	46.1%
Average cost of signage (incl. installation)	$1.12 million
Average rental return (per annum)	$377,000

[1] Urban Concepts (2017), North Sydney Signage Research

An estimate extrapolated from the figures above of the financial impact on building owners of removing third party signage would be:

- to immediately **erase $61 million** in signage infrastructure investment.
- to **discontinue a combined yearly rental return of $20 million** - some of this would likely be recovered if owners could find a tenant within their building willing to invest in a roof sign. It is not guaranteed this would be achievable or that it would provide the same returns.
- to **wipe an estimated capitalised value of $302 million** from the value of North Sydney properties[2].
- Building owners would incur an estimated **$2.3 – 3.5 million in signage removal fees** and **$1.7 – 2.9 million in "make good" and shadowing repair fees.**

A precarious rental market

The vacancy rate across the North Shore's office market has increased, according to the Property Council of Australia's latest Office Market Report. In the six months to January 2017, the vacancy rate increased from 7.3 per cent to 8.0 per cent across the North Shore - comprising North Sydney, Crows Nest/St Leonards and Chatswood.

By comparison North Sydney's closest neighbour, the Sydney CBD is registering vacancy rates of just 6.2 per cent. Parramatta is registering the lowest vacancy rates in Australia with just 4.3 per cent of office space unoccupied. This places North Sydney in a very competitive market with two economic powerhouses within easy commuting distance.

The North Sydney Council must protect its office market by making it as appealing as reasonably possible to potential tenants.

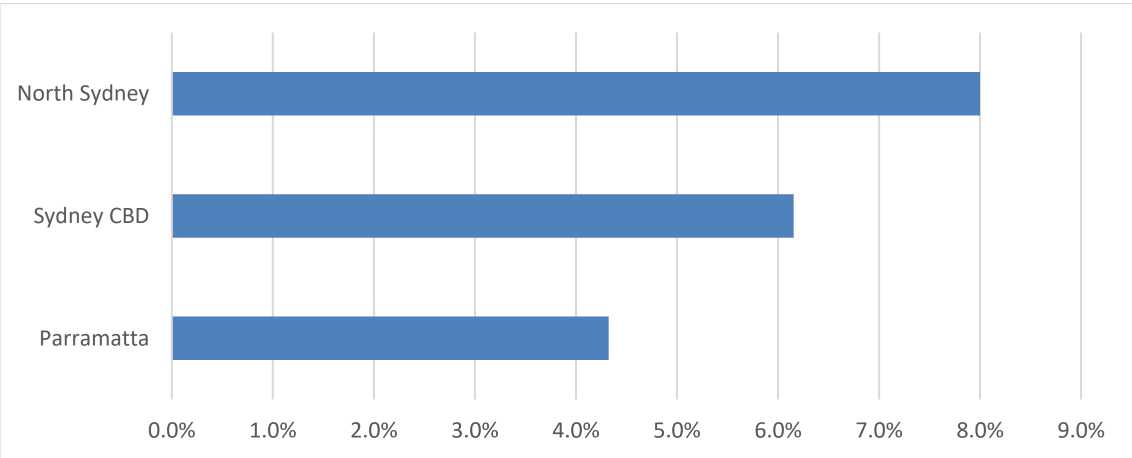

Figure 1 - Vacancy levels in office buildings

Source: Property Council[3]

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[2] A capitalisation rate of 6.75% has been used as an estimate.

[3] Property Council of Australia, Office Market Report, January 2017

Contributions and flow on

Commercial offices are large contributors to their councils. The financial health of a council is very much linked to the success of the businesses that operate within its local area.

Last financial year, the North Sydney Council collected $9.4 million[4] in levies raised under section 94 of the *Environmental Planning and Assessment Act 1979*. This amount was added to the existing balance of almost $25 million of unspent section 94 Levies. Businesses also contribute significantly through annual rates paying $13.5 million in the last financial year alone. Reducing the value of buildings by removing signage rights, may have a negative effect on underlying land values.

There are also flow-on effects for local retailers, trades activities and job creation that may be significant but are not as easily quantified.

The DCP should align with the Sydney Metropolitan Strategy

The Draft North District Plan released by the Greater Sydney Commission rightly identifies North Sydney as a strategic economic centre. There were approximately 60,400 jobs in the North Sydney area in 2016 and the District Plan identifies growing this number as a key objective over the years to come[5]. The strategy identifies that in established commercial cores, Council's need to be ensuring that residential conversion does not erode the commercial office function of a centre. Removing a valuable source of income to building owners would be directly contradictory to this objective.

The Property Council urges the North Sydney Council to recognise the economic contribution of signage in supporting the office function of a CBD and align its DCP with the Greater Sydney Commission's Draft District Plan.

Third party signage

Clause 9.11 provision P2 (e) of the draft DCP states:

"Roof signs are generally not permitted. However, Council may consider approving a new roof sign, but only where: […] (e) the message of the sign relates to an owner or a major tenant of the building;"

There is no justification provided for this arbitrary change that will have severe negative consequences for building owners. Firstly, there is no definition provided for the meaning of "major tenant". This drafting terminology is vague and would lead to uncertainty for building owners seeking to allocated a roof sign to one of their tenants.

Secondly, this rule would lead to an unnecessary narrowing of the market of potential parties who would be interested in displaying their brand name or logo at the top of a building. Simple market economics states that the larger the pool of potential tenants, the greater the expected return on

[4] North Sydney Council, Financial Report 2016
[5] Draft North Sydney District Plan (November 2016), Greater Sydney Commission

signage placement leasing. The signage market of North Sydney has operated this way for many decades without any reported adverse effects.

Thirdly, roof signs are permissible with consent according to the *North Sydney Local Environmental Plan 2013*. We fail to understand how a DCP can purport to prohibit a development that is permissible with consent.

The Australian Government Guide to Regulation states that the first principle of good regulation is to *"clearly identify and define the problem you are trying to solve"*[6]. The objectives stated for this proposed change are the following:

"O1 To minimise the visual impacts on the quality of vistas, streetscapes and skylines.

O2 To reinforce desirable characteristics of neighbourhoods."

Neither of these objectives would be contravened should a top of building sign be allocated to a third party rather than the building owner of a "major tenant". The Property Council is not aware of any problem that is being addressed by this major change in regulation and cautions strongly against implementing it as it will result in significant loss of income to local building owners.

Further, there are some tenants currently occupying buildings in North Sydney who would not seek to have their brand displayed at the top of their building (Commonwealth Government departments for example). Preventing building owners from generating additional revenue by leasing the signage space to a third party creates a negative business environment that will result in North Sydney jobs being lost.

Other jurisdictions

Leasing signage space to third parties is commonplace in Australian cities. The City of Perth has no restrictions on the company or brand to be represented in a roof or sky sign, and neither does Brisbane City Council. Brisbane City Council has provisions in place to ensure that the proposed signage does not affect the character and vistas of their local area and to prevent any abuse of the system.

In the City of Melbourne LGA, roof signs are permitted to any corporate body with naming rights[7] regardless of whether or not they are a tenant or an owner of the building.

Strata subdivisions for the purpose of leasing

Recommendation 3: **Retain provisions for subdivision for the purpose of creating separate lots for signage.**

Clause 9.6 provision 8 of the draft DCP states:

"Stratum or strata subdivision for the purpose of creating separate lots for signage is inconsistent with the orderly use and development of land, and is not permitted."

[6] The Australian Government Guide to Regulation (2014), Office of Best Practice Regulation
[7] Melbourne Planning Scheme, Local Planning Policies - Clause 22.07 Advertising Signs

This practice has been in use across the North Sydney local government area for in excess of 10 years and has not been the subject of any known controversy. The Council has approved this practice and it has led to significant investment into lots for the purpose of signage display.

Thus, it is unclear why the council is proposing to radically alter the policy. No analysis of potential market impact appears to have been undertaken. Council supported the creation of a market and is now proposing to close it for no reason and without compensation.

Taking unilateral action to remove this practice will lead to severe and unwarranted loss of property value within the North Sydney LGA. It is an extinguishment of a property right and the economic benefits derived from the property without any form of compensation.

The creation of such strata lots is permissible with development consent. Thus, the draft DCP is inconsistent with the *North Sydney Local Environmental Plan 2013* and is thus *ultra vires* according to section 74BA and section 74C (5) of the *Environmental Planning and Assessment Act 1979*.

Example: Strata subdivision impact

In 2005, a company purchased a subdivided lot which can *only* be used for the purpose of signage display.

North Sydney Council specifically recognised the long-term nature of the signage on the property lot by consenting to the subdivision and creation of a separate & specific strata lot for signage. In granting this consent, the Council no doubt considered that the permanent establishment of a separate title for the display of signage was appropriate

The value of this lot is now between $8-10 million and generates an annual rent of close to $500k.

The annual rental amount could realistically be increased to $1 million per annum with a digital sign.

Removing subdivision for the purpose of signage would render this property completely worthless and lead to significant and unwarranted losses for this owner.

The above illustration is an actual example provided by a strata lot owner in the North Sydney area.

Digital signage

Recommendation 4: **Allow the introduction of digital signage in a conservative and measured way.**

The digital solution

The Property Council supports efforts to preserve the character and streetscape of North Sydney and the growing residential amenity. Preventing the use of digital signage is not the way to achieve these worthy aims.

Digital signs are already ubiquitous in many cityscapes, but they also could be installed in a measured and appropriate way to enhance the character of North Sydney rather than detract from it. Various technologies are available today that would present all the advantages of digital signage while being practically indistinguishable from traditional signage. This technology is not confined to “large rectangular boxes” as stated in the Council Report Resolution of 21 November 2016 but is much more creative and versatile.

During a face-to-face meeting, representatives of the council expressed their concerns with drafting provisions in the DCP that would lead to the desired outcome of allowing understated digital signage but precluding signage that would be out-of-place or out-of-character to North Sydney. Difficulty in defining terminology to capture the desired outcome should not be an obstacle to progressing this matter when the modernity and relevance of North Sydney is at stake. The Property Council would like to offer the industry expertise of our staff and members to assist with this process should it be required.

The draft DCP contains a range of provisions to address digital signage in 9.11 (P8-P12) for business and building identification signs and in 9.12 (P4-P10) for digital advertising signs.

Many of these provisions are designed to curtail the potential for digital signage to be installed on buildings in place of existing static signs. They include limits on size (clause 9.11 P4), limits on maximum height (clause 9.12 P5), limits on content (9.12 P10) and dwell time (9.11 P12, 9.12 P8).

There are no planning justifications provided for these restrictions.

Clause 9.11 provision 12 of the draft DCP states:

"P12 Messages must be static in nature with a minimum dwell time of 1 minute, unless located more than 4m away from any window."

This provision is seemingly out of alignment with common practice for dwell times in other areas of regulation. The *Draft Transport Corridor Outdoor Advertising and Signage Guidelines*[8] specifies a dwell time of 10 seconds in areas where the speed limit is below 80km/h and 25 seconds when it is above. Issues relating to the effect of dynamic signage on driving safety have been considered by the Roads and Maritime Services. There is no reason the regulatory standard should be different in North Sydney.

<u>Advantages of digital</u>

Digital signs present many advantages for industry over their traditional counterparts. While they do have a significantly higher upfront cost, this is mitigated by the fact that content can easily be changed when required, thus avoiding the cost, inconvenience and interruption of surrounds that replacing a physical sign necessitates.

Digital signs are not limited to displaying the brand name and/or logo of a single business and can be programmed to cycle through several displays. This is beneficial to local businesses that would like to purchase advertising but cannot afford the full expense of a roof sign. It also results in higher rental returns for building owners who can enter into agreements with multiple businesses seeking to advertise their brand name and/or logo.

There would also be significant value uplift resulting from the conversion of top of building signs to digital technology. Contracts with advertisers could be reduced from 10 years to one or two as there is no cost in replacing the signage. Shorter contracts would typically deliver higher margins and increase the value of North Sydney buildings.

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[8] The *Draft Transport Corridor Outdoor Advertising and Signage Guideline (2015)* – Department of Planning and Environment.

Digital and the community

The prominence of these signs and the ease of displaying varied content makes digital signage a valuable tool in keeping the community safe and informed of major events such as roadworks, road closure for events or weather warnings. The council should see the installation of well-designed and installed digital signage as an opportunity to better communicate with its residents rather than an obstacle to good development.

Digital signage offers the potential to lower costs for advertisers and thus is a benefit to local businesses. Traditionally general advertising signs are in place for over one month and come at a high cost. Digital offers the potential for shorter advertising at much lower cost.

Furthermore, digital signage can be used to support local community events and functions. The owners of the sign can propose a certain amount of time to be made available for community purposes. Such proposals are generally the subject of voluntary planning agreements.

A unilateral requirement for a minimum amount of free signage time is not supported. It is also potentially inconsistent with the requirement that any financial contribution can only be imposed under sections 94 and 94A. Unilateral conditions of consent requiring a fixed amount of free signage time would amount to a compulsory financial contribution and would therefore by invalid.

Limiting the number of signs per building

Recommendation 5: Retain provisions allowing more than two roof signs to be attached to a building.

Leasing the signage rights of a building can represent a significant income flow. The proposed clause 9.11 P1 (f) of the draft DCP states:

"(f) there are no more than 2 roof signs attached to a building"

This provision would place an immediate valuation risk on buildings with top of building signs that would no longer be compliant. Valuers would be likely to no longer capitalise the signage lease/licence fees when undertaking valuations or would capitalise the income at a higher rate to reflect the new risk associated with the income stream's uncertainty.

Of the buildings surveyed for this submission, 12.5 per cent would be captured by this new provision and would be required to remove one or more signs from their roof space. This would lead to fees incurred, loss of regular income and risk to the valuation of the building. Once again, there is no clear rationale for the introduction of this provision.

Furthermore, a proposal to install more than two signs per building is permissible with development consent as per the *North Sydney Local Environment Plan 2013*. We note that in relation to wall signs, SEPP 64 provides that only one general advertising wall sign is permitted per building elevation.

Recommendation 6: Retain provisions allowing top-of-building signage in B4 – Mixed use zones.

Clause 9.2.2 of the draft DCP includes the following statements made in relation to B4 – mixed use zones:

"These remaining roof top signs reflect the former commercial character of the locality. Future signage in the locality should be limited to small scale business and/or building identification signs located at lower levels where commercial development is permitted."

"There are a number of large scale existing roof and wall signs for building identification purposes that currently dominate the skyline. Given the area's transition to a more residential focus, additional signage of this type should be avoided. Future signage in this area should be limited to small scale business identification advertisements […]"

Many signs have been present in these areas for decades without, to the best of our knowledge, attracting any significant complaints from residents. Once again, the Property Council questions why the council is seeking to address a problem that does not seem to exist. Owners corporations surveyed for this submission have universally been supportive of top-of-building signage.

Additional comments:

The following section contains general comments regarding the rationale put forward for this change to the DCP, the terminology employed and some closing remarks.

<u>Impact on residential amenity</u>

Clause 9.6 Objective 4 of the draft DCP states:

"O4. To minimise the impact on residential amenity."

Rooftop signage has been a part of the character and streetscape of North Sydney for decades. The signage adheres to Australian Standard *AS 4282 – Control of Obtrusive Effects of Outdoor lighting*. Anecdotal evidence from members indicates they very rarely receive any complaints about signage and that these are normally resolved swiftly.

If council is aware of an impact on residential amenity we would be happy to work with Council officers to implement solutions.

<u>Wayfinding</u>

Wayfinding is taken to mean a person's ability to successfully navigate to their intended destination.

Good public policy should be firmly anchored in the best available data or evidence at the time. The Council Report Resolution of 21 November 2016 cites 'wayfinding' as a reason to prohibit digital signage. There is no evidence cited to substantiate this claim and until they do, we don't believe this issue should be given any credibility. Many cities such as Singapore, Tokyo and New York have embraced digital technology to an enormous extent and it has not affected people's ability to navigate the streets. What is being proposed for North Sydney is significantly less and its effect on wayfinding should be discounted.

In an age when smartphone penetration among the general population is ubiquitous with pre-loaded mapping software that is free and reliable, to suggest keeping building names static as a means to achieve successful wayfinding in a city is now untenable.

Comparison to City of Sydney policy

The draft DCP released by the North Sydney Council mirrors the draft version of a comparable DCP released by the City of Sydney in late 2015. The final City of Sydney DCP represented the outcome of 12 months of public consultation and engagement to ensure that all significant stakeholders could present their views.

One of the key changes the City of Sydney made was to recognise the economic function of signage and the role that it plays in supporting Australian business. It also introduced signage strategy provisions that would enable an applicant to present a merit based case for varying the controls. North Sydney Council should incorporate this option into their DCP to allow for a case to be made for varying the provisions in certain unforeseen but compelling circumstances.

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