



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: JD:lb:EP&D:675380
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Building Systems Unit
Department of Planning and Infrastructure
GPO BOX 39
SYDNEY NSW 2001

Email: information@planning.nsw.gov.au

Dear Sir/Madam

Draft Planning Circular to Councils – Safety of awnings over public lands

I am writing to you at the request of the Law Society's Environmental Planning and Development Committee (Committee).

The Committee represents the Law Society and its members in relation to all aspects of environmental and planning law and practice. The Committee includes experienced practitioners whose expertise has been developed in representing a wide spectrum of stakeholder interests.

The Committee has reviewed the draft Circular and considered the actions to be undertaken by a council as part of a program to monitor awning safety in its area.

General Comments

The Committee submits that any regime monitoring structures over public roads should relate to all such structures rather than be limited to awnings. Such a regime should be implemented in such a way as not to impose unreasonable costs on building owners or councils.

The Committee understands that it may not be possible to accurately assess the structural adequacy of a structure over a public road (such as an awning, verandah or other structure) from a visual inspection from a public road. It is also suggested that many councils do not have relevantly experienced staff available to undertake inspections and determine structural adequacy of structures over a public road.

Current orders regime

Councils are reminded in the draft circular of the provisions giving councils the power to issue orders in certain circumstances. These orders, however, only apply where a council can demonstrate (to a court if need be) that it has evidence to support a finding that the precondition for the issue of the order exists, namely that the "building is or is likely to become a danger to the public" or "the land or premises are not in a

safe or healthy condition” or where it is necessary to “alter or repair a work or structure on over or under a public place” because “it is in the public interest to do so”. Unless there is clear, visual evidence of structural failure, the current regime does not adequately assist a council to ensure building owners have taken sufficient steps to protect public safety.

The Committee suggests that in addition to the program set out in the draft circular, consideration be given to including in the orders regime (through either the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*), an order in terms similar to the following:

Order

To obtain a structural engineer’s report as to the structural adequacy of any structure (being an awning, veranda or other structure) that currently exists over a public road.

Reason for order

A structure exists over a public road.

The structure may fail and cause injury to persons or property.

No certificate of structural adequacy has been provided to the Council within the last 5 years.

To whom the order is addressed

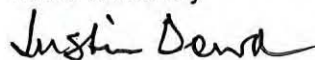
The owner of the building to which the structure is attached.

Alternative regime

The Committee notes that the problems proposed by unsafe awnings are not dissimilar to those posed by trees along public roads or the fencing of swimming pools. The Committee suggests that consideration be given to whether separate legislation may be warranted given the issues of public safety and difficulties of monitoring are not dissimilar to those dealt with under, for example, the *Swimming Pools Act 1992*.

Any queries in relation to this letter may be directed to Liza Booth, Policy Lawyer for the Committee on (02) 9926 0202 or via email on liza.booth@lawsociety.com.au.

Yours sincerely



Justin Dowd
President