

ITEM 2. STREET ART REVIEW**FILE NO: S054608****SUMMARY**

Street art is a highly accessible art form that is increasingly recognised and accepted in the public domain. Street art has a long history and embodies a complex set of associations, and the community often holds strong and sometimes opposing views about it. The City recognises the artistic and social value of creative expression, and also the shared nature of the public domain.

This report outlines the review undertaken of the City's street art policies and procedures and provides a summary of current legislative and policy frameworks and the City's current practices. It identifies areas for improvement and proposes a number of actions and pilot projects.

Street art, for the purpose of this report, refers to inscriptions on walls created with consent and in compliance with relevant planning requirements and policy. Works created without consent and/or without compliance are referred to as unlawful graffiti, and are primarily addressed by the City's *Graffiti Management Policy 2013*.

The purpose of this report is to provide clarity on the City's position, practices and responsibilities for street art, and to propose a number of improvements to current processes. A key initiative is the updating and ongoing maintenance of a Street Art Register, which is to be integrated within the City's asset management system so that it can guide the City's graffiti removal contractor, as well as recognise the artistic achievement of street artists.

The key issues identified by the review are confusion about requirements and a lack of clarity around the process for commissioning new street art. This report is presented to Council alongside a separate report to the Planning and Development Committee, which recommends amendments to *Sydney and South Sydney Local Environmental Plans* that will clarify the street art planning requirements, as well as a number of proposed actions to clarify processes.

The proposed Local Environmental Plan (LEP) amendments and actions in this report take into consideration Council's strategic aspirations, as well as current legal and planning requirements.

RECOMMENDATION

It is resolved that the report be received and noted.

ATTACHMENTS

Nil.

BACKGROUND

1. On 21 October 2013, Council considered a Notice of Motion on *Legal Street Art and Graffiti*, and resolved to request the Chief Executive Officer to ensure the work being undertaken to develop a street art policy includes consideration of the *Graffiti Control Act 2008*, as well as consideration of avenues for reducing the incidences of illegal graffiti and providing opportunities for public artistic expression and street-art murals.
2. On 28 July 2014, Council adopted a Notice of Motion on *Graffiti Spaces* that noted the role of activated public space in graffiti prevention; the success of the former Marrickville Council's *Perfect Match* Program, the increased opportunities for street art offered by the draft *Creative City Cultural Policy and Action Plan 2014-2024*; and noted that the Street Art Guidelines were being finalised to include initiatives for street art and commissioned murals whereby property owners and artists can work together to install artwork on private property with owners' consent.
3. The ways in which murals, street art and graffiti are perceived by the community have evolved over recent years. Street art is exhibited in museums around the world and is becoming more widely considered as part of mainstream artistic endeavour. In addition Council has articulated a vision of a creative city in *Sustainable Sydney 2030*, the *Public Art Policy 2011* and, more recently, the *Creative City Cultural Policy and Action Plan*. In response, the City's policies, practices and processes concerning murals, street art and graffiti have been reviewed.
4. Murals, street art and graffiti are different forms of creative expression, although the boundaries between them are often blurred. The practice of associating street art with legality and graffiti with illegality contributes to confusion about what is legal and permitted. Murals tend to be traditional in style and intended to last for years. Street art and graffiti tend to be more ephemeral and differ from each other stylistically. Graffiti is associated with hip hop culture and the depiction of words and letters, while street art is associated with images and characters, and extends to other media such as stencils and paste-ups. Despite their differences, they are subject to the legal and planning requirements outlined in more detail later in this report. Works created with consent are referred to as street art. Non-complying works created without consent are unlawful graffiti.
5. Street art can be a marker for either a lively, creative and engaged city, or for a neglected and conflicted one, depending on factors such as its location, condition, and quality. In 2000, the City introduced a *Graffiti Management Policy* and processes for rapid removal of vandalism and unlawful graffiti, and has successfully implemented these in the ensuing years.
6. In 2013, the City engaged a consultancy team to undertake research into legislation, policy, process and programs around street art and graffiti and to create a register of street art and murals in the City of Sydney Local Government Area (LGA). The consultancy team comprised of Dr Kurt Iveson from the University of Sydney and Dr Cameron McAuliffe from the University of Western Sydney, assisted by researchers and graffiti artists Matthew 'Mystery' Peet and Wendy Murray (aka MiniGraff). The consultants' findings and recommendations have informed the City's review and this report. The full report *Reframing Graffiti and Street Art in the City of Sydney: Report of the Mural, Street Art and Graffiti Review Project* November 2014 by Kurt Iveson, University of Sydney, Cameron McAuliffe, University of Western Sydney, Wendy Murray and Matthew Peet is available on the City's website <http://www.cityofsydney.nsw.gov.au/reframing-graffiti-street-art>.

STREET ART REGISTER

7. A key recommendation of the consultants is to establish a Street Art Register to catalogue street art. It will be a “live” register that will be updated as locations are approved and works are commissioned and updated.
8. In 2004, the City’s then graffiti removal contractor created a list of walls containing murals or street art that were not to be removed by the contractor. This was a useful tool, but soon became dated as works were removed or replaced, and others created.
9. The brief to the consultants engaged in 2013 included a request for a new Street Art Register that would identify significant works in the City LGA and update the older document. The brief required that, where possible, the database include more detailed information about each work, such as artist details, whether the work had been created with consent of the owner, and whether development consent had been granted.
10. The consultant team walked every street in the City LGA to provide a snapshot record of all significant murals, street art and graffiti. It includes a record of over 400 works and sites, with approximately 200 recommended for inclusion in the new Street Art Register. The works included in the record were mapped and categorised, and this information was a useful component of the research.
11. Data of the selected works will be included in the City’s asset management system. These will form the basis of the new Street Art Register.
12. Following the making of the proposed LEP amendments, the Street Art Register will be publicly launched and updated through the planning assessment process when new works receive development consent (where development consent is required) or by an applicant voluntarily applying to have the street art recorded (where development consent is not required). The City’s graffiti removal contractor will also be able to update the Street Art Register from time to time by recording changes to approved locations, and a historic record of sites will be developed.
13. The benefit of listing on the Street Art Register is that the street art will be excluded from the City’s unlawful graffiti removal service carried out on public and private land under the *Graffiti Management Policy 2013*.
14. A listing in the Street Art Register:
 - (a) does not extend the heritage status of a nearby structure, or the heritage status of the property on which it is located, to the street art;
 - (b) does not deem the work to be compliant with the law; and
 - (c) does not prohibit or ‘protect’ the street art from subsequent removal by third parties (such as the owner of the premises where the street art is located).
15. The Street Art Register will be publicly accessible via the City’s website.

16. City Business Units have involvement in creating, assessing and managing street art and unlawful graffiti, and community expectations around them. Extensive consultation was undertaken with these internal groups to review and analyse their experiences, processes and practices around street art and unlawful graffiti. This internal consultation has revealed areas for improvement and has informed the actions proposed in this report and the proposed LEP amendments, which are the subject of a separate report to the Planning and Development Committee.
17. The City's roles and responsibilities concerning murals, street art and graffiti are defined in the following three key areas:
 - (a) regulation of unlawful graffiti;
 - (b) planning framework; and
 - (c) guidelines, processes and practices.
18. Each of these key areas are addressed below.

REGULATION OF UNLAWFUL GRAFFITI

19. The *Graffiti Control Act 2008* (NSW) aims to minimise and control unlawful graffiti.
20. The Act makes it an offence, without reasonable excuse, to *intentionally mark any premises or other property* unless that person has first obtained the *consent* of the owner, occupier or person in charge of the premises or other property.
21. A person is also guilty of an offence under the Act, with increased penalties and carrying up to 12 months imprisonment, to intentionally mark any premises or other property without consent in *circumstances of aggravation*. A person commits an offence in circumstances of aggravation if the person intentionally marks the premises or other property:
 - (a) by means of any graffiti implement; or
 - (b) in such a manner that the mark is not readily removable by wiping or by use of water or detergent.
22. The Act also empowers local councils to undertake graffiti removal work:
 - (a) on private land, *with the agreement* of the owner or occupier of that land; and
 - (b) on private land where the graffiti is visible from a public place, and can be carried out from a public place, *without the agreement* of the owner or occupier of that land.
23. Councils are required to keep a register of all graffiti removal work carried out by them on private land.

24. The City's *Graffiti Management Policy 2013* outlines Council's approach to its functions under the *Graffiti Control Act 2008*. The purpose of the policy is to "establish an effective and cost efficient Graffiti removal service and to describe the framework for the display of art, posters and notices". Council's current policy appropriately addresses the responsibilities and functions under the Act and no changes are recommended at this time. Following implementation of the proposed LEP amendments, the policy may need further review to address any changes necessary to support the new planning controls coming into force.

PLANNING FRAMEWORK

25. The planning framework for street art is established by the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and the City's LEPs.
26. Currently, these documents do not explicitly permit the installation of street art and murals without development consent in any circumstances. Therefore, a development application is required to be submitted for all new street art.
27. The review identified a number of issues and recommends improvements to the current planning framework to increase clarity and certainty for street art proponents and the community. The review found that there is a lack of clarity and lack of accessible information about street art planning requirements. All new works require development consent, which is commonly not sought or obtained. This makes the art work subject to potential removal and/or fines for non-compliance.
28. In addition, the review found the following challenges:
- (a) preparing and lodging a development application for a street art work can be time consuming and costly, often more costly than the art work;
 - (b) street art is ephemeral and generally not intended to last, although some works are much loved and connect with a particular local community for years or decades. Under the current process, the ephemerality of street art is not acknowledged, and there are often no provisions for maintenance nor clarity about responsibility and ownership; and
 - (c) sometimes a particular street art work is controversial due to scale, design, or content. At present, there are no clear guidelines on how to address this or manage complaints.
29. In response to the issues identified above, a separate report to the Planning and Development Committee recommends making street art exempt development outside of heritage conservation areas and special character areas. This means a proponent will not be required to lodge a development application for street art where the art work meets the following criteria:
- (a) it is not advertising or signage;
 - (b) it has owners consent;
 - (c) it complies with relevant Commonwealth and State legislation such as:
 - (i) it does not vilify or discriminate;
 - (ii) it is not sexually exploitive or degrading;

- (iii) it does not use language or depict material contrary to prevailing community standards; and
 - (iv) it does not infringe intellectual property rights;
 - (d) it is not located in a heritage conservation area or a special character area (Note: the NSW LEP template does not currently permit exempt development in conservation and special character areas. This principle seeks to maintain an appropriate level of assessment for development activity in order to maintain an area's heritage or special character); and
 - (e) it does not project from a surface.
30. In areas where development consent is required, assessment of suitability will be made on a case-by-case basis, with consideration for elements such as contributory facades in heritage conservation areas or the unique character of precincts within central Sydney, where the majority of the city's special character areas are located.
31. The proposed LEP amendments will make it clear to City staff, property owners and the general community where development consent will be required for street art and where it will be exempt. The proposed actions below will help to further clarify the process once the planning parameters have been established.

OTHER INITIATIVES TO SUPPORT STREET ART

32. The review recommended simplifying development application forms for street art. New state government requirements which introduce minimum standards for development application forms restrict councils from further simplifying applications for specific development types, such as street art. However, clear and simple advice and instructions will be provided on the City's website to assist applicants.
33. The review also recommends Council develop appropriate street art locations where art work can be replaced without further approval or costs. If located in conservation areas or special character precincts, a development application will be required. These locations will ensure greater clarity and consistency in the development assessment process and address concerns about aesthetic and/or stylistic assessments, and acknowledges the ephemeral nature of street art. Street art locations will be identified in the Street Art Register.
34. Where street art can meet the criteria for exempt development and therefore not require a development application, street artists and property owners will be encouraged to include their street art commissions in the Street Art Register.
35. Property owners are responsible for the presentation and condition of street art works on their property. Street art works may require ongoing maintenance, either by applying protective coatings, repainting or replacing. The City will assist owners and owners by providing information on the City's website about the responsibilities of property owners regarding the condition and ongoing maintenance of street art works, and providing suggestions such as suitable anti-graffiti coatings.

POLICY, GUIDELINES, PROCESSES AND PRACTICES

36. The City's current framework for murals, street art and graffiti consists of the *Graffiti Management Policy 2013* and the *Interim Aerosol Art Guidelines 2006*. In addition, there are a number of broader strategies and policies that are relevant to street art including *Sustainable Sydney 2030*, *Public Art Policy 2011*, the *Creative City Cultural Policy and Action Plan 2014-2024* and the *Social Sustainability Policy 2016*.
37. In general, the City's policy position is to support creative practices and to make creativity visible and accessible. Street art is a visible and accessible art form, and the City's policy position regarding street art is to support lawfully created works in appropriate locations.
38. *Sustainable Sydney 2030* identifies the community's aspiration for a cultural and creative city as a strategic direction. This aspiration articulates the community's love of the arts and creativity and the desire for creativity to be celebrated and accessible - not only in the state cultural institutions, but in the informal ways our lives are enriched by the work of artists. The relevant objectives in *Sustainable Sydney 2030* are to:
 - (a) support cultural activity, participation and interaction;
 - (b) support the development of creative industries; and
 - (c) provide cultural leadership and strengthen cultural partnerships.
39. The City's *Public Art Policy 2011* outlines the criteria for public art commissioned or acquired by the City, as well as the framework for the management and promotion of the public art collection. It aims to encourage an environment that fosters creativity, with art integrated with the fabric of the city. Key directions support local artists and the activation of city places through art commissions, and recognise that the opportunity to participate in the conceptualising or making of art is an empowering method of engagement. The policy notes: "*Public art can enrich the public domain and artists can contribute to shaping and transforming the urban realm in ways which reflect, accentuate and give meaning to Sydney's unique environment, history and community*".
40. The driving vision of the *Creative City Cultural Policy and Action Plan 2014-2024* is that creativity in Sydney should be visible, evident in the city's street life, in expressions of creativity in the public domain (and its virtual equivalents), and in memorable precincts that offer a range of large and small-scale activity, interaction and experiences. It supports innovation, participation and engagement. The relevant strategic priorities include:
 - (a) precinct distinctiveness and visible creativity in the public domain through interventions large and small, temporary and permanent. Initiatives amplify and explore the unique characteristics of each precinct, and animate and reinvigorate urban spaces with creative imagination;
 - (b) new avenues for creative participation, where opportunities for individual creative expression in all its forms are visible, valued and accessible; and

- (c) sector sustainability: surviving and thriving – where the business and creative opportunities for local artists, creative workers and cultural organisations are supported and extended, leading to productivity gains and innovation and more sustainable careers for artists and cultural organisations.
41. *A City for All*, the City's *Social Sustainability Policy 2016* sets out the City's aspirations for a socially sustainable City of Sydney. The policy outlines the City's vision, guiding principles and role in strengthening the wellbeing and resilience of the people who live, work, study in, and visit the City LGA. The policy recognises that sustaining a socially just and resilient society is vital to Sydney's progress and global competitiveness. The Policy sets out ten principles, including specific references to creative and cultural expression, accessibility and inclusion. The relevant principle states:
- (a) Sydney is a vibrant city where creative and cultural expression is valued and celebrated. Sydney's diverse communities can access and contribute to the city's cultural life. Opportunities for creative and cultural expression enable people to share their ideas and values, to come together, to tell their stories, and to shape their city and community. The city's diversity brings opportunities for rich cultural expression and celebration, supporting social connection and sense of belonging and identity in everyday life.
42. The *Graffiti Management Policy 2013* outlines the City's roles and responsibilities concerning unlawful and unwanted graffiti, posters, notices and street art. The policy is consistent with the definitions and requirements of the *Graffiti Control Act 2008* (NSW) and amendments are not recommended. There are no proposals in this report that are inconsistent with the *Graffiti Management Policy*. The *Graffiti Management Policy* will be updated in 2017.
43. The *Interim Aerosol Art Guidelines 2006* outline procedures for new murals and the maintenance and modification of existing murals. These interim guidelines are proposed to be repealed and replaced with online information once the proposed LEP amendments are in place. As the processes and practices that support street art are procedural, they do not require Council's consideration and approval and, therefore, Council approval is not recommended. Processes and procedures will be further reviewed following Council's consideration of the proposed LEP amendments, and Council will be informed of their progress via CEO updates.
44. Online information will include, as a minimum, defining street art; outlining the procedures to obtain the relevant consents; introducing the Street Art Register; and describing ongoing management and maintenance responsibilities.
45. Other initiatives to support street art include:
- (a) street art workshops for staff, contractors, artists, and property owners;
- (b) developing opportunities for new street art works, either commissioned or supported by the City including street art:
- (i) locations in council properties such as community centres;
- (ii) art locations on other property; and
- (iii) commissions in capital works projects;

- (c) support for street art culture and artistic development including:
 - (i) courses for street art at Pine Street Creative Arts Centre and other youth and community centres, including rules and requirements;
 - (ii) continue to commission high quality works through the City's Streetware and Art & About programs;
- (d) continue to support community initiatives for new Street Art commissions through the Matching Grants and Cultural and Creative Grants and Sponsorship Programs, and by providing advice and support to artists and community groups;
- (e) establishment and maintenance of the Street Art Register; and
- (f) engaging with community views concerning murals, street art and graffiti via the City's web-based feedback, calls to the City and specific surveys if required.

PROMOTING STREET ART

46. The City is well-regarded for high quality street art commissions. The City's public art collection includes over 20 permanent murals and street art works, and the Streetware temporary street art program developed in 2010 has seen the work of over 20 artists in prominent locations in the CBD, Surry Hills and Darlinghurst. Street art is sometimes integrated in capital works projects. In addition, street art has been commissioned by the City via other City Art programs such as the Laneways commissions and Eora Journey. Information about these works is available on the City Art website, and key permanent murals are included in the City's Sydney Culture Walks app.
47. Murals and street art are also commissioned by the City through other programs including Art & About Sydney, particularly the City Walls series currently underway.
48. The City also commissions street art through the Pine Street Creative Arts Centre and other youth and community centres. Many of these commissions support community involvement and skill development.
49. The City already supports the development of creative skills in street art through Stencil Art classes at Pine Street Creative Arts Centre and through youth programs in community centres.
50. Assistance is also given to mural and street artists and to community groups seeking to commission street art through grants, advice, and Creative City programs.
51. Conservation of murals and street art is highly complex and not always recommended, as treatment may alter the original work. Where possible, the City works closely with the original artists or with qualified conservators in order to maintain and restore the murals in the City Art collection. In recent years, the conservation program has seen the completion of the KGV mural, the restoration of the *Peace, Justice and Unity* mural in the city centre, repainting of the *What Bird Is That?* mural in Surry Hills, and preservation treatment of the Woolloomooloo Historical Murals.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030

52. *Sustainable Sydney 2030* is a vision for the sustainable development of the city to 2030 and beyond. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
- (a) Direction 5 - A Lively and Engaging City Centre – the street art review responds to community wishes for a city that tells its history, has a human scale, and has public spaces that invite people to pause and contemplate. It contributes to the objectives of creating more and better spaces, preserving and extending the city's 'fine grain', and to increasing life on the street.
 - (b) Direction 6 - Vibrant Local Communities and Economies – the street art review responds to community wishes for a city with vibrant culture and entertainment, a sense of belonging, and where different villages offer different specialities. It contributes to the objectives of meeting the needs of a diverse population, enhancing the distinctive character of the villages, and ensuring all communities have an opportunity to participate.
 - (c) Direction 7 - A Cultural and Creative City – the street art review addresses the aim for a city that provides a platform for creative expression and responds to community wishes for a city where art is for everybody, that celebrates artists, and that is cosmopolitan, vibrant and active. It contributes to the objectives of meeting the needs of diverse communities, fostering innovation and creativity and fostering cultural vitality and public engagement.

Organisational Impact

53. Issues relating to murals, street art and graffiti are part of the business activities of many City Business Units. Key staff were interviewed as part of the research for the review, and staff from the following units were consulted in the preparation of this report and associated actions:
- (a) City Projects and Property, including Public Art and Core Portfolio;
 - (b) City Operations, including Resource Recovery (Cleansing and Waste), City Rangers, and Events and Film Liaison;
 - (c) Chief Operations Office, including City Design (Special Projects, Public Domain), Asset Strategy and Systems (CAMs), Cultural Strategy and Social Strategy;
 - (d) City Life, including Culture and Creativity, Creative City, Events, Grants, Social Programs and Services (City Spaces), and Culture and Libraries (Pine Street);
 - (e) City Engagement, including Communications and Media (Media, Web, Social Media), Stakeholder Engagement, Customer Service, Neighbourhood Service Centres, and Marketing;
 - (f) City Planning, Development and Transport, including Planning Assessment, Urban Design and Heritage, Strategic Planning and Urban Design, Planning Policy, Development, Building Approvals, and Standards and Policy;

- (g) Legal and Governance, including Corporate Governance and Legal Services;
and
- (h) Workforce and Information Services, including Spatial Information Team.

Social / Cultural / Community

- 54. There are strongly-held and often opposing views in the community concerning street art. The proposal to provide clear and accessible information about legislative and planning requirements, and about the City's roles and responsibilities, will reduce confusion about this complex topic.

BUDGET IMPLICATIONS

- 55. There are no budget implications.

RELEVANT LEGISLATION

- 56. Graffiti Control Act 2008 (NSW).
- 57. Environmental Planning and Assessment Act 1979 (NSW).
- 58. Sydney Local Environmental Plan 2012.

CRITICAL DATES / TIME FRAMES

- 59. Key dates include timing of Gateway approval from the Greater Sydney Commission and the subsequent plan making process, which may take at least 12 months.

PUBLIC CONSULTATION

- 60. It is proposed to engage with community views concerning street art via the City's web-based feedback, calls to the City and specific surveys.

AMIT CHANAN

Director City Projects and Property

Eva Rodriguez Riestra, Public Art Program Manager