

Item 2.

Post Exhibition - Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice

File No: S122196.001

Summary

This report proposes that the draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice, placed on public exhibition in September 2018, be adopted by Council with some minor amendments.

On 17 September 2018, Council resolved that a draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice (the Policy) be placed on public exhibition for community feedback.

The draft Policy is the result of an extensive process of research and consultation, arising from an action of the City's live music and performance action plan. The Policy proposes three significant changes to the management of busking in Sydney.

1. That the practice of Aboriginal and Torres Strait Islander Cultural Heritage in public spaces be exempt from requiring an approval to busk.
2. That a new permit system be introduced, categorising busking acts by their impact on public space and the volume and nature of the sound they generate.
3. That the permits and their conditions be supported by a Busking Code that provides proactive guidance on how best to busk, busking etiquette, and the management systems for popular, high-traffic Special Busking Sites.

On exhibition, the Policy was accompanied by an example of the Busking Code and a Busking Policy Review document which outlined six priorities for managing and supporting busking in Sydney. These documents helped steer discussions regarding busking operations, which fall outside the scope of the regulatory framework the Policy deals with.

Engagement activities included information on the Sydney Your Say website and distributed by media releases, social media, postcards and emails to stakeholders. Respondents had an opportunity to make a written submission or to attend one of four consultation workshops that were held at Town Hall House throughout the exhibition period.

The information on Sydney Your Say was accessed 1,172 times, the exhibition documents were downloaded 238 times and the City received 44 written submissions. A further 13 people attended the face-to-face consultation workshops.

Feedback to the Policy is largely supportive and the proposed new permit system has been well received by buskers. Some concerns and queries were raised and to address these some minor edits for clarification have been proposed in the post-exhibition draft Policy (Attachment A).

An Engagement Report outlining feedback to the Policy is attached (Attachment D). A plan for the implementation of the Policy is outlined in this report.

Recommendation

It is resolved that:

- (A) Council adopt Sections 2 and 3 of the Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice, as shown at Attachment A to the subject report;
- (B) Council endorse Section 1 of the Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice, as shown at Attachment A to the subject report, and authority be delegated to the Chief Executive Officer to adopt Section 1 of the policy upon receipt of consent from the Chief Executive of the Office of Local Government, or their equivalent, as required by Section 162 of the Local Government Act 1993;
- (C) Council note the Protocols for the practice of Aboriginal and Torres Strait Islander Culture in public places, as shown at Attachment B to the subject report;
- (D) Council note the Sydney Busking Code, as shown at Attachment C to the subject report;
- (E) authority be delegated to the Chief Executive Officer to make minor changes to the Local Approvals Policy for clarity or correction prior to publishing and implementation; and
- (F) authority be delegated to the Chief Executive Officer to approve amendments to the Busking Code and the Protocols for the practice of Aboriginal and Torres Strait Islander Culture in public places, from time to time.

Attachments

- Attachment A.** Draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice.
- Attachment B.** Draft Protocols for the Practice of Aboriginal and Torres Strait Islander Culture in Public Places.
- Attachment C.** Code of Practice for Busking - "Sydney Busking Code"
- Attachment D.** Engagement Report - Proposed Changes for Busking in Sydney.

Background

1. From 25 September 2018 to 19 November 2018, the City received community feedback on a proposed Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice. The Policy proposes changes to the regulation of busking and the practice of Aboriginal and Torres Strait Islander cultures in public space.
2. Consultation activities included emailing all registered buskers, face-to-face engagement at consultation workshops, online engagement, postcards ('flyers') and advertisements in local publications.
3. The proposed changes received broad media coverage and the Sydney Your Say webpage attracted strong interest. In addition to feedback at the consultation workshops, the City received 44 formal submissions. An attached report outlines the community engagement activities that took place to support the consultation and summarises the key findings (Attachment D).
4. **The Practice of Aboriginal and Torres Strait Islander Cultural Heritage.**
 - (a) The policy proposes that the practice of Aboriginal and Torres Strait Islander culture no longer be recognised as a busking activity and be respected as a distinct activity that is unique to Aboriginal and Torres Strait Islander communities. The Policy proposes that this activity be exempt from requiring an approval from Council if certain criteria are met.
 - (b) Section 1 of the Local Approvals Policy outlines the criteria for the exemption from approval. Under s 162 of the Local Government Act, this part of the policy requires consent from the Chief Executive of the Office of Local Government before it can be adopted. This consent has been sought and is pending. In order to not delay the implementation of the busking aspects of the policy (Sections 2 and 3), this report recommends Council endorse Section 1 of the Policy and delegate adoption of this section to the Chief Executive Officer upon receipt of the required consent.
 - (c) During the exhibition period there was national and international news coverage representing the section of the policy as providing Aboriginal and Torres Strait Islander performers with "free permits to busk". Whilst most of this coverage was supportive, the premise misrepresents the policy.
 - (d) Nine (9) submissions were received objecting to "free busking permits" for Aboriginal and Torres Strait Islander people. These submissions seem to be a response to the incorrect media coverage and contain no clear feedback to the content of the draft policy.
 - (e) Two (2) submissions were received objecting to the policy as it has been proposed.
 - (f) Otherwise, there is evidence of broad community support for the proposal.
 - (g) The submission from Arts Law Australia notes "Arts Law supports the City of Sydney's intention to advocate for a consistent busking system across (Greater) Sydney... City of Sydney should also seek to lead the conversation and advocate for the establishment of consistent recognition for Aboriginal and Torres Strait Islander cultural practice in these areas."

- (h) Further, the Arts Law Australia submission supports maintaining Protocols for the interpretation and application of the exemption, and recommends "a clear process be developed with the Aboriginal and Torres Strait Islander Advisory Panel and community to avoid the exploitation of this exemption by non-Indigenous people". This feedback is noted.
- (i) The City's Aboriginal and Torres Strait Islander Advisory Panel were briefed on 19 September and provided with the draft Policy and Protocols. The Panel supports the adoption of the Policy.
- (j) The submission from Sara Hamilton, co-chair of the Advisory Panel says:

"The existence and development of such policies recognises the inherent right of Aboriginal and Torres Strait Islander peoples to maintain their distinct identities and cultures and to practice, express and share these in the public domain.

The introduction of the Busking and Cultural Practice Policy further demonstrates Council's commitment to the achievement of social, cultural and economic outcomes for Aboriginal and Torres Strait Islander community members and it recognises the valuable contribution Aboriginal and Torres Strait Islander peoples make to City life.

Developed through principles of respect and recognition, this policy will support cultural practitioners in the City of Sydney to continue to connect to their culture, heritage and identity which is vital in strengthening communities and enabling the wider community to observe and honour cultural practice.

I would like to commend the City for recognising its role and obligation to work in partnership with members of the City of Sydney Aboriginal and Torres Strait Islander community to develop this policy and I look forward to seeing the outcomes it creates for the community as a whole."

5. A new approach to regulating busking.

- (a) The Policy proposes a new permit system for busking in Sydney which uses measures of space, sound and risk to categorise busking acts according to their impact. This will replace the current system which seeks, at times imprecisely, to classify buskers by the nature of their act, which in itself can be open to interpretation.
- (b) The permit categories based on impact are seen as a way of broadly capturing all eligible busking activities by using a measurable set of criteria, regardless of nuance or the particulars of any given act or any new performance trends that may emerge over time.
- (c) Importantly, the proposed categories consider the volume and nature of sound an act will generate in assessing its impact, as well as size, scale and any potential hazards. In consultation and research conducted during the busking policy review, the volume of performances was identified as the primary concern the community had about busking.
- (d) The Policy proposes the following categories of busking permits:

- (i) Low Impact, for acts requiring less than 2 square metres, no higher risk materials or equipment and a volume or sound that is easy to control.
 - (ii) High Impact, for acts requiring more than 2 square metres, or incorporating higher risk materials or equipment, or producing a volume or sound that is naturally loud, repetitive or difficult to control.
 - (iii) Extended Duration, for low impact, non-musical acts or artworks that are continuously created over a long period of time
- (e) High Impact acts will be subject to more restrictive conditions than Low Impact acts, and through working with the City and busking peers, acts categorised as High Impact may choose to alter their performance to be reclassified as Low Impact. Likewise, a Low Impact act causing adverse issues or receiving validated complaints may be reclassified as High Impact.
- (f) The proposed changes to the permit system received broad support, particularly from buskers attending the consultation workshops.
- (g) Three (3) submissions expressed a dislike of busking in general and a desire to see busking reduced or banned, however no submissions were received that directly objected to the regulatory framework proposed in Sections 2 and 3 of the Policy.
- (h) Two (2) submissions expressed doubt over the legislative or statutory power of Council to revoke or suspend busking permits. The wording of the clauses relating to modification (suspension) and revocation of an approval to busk (permit) has been redrafted for clarification.
- (i) The submission from Destination NSW requested greater clarity in the sections of the Policy which deal with the power of Authorised Persons to exclude areas from busking or to move-on buskers when public spaces are required for special events, crowd management, road or building works. An edit to the Policy has been made to satisfy this request.

6. Sydney Busking Code

- (a) The Policy proposes the new permit system be supported by a "Sydney Busking Code" - a guidebook for busking, busking etiquette and the management systems for Special Busking Sites such as Pitt St Mall and Martin Place. An example Busking Code was exhibited with the draft Policy.
- (b) The proposal for a Busking Code is strongly supported in feedback from buskers and broadly supported by other submissions.

- (c) The Busking Code will provide an avenue through which to address the operational aspects of busking which received feedback and suggestions during the exhibition consultation. These are:
- (i) Concerns there is inadequate space for circus acts and the High Impact permit will only allow these acts to perform once per day in already limited locations. This feedback is noted and will be addressed in the Busking Code. The Busking Policy Review identified the need to establish more suitable locations for circus acts in the City of Sydney and the operational team are already considering solutions. The Busking Code can provide for certain Special Busking Sites to offer High Impact permit holders greater access and more performances in certain suitable locations. This will also encourage High Impact acts to perform in these more suitable locations.
 - (ii) Concerns about crowding in public spaces. This was also a theme in submissions to the Busking Policy Review. Research concluded that the best way to reduce crowding associated with busking is to provide better guidance and techniques for coping with crowds in the Busking Code. The recommended approach is to provide guidance to buskers to self-manage crowds, rather than impose arbitrary permit conditions or restrictions.
 - (iii) Concerns relating to the safety of buskers and calls for a communication platform to assist buskers who are being threatened or harassed. This is outside of the scope of the Local Approvals Policy but has prompted City staff to research potential platforms for buskers to immediately notify each other if they have been threatened or robbed so they can warn other buskers. Updated guidance about how to respond to harassment and directions for seeking help from appropriate authorities will be included in the Busking Code.

7. The sale of artwork and merchandise

- (a) The reduced restrictions proposed for the type and media of artworks and merchandise that may be sold by buskers was strongly supported by buskers at stakeholder engagement workshops.
- (b) The submission from Destination NSW raised concerns that this may be exploited by unauthorised street vendors. This feedback is noted. The Policy has not been redrafted as the proposed conditions expressly state the sale of artworks or merchandise must be ancillary to an approved busking act and directly related to that act. The application of the new sales conditions will be monitored throughout implementation of the policy.

Key Implications

Strategic Alignment - Sustainable Sydney 2030 Vision

8. 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 policy is aligned with the following strategic directions and objectives:
 - (a) Direction 5 - A Lively and Engaging City Centre - sixty-six per cent of respondents to the Busking Policy Review identified that busking brings life and vibrancy to city streets. Busking in Pitt Street Mall regularly attracts large enthusiastic crowds and new busking locations appearing organically along the George Street Light Rail construction zone are regularly attracting public engagement.
 - (b) Direction 6 - Vibrant Local Communities and Economies - over one third of respondents to the Busking Policy Review valued the presence of busking for improving mood, enhancing wellbeing and contributing to a sense of community connection. Busking is widely considered an economic driver in busy tourist destinations and provides a legitimate income source for creative professionals. Feedback from retailers at stakeholder engagement sessions recognised the contribution busking makes to the consumer experience and customer dwell times in places like Pitt Street Mall.
 - (c) Direction 7 – A Cultural and Creative City – over eighty per cent of respondents to the Busking Policy Review recognised the role busking plays in the cultural life of the city. Busking contributes to a number of strategic priorities of the City's Cultural Policy including: creativity in the public domain; increased avenues for creative participation; and sustainability of the creative sector.

Organisational Impact

9. Implementation of the proposed Local Approvals Policy will require collaboration between the following city business units:
 - Cultural Strategy - coordination and policy oversight
 - Venue Management - operational oversight
 - Customer Service - permit issuing systems and primary interface with buskers
 - Creative Services - design of Busking Code and associated materials
 - Marketing - communications and online resources
 - City Rangers - monitoring and enforcement
10. City staff have commenced planning the implementation of the new Policy. If adopted, the new permit system would be introduced in July 2019.
11. In April, May and June 2019, buskers seeking to apply for or renew their permits will be offered a temporary permit under the current structure, valid until July 2019, free of charge.

12. In the lead-up to the July commencement date of the new permit system, extensive communications will be issued to buskers to prepare them for the permit changes.
13. Buskers who self-assess as meeting the High Impact permit criteria will have a number of opportunities to attend an act assessment prior to the July commencement date to facilitate a smooth, unbroken transition from one permit to next.
14. At the time of the July commencement of the new permit system, further opportunities to attend a High Impact act assessment will be offered through a series of public busking events in Martin Place.

Risks

15. Feedback through exhibition suggests risks associated with implementing the Policy are low and the new permit system has received broad support.
16. Operational risks associated with implementing the Policy have been explored by City staff through extensive internal consultation across all divisions and units with responsibilities associated with busking. Implementation of the new Policy will require considered collaboration across these units, but is considered low risk and has been prepared for in work-plans and budgets.
17. Implementation of the Policy will require a transitional period in which old permits are phased out and new permits introduced. This may cause some confusion amongst buskers, however customer service and operational staff as well as City Rangers will be briefed on responding to and assisting buskers in moving into the new permit system.

Budget Implications

18. A budget has been allocated for the implementation of the new policy and permit system in the Strategy and Urban Analytics 2018-19 and 2019-20 budgets.
19. The ongoing operational costs of implementing the Policy are largely unchanged.

Relevant Legislation

20. Local Government Act 1993.
21. Local Government (General) Regulation 2005.
22. Creative City Cultural Policy and Action Plan 2014 - 2024.
23. Live Music and Performance Action Plan 2014.

Critical Dates / Time Frames

Dates	Activity
13 May 2019	Council Approval
14 May 2019	New busking permit applications will be issued temporary free permits, under current system, valid until 1 July
3 – 30 June 2019	Communications to buskers advising of changes
21 June 2019	Busking event, city staff commence assessing high impact performances
1 July 2019	New permit system introduced across customer service centres
TBD	If and once consent for Section 1 of the policy is received, implementation of the exemption from approval for the practice of Aboriginal and Torres Strait Islander culture will be implemented within one month of receipt of consent. A communications and engagement strategy will be implemented at this time.

Options

24. The current busking policy, permits and guidelines could be maintained.
25. The proposed changes to the permit system reflect community sentiment for better management of loud, repetitive and back-to-back performances in busy busking locations, and clearer guidelines for buskers to adhere to. The proposed permit system aims to address the common issues that arise from busking in Sydney and install a more effective model for managing busking long-term.
26. Public consultation and exhibition of the proposed Policy has received community, industry and stakeholder support.

Public Consultation

27. The draft Policy was exhibited from 25 September to 19 November 2018.
28. The Sydney Your Say page with information related to proposed changes to busking was visited 1,172 times.
29. The exhibition documents were downloaded 238 times.
30. The City received 44 written submissions during exhibition.
31. 13 stakeholders (buskers and retailers) attended face-to-face consultation workshops.
32. Public notice advertisements regarding the exhibition and public consultation were placed in the Sydney Morning Herald, Wentworth Courier, Central Sydney, Inner West Courier and Southern Courier.
33. All registered buskers were emailed twice during the exhibition period.
34. Postcard fliers were distributed across Sydney and directly to buskers.
35. Social media posts and media activity further broadcasted the exhibition details.
36. A summary of public consultation activities, submissions made and outcomes from the consultation process is at Attachment D to this report.

CHRIS DERKSEMA

A/Chief Operating Officer

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