

Item 10

Al Fresco City

File No: X034972.014

Summary

The Covid-19 pandemic has had a significant and devastating impact on our communities and our economy. The City of Sydney (the City) responded swiftly when the pandemic first hit, closing community centres, libraries, pools and playgrounds, increasing cleansing and waste regimes and establishing new grants programs to help support our creative community sector and small business.

As a health crisis, the response has been generally well managed in NSW and Australia. However, although workers and visitors are returning to the city, the CBD is quieter than before and this continues to significantly impact businesses. Both NSW Government and the City have recognised the need for a collaborative effort to encourage people back into the city in a safe way. This opportunity was identified and supported at the State Government Summer Summit in mid-September where the 24-Hour Al Fresco City was proposed.

While management of the crisis is continuing, the staged removal of restrictions on social and business activity has commenced. On 29 June 2020, Council endorsed City Recovery Plans recommending a pathway to moving beyond the crisis. The three part plan considers how the City will continue to operate and adapt its services, how it can support businesses and community to recover, and how it will manage its own financial recovery over the next three years. The Community Recovery Plan set out the background to the Covid-19 impacts, community needs expressed through research and consultation, the proposed strategic response including recovery goals, principles and specific areas for action, as well as an approach to tracking and measuring progress.

In March 2020, Council resolved to undertake a range of support measures to assist the community and businesses across the City. The support packages included the waiver of a number of fees, return of deposits for events that were unable to proceed, provision for commercial property rental abatement and flexible parking arrangements, new grants and donation programs, and a commitment to bring forward capital works that would directly support employment.

On 2 October 2020, the City and NSW Government announced a \$20 million joint funding partnership to boost the city centre economy, support businesses and creatives and invite the public safely back into the city, particularly during the summer months. The NSW Government will commit up to \$15 million and the City will provide a further \$5 million towards Al Fresco City initiatives. All initiatives under this program will be presented adhering to applicable Public Health Orders and specific Covid-19 Safety Plans. If at any time NSW Health recommends against proceeding with any aspect of program it will be ceased until such time as advice is received that it is safe to proceed.

This report is dependent on final approval by the NSW Government Treasurer and endorsement by the City of Sydney Council. A deed is currently being finalised to be signed by both parties.

This report outlines the following initiatives and the necessary requirements to achieve them:

- (a) transforming the city into an outdoor summer cultural experience;
- (b) creating a summer of outdoor dining;
- (c) funding projects that enliven public spaces, venues, laneways with music, performance and public art;
- (d) keeping Sydney's cultural institutions open into the evenings, and
- (e) working with Destination NSW to promote this activity to Sydney and interstate visitors.

It is anticipated that these activations will commence in November 2020 and some will continue until October 2021. In order to achieve these activations, move quickly and deliver the AI Fresco City program, both the City and NSW Government have recognised the need to expedite decisions and processes where possible, including changes to relevant regulations and planning controls where necessary.

Recommendation

It is resolved that:

- (A) Council approve a \$20 million joint funding partnership to boost the city centre economy, support businesses and creatives and invite the public safely back into the city, particularly during the summer months, with the NSW Government contributing up to \$15 million and the City contributing up to \$5 million towards AI Fresco City initiatives as outlined in the subject report;
- (B) Council note that the City is working with the NSW Government to facilitate any necessary changes to regulations and planning controls and exemptions to applicable public health orders, and to obtain any necessary approvals to deliver the initiatives set out in the subject report;
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and enter into any necessary agreements with the NSW Government relating to the funding and implementation of the AI Fresco City program as outlined generally in the subject report and in Confidential Attachment C to the subject report;
- (D) Council note that the City's \$5 million contribution is largely funded by savings as a result of the NSW Government taking over delivery of Sydney New Years' Eve, as well as other operational savings within the City Life budget due to cancellation of events during this time. If savings are not achieved additional budget may be required from General Contingency;

Outdoor Dining

- (E) Council continue support for small business, community and the cultural sector until 31 October 2021 by waiving footway dining fees and security deposits in accordance with the Covid-19 fee waiver category in the Schedule of Fees and Charges;
- (F) Council adopt the temporary City of Sydney Outdoor Dining Guidelines, October 2020, at Attachment A to the subject report, noting that public consultation has not been possible given the circumstances;
- (G) the Chief Executive Officer be requested to urgently develop all necessary criteria and processes to implement the recommendations in the subject report in relation to outdoor dining;

Grants and Sponsorship

- (H) the Chief Executive Officer be requested to urgently prepare and exhibit a revision to the Grants and Sponsorship section of the 2020/21 Operational Plan to incorporate the proposed amended grants program outlined in the subject report;
- (I) Council note the relevant Covid-19 Recovery Grants and Sponsorship Guidelines Summary at Attachment B to the subject report;

Outdoor Summer Cultural Experience

- (J) Council approve an exemption from tender for the provision of technical services and event personnel for the performance stage forming part of the outdoor summer cultural experience program; and
- (K) authority be delegated to the Chief Executive Officer to negotiate, execute and administer these contracts referred to in clause (J), noting the reasons a satisfactory result would not be achieved by inviting tenders are:
 - (i) there is an immediate need to have this program in place for summer, to occur at a time when the weather conditions suit outdoor performances, and provide the urgent and necessary support required by businesses and creatives;
 - (ii) there is insufficient time to undertake the usual competitive tender process and still deliver the program in time for the program to have its desired impact this summer;
 - (iii) there are limited providers in the market capable of providing the required technical services, and experienced event personnel, of the required scope; and
 - (iv) value for money for Council will be achieved by conducting a competitive procurement process, as outlined in Confidential Attachment D to the subject report.

Attachments

- Attachment A.** City of Sydney Outdoor Dining Guidelines - October 2020
- Attachment B.** Covid-19 Recovery Grants and Sponsorship Guidelines Summary
- Attachment C.** Al Fresco City Initiatives and Budget Summary (Confidential)
- Attachment D.** Outdoor Stage Procurements (Confidential)

Background

1. The City's Community Recovery Plan outlines the next steps the City will take until the end of 2021 to shape the future of the City and its communities. It builds on the \$72.5 million support packages released in March 2020. This included:
 - (a) waiving fees for Health and Building compliance activities;
 - (b) reviewing rents in City premises for those tenants who required support on a case-by-case basis;
 - (c) waiving standard contractual terms and return venue booking and banner fees to people who had booked venues and banners and were then unable to proceed with their bookings;
 - (d) waiving footway dining, market permit and filming fees;
 - (e) providing rental support of our Accommodation Grant Program tenants and childcare services by waiving all rent;
 - (f) allowing grant recipients to vary their deliverables under existing grants to enable recipients to retain funds; and
 - (g) bringing forward \$23 million of capital works to support construction activity in the City.
2. Key goals include working together with the NSW government where actions must be coordinated, supporting businesses and organisations to adapt, rebuilding the visitor economy, prioritising the role of the cultural sector and safely managing public spaces to support community life and businesses.
3. It is vital that the City promote a safe, inclusive and welcoming city to ensure a swift road to recovery for the benefit of the community. The most severely impacted sectors of the economy are those with a high concentration in the CBD including hospitality, tourism, retail and creative industries, all of which require an activated and enlivened city to aid recovery.
4. The City will work with businesses participating in this program to expand areas for their customers, providing more space to support physical distancing measures, as well as ensuring pedestrian accessibility and adequate fire safety exits for buildings.
5. On 21 September 2020, Council resolved to continue support for our small business and community and cultural sector until 31 March 2021, including waiving footway dining fees. Following the announcement of the AI Fresco program and given the ongoing and changing nature of Public Health Order restrictions, it is proposed to continue our support for small business by waiving footway dining fees and the requirement to provide security deposits until 31 October 2021. This will enable businesses to effectively engage in and benefit from the program.

6. The key Al Fresco City initiatives are outlined below and in Confidential Attachment C:

- (a) Transforming the city into an outdoor summer cultural experience: The City and NSW Government will fund a performance stage and the curation of artistic performances during the length of time the stage is in location.

The City is currently working to identify the most suitable appropriate location for the performance stage, taking into consideration public health and physical distancing requirements, and will work to identify the most efficient pathway to ensure compliance with planning legislation. In addition, small outdoor roving and pop-up performances intended to entertain the community at various city locations during the day, will commence in late November 2020 and continue until March 2021.

- (b) Creating a summer of outdoor dining: It is proposed to continue fee waivers associated with outdoor dining until 31 October 2021 to encourage businesses to expand their capacity and trade more safely outside, particularly over the summer months.

A temporary project to reclaim new spaces for outdoor dining will take place in Pitt Street, Barrack Street, Wilmot Street, Tankstream Way, Crown Street and other identified sites, where possible during the period.

The City will explore opportunities for seating for public life in Martin Place, Sydney Square and Customs House, and other sites across the CBD through the Chairs in Squares program. The City will also explore opportunities for temporary street closures, to enable retailers to spill onto streets for the Lunch Club program, providing temporary seating, roving entertainment and encouraging people to sit and eat lunch.

- (c) Funding projects that enliven public spaces, venues, laneways with music, performance and public art: the City would like to relaunch the live music scene in Sydney, supporting performances in venues and in the public domain, reactivating the city over several months. This will be achieved through a new grant program with matched funding from both NSW Government and the City. The CBD Activation Grant will support economic recovery by bringing business and creatives together to activate businesses and public space in the CBD with cultural programming.

In addition, the City will offer a Cultural Sector Innovation Grant program to support cultural organisations and businesses to innovate, adapt and grow, and a Community Services Grant program to respond to ongoing community need including food relief, digital inclusion, social isolation, tenancy support and homelessness services.

The City's laneways will again be enlivened with public art as in previous years. The City will produce a public art program engaging artists to transform up to four laneways in central Sydney over six months. The City will host summer tours of existing artwork in the city centre.

The City has advocated that the NSW Government keep Sydney's major cultural institutions open into the evenings, to provide opportunities for visitors and residents to see exhibitions, programs and events.

- (d) The City is working closely with Destination NSW to plan for an integrated approach to marketing Sydney “beyond the icons” over the next 12 months, which will include promoting Sydney as a domestic destination to Sydneysiders, inviting them to explore the main streets, cultural offering and nightlife.

The City will continue its successful #sydneylocal campaign, working with local online publishers Concrete Playground, Broadsheet and Time Out to promote the tourism, retail and hospitality businesses in the CBD and villages. The City and the State Government will work in partnership with Destination NSW to ensure an integrated approach.

7. The City and NSW Government will enter into an agreement. The agreement will include details regarding the key initiatives outlined in this report, together with funding arrangements for the delivery of the initiatives.

Key Implications

Temporary outdoor dining

8. The activation of the city and the safe operation of food and drink businesses will be supported by a streamlined approval process for temporary outdoor dining. The streamlined process will be in place until 31 October 2021 to specifically support businesses through Covid-19 recovery. It will encourage business to temporarily take up outdoor dining, extend their existing outdoor dining if there's sufficient space and use any reallocated road space.
9. It is proposed to update the City's Outdoor Dining Guidelines to facilitate temporary outdoor dining opportunities up to 31 October 2021. The proposed changes and any approvals will be time limited up to that date, after which businesses will need to go through the standard processes. In order to create opportunities for the summer period and given the urgent need to assist business it's recommended these temporary changes are adopted without exhibition.
10. The changes streamline approval processes, broaden the range of businesses that may apply, reduce consultation from 14 days to seven days, provide flexibility on the clear path of travel, make clear that reallocated road space may be used, allow later trading with reduced or no trial periods, and remove the requirement for a security bond for repairs. They reflect similar changes being made by the State government to planning controls and licensing regulations, as well as some recent easing of restrictions to enable more people to be accommodated in outdoor dining areas and some larger outdoor events.
11. The process will reduce approval times to between one and five weeks, depending on the proposal and whether public consultation or referral to a NSW Government agency, such as Transport for NSW or NSW Liquor and Gaming, is needed, or whether standard criteria can be met. At the time of writing, the NSW Government is in the process of amending planning rules to allow small bars and pubs to seek an outdoor dining approval without an additional development application, treating them the same as restaurants and cafes.

12. The restrictions at hospitality venues are also being eased to allow one patron for every two square metres in outdoor areas, which was previously one patron per four square metres. Liquor Regulations have also been amended to enable the boundaries of licensed premises to be expanded, without an application fee or consultation with the NSW Police, to take in additional approved outdoor dining area for trading up until 12 midnight.
13. To achieve the reduced approval time-frames it is proposed council adopt temporary changes to the City's Outdoor Dining Guidelines (the Guidelines) as shown at Attachment A with insertions shown as bold italic. The proposed changes to the Guidelines are described below.

Eligible businesses

14. Under the Guidelines, eligible businesses have to be a restaurant, café or other business that serves food and also has seating inside. This helps provide clarity for businesses that may need to meet the definition of a restaurant under the *Roads Act 1993*. It is proposed to temporarily provide greater flexibility by expanding the range of business that can have outdoor dining to other venues that serve food for immediate consumption. Businesses using the footpath will still need to meet the applicable Roads Act definition for a restaurant.

Consultation and notification

15. It is proposed to reduce the consultation period from 14 days to seven days. Currently, applications in Central Sydney are notified for comment if they are greater than 20 square metres in size. Applications outside Central Sydney are notified if they are greater than 10 square metres or the operating hours are outside 7am to 10pm. Neighbours will still be notified and be able to lodge submissions which will be considered by the assessing officer.
16. It is also noted that notification will be based on the size of the application, not the cumulative outdoor dining area. This means that if a Central Sydney business has a 15 square metre area and proposes a 10 square metre temporary outdoor dining area it will not be notified even though the total area if approved is above the 20 square metre threshold. This limits the assessment and any consultation to the additional impact of the temporary outdoor dining area.

Clear path of travel

17. The Guidelines currently set a minimum clear path of travel width of two metres for streets, 1.2 metres for Central Sydney laneways and four metres in shared zones used by vehicles. These widths were set on the basis of the city's typically busy footpaths and exceed the Australian Standards which recommend a minimum clear path of travel of 1.8m which can be decreased to 1.2m in part if there are areas for pedestrian passing. It is proposed to temporarily amend the Guideline to allow a narrower clear path of travel following assessment of the location and merit of the application, provided that the proposal complies with the Australian Standards. This change may create additional outdoor dining opportunities for businesses on streets that are currently not as busy as they previously were.

Location of the outdoor dining area

18. A new provision is inserted to make clear that businesses may provide outdoor dining on road space that the City is able to reallocate from traffic or parking lanes. The provision requires the area to be protected with barriers suitable to the speed limit on the roadway. The provision also allows the business to extend its operations lengthways along the reallocated road space to provide additional outdoor dining opportunities. A business's outdoor dining cannot be in front of another food and drink outlet and the space in front of non-food and drink outlets must be shared with other food and drink businesses. Existing provisions which avoid businesses occupying the footpath directly in front of another business are retained. A provision is also inserted to allow flexibility around the setbacks from classified roads provided appropriate barriers are in place.

Trading hours

19. A new provision is inserted to allow maximum trading hours to be approved with reduced or no trial periods given the temporary outdoor dining approvals will only be in place until 31 October 2021. The Guidelines refer to the City's late night trading controls in Sydney Development Control Plan 2012 (DCP). Under the DCP, maximum trading hours for outdoor dining areas are 1am in 24-hour late-night management precincts, 11pm in City living precincts and 10pm in local centre precincts. Typically, maximum hours are achieved after a series of successful trial periods but start at a base of 10pm in late night management precincts and 8pm in all other areas. Full trial periods may not be possible given these are temporary outdoor dining areas to support Covid-19 recovery. A trial period may still be used in sensitive situations.
20. The City's standard conditions for outdoor dining enable approvals to be revoked or amended if there are issues. Council may also require a plan of management for the outdoor dining area of licensed premises, as requested by NSW Police and NSW Liquor and Gaming. It is also noted that the NSW Government's temporary streamlined licensing process will limit outdoor dining to midnight for extended outdoor dining areas relying approved through that process.

Rental, application and security fees

21. On 21 September 2020, Council waived fees for footway dining until 31 March 2021. It is recommended the waiver is continued to 31 October 2021 to align with the temporary outdoor dining program and make clear that application fees as well as rental fees are waived on the basis of hardship.
22. The Guidelines currently require an operator to lodge a security deposit with the City to pay for any necessary repairs resulting from damage to the footway caused by the operation of an outdoor seating area or unpaid rent when a business ceases to operate. The security is the greater of \$500 or three-month rental. The City will waive this payment for the period as rental fees are waived and the security is rarely drawn upon to cover damage. Existing provisions in the Guidelines require furniture that doesn't damage the footpath and permanent fittings are not permitted. Conditions can be placed on an approval to make businesses aware that Council may seek costs in the unlikely case of significant damage to the footpath.

Temporary implementation

23. The proposed changes will be in force until 31 October 2021 and apply to applications lodged and likely to operate before that date. Approvals will be granted up to 31 October 2021. After that date, it is planned to revert to the usual processes and business will have to apply through those processes to continue any outdoor dining. In order to create opportunities for the summer period and the urgent need to assist business it's recommended these temporary changes are adopted without exhibition.

Grants

24. In order for the Chief Executive Officer to implement the new Grants Programs, increase the existing programs, and reflect the changes to the budget outlined above, an amendment to the Operational Plan is required to be exhibited. It is proposed that Council approve the exhibition of those programs and budget changes and request the Chief Executive Officer undertake that exhibition immediately so that funding can be made available to our businesses, cultural and creative and community sectors as soon as possible.

Outdoor summer cultural experience

25. A key part of the AI Fresco City initiative is the delivery of a program of outdoor cultural events in order to attract people to the city and increase activity and vitality in the CBD. Staff are currently exploring appropriate locations for the establishment of a stage, which is proposed to be curated by the cultural community, in order to deliver a range of cultural and creative performances. These events will be ticketed and either compliant with existing public health orders or, if approved, in accordance with the conditions of an exemption issued by NSW Health. The details of the location and approval process for the stage is currently being worked through by staff and further information will be provided by way of CEO Update as soon as possible.
26. In order to deliver a performance stage that forms part of the outdoor summer cultural experience, key services not currently under contract with the City need to be procured. Technical services, including stages, lighting and audio, suitable for cultural and creative organisations to present performances will be required. Event personnel, including front-of-house/guest services, site and stage managers, will also be required to manage the two-month operational period. Given the need for the program to occur over summer, there is insufficient time to invite tenders. Accordingly, Council's approval for an exemption from tender is sought, noting that value for money will still be achieved by adopting the procurement process outlined in Confidential Attachment D.

Strategic Alignment - Sustainable Sydney 2030

27. 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 program is aligned with the following strategic directions and objectives:
 - (a) Direction 5 - A Lively and Engaging City Centre - Implementing the AI Fresco City program will safely promote the city centre through initiatives which support the re-activation of the CBD with outdoor dining, bars, late night trading, live music and performances and cultural institutions staying open in the evening.

- (b) Direction 6 - Vibrant Local Communities and Economies - Covid-19 has had a devastating impact on local communities and the economy. The AI Fresco City initiatives will aim to boost the local economy, support businesses and create jobs over the vital summer period.
- (c) Direction 7 - A Cultural and Creative City - The AI Fresco City program will connect creatives and businesses, provide performance opportunities and offer support and work to artists whilst enlivening the city with cultural activations.
- (d) Direction 10 - Implementation through Effective Governance and Partnerships - The City has formed a new and effective partnership with the State Government in order to deliver this program which is in line with the City's Community Recovery Plan goals.

Organisational Impact

- 28. The implementation of the AI Fresco City program will involve key staff from across the City of Sydney. Identified staff will be responsible for leading and managing the specific initiatives, including reporting to the NSW Government. Additional staff essential to ensure delivery will be recruited for the duration of the program. The funding for this is included in the City's \$5 million contribution to this program.

Risks

- 29. The AI Fresco City program has been developed at a time when the health crisis is not yet over, and the status of government restrictions are constantly changing. Activations must therefore be monitored and scaled as required in response to changes in applicable rules and the health situation generally.
- 30. The program is being delivered with very short timeframes and there may need to be modifications and adaptations to delivery as the program is rolled out.

Social / Cultural / Community

- 31. The City recognises the impact of Covid-19 restrictions have hit the cultural sector particularly hard. Cancellation of large-scale performances, events and festivals means many businesses in this ecosystem may not survive. This program puts the creative activity at the heart of re-activating the city, acknowledging that a thriving cultural sector is vital for the city's recovery.

Economic

- 32. The pandemic has had severe impact on the city and economy. The impact is particularly significant in our local area because there is such a high concentration of businesses. The AI Fresco program aims to safely encourage workers and visitors back to the CBD, helping businesses survive in the short-term and creating opportunities for them to thrive in the long-term.

Financial Implications

33. The AI Fresco City program will be delivered using the \$20 million partnership funding from both the City and NSW Government in 2020/21 (Please see Confidential Attachment C). \$15 million will be incoming funds from NSW Government and \$5 million will be funded by savings in the City Life division including savings from Sydney New Year's Eve 2020 and other events that were not possible due to the pandemic. Should these savings prove insufficient, the balance would need to be funded from General Contingency.
34. Extending the waiver of outdoor dining fees for the remainder of the 2020/21 will cost an estimated \$329,000. The total over two financial years 2020/21 and 2021/22 is estimated to cost approximately \$1,956,000.

Relevant Legislation

35. The Local Government Amendment (Governance and Planning) Act 2016 was assented to on 30 August 2016. The aim of the Integrated Planning and Reporting framework is to improve integration of various statutory planning and reporting processes undertaken by councils as required by the Local Government Act 1993, the Office of Local Government's guidelines and the Environmental Planning and Assessment Act 1979.
36. Sections 402 to 406 of the Local Government Act 1993 outline the requirements that a council must undertake when preparing a community strategic plan, underlying delivery plan and strategies with respect to the council's activities.
37. Section 356 of the Local Government Act 1993 describes how councils may financially assist others.
38. Section 610E of the Local Government Act 1993 enables councils to waive or reduce fees and charges where it has determined that a category of cases in which waivers or reductions are appropriate. Public exhibition of a category related to the Covid-19 pandemic is not required under the new cl 413J of the Local Government (General) Regulation 2005.
39. Section 55 of the Local Government Act 1993 sets out the circumstances in which Council may grant an exemption from the requirement to follow the legislated tender processes.
40. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
41. Attachments C and D to the subject report contain confidential commercial information which, if disclosed, would confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business.
42. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

43. Council is required to place proposed new documents related to the Integrated Planning and Reporting legislation on public exhibition for 28 days. The Local Government Act 1993 requires that the draft budget, and revenue policy for rates, annual charges and fees, be incorporated within that exhibition and consultation process.
44. The Al Fresco program has an anticipated duration from 27 October 2020 to 31 October 2021. By 31 December 2020, the grants programs and call for laneway artists will have opened, marketing campaign commenced, and stage infrastructure orders will be placed. By 28 February 2021, stage activation will have commenced, grants will be awarded, and laneway art installed. By June 30 2021, laneway art will be finalised, procurement of Alfresco dining will be complete and grants activations will commence. The project will be complete by 31 October 2021.

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