

Item 9**Al Fresco City - Acceleration of Covid-19 Recovery - Implementation Update and Delegations****File No: X034972.014****Summary**

On 2 October 2020, the City and NSW Government announced a 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 the program it will be ceased until such time as advice is received that it is safe to proceed.

On 26 October 2020, Council made a number of resolutions regarding the Al Fresco City program, including to:

- (a) approve the funding partnership;
- (b) note 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;
- (c) delegate authority 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 Al Fresco City program; and
- (d) adopt temporary Outdoor Dining Guidelines and 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.

Recommendations were endorsed in order to deliver the following Al Fresco 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, and 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.

Since Council approved this urgent program of works, consultation and coordination has continued with the NSW Government, other relevant groups and the community. Further, a number of legislative changes have been initiated which will assist in removing time and administrative barriers to the delivery of a number of aspects of the program, including outdoor dining and performance. As part of this, further resolutions have been identified as being required to ensure all aspects of the program are realised in a safe, coordinated and timely fashion. They relate to:

1. the implementation of the performance stage as part of the outdoor summer cultural experience;
2. the acceleration of the project timeframes for the Covid-19 Recovery Grants Program adopted by Council and currently open to application, which is proposed to be facilitated by delegating determination of these applications to the Chief Executive Officer. The Covid-19 Recovery Grants Program contains three distinct funding programs: CBD Activation Grant, Cultural Sector Innovation Grant and Community Services Grant; and
3. temporary waivers for outdoor and event activation fees, including application fees, venue hire, and power and road closure fees (where applicable) for the use of City land for the approved Covid-19 Recovery Grants Program recipients, and any contractors engaged by the City to deliver any part of the City's AI Fresco City program.

In addition, since the time of the previous report, a significant package of legislative reforms has been passed by the NSW Parliament. The Liquor Amendment (Night-time Economy) Act 2020 (previously known as the Liquor Amendment (24-hour Economy) Bill 2020) was assented to on 27 November 2020 and is currently awaiting proclamation. When passed this legislation will facilitate delivery of a number of aspects of the AI Fresco program.

This includes changes proposed to the Roads Act 1993 which will broaden the types of businesses that may have outdoor dining and the space available for outdoor dining. The changes will prompt minor amendments to the City's Outdoor Dining Guidelines. The amendments seek to align the Guidelines with the changes to the Roads Act 1993. They will improve clarity for businesses. They will support the NSW Government's and the City's Covid-19 recovery response to boost the city centre recovery, support businesses and create jobs.

In addition, amendments to the Liquor Act 2007 will be introduced for a 12-month period to enable local councils to encourage the use of outdoor space (including roads) for outdoor dining and performance in order to assist with social distancing measures. These provisions will enable council, by way of notification on its website, to:

1. temporarily allow the use of footways and public open space associated with licensed premises or entertainment, arts or cultural venues as an outdoor dining area, extension of foyer space or performance space;
2. temporarily allow parking spaces to be used for these purposes;
3. temporarily close a road for which it is the roads authority for these purposes;

4. temporarily close a classified road with the concurrence of Transport for NSW for these purposes; or
5. temporarily vary a development consent or conditions of a development consent to allow outdoor performance.

Any notice given under these provisions will mean that no development consent is required for the use, and has the effect of an approval under the Roads Act 1993. These provisions may be able to be used to facilitate faster approvals for a number of the activities already supported by Council under the Al Fresco City program and a delegation to the Chief Executive Officer is recommended to enable them to be used to facilitate the efficient implementation of this program.

Extensive work has already been done by staff to ensure efficient approvals of outdoor dining areas, pursuant to the previous resolutions of Council. These processes will be reviewed and broadened to adapt to the use of these new provisions (once available) and to facilitate the broader range of activities now able to be approved through these pathways.

Further amendments may be required to the City of Sydney's Outdoor Dining Guidelines for the implementation of these provisions and additional guidelines developed in relation to their use to facilitate outdoor foyer and performance areas. Staff have commenced work on this to ensure the efficient uptake of these procedures, and an assessment framework will be developed and reported to Councillors by CEO Update.

Recommendation

It is resolved that:

- (A) Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 21 September 2020 to enable the Chief Executive Officer to approve the occupation and use of public land (as defined in the Local Government Act 1993), crown land or any other land managed by Council in respect of approvals relating to a temporary use of public land or crown land (including parks and open spaces) for a period not exceeding 75 days between 1 January and 1 April 2021, where it is consistent with a Council resolution to activate public spaces;
- (B) authority be delegated to the Chief Executive Officer to exercise the functions under Section 356 of the Local Government Act 1993 to grant financial assistance to persons as part of the Covid-19 Recovery Grants Program (CBD Activation Grant, Cultural Sector Innovation Grant and Community Services Grant), up to 22 February 2021 in accordance with the Operational Plan, as amended from time to time, noting that:
 - (i) all grant approvals must be made in accordance with the assessment criteria and guidelines; and
 - (ii) all grants approved and not approved for funding must be reported back to Council by CEO Update;
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and administer agreements with any organisation approved for a grant or sponsorship under terms consistent with this resolution and the Grants and Sponsorship Policy;
- (D) Council temporarily waive outdoor and event activation fees, including application, venue hire, and power and road closure fees (where applicable) for the use of City land for the Covid-19 Recovery Grants Program recipients, and any contractors engaged by the City to deliver any part of the City's AI Fresco City program until 31 October 2021;
- (E) subject to the commencement of the relevant provisions of the Liquor Amendment (Night-time Economy) Act 2020 amending the Roads Act 1993, Council adopt the revised temporary City of Sydney Outdoor Dining Guidelines, November 2020, at Attachment A to the subject report, applicable until 31 October 2021, noting public consultation has not been possible given the circumstances;
- (F) subject to the commencement of the relevant provisions of the Liquor Amendment (Night-time Economy) Act 2020 to insert a new Part 12 in the Liquor Act 2007, Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 21 September 2020 to insert a new delegation to enable the Chief Executive Officer to, by notice on the City's website, approve the use of roads, footways and public open spaces for outdoor dining, extension of foyer space and performance space under Part 12 of the Liquor Act 2007 in accordance with the requirements of that Act, with such delegation to apply until 31 October 2021 unless revoked earlier; and

- (G) authority be delegated to the Chief Executive Officer to make any necessary temporary changes to the City of Sydney Outdoor Dining Guidelines and develop any necessary further guidelines to enable the implementation of AI Fresco City objectives as outlined in this report, with such changes to be reported by way of the CEO Update and to apply only until 31 October 2021 unless revoked earlier.

Attachments

Attachment A. Outdoor Dining Guidelines - November 2020

Background

1. On 2 October 2020, the City and NSW Government announced a 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 AI 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 the program it will be ceased until such time as advice is received that it is safe to proceed.
2. On 26 October 2020, Council made a number of resolutions regarding the AI Fresco City program, which were endorsed in order to deliver the following AI Fresco 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; and
 - (c) funding projects that enliven public spaces, venues, and laneways with music, performance and public art.
3. Since then, staff have worked with the NSW Government and relevant stakeholders to implement the AI Fresco City program. As part of this, further resolutions have been identified as being required to ensure all aspects of the program are realised in a safe, coordinated and timely fashion.

Outdoor Stage

4. 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 has identified Cathedral Square as a suitable stage location pending all relevant approvals, taking into consideration public health and physical distancing requirements. The City is working to identify the most efficient pathway to ensure compliance with planning legislation. Infrastructure associated with the stage will be in location for up to 75 days including installation, performance time and deinstallation.
5. In order to facilitate delivery of this aspect of the program, the NSW Government has publicly exhibited a proposed Outdoor Events State Environmental Planning Policy (SEPP) for the City of Sydney, with submissions closing on 7 December 2020. If made, this SEPP will enable the stage to be erected and used without development consent. The conditions of operations of the stage will be set by the standards in the SEPP and conditions of Outdoor Event approvals issued by the City.
6. Under current Delegations, a Council resolution is required to occupy and use public land (as defined in the Local Government Act 1993), crown land or any other land managed by Council relating to a temporary use of public land or crown land (including parks and open spaces) exceeding 40 days. A change to the Chief Executive Officer's delegations is recommended to enable the approval of a temporary use up to 75 days, where this is consistent with a Council resolution to activate public spaces. This will enable the issue of an Outdoor Event approval to the proposed event at Cathedral Square in a timely manner, assuming the SEPP is made by the NSW Government.

Grants

7. Council approved three new grant programs to provide continued support to the community. The Covid-19 Recovery Grants Programs consist of:
 - (a) CBD Activation Grant - \$3 million to support economic recovery by bringing businesses and creatives together to activate businesses, public domain and vacant corporate space in the CBD with cultural programming.
 - (b) Cultural Sector Innovation Grant - \$500,000 to support cultural organisations and businesses to innovate, adapt and grow through recovery from the impacts of Covid-19.
 - (c) Community Services Grant - \$800,000 to respond to ongoing community needs including food security, digital inclusion, social isolation, tenancy support and homelessness services.
8. These programs opened to application on 29 October and closed on 7 December. Successful grant applicants were to be submitted for Council approval in February 2021 with projects commencing in March 2021 for a period of 12 months. This timeline does not allow for projects to commence during the summer months and the key AI Fresco period.
9. Applicants are now encouraged to commence their projects from January 2021 for the CBD Activation Grant and Community Services Grant, and from February 2021 for the Cultural Sector Innovation Grant. This acceleration has come as part of the coordination with the NSW Government and in analysing the needs of the community further.
10. To enable this to occur and to ensure successful applicants receive approved funding as soon as possible, it is recommended that Council provide a delegation to the Chief Executive Officer to enable these grants to be determined during the Council recess period, noting that all grants awarded and not awarded funding will be reported back to Council via the CEO Update.
11. A number of these projects are scheduled to start from late January 2021 and require accelerated and urgent approval.

Fees

12. All events and activations on City owned and managed land in the public domain require hire and application fees, power and any road closure fees to be paid for by the applicant.
13. The industry has been negatively affected by the pandemic and the NSW Government and the City want to enliven the public domain and encourage residents and visitors to come back to the city and help support businesses and stimulate the economy.
14. It is recommended these fees be waived to enable successful grant recipients to freely activate the public domain is crucial in the reactivation of the city.

Pending Legislative Change

15. In addition, since the time of the previous report a significant package of legislative reforms has been passed by the NSW Parliament. The Liquor Amendment (Night-time Economy) Act 2020 (previously known as the Liquor Amendment (24-hour Economy) Bill 2020) was assented to on 27 November 2020 and is currently awaiting proclamation. When passed this legislation will facilitate delivery of a number of aspects of the AI Fresco program.

Revised Outdoor Dining Guidelines

16. Proposed changes to the Roads Act 1993 will broaden the types of businesses that may have outdoor dining and the space available for outdoor dining. The changes to the Act have prompted minor amendments to the City's Outdoor Dining Guidelines. The amendments seek to align the Guidelines with the changes to the Roads Act 1993. They will improve clarity for businesses. They will support the NSW Government's and City's Covid-19 recovery response to boost the city centre recovery, support businesses and create jobs.
17. The proposed further temporary amendments to the Outdoor Dining Guidelines include:
 - Aligning the types of businesses that may have outdoor dining to the Roads Act 1993 by using the planning definition of 'food and drink premises', which expands the opportunity to take away premises.
 - Enabling Council to approve the use of road space for outdoor dining, in addition to the footway, in accordance with the changes to the Roads Act 1993.
 - Removing the definition of 'restaurant', which was based on the previous definition in the Roads Act 1993. These provisions will now apply to any food or drink premises, and are no longer limited to restaurants which provide dine in facilities.
 - Making minor changes to terminology through the document to reflect the proposed changes to the Roads Act 1993.
18. The amended Outdoor Dining Guidelines at Attachment A are recommended for adoption with deletions shown as strikethrough and additions shown in bold underline.

Streamlined Outdoor Area Process - Covid-19 Provisions

19. In addition, amendments to the Liquor Act 2007 will be introduced for a 12 month period to enable local councils to encourage the use of outdoor space (including roads) for outdoor dining and performance in order to assist with social distancing measures. These provisions enable council, by way of notification on its website, to:
 - (a) temporarily allow the use of footways and public open space associated with licensed premises or entertainment, arts or cultural venues as an outdoor dining area, extension of foyer space or performance space;
 - (b) temporarily allow parking spaces to be used as an outdoor dining area, extension of foyer space or performance space;
 - (c) temporarily close a road for which it is the roads authority for use as an outdoor dining area, extension of foyer space or performance space;

- (d) temporarily close a classified road with the concurrence of Transport for NSW for use as an outdoor dining area, extension of foyer space or performance space; or
 - (e) temporarily vary a development consent or conditions of a development consent to allow outdoor performance.
20. Any notice given under these provisions will mean that no development consent is required for the use and has the effect of an approval under the Roads Act 1993. Approvals using these provisions do not need to proceed through the Local Pedestrian, Cycling and Traffic Calming Committee.
21. Laws and regulations relating to noise attenuation continue to apply to premises operating under these provisions. In addition to publication on the City's website to use these provisions, seven days notice must be given to the Minister and, depending on the nature of the proposal, the Independent Liquor and Gaming Authority, the Commissioner of Police and/or Transport for NSW.
22. These provisions may be able to be used to facilitate faster approvals for a number of the activities already supported by Council under the AI Fresco City program and a delegation to the Chief Executive Officer is recommended to enable them to be used to facilitate the efficient implementation of this program. Amendments will be required to the City of Sydney's Outdoor Dining Guidelines for the implementation of these provisions which will be developed and reported to Councillors by CEO Update.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

23. 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

24. 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

25. 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 is constantly changing. Activations must therefore be monitored and scaled as required in response to changes in applicable rules and the health situation generally.
26. 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.

Financial Implications

27. The AI Fresco City program will be delivered using the \$20 million partnership funding from both the City and NSW Government in 2020/21. \$15 million will be incoming funds from the 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.
28. To temporarily waive outdoor and event activation fees for the use of City land for the Covid-19 Recovery Grants Program recipients, and any contractors engaged by the City to deliver any part of the City's AI Fresco City program until 31 October 2021 would see a total of approximately \$80,000 worth of revenue foregone and approximately \$6,000 of hard costs incurred by the City.

Relevant Legislation

29. Section 377(1)(q) of the Local Government Act 1993 prohibits the Council from delegating a decision under section 356 to contribute money or otherwise grant financial assistance to persons. Section 377(1A) provides an exception to this prohibition where:
 - (i) the financial assistance is part of a specified program, and
 - (ii) the program is included in the Council's operational plan for the year in the relevant year, and
 - (iii) the program's proposed budget for that year does not exceed 5 per cent of the City's proposed income from the ordinary rates levied for that year, and
 - (iv) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.

30. Council is able to delegate the determination of the Covid-19 Recovery Grants (CBD Activation Grant, Cultural Sector Innovation Grant and Community Services Grant) to the Chief Executive Officer, subject to the adoption of the revised 2020/21 Operational Plan includes these grants programs and is currently being recommended to Council for approval . All other elements of the above are satisfied.
31. Liquor Amendment (Night-time Economy) Act 2020.
32. Roads Act 1993.
33. Liquor Act 2007.

Critical Dates / Time Frames

34. The Al Fresco program has an anticipated duration of 27 October 2020 to 31 October 2021.
35. By 31 December 2020, the grants programs and call for laneway artists will have closed and be under assessment, and stage infrastructure orders will be placed.
36. By mid-January 2021, installation of stage infrastructure will have commenced.
37. By 28 February 2021, stage activation will have commenced, grants will be awarded, and laneway art installed.
38. By 30 June 2021, laneway art will be finalised, procurement of Alfresco dining will be complete and grants activations will commence.
39. The project will be complete by 31 October 2021.

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