

# **Attachment A**

## **Busking and Aboriginal and Torres Strait Islander Cultural Practice Policy**

# Busking and Aboriginal and Torres Strait Islander Cultural Practice Policy

## Acknowledgement

All buskers and cultural practitioners in the City of Sydney perform on Gadigal Land. Gadigal people of the Eora nation, and other First Nations Australians, are custodians of one of the world's oldest continuing cultures, a culture that is practiced, expressed and shared through a tradition of dance, song and storytelling.

## Purpose

This policy applies to all buskers and cultural practitioners performing in the City of Sydney.

This policy outlines the criteria for receiving:

- an exemption from approval for practicing Aboriginal and Torres Strait Islander culture; or
- an approval to busk, including the conditions of the approval and regulations that apply to busking in the City of Sydney.

This policy aims to support and promote busking culture in Sydney, in balance with the expectations and needs of all users of public space.

The City of Sydney plays two roles in relation to busking:

1. As a creative city that strives to support cultural activity and participation, the City of Sydney supports busking and the contribution buskers make to the city's character and cultural industries.
2. As the governance authority that regulates the use of public space to ensure the safety, amenity and harmonious enjoyment of these spaces for all, the City of Sydney must establish the rules and a regulatory framework for busking on public land.

This policy aims to consider both these responsibilities in equal measure. It was established in consultation with buskers, businesses, residents and visitors to the City of Sydney and members of the Aboriginal and Torres Strait Islander community. It draws upon learnings from the world's best busking cities.

## Scope

This is a Local Approvals Policy under the Local Government Act 1993. It relates to activities under section 68 Part D items 2, 4, 5 and 6 and Part E item 2 insofar as those activities relate to the particular activity of busking or cultural practice.

This policy applies to the City of Sydney local government area. It does not cover areas where the City is not the regulatory authority for these activities, such as:

- areas managed by Placemaking NSW, including Darling Harbour, Circular Quay, the Rocks, Barangaroo and the Goods Line
- areas managed by Transport for NSW including the rail network
- the Sydney Opera House forecourt.
- the Botanic Gardens, Centennial Park and Moore Park.

**Part 1** of this policy sets out the circumstances where an approval is not required.

**Part 2** of this policy outlines the criteria for giving or refusing an approval to busk.

**Part 3** of this policy outlines other matters regarding the regulation of busking

## Principles

This policy and the City of Sydney's approach to regulating busking is underpinned by the following principles:

- Sydney has a strong tradition of busking and buskers contribute to a sense of place and the character of the city.
- Buskers make an important contribution to the cultural life of the city and help build a social city, they create connections between strangers and bring spontaneity to the everyday, in doing so they help reduce isolation and build community cohesion.
- Buskers contribute to the tourist experience of Sydney and drive foot-traffic and commerce in business districts.
- Busking is a legitimate means for professional artists and performers to make income.
- Busking is a legitimate means for hobbyists, amateur performers, enthusiasts or anyone to express themselves creatively in the public domain.
- Busking is an important part of the ecology of the creative industries. It provides a training ground for emerging artists and self-determined work opportunities for established artists. Busking assists with developing new audiences for live music and performance by exposing people to the creative life of Sydney and new avenues for creative participation.
- The practice of Aboriginal and Torres Strait Islander Cultural Heritage is a unique and important activity that takes place in the public domain. It has a fundamental purpose of maintaining connection to culture for Aboriginal and Torres Strait Islander people. For this reason, it is considered to be a distinct activity and is not included in the City's definition of busking.
- Regulation of busking activity should expect nothing more or less of buskers than any other person or group of people using shared public space.
- Other users of public space, residents, business owners and workers in the city have a right to quietly enjoy the city's open spaces and to not be subjected to extended high volume or repetitive performances audible within their homes or places of work, or to be exposed to unsafe or offensive behaviour.

## Definitions

Term	Meaning
Aboriginal and/or Torres Strait Islander person	A person of Aboriginal or Torres Strait Islander descent who identifies as Aboriginal or Torres Strait Islander and is accepted as such by the community in which they live.
Aboriginal and/or Torres Strait Islander Heritage	The intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Aboriginal and Torres Strait Islander people and passed on by them as part of expressing their cultural identity. This heritage is a living one, it continues to develop, and includes items which may be created in the future.
Aboriginal and/or Torres Strait Islander Cultural Practitioner (“cultural practitioner”)	An Aboriginal and/or Torres Strait Islander person expressing Aboriginal and/or Torres Strait Islander Cultural Heritage, including knowledge and cultural expression such as songs, stories, dances, performing arts and creating artistic works.
Act	The performance or artwork that a busker is making. Can be interchangeable with performance.
Animal	Any bird, fish, insect, reptile or animal other than a human.
Authorised Person	An appropriately delegated employee of the City of Sydney, NSW Police or NSW Environmental Protection Agency (EPA).
Busker	Someone performing or creating an artwork in a public place with the intention of entertaining the public for financial reward, but does not include an Aboriginal and/or Torres Strait Islander cultural practitioner.
Busking Pitch	A site or location where buskers and cultural practitioners perform. Also referred to as a <i>pitch</i> .
City of Sydney	Refers to both the Council of the City of Sydney and the Local Government Area of Sydney. Also referred to as The City. The lower case ‘city’ refers to the place known as Sydney.
Higher Risk Activities	Activities that can be reasonably considered to pose a risk or hazard to the safety or welfare of a member of the public or the person undertaking the activity. This includes performing at heights, acrobatics, the use of live flames or items such as knives, swords, chainsaws and other sharp objects, mallets, chains or other items swung or thrown in the air.
Outdoor Event Approval	A permit issued by the City to use public land for the purpose of an event, promotion or public gathering.
The <u>Sydney Busking Code</u> (Busking Code)	A document which outlines the etiquette expected of buskers and the systems by which Special Busking Sites are shared and managed by the busking community.

## Part 1

### Exempt from approvals – the practice of Aboriginal and Torres Strait Islander cultures

The City of Sydney respects and celebrates Aboriginal and Torres Strait Islander cultural heritage. The City recognises that practicing culture is vital to maintaining personal identity and connection to culture for Aboriginal and Torres Strait Islander people, as well as sharing cultural knowledge with the community and visitors to Sydney.

The practice of Aboriginal and Torres Strait Islander cultures, outdoors and in public places, can be both an entertainment and an economic activity, but it is primarily the practice of a cultural right, as articulated in Article 11 of the United Nations Declaration on the Rights of Indigenous People. For this reason, Aboriginal and/or Torres Strait Islander people wishing to practice Aboriginal and/or Torres Strait Islander culture in public and on community land are not required to apply for an approval in the circumstances outlined below.

Further information regarding cultural practice can be found in the City's protocols for the practice of Aboriginal and Torres Strait Islander culture in public places.

The following criteria apply to this exemption:

#### 1. Application

This exemption applies to the practice of Aboriginal and/or Torres Strait Islander cultural heritage ("cultural practice") by an Aboriginal and/or Torres Strait Islander person.

#### 2. Times and Durations

Cultural practice does not require an approval or a permit:

- i. between the hours of 6am and 10pm
- ii. if taking place for no more than two hours per location per day per individual or group.

#### 3. Locations

Sites for practicing culture must not be established in a location that is likely to block access to an entry or exit of a building (including any fire exit), street, laneway or carpark or within 100 meters of a busker or within 100 meters of an approved outdoor event.

#### 4. Safety

A minimum one metre perimeter for pedestrian flow must be maintained around any site for practicing culture. Any fire or other higher risk activities that may cause harm to any member of the public must remain within the site and surrounding perimeter.

**5. Insurance**

Cultural Practitioners are required to maintain adequate Public Liability Insurance coverage for their public activities. Cultural Practitioners may either:

- i. Obtain their own insurance policy and coverage, or
- ii. Register for free cover under the City's Community Engagement Liability Insurance policy by completing a registration form at any City of Sydney customer service centre. Refer to Section 3, Item 16 of this policy for more information about the cover.

**6. Queuing**

When a busker or another cultural practitioner is already occupying a site, a queue system should be introduced whereby each person or group awaits the completion of the previous performance and then takes their turn.

Cultural Practitioners using Special Busking Sites, as outlined in Section 3 of this policy, must follow the rules of that Special Busking Site.

**7. Sales**

Cultural practitioners may receive donations from the public and proceeds from the sale of artworks. The sale of artwork must be secondary and only in addition to the practice of Aboriginal and/or Torres Strait Islander Cultural Heritage.

**8. Compliance with laws and directions**

Cultural practitioners shall comply with all relevant laws, regulations and policies and the lawful directions of Authorised Persons. Authorised persons may restrict any public space from use for practicing culture during special events, emergencies or as circumstance may require.

## Part 2

### Busking approvals

All people wishing to busk in the City must obtain an approval to busk in accordance with s68 of the Local Government Act 1993. The following criteria apply to approvals to busk:

#### 9. Busking Acts

- 9.1. Busking Acts are categorised by the amount of space and time they occupy in a public place, and the volume and type of sound they are likely to generate.

Busking Acts will fall into one of the following categories:

i. Low Impact

Low Impact Acts have a small footprint in public space and have sound that is easily managed. A Low Impact Act is defined by meeting all of the following criteria:

- a. does not need more than 2m<sup>2</sup> performance space
- b. does not involve Higher Risk Activities
- c. does not use instruments that are naturally loud, even without amplification, including drums of any kind, bagpipes and brass instruments.

Examples of Low Impact Acts may include solo musicians or small musical groups, magicians, puppeteers and other solo performers.

ii. High Impact

High Impact Acts have a large footprint in public space and/or have sound that is harder to manage and/or incorporate activities and equipment that may pose a greater risk to the busker or their audience. A High Impact Act is defined by any one or more of the following criteria:

- a. needs more than 2m<sup>2</sup> performance space
- b. actively encourages an audience to gather, wait and watch
- c. involves Higher Risk Activities
- d. uses instruments that are naturally loud even without amplification including drums of any kind, bagpipes and brass instruments, or
- e. features 5 or more performers.

Examples of High Impact Acts may include dance groups, acrobats and circus acts, drummers, bagpipe and trumpet players.

iii. Extended Duration

An Extended Duration Act has a low impact in terms of the space it requires or the volume of sound it generates, however requires a longer period of time to be performed. An Extended Duration Act is defined by all of the following criteria:

- a. the artwork or performance is made continuously and evolves over a period of more than two hours
- b. the artwork or performance is quiet, non-musical and non-amplified
- c. the artwork or performance does not significantly restrict access or use of the public space in which it is created

Examples of Extended Duration Acts may include pavement art, chalk art, durational performance art and human statues.

9.2. The following acts will not be approved for a Busking Permit in Sydney.

- i. Acts which involve the use of live flames, unless and only if specifically approved in a suitable location outlined in the Sydney Busking Code.
- ii. Acts which involve handing out plastic or paper items that may have an adverse impact on parks, waterways, bird life or marine life, such as balloon sculpting.
- iii. Acts which incorporate any animal, with the exception of a certified assistance animal (as defined by section 5 of the Companion Animals Act 1998) who is supporting the performer but is not a feature of the performance.
- iv. Acts which offer or provide a one-to-one service for a fee such as fortune telling, portrait painting, massage or any other therapeutic service.

## 10. Permits

10.1. All buskers (or people wishing to undertake busking) within the City of Sydney must obtain a Busking Permit and must agree to comply with the terms and conditions of the Permit and this Policy.

10.2. The City of Sydney issues three types of Busking Permit:

- i. Low Impact Busking Permit, for Low Impact Acts
- ii. High Impact Busking Permit, for High Impact Acts
- iii. Extended Duration Busking Permit, for Extended Duration Acts.

10.3. Low Impact and Extended Duration Busking Permits may be approved by a Customer Service officer of the City of Sydney at the time of application.

10.4. Buskers applying for a High Impact Busking Permit may be required to satisfactorily complete an assessment of their act before a Permit can be issued. An applicant may be requested to attend an onsite assessment, or, at the discretion of the issuing officer, an assessment may be undertaken remotely via video call or by submitting a recent video.

10.5. Buskers who have previously completed an assessment can renew their High Impact Busking Permit without attending another assessment if:

- i. they have been assessed in the previous two years
- ii. their previous permit is current or expired less than six months prior
- iii. their act has not significantly changed since it was approved, and



- iv. they have not received a formal warning or penalty since their last permit was issued.
- 10.6. All members of a group act are required to obtain a permit.
- 10.7. Proof of identity is required with an application for a Busking Permit.
- 10.8. Valid and current telephone or email contact details are required with an application for a Busking Permit.
- 10.9. Proof of parental consent is required for applicants under the age of 18.
- 10.10. Buskers are required to pay a service fee for a Busking Permit. The fees are published annually in the City's register of fees and charges.
- 10.11. If a busker wishes to perform a combination of Low Impact, High Impact and Extended Duration acts from time to time they may apply for multiple permits at an Assessment.

## **11. Act Assessment**

- 11.1. Any Busker whose act meets the High Impact Act criteria (as outlined in section 9.1. of this policy) may be required to undertake an assessment of their act prior to a Busking Permit being approved.
- 11.2. Assessments are conducted by City Staff and may include an in person onsite assessment of the act in a public space, or may be conducted remotely by video call or by providing a recent and comprehensive video recording of the proposed performance.
- 11.3. The purpose of the assessment is to identify that:
  - i. the busking act can be performed safely and measures are in place to mitigate any potential risks to the performer(s) or public
  - ii. the sound generated by the performance is being monitored and controlled by the performer(s) as best as it can be.
- 11.4. The outcome of an assessment will confirm whether the busking act is approved for a High Impact Busking Permit.
- 11.5. At an assessment, a busking act may be assessed as low impact and offered a Low Impact Busking Permit if the busker can demonstrate that the performance does not meet the criteria of a High Impact Act.
- 11.6. If a busking act is not approved for a Permit, City Staff will provide the applicant with feedback as to why they have not been approved.
- 11.7. If, at an assessment, a busking act is not approved for a Permit, they may arrange to attend another assessment on another day to illustrate appropriate revisions have been made to their act.
- 11.8. The artistic quality of the act or any subjective appraisal of the talent or skill of the performer(s) is not an assessment criteria.

## Part 3

### Other Matters

#### Guidelines

The following guidelines apply to busking acts in the City of Sydney.

These guidelines for busking are complemented by the Sydney Busking Code which outlines expected etiquette for street performers, guidance on managing volume and public safety, and the booking and queuing systems that apply to high-traffic Special Busking Sites (see paragraph 15 below) in Sydney.

#### 12. Busking Permits

- 12.1. Buskers must have a valid permit clearly displayed on their person or pitch when busking.
- 12.2. Permits can be issued for a period of one month, three months or twelve months.
- 12.3. Permits are not transferable or refundable.

#### 13. Busking Times

- 13.1. Except where otherwise permitted under the Sydney Busking Code, holders of a Busking Permit may perform:
  - i. 8am – 10pm Sunday to Thursday
  - ii. 8am – midnight Friday and Saturday
- 13.2. Subject to compliance with the Sydney Busking Code:
  - i. Low Impact buskers may busk for up to two hours in any one location per day.
  - ii. High Impact buskers may busk for up to one hour in any one location per day.
  - iii. Extended Duration buskers may busk for up to 8 hours in any one location per day.
- 13.3. Where a site is established as a Special Busking Site under the Sydney Busking Code the times and durations set out in the Sydney Busking Code must be complied with at all times.
- 13.4. Buskers who have performed the maximum time in a location on one day may move their performance to another location at least 100 metres from their previous pitch.
- 13.5. Buskers under the age of 15 must be supervised by an adult guardian whenever busking.

#### 14. Busking Pitches

- 14.1. Buskers with a valid City of Sydney Busking Permit may busk in any public place or footpath under City management with enough open space for their performance to be conducted, and a further 2 metres on at least two sides of their performance area for safe pedestrian flow.

- 14.2. High Impact buskers conducting Higher Risk Activities must visually demarcate their performance area with a rope or similar boundary placed on the ground.
- 14.3. Busking is restricted to one performance per site at any one time.
- 14.4. Buskers must not busk within 100 meters of another busker (unless busking on a Special Busking Site with multiple busking pitches within 100 metres of each other).
- 14.5. A busking site must not be established where the act or their audience is likely to block or hinder access to an entry or exit of any building (including any fire exit), street, laneway, carpark or pedestrian thoroughfare.
- 14.6. Authorised persons may restrict any public space from use for busking during special events, emergencies or as circumstance may require.

## **15. Special Busking Sites**

- 15.1. Some areas in the city are recognised busking locations and have specific, defined busking pitches. These pitches experience high pedestrian traffic and can provide buskers with a very visible performance space and big crowds. In order to provide equitable access to these high-value busking locations for a diverse range of buskers, these Special Busking Sites have certain additional conditions. These conditions are determined by the busking community in consultation with the City and are outlined in the Sydney Busking Code.
- 15.2. Buskers need to familiarise themselves with the locations and conditions of Special Busking Sites in the Busking Code.
- 15.3. Temporary Special Busking Sites are occasionally established in association with festivals and events. These sites are in public areas subject to an outdoor event approval. The conditions for performing in these locations will be provided by email to buskers who hold a current busking permit and have provided the City with their email address.

## **16. Insurance**

- 16.1. As long as the busker complies with the conditions of their permit, holders of a Busking Permit are covered for public liability under the City of Sydney's Community Engagement Liability Insurance policy.
- 16.2. The City's policy is limited to \$10 million for any one loss and the busker is responsible for the first \$500 of each and every loss (the excess). This coverage and excess may be subject to change over time. Current details of the liability insurance policy will be made available to buskers on receipt of their permit.
- 16.3. Buskers may prefer to obtain their own public liability insurance. If a busker is covered by their own or any other public liability insurance policy, they will be considered covered by that policy for their busking activities and not the City's Community Engagement Liability Insurance policy.

## **17. Sales**

- 17.1. Buskers may sell their own original music or video recordings, artwork or merchandise as a complement to their performance.
- 17.2. The sale of music, video, artwork or merchandise must not be delegated to another

person and must not dominate the time a busker is occupying a busking pitch.

- 17.3. The primary purpose of busking is to perform an act or to make an artwork for the entertainment of the public, any sales of any products must be secondary to this purpose and directly related to the approved busker and their busking act.

## **18. Other matters**

- 18.1. Buskers with a valid permit may perform in any public place under the care and control of the City of Sydney in accordance with the Local Government Act and any other applicable law, this policy and the Busking Code.
- 18.2. Buskers are responsible for their impact on their environment and should take all necessary precautions and actions to limit any risks or hazards they may pose to the public.
- 18.3. Busking acts must not cause a public disturbance or nuisance, whether by the volume or nature of the sound they produce, or the physical impact of the act on other people, property or public space. If a busker is directed to stop or modify their act by any authorised person, they must do so immediately.
- 18.4. Where a public space is being used by an event, a retail promotion or public gathering with an outdoor event approval issued by the City of Sydney, buskers must not busk within 100 metres of such an event or activity. This includes areas established for the safe dispersal of crowds at major events such as New Year's Eve and Vivid Sydney.
- 18.5. Buskers must comply with all relevant laws, regulations and policies and lawful directions of Authorised Persons. The holding of a busking permit will not constitute a defence where a busker has committed an offence.
- 18.6. The use of political, religious, racist, sexist, sexually explicit, homophobic or transphobic material that may be deemed offensive or discriminatory is prohibited as determined by the Anti-Discrimination Act 1977 (NSW).

## **19. Suspensions, Modifications, Cancellations and Penalties**

- 19.1. In accordance with section 108 of the Local Government Act 1993, busking permits may be revoked or modified where a busker has breached any laws, this Policy, the Busking Code or any of the conditions of their Busking Permit.
- 19.2. A Busker holding a Low Impact Busking Permit who receives multiple complaints about their act or is repeatedly observed playing at excessive volume or is regularly causing a disturbance to foot-traffic in pedestrian zones may be required to attend an assessment and may have their permit re-issued as a High Impact Busking Permit.
- 19.3. A busker must provide the City of Sydney with a valid means of contact as a condition of their Busking Permit. A permit may be suspended if the City is repeatedly unable to contact a busker using the details provided.
- 19.4. Pursuant to sections 109, 110 and 627 of the Local Government Act 1993, City of Sydney may, in certain circumstances, revoke or modify permits or issue an on the spot fine if the permit holder fails to comply with the requirements and conditions of the permit.
- 19.5. In accordance with section 110 of the Local Government Act 1993 before revoking or modifying the permit, the City will:

- i. give written notice to a busker of its intention to revoke or modify their permit; and
- ii. give the permit holder the opportunity to meet with Council officers to show cause why the approval should not be revoked.

**20. Responsibilities**

- 20.1. The implementation of this policy is the responsibility of the Venues Management team of the City of Sydney. Officers monitor and respond to public enquiries or complaints in relation to buskers, manage day to day operations in relation to busking and make recommendations to the Busking Code.
- 20.2. The issuing of Busking Permits and maintaining a register of buskers is the responsibility of the Customer Service team of the City of Sydney.
- 20.3. The City’s Rangers will enforce the Busking Policy and ensure buskers are compliant with the conditions of their permit.

**Consultation**

This policy was placed on public exhibition from 29 August to 11 October, 2022.

**References**

Laws and Standards
Local Government Act 1993
Anti-Discrimination Act 1977
Children and Young Persons (Care and Protection) Act 1998
Companion Animals Act 1998
Work Health and Safety Act 2011
United Nations Declaration on the Rights of Indigenous Peoples
Policies and Procedures
Creative City Cultural Policy and Action Plan 2014 – 2024
Live Music and Performance Action Plan 2014
Eora Journey Economic Development Plan 2016
City of Sydney Event Guidelines 2015
Sydney Busking Code

**Review period**

This policy will be reviewed within in one year of the commencement of a newly elected council.

### Approval Status

Council approved this policy on [DD MM YYYY].

### Approval History

Stage	Date	Comment	TRIM Reference
Original Policy	13 May 2019	Approved by Council	2019/428176
Consent	4 June 2019	Office of Local Government Consent to Adopt	2019/297291-01
Reviewed	[ ] 2022	Approved by Council	[Governance to populate]
Consent	[ ]	Office of Local Government Consent to Adopt	
Commence Review Date	[ ] December 2024		
Approval Due Date	[ ] September 2025		

### Ownership and approval

Responsibility	Role
Author	Manager, Cultural Strategy
Owner	Manager, Venue Management
Endorser	City of Sydney Executive
Approver	City of Sydney Council