

Busking Policy and Guidelines Review 2018

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Summary

This review of the City of Sydney Busking Policy and Guidelines arises as an action of the City's *Live Music and Performance Action Plan (2014)*. The action calls upon the City to simplify busking requirements and to explore opportunities to support and promote buskers in Sydney. In doing so, the City aims to increase opportunities for musicians and performers to practice their profession, reduce barriers to creative participation for all of the community, enhance creativity in the public domain, and celebrate the cultural character of our city.

The review has been completed and draws upon research commissioned by the City of Sydney and independently conducted, as well as policies and program examples from some of the best busking cities in the world.

Central to the review, in March 2017, the City released a Discussion Paper titled "Busking in the City of Sydney" and called for public feedback on a series of talking points through the Sydney Your Say website. Feedback to the Discussion Paper has been analysed alongside one-on-one consultation with City staff, buskers, community members and a broader stakeholder workshop. Feedback from all sources is overwhelmingly supportive of busking, recognising the important contribution buskers make to the creative life and the lived experience of Sydney for residents, workers and visitors alike.

The review has identified six priorities for the City to better support and manage busking.

The key finding from the review is an opportunity to reform the regulatory framework that manages busking in Sydney. This reform would replace the current system for issuing approvals to busk on public land with a new permit system. The new permit system is intended to simplify and clarify the conditions applying to different types of busking acts.

The new permit system will focus on the impact of busking performances on their environment and classify them according to their level of impact. This will replace the current system which seeks, at times imprecisely, to classify buskers by the nature of their act.

The proposed 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.

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.

The proposed permit system and the six priorities for busking in Sydney are outlined in this document, to be read alongside the proposed new Local Approval Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice.

Background

The City of Sydney plays two important roles in relation to busking.

1. As a creative city that strives to support cultural activity and participation, the City supports busking and the contribution buskers make to Sydney'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 must establish the rules and a regulatory framework for busking on public land.

This policy review has been guided by these two responsibilities in equal measure. It seeks to find a regulatory framework that will not be complicated, restrictive or unjust for performers, but will acknowledge the needs and expectations of the community to have boundaries placed around busking activity.

In 2014, the City of Sydney adopted its Live Music and Performance Action Plan. Within this, the City committed to reviewing its busking policy to identify ways to simplify the busking experience, explore opportunities to support busking, and promote buskers to the general public, retail operators, landowners and event producers. This commitment arose from recommendations of the Live Music Taskforce and was reinforced by consultation undertaken to support the Live Music and Performance Action Plan.

This commitment complements the Creative City: Cultural Policy and Action Plan 2014 – 2024. Adopted in August 2014, this Plan identifies 'precinct distinctiveness' and creativity in the public domain as a strategic direction. This strategic priority highlights the need for creativity to be visible on the streets of Sydney, in both a planned and unplanned way.

Both Action Plans focus on reducing regulatory 'red tape' barriers to cultural activity and participation. Hence, the review of the City's busking policy prioritises an evaluation of the current regulatory and compliance framework used to issue busking permits and monitor busking activities.

The policy review has collected a number of recommendations from both buskers and the wider community for programs and initiatives to support busking in the future. It should be noted that those included in the review's recommendations are a starting point for further consultation and contributions to come.

Context

Busking in the City of Sydney is currently managed under an Interim Busking Policy and Interim Busking Guidelines. These documents were adopted in 2011.

A review of the City's busking policy and program is timely as the city undergoes significant transformation through the new Light Rail corridor and a large number of

property developments affect open spaces throughout the CBD. At this time there are fewer places for buskers to perform and considerably more background noise for them to compete with. It could be said that buskers are currently experiencing unusual stressors.

On the flip side, this construction in the city is making way for a pedestrianised George Street and other new public spaces that will provide an increase in busking-suitable public space in the near future.

In 2016, a Pilot Program for busking in Pitt Street Mall was introduced to trial a more hands-on approach to regulating busking activity in high traffic pedestrian areas. Pitt Street Mall offers buskers one of the most lucrative locations to busk in the country. The pilot guidelines were developed to provide a more equitable access to Pitt Street Mall pitches for more buskers, and to minimise the impact of regular, repeat acts on neighbouring businesses and residents.

The busking policy review occurs after the governance of Circular Quay and Darling Harbour (two of Sydney's busiest busking locations) has been transitioned from the Sydney Harbour Foreshore Authority to Property NSW, and council mergers across NSW, such as the newly formed Inner-West Council, have resulted in new Local Government Areas with a need to rework their previous policies. This timing provides the City of Sydney with an opportunity to take a leadership position in the management, support and regulation of busking across greater metropolitan Sydney in pursuit of a more consistent regulatory landscape for buskers to negotiate and comply with.

Methodology

In 2015, the City undertook research on community attitudes towards busking in and around Pitt Street Mall. The researchers conducted over 300 quantitative interviews with business owners, residents and visitors to the area. This research has informed the busking policy review.

Later that year, Julia Quilter and Luke McNamara of the University of Wollongong published an academic review of busking policy and legislation in Sydney and Melbourne. Titled "Long May the Buskers Carry on Busking: Street Music and the Law in Melbourne and Sydney" the paper drew upon independent consultation with buskers, compliance officers and staff of both councils to appraise the efficacy of busking regulations. This research has informed the busking policy review.

In 2017, the City prepared a report on the City of Sydney busking policy and guidelines. The report reviewed local and international literature on busking and conducted interviews with stakeholders and performers in the city. This review formed the basis of a Discussion Paper developed by City staff to stimulate feedback on the current busking policy.

The City of Sydney's Discussion Paper titled "Busking in the City of Sydney" covers a broad range of areas including costs and processes for getting a

permit, places where busking can occur, navigating different landowners and jurisdictions, the current City of Sydney Policy and Guidelines, strategies for monitoring busking impacts and compliance, access to high value pitches, investigating the development of new or unused pitches, opportunities for government agencies to collaborate and projects that would increase the skills and promotion of buskers. The Discussion Paper was released, with an accompanying survey through the Sydney Your Say engagement portal.

After reviewing the submissions to the Discussion Paper, a workshop was conducted with a broad range of stakeholders including buskers, businesses, residents, arts advocacy organisations and representatives from other council areas. The workshop discussed the Sydney Your Say feedback and invited participants to offer further, more detailed feedback and imaginatively propose models for busking regulation and alternative guidelines.

In addition, extensive consultation was carried out with relevant City of Sydney internal staff and the City's Aboriginal and Torres Strait Islander Advisory Panel.

Key Findings

The research and community consultation for the busking policy review has identified six priorities for the City's busking policy and program.

1. Recognise that practice of Aboriginal and Torres Strait Islander culture is not busking.

The cultural identity and expression conducted by Aboriginal and Torres Strait Islander people currently on busking permits is part of the continued practice (including performance, storytelling and arts) of Aboriginal and Torres Strait Islander cultures and should be considered as distinct from busking. Although, like busking, this cultural practice takes place in the public domain and is often met with financial reward from audiences, the purpose of the performance is the continuation of cultural heritage and is more accurately (and respectfully) associated with cultural identity, ceremony and cultural exchange.

It is proposed that the new Policy for Busking outline criteria by which the practice of Aboriginal and/or Torres Strait Islander cultures in public places may be exempt from requiring an approval (permit). This exemption will be supported by a set of protocols outlining a best practice approach to the practice of Aboriginal and Torres Strait Islander culture in public places.

This proposal is supported by research undertaken by Terri Janke and Co, looking at national and international precedent for policy addressing the rights of Indigenous people, and input from the City's Aboriginal and Torres Strait Islander Advisory Panel.

2. Advocate for consistent busking rules and / or permit systems across Sydney.

The number one priority articulated by buskers in all consultation and research conducted was the need for a single permit system and consistent guidelines across greater Sydney.

Buskers are required to negotiate different policies and guidelines for each jurisdiction across metropolitan Sydney. A separate permit is required to busk in Circular Quay and Darling Harbour (Property NSW governed) and any other Local Government Area. These permits often come with fees and their guidelines are far from consistent, which makes obtaining and complying with multiple permits costly and confusing for buskers.

The City will investigate and advocate for systems that increase consistency and facilitate permit transfer between jurisdictions.

3. Make information about busking clearer and more easily accessed, for everyone.

Research and consultation suggests that a significant number of buskers are not abiding by current guidelines because they either do not understand the guidelines or the guidelines are impossible to self-monitor.

Currently, to understand the full range of rules and responsibilities of busking in Sydney a busker has to read a busking policy, busking guidelines, interim guidelines for busking in Pitt Street Mall and the conditions of their Busking Permit. In addition, they are required to consult a set of Busking Locations Maps. This complex tangle of inter-connected documents and their “legal-speak” style may be counter-productive to the purpose of these guidelines – to communicate the rules of busking to buskers.

There is evidence that buskers will benefit from a far more straight-forward, straight-talking code for busking.

Currently, information about busking is only available in English and there are few visual resources available to buskers who may have limited literacy to help illustrate how they should conduct their performances. Likewise, the current busking guidelines almost exclusively focus on *what not to do* rather than articulating the right ways to busk.

Busking resources will be updated to provide clear visual communications, in multiple languages, that demonstrate both the dos and the don'ts of busking in Sydney.

During the new policy's exhibition period, the City will consult with local buskers to develop a "Sydney Busking Code". This will provide a guidance to those busking within the City as to matters including busking etiquette, appropriate approaches to conflict resolution and the management systems of popular pitches. The Code will ultimately be approved by the Chief Executive Officer and is intended to be a living

document which will be able to be reviewed and amended as necessary from time to time. The Code will accompany the more stripped-back, regulation-focused Local Approvals Policy.

4. Change the language we use to describe busking (to facilitate cultural change).

Buskers make sound not noise, and the payments they receive from audiences are not donations. Donations are for charities, whereas buskers get paid a taxable income. The language the City uses to describe and regulate busking has an impact on the way buskers are perceived and valued in the community.

Feedback to the Busking Discussion Paper highlighted a disconnection between how buskers see themselves and how the community view busking. Over half of the buskers who responded described busking as a profession and a legitimate source of income, whereas 20 per cent of the non-buskers surveyed described busking as a good alternative to welfare.

Many respondents conflated beggars, protestors and those preaching religious beliefs with buskers. Not a single response from a non-busker expressed concerns about the safety of buskers when performing alone in public. On the other hand, 25 per cent of buskers spoke of their concerns for their own safety from theft or violence when busking.

Using carefully chosen language in our policy documents and guidelines may help facilitate a shift in public perceptions of busking, help recognise the activity as a cultural industry and build empathy and respect for these performers.

Whilst guidelines are intended to minimise the negative impacts and risks associated with busking, the language used should be balanced and should not be so focused on articulating risks that it demonises buskers who are, by and large, very well organised and respectful contributors to our communities.

5. Advocate and act for a more busker-friendly city.

Most of the common issues associated with busking can be remedied by providing more spaces and better infrastructure for buskers across the city.

High volume sound, back-to-back performances and the repetition of certain acts in certain places are the most common complaints that the public make about buskers. Opening up more locations across the city will reduce the reliance on certain key pitches that can suffer from over-supply of buskers, and disperse performers through new locations. This will reduce competition, increase access and diversify the frequency of certain acts in certain locations.

The City will work in partnership with landholders and neighbouring Councils to actively increase the number of quality, defined public busking pitches in Sydney and will encourage busking programs in privately held, unexpected places.

6. Simplify and clarify busking regulation and better involve buskers in writing the rules.

It is easy to break the current busking guidelines without even knowing it. For example, the Pitt Street Mall pilot guidelines stipulate a decibel limit on volume produced by an act to be captured at 6 metres from the source of the sound. It is impossible for a solo busker to gauge their own volume from 6 metres away during their performance.

Even when the criteria set out in the guidelines are possible to achieve, they are often difficult to interpret or require complicated subjective or expert measurements to assess.

The key finding from the review is an opportunity to reform the regulatory framework that manages busking in Sydney. This reform would replace the current system for issuing approvals to busk on public land with a new permit system. The new permit system is intended to simplify and clarify the conditions applying to different types of busking acts.

The new permit system will focus on the impact of busking performances on their environment and classify them according to their level of 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.

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. 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.

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 valid complaints may be reclassified as High Impact.

Proposed Permit Categories

The proposed new permit categories, their criteria and conditions are:

Low Impact	High Impact	Extended Duration
<p>Low Impact Acts have a small footprint in public space and have sound that is easily managed</p>	<p>High Impact Acts have a large footprint in public space and/or have sound that is harder to manage and/or use materials that pose a greater risk.</p>	<p>Extended Duration Acts have minimal impact on their surrounds (in both space and volume) but require a longer period of time to be performed.</p>
<p>Criteria:</p> <ul style="list-style-type: none"> • Under 2m² performance space • Amplified instruments that can have their volume adjusted • Non-amplified instruments that can be played at lower volume 	<p>Criteria:</p> <ul style="list-style-type: none"> • Over 2m² performance space • Encourages an audience to gather, wait and watch • Uses higher risk equipment or materials • Incorporates instruments that are naturally loud even without amplification 	<p>Criteria:</p> <ul style="list-style-type: none"> • Artwork that is made continuously over a long time • Quiet, non-musical and non-amplified
<p>Examples:</p> <p>Solo performers or small groups, musicians, magicians, puppeteers</p>	<p>Examples:</p> <p>Dance groups, acrobats and circus acts using fire or sharp objects, drummers, bagpipes, brass instruments</p>	<p>Examples:</p> <p>Pavements artists, durational performance artists, human statues</p>
<p>Conditions:</p> <ul style="list-style-type: none"> • Max 2 hours per location per day 	<p>Conditions:</p> <ul style="list-style-type: none"> • Max 1 hour per location per day 	<p>Conditions:</p> <ul style="list-style-type: none"> • Max 8 hours per location per day
<p>Act Assessment:</p> <ul style="list-style-type: none"> • Does not require assessment • Repeated issues with an act may result in an assessment to see if the act should be re-classified as High Impact. 	<p>Act Assessment:</p> <ul style="list-style-type: none"> • Requires assessment • May be deemed Low Impact at assessment (ie, if a busker with a “naturally loud” instrument can demonstrate they are able to play at a considered volume). 	<p>Act Assessment:</p> <ul style="list-style-type: none"> • Does not require assessment

Regulatory Recommendations

Permits

- Categorise busking acts by the kind of impact they have on their surrounds;
- Consider use of space, higher risk activities, volume and the type of sound being produced in assessing the potential impact of an act;
- Issue busking permits based on categories of impact and apply a set of conditions to each permit type. This will mean the conditions applying to the busker's act are the same as the conditions applying to their permit;
- Issue permits for High Impact acts, Low Impact acts and Extended Duration acts;
- Apply time limits on performances for each of the permit types:
 - two hours per location per day for Low Impact,
 - one hour per location per day for High Impact,
 - eight hours per location per day for Extended Duration;
- Require any act that is considered to potentially meet the criteria for High Impact to attend an assessment. The assessment is to ascertain whether the act is performed safely and how much of an impact it is likely to have on neighbouring residents and businesses;
- At an assessment, a busker who meets the criteria for a High Impact Permit will have the opportunity to work with the assessors to find ways to make their act Low Impact if they wish it to be;
- Conversely, should a Low Impact busker have repeated legitimate complaints made about their act or cause repeated public disturbances, they can be required to attend an assessment and could be re-classified as High Impact. This will provide an incentive to maintain a considered volume and to manage any adverse impacts an act might be making; and
- Allow larger group acts (5 or more individuals) the opportunity to be assessed for a High Impact busking permit. Currently groups of 5 or more are not permitted.

Times

- Delay the permissible start time for busking performances from 7am to 8am, in line with the City's neighbourhood noise guidelines for playing musical instruments or using PA systems that may be heard in neighbouring premises. This is purely for policy consistency.

Locations

- Abandon the current Busking Site Maps;
- Provide buskers with the criteria by which the City would assess and select eligible busking sites (ie ample performance space and pedestrian zones) and allow them to self-assess the suitability of a space for their act;

- Authorised persons have the power to ‘move on’ any busking act at any time where there is a legitimate reason to do so; and
- Keep busking pitches 100m apart. Having minimum spacing between pitches is a useful tool for volume control. ie "if you can be heard at the next busking pitch, you are playing too loud".

Special Busking Locations

- Areas formerly called “Restricted Busking Sites” to be renamed “Special Busking Sites” e.g. Pitt Street Mall;
- Special Busking Sites are locations with additional performance conditions, programmed sets or busker-managed queuing or booking systems. These systems help facilitate equitable access to popular pitches for a diverse range of buskers; and
- The conditions applying to Special Busking Sites will be outlined in a Sydney Busking Code and will be developed in consultation with buskers and neighbouring residents or businesses. The Busking Code is intended to be updated from time to time without requiring a policy review or Council approval and will allow City staff and the busking community to be more flexible and responsive in managing high-traffic busking sites and also to enable new locations to be added as they are created as a result of development.

Sales

- Remove the restrictions on selling products and artworks, because:
 - The City aims to remove obstacles for the creative sector to build industry and commercial opportunities, to survive and thrive;
 - In an increasingly cashless world, selling products for a fixed fee could help increase busking income when “cash tips” are on the decline;
 - The world has moved on from CDs and DVDs and performers need to be agile and responsive in how they sell their work;
 - Allowing a musician to sell a CD but not allowing a visual artist to sell a reproduction of their work is a double standard;
 - Merchandise for popular buskers could make for a unique souvenir for visitors to Sydney, contributing to the tourist experience; and
 - The proposed conditions still expressly require that the sale of products or merchandise must be secondary to the busking performance and must not be delegated to another person. These are not ambiguous conditions and can be easily enforced.

Obligations, suspensions and modifications.

- It is recommended that heavy-handed guidelines around offensive behaviour, damage to public property, or causing a disturbance or nuisance are not included in the policy. These are unlawful activities under other legislation that are forbidden to any user of public space and should be a police matter.

Sound and volume

- Measured volume limits and amplification has not been addressed in the policy as it is not recommended that any volume or amplification conditions be introduced.
- Amplification restrictions are not recommended because:
 - The volume of amplified instruments is easy to control as it can be turned down;
 - The sound produced by the types of instruments that use amplification can be more melodic and less intrusive in its nature;
 - The nature of the sound of the types of instruments that usually don't require amplification, such as drums, bagpipes and brass instruments, tends to be more repetitive and intrusive and very loud even without amplification; and
 - Volume of all busking performances needs to be considered and controlled regardless of amplification. Volume management is about exercising sensitivity on a case-by-case basis, respecting the varying needs of others and learning how to adapt to pitch conditions on any given day. Setting fixed restrictions and rules does not encourage collaborative, empathetic reasoning.
- No measurable volume limits are recommended because:
 - there is no evidence that using volume limits is an effective way to reduce volume impacts of busking;
 - set volume limits are extremely difficult for City Rangers to monitor with consistency and inconsistent enforcement of the busking policy tends to lead to further noncompliance by some buskers;
 - a solo busker is unable to measure their own volume with a decibel reading at 6 metres while performing, so dB readings are not self-assessable;
 - set volume limits assume that the busker has the required equipment to accurately measure their dB reading;
 - like a speed limit, a volume limit gives a busker a volume "to aim for" rather than guiding them towards an appropriate volume setting for their space on that day; and
 - it is recommended that guidance on identifying and assessing the appropriate volume to play at be included in a Sydney Busking Code rather than the policy or permit conditions.
- It is recommended that guidance on the appropriate volume to play at and tips for assessing if you're performing at the right volume are included in the busking code rather than the policy or permit conditions.

Appendices

- A. Draft Local Approvals Policy for Busking and Aboriginal and Torres Strait Islander Cultural Practice.
- B. Proposed Busking Permit Categories.
- C. Draft Protocols for the Practice of Aboriginal and Torres Strait Islander Culture in Public Spaces.
- D. Example Busking Code (for the purposes of consultation).