

## 4.2 Busking Policy

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TRIM REFERENCE: F2004/06239 - D12263381

MANAGER: Peter Stokes, Manager Property Management

AUTHOR: Darryl Rayner; Manager Workplace Change

### SUMMARY

This report provides the proposed Busking Policy and Guidelines for endorsement, as well as information relating to the implementation of this policy.

### RECOMMENDATION

- 1 ***That Council adopt the attached Busking Policy and Busking Guidelines for use on a trial basis.***
- 2 ***That Council approve that Busking Permits issued before 1 July 2016, be issued free of charge in order to fast track the implementation of the trial policy.***
- 3 ***That Council endorse the inclusion of a six month \$10.00 busking permit fee in the 2016/17 Strategic Plan, which will be publicly exhibited for comment for a period of 28 days in accordance with Section 610F and 205 of the Local Government Act.***

### BACKGROUND

At its Ordinary Meeting held on 27 January 2016, Council:

*“RESOLVED unanimously on the motion of Councillor WEBSTER and seconded by Councillor EATON:*

- |       |   |
|-------|---|
| 75/16 | <i>That Council <u>adopt</u> a new policy on a trial basis, to encourage busking in the Shire.</i>  |
| 76/16 | <i>That Council <u>request</u> the Acting Chief Executive Officer to prepare the policy on the basis that the process for approval is simple, cheap and easy for the applicant.</i> |
| 77/16 | <i>That Council <u>request</u> the Acting Chief Executive Officer include the following elements in the trial policy:</i>   |
| a     | <i>6 month permit on a single page application for a \$10 fee.</i>  |
| b     | <i>The busker must produce photo identification, mobile number and address details.</i>   |
| c     | <i>Conditions of permit should include no impediment to pedestrians or shopkeepers, use of battery powered amplifiers (ie. no power leads), no risk of harm to the public etc.</i>  |
| d     | <i>Council may revoke the permit at any time without notice.</i>  |
| e     | <i>There be no requirement for any insurances by Council.</i>   |

- 78/16      *That Council request the Acting Chief Executive Officer to prepare the new policy to Council with a view to swift implementation of the trial.*
- 79/16      *That Council request the Acting Chief Executive Officer to report on the results of this trial in August 2016.”*

## **CURRENT STATUS**

Council does not currently have a Busking Policy in place and has no guidelines around what type of busking is permitted within the Shire. The proposed policy and guidelines are based on information from other areas with established busking policies.

## **THE PROPOSAL**

It is proposed to adopt a Busking Policy, as well as Busking Guidelines, that will encourage busking participation in the Shire. Busking contributes colour and life to the Shire and provides for artistic expression of our residents through public performance.

The proposed policy makes the application process user-friendly and simple, with no requirement for the applicant to provide Public Liability Insurance. Insurance coverage of up to \$20million for any once occurrence is provided by Council under its *General Public and Products Liability Policy*. The resolution of Council on 27<sup>th</sup> January 2016 included provision for a \$10 application fee. In order to implement this fee, Council would have to resolve to place the proposed fee on public exhibition for 28 days and then consider any objections. That would delay the process, so in order to fast track implementation of the trial period, it is proposed to charge no application until after the 1<sup>st</sup> of July, 2016. The \$10 fee will be included in Council's proposed fees and charges as part of the 2016/17 Annual Plan process.

## **OPTIONS**

### **Option 1 – Adoption of policy**

This option would see the adoption and implementation of the Busking Policy and associated Busking Guidelines. This would encourage busking in the Shire and allow Council to monitor the interest from the public in providing a cultural and artistic element to its major tourist hubs. If the policy was deemed a success, in its trial phase, it would be further adopted for future use. This is the preferred option.

### **Option 2 – Do nothing**

In this case, Council would not have a policy for busking and artists performing in the Shire would be doing so unlawfully with risk to public safety. This is not the preferred option.

**STRATEGIC LINKS**

**Community Strategic Plan**

<i>CSP Objective</i>	<i>Impact on Action / Target</i>
3. <i>Communities will have access to a diverse range of affordable and coordinated facilities, programs and services.</i>	The inexpensive \$10.00 fee, as well as Council’s provision of Public Liability insurance aligns the propose Busking Policy and Busking Guidelines to this objective.

**Budget Impact**

Council currently has arranged *General Public and Products Liability* insurance coverage for busking activities. The minimum cost for the insurance cover is \$820, and the cost cascades according to how many busking permits are issued. As a guide, if 50 buskers were to apply individually for a 6 month permits the total cost to Council would be approximately \$4,000.00.

This policy does not cover claims arising from the use by buskers of knives, swords (including theatrical knives and swords), or any activity involving the use of fire. It specifically restricts dangerous acts including the use of fire, saws, swords, spears, knives, bicycles and sharp implements are prohibited. Animals are not to be used in any act whether in an active or passive form. The following acts are not considered as Street Entertainers and will not be issued a permit - balloon sculptors, tarot card/palm/fortune readers, aerosol artists, face painting artists, masseurs. The Busking Policy and Guidelines reflect these conditions.

The application process and management of the policy and guidelines will be handled by existing Town Centre Management staff.

**CONSULTATION**

The Busking Policy and Busking Guidelines are proposed to be endorsed on a trial basis, which will inform Council on how well received this policy is.

The details of the application process will be available on Council’s website and general information relating the Busking Policy will be advertised as part of the *Shirewide* pages in the Central Coast Express Advocate.

**GOVERNANCE AND POLICY IMPLICATIONS**

**Consideration of s.23A guidelines**

The Chief Executive of the NSW Office for Local Government has issued guidelines titled “*Council Decision Making during Merger Proposal Periods*” pursuant to s.23A(1) of the *Local Government Act 1993* (“LG Act”). The Council must consider those guidelines when making decisions during the “merger proposal period”, which commenced on 6 January 2016 and will conclude on the date on which a proclamation is made to amalgamate the Wyong and Gosford local government areas or the Minister for Local Government determines that he will not proceed with the proposal for that amalgamation: s.23A (3) of the LG Act. Councillors have been provided with a copy of those guidelines and have been given advice concerning those guidelines. The decisions that are proposed as part of this report comply with those guidelines.

**CONCLUSION**

The adoption of the Busking Policy and guidelines would meet Council Resolution and objective.

**ATTACHMENTS**

- 1 Draft Policy for Busking D12298953
- 2 Draft Guidelines for Busking D12298970

**POLICY NO:**

# **POLICY FOR BUSKING**

<b>AUTHORITY</b>	<b>NAME &amp; TITLE</b>
<b>AUTHOR</b>	Darryl Rayner
<b>MANAGER</b>	Peter Stokes
<b>DIRECTOR</b>	Mike Dowling
<b>CHIEF EXECUTIVE OFFICER</b>	Rob Noble

**CERTIFIED A TRUE COPY OF POLICY ADOPTED BY COUNCIL**

<b>AUTHOR SIGNATURE</b>	
<b>COUNCIL RESOLUTION DATE</b>	

**History of Revisions:**

Version	Date	TRIM Doc. #
1		

**A. POLICY SUMMARY**

- A1 This policy identifies the conditions that apply to all buskers undertaking performances within the Wyong Shire Local Government Area (LGA) and seeks to encourage and support the rights of individuals to express themselves through public performance.

**B. POLICY BACKGROUND**

- B1 To encourage activities that contribute to the colour and life of the Shire and provide opportunities for alternative voices to be heard through public performance.
- B2 To provide an equitable system of use for popular busking sites in the Shire among the buskers earning a living through their art form.
- B3 To identify locations in the Shire suitable as busking sites.
- B4 To promote public safety and amenity, the protection of property and to help ensure the safety of buskers.
- B5 To support the rights of buskers to express themselves in an artistic manner.

**C. DEFINITIONS**

- C1 **Council** means Wyong Shire Council, being the organisation responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.
- C2 **Authorised person** means an appropriately delegated employee of Wyong Shire Council or a police officer.
- C3 **Busker** means a person who entertains in a public place by playing a musical instrument, dancing, singing, clowning, juggling, or performing acts of a similar nature with the intention of receiving donations from members of the public. Animals are not to be used in any act whether in an active or passive form. The following acts are not considered as Street Entertainers and will not be issued a permit - balloon sculptors, tarot card/palm/fortune readers, aerosol artists, face painting artists, masseurs.
- C4 **Busking permits** means a permit issued under the Policy.
- C5 **Busking Policy** means this document and any annexure to this document.
- C6 **Dangerous Material** means any substance whether solid, liquid or gas that because of its chemical or physical properties poses a risk, hazard or a potential risk or hazard, to the safety or welfare of a member of the public or any person handling the substance. This term includes flammable substances, explosives, smoke, toxic substances or extremely hot or cold substances.
- C7 **Dangerous Implement** means any object that because of the way it is used or its design or construction poses a risk, hazard or a potential risk or hazard to the safety or welfare of a member of the public or any person handling the object. This term includes chain saws, spikes, fire, saws, swords, spears, knives, bicycles and sharp implements
- C8 **Performance** means an entertainment event that substantially involves the demonstration of an artistic skill including playing a musical instrument, theatre, dancing, singing, clowning, juggling or other similar performance skills.
- C9 **Restricted Areas** means areas within the Shire that have restrictions on the busking activities that may occur in them as defined in this Busking Policy.
- C10 **Soliciting of Funds** means the act of asking, begging, seeking or requesting money or goods from members of the public.

**D. POLICY STATEMENTS****Jurisdiction**

- D1 This Policy covers all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.
- D2 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the Chief Executive Officer.
- D3 This policy applies to all public areas within the Wyong Shire Local Government Area.

**General**

- D4 All buskers (or people wishing to undertake busking) within the Shire must obtain a valid Busking Permit.
- D5 All applicants must apply for a Busking Permit in person and acknowledge and agree to comply with the terms and conditions of this Policy and Busking Guidelines. They must also agree to have their photograph taken at the time of their application. Scanned photos are not permitted.

**E. POLICY IMPLEMENTATION - PROCEDURES**

- E1 Council can issue one (1) types of Busking Permit.
- E2 Standard Busking Permit – all busking acts that do not involve dangerous materials or implements in their act.
- E3 Details of buskers holding Busking Permits will be entered into a register of approvals granted by Council, in accordance with s133 (2) and (5) of the Local Government Act, 1993..
- E4 Buskers with Busking Permit are covered for public liability under Council's Liability Insurance policy while the busker complies with the conditions and requirements for busking contained in this policy.
- E5 The policy is limited to \$20million for any one loss.
- E6 Groups are limited to a maximum of 2 members. This is to ensure that pedestrians are able to move freely through the busking location and to prevent crowd crush.
- E7 This policy should be read in conjunction with the Wyong Council Code of Conduct.
- E8 It is the personal responsibility of all Council employees and agents thereof to have knowledge of, and to ensure compliance with this policy.

**E9 Associated documents**

- Council Code of Conduct
- Busking Guidelines

# **GUIDELINES FOR BUSKING**

## GUIDELINES

The following Guidelines apply to all holders of Wyong Shire Council Busking Permits and are set in a context of the Wyong Shire Council Busking Policy 2016.

### PURPOSE

The purpose of these Guidelines is to outline the conditions for buskers to ensure maximum public safety and amenity and community harmony at all times.

### SCOPE

All applicants must agree to comply with the conditions outlined in the Wyong Shire Council Busking Policy and Busking Guidelines in order to obtain a Busking Permit.

### DEFINITIONS

Specific terms referred to in these Guidelines are consistent with the Definitions identified in the Wyong Shire Council Busking Policy 2016.

## GUIDELINES

### 1 Applying for a Busking Permit

- 1.1 All Buskers (or people wishing to undertake busking) within the Wyong Shire Council must obtain a valid Busking Permit.
- 1.2 All applicants must apply for a Busking Permit in person and acknowledge and agree to comply with the terms and conditions of this policy. They must also agree to have their photograph taken at the time of their application. Scanned photos are not permitted.
- 1.3 Busking permits are available on Councils website, The Entrance Town Centre website and by contacting The Entrance Town Centre Management Office, Marine Parade, The Entrance, 43335377. They are to be lodged with The Entrance Town Centre Management Office.

### 2 Identification

- 2.1 All applicants are required to present proof of identify with their application form before a Busking Permit is issued.
- 2.2 Proof of identity must include one of the following:
  - Current Australian driver's licence
  - Proof of age card , such as a Photo Card (NSW), Personal Information Card (Tas), Evidence of Age Card (NT), Card 18+ (Qld) or a Proof of Age card (Vic, SA, WA and ACT)
  - Current passport

- Another document containing a signature, a recent photograph and date of birth (a military identification document, student identification card, air crew identity document, seafarer identification document) which establishes the person's identity.

### **3 Permits**

#### **3.1 Standard Busking Permits**

These permits are for all busking acts that **do not** involve dangerous materials or implements in their act.

3.2 Busking applications will be assessed by the Section Manager, Town Centre Management.

### **4 Cost of Permits**

4.1 Busking Permits are issued for a six (6) month term and a fee of \$10.00 is applicable. For the current fees please refer to Council's annual Fees and Charges.

4.2 Fees are payable at the time of submitting an application.

4.3 Permits are not transferable or refundable

### **5 Insurance**

5.1 Buskers with a current permit are covered for public liability under Wyong Shire Council's Liability Insurance policy while the busker complies with the conditions and requirements for busking contained in this policy.

5.2 The policy is limited to \$ 20 million for any one loss, and the busker is responsible for the first \$5,000 of each and every loss, under current arrangements.

### **6 Register**

6.1 The Local Government Act 1993 requires Council to keep a register of people approved to busk in the Shire and this information is to be made available for public inspection at the office of the Council on request.

6.2 The accessible information includes the busker's name, address, duration of the approval, description of what has been approved and whether the approval has been revoked or modified.

6.3 The register will be maintained by Town Centre Management staff.

### **7 Renewal of Permits**

7.1 Standard Busking Permits should be renewed before the expiry date. Buskers cannot perform with an expired permit and fines may be issued where unauthorised or expired permits are used.

**8 Lost or Stolen Permits**

Buskers must contact The Entrance Town Centre Management Office to report a lost or stolen permit and arrange a replacement

**9 Non Acceptable Acts**

- 9.1 Offering for sale or the provision of goods or services or one-on-one consultation for money, fee or reward are not considered to be busking under the terms of this policy; for example:

Balloon sculpting or modelling, fortune, tarot card and palm reading, artists selling their works (such as portrait artists), massage or any type of healing therapy, selling of any kind (with exception of clause 22), solicitation of money for any purpose.

- 9.2 The following activities are considered dangerous and will not be approved: the use by buskers of knives, swords (including theatrical knives and swords), or any activity involving the use of fire, saws, swords, spears, knives, bicycles and similar implements are prohibited.
- 9.3 The following acts are not considered as Street Entertainers and will not be issued a permit - balloon sculptors, tarot card/palm/fortune readers, aerosol artists, face painting artists, masseurs.
- 9.4 Wyong Shire Council does not permit any Performance which involves an animal, reptile or bird and busking permits will not be issued for such performances.
- 9.5 A Busker who is supported by an assistance animal (as defined by section 5 of the Companion Animals Act 1998) may deliver a performance whilst accompanied by that assistance animal. The assistance animal must not form part of the performance.

**10 Buskers Under the Age of 18**

- 10.1 Proof of parental consent is required for applicants under the age of 18 years.
- 10.2 The Wyong Shire Council Busking Permit Application must be completed and signed by the applicant's parent or guardian in person at the time of application for a Busking Permit.
- 10.3 Wyong Shire Council strongly recommends that all buskers under the age of 18 be accompanied by a parent, guardian or other appropriate adult at all times while busking. The granting of a busking permit to a person under the age of 18 does not constitute the condoning by Wyong Shire Council of that person busking without appropriate adult supervision in any area or at any time permitted by the Busking Policy.

**11 Group Acts**

- 11.1 Groups are limited to a maximum of two (2) members. This is to reduce conflict with pedestrian activity.
- 11.2 Each member of a busking group must hold a current Busking Permit.

**12 Display of Permits**

- 12.1 Buskers must display their Busking Permits in a prominent, highly visible position in the busking site at all times during their acts.

**13 Public Amenity and Pedestrian and Vehicle Access**

- 13.1 Buskers must not undertake any act that could be considered as causing a public nuisance including excessive noise and/or the use of offensive or discriminatory language or behaviour.
- 13.2 Buskers must not unreasonably interfere with pedestrian flow or public amenities or cause obstruction to traders or delivery vehicles, including by way of encouraging audience formation in such a manner as to cause such interference.
- 13.3 Buskers must not interfere in any way with an approved event or activity.
- 13.4 Buskers should make provision for clear and accessible pathways of travel for people with disabilities ensuring sufficient clear footpath access with 1 metre recommended as a minimum.
- 13.5 Buskers should be aware that the building line may be used for navigation by people with vision impairment.

**15 Hours**

- 15.1 Holders of Permits, may busk within the Wyong Shire Local Government Area only between the following times:
- 9am- 6pm Monday - Thursday
  - 9am- 9pm Friday and Saturday
  - 9am- 6pm Sunday

**16 Duration**

- 16.1 Buskers may perform at designated sites for a maximum of 2 hours. Designated sites will be advised by Town Centre Management. :
- Maximum of 8 hours for pavement art in accordance with clause 23.

**17 Behaviour**

- 17.1 Buskers must not undertake any act that could be considered a public nuisance such as the use of excessive noise, offensive language or anti-social behaviour.
- 17.2 The use of political, religious, racial, sexually explicit or homophobic material that may be deemed unduly persuasive, offensive or discriminatory is strictly prohibited as determined by the NSW Anti-Discrimination Act 1977.
- 17.3 Buskers must comply with directions issued by any Authorised, Event Organisers and members of the Ambulance, Fire and any other Emergency Services.
- 17.4 Buskers must comply with directions issued by an Authorised Person who may at any time request a busker to cease busking if the performance is deemed loud or intrusive, or excessively repetitive, or is causing public inconvenience, or is likely to cause harm to the public or property.
- 17.5 Buskers must take all reasonable precautions to ensure the health and safety of the audience witnessing the performance.
- 17.6 Buskers must ensure that public property is not damaged in the course of the performance.

**18 Cleanliness**

- 18.1 Buskers must keep the site clean while they are working.

**19 Amplification**

- 19.1 Buskers may only use amplification that is battery operated. Mains voltage amplification and amplification powered by a generator is prohibited.
- 19.2 Buskers must keep all speakers and amplifiers within 1 metre of their performance.
- 19.3 Buskers must not have exposed or unsecured speaker or electrical cables on the ground.
- 19.4 Excessive amplification is not permitted. Loud acts may be asked to lower their volume or cease busking. Council reserves the right to impose a decibel limit on amplified sound in appropriate circumstances.
- 19.5 Where a complaint has been received about excessive noise, level of noise amplification, music of a percussive or repetitive nature, or excessive duration of an act, particularly in relation to the proximity of that act to a place or work or residence, and the complaint is deemed to be justified, a busker may be directed by Authorised Persons to cease busking.

**20 Soliciting of Funds**

- 20.1 Buskers may receive a monetary appreciation from the audience for their performance but may not solicit funds in a way which is likely to cause any discomfort to any individual.

**21 Advertising/Selling**

- 21.1 Subject to clause 21.2 and 22 of these Guidelines, buskers cannot offer goods and services for sale; display, demonstrate or advertise goods or services or associate themselves with such advertising in conjunction with their performance.

Buskers are permitted one sign advertising their own original CD and/or act. The sign must be no greater than a standard A4 card and displayed in a way that doesn't create a trip hazard. It is recommended the sign be attached to the busker's collection receptacle.

**22 CDs and DVDs**

- 22.1 The sale of CDs and DVDs ancillary to a busking performance is permissible in all areas within the Sydney Local Government Area, subject to clauses 22.2, 22.3 and 22.4 of these Guidelines.
- 22.2 The CDs or DVDs must contain original material of the busker. Only one item for sale is allowed on display and a maximum of fifty items can be available for sale at any given time.
- 22.3 The sale of CDs or DVDs may only occur as a complement to the busker's performance and should not dominate the time a busker occupies a site.
- 22.4 Buskers cannot delegate the sale of their CDs and DVDs to another person.

**23 Pavement Art**

Buskers who are utilising pavement (chalk) art as a form of entertainment may only do so where:

- 23.1 The material used is removable by water and does not leave a residue, and is approved at the time of the busking application,
- 23.2 The surface is of a non-porous material, such as bitumen and concrete. Prohibited surfaces include sandstone, granite and other porous surfaces currently used in some pavements, pathways and walkways. All locations must be approved at the time of the busking application..
- 23.3 Buskers may choose to draw onto a large removable surface (such as canvas or plastic) at least 2m x2m laid on the pavement.
- 23.4 Individual renditions of the artists' work may not be offered for sale, or sold to the public.
- 23.5 Any proposed material to be used in carrying out pavement art must not be slippery (whether wet or dry) and must not be likely to cause a public hazard.
- 23.6 The site is used for no more than 8 hours.

23.7 The work space to be used is to be clearly defined and artist's tools and personal belongings must be kept within this area.

23.8 Buskers must be conscious of public safety and accessibility at all times.

## **24 Legal Obligations and Cancellation**

24.1 Buskers shall 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.

24.2 Busking permits may be revoked or modified where persons breach any laws or any of the conditions listed in these Guidelines

24.3 Wyong Shire Council 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, in accordance with sections 109, 110 and 627 of the Local Government Act 1993.

## **25 Monitoring**

25.1 Authorised Persons and can prohibit use of a Restricted Area, Busking Site or such area as may be specified while Council or other approved works are in progress, or while a special event is in progress. It is possible that restrictions on busking may be imposed during such occasions as New Year's Eve, Mardi Gras, Australia Day, Anzac Day or other events.

25.2 Council will monitor compliance and if necessary take action such as moving on unauthorised or non-complying buskers, issuing fines or revoking permits for the term of the licence.

## **26 Busking Areas Covered**

26.1 These Guidelines cover the Wyong Shire Local Government Area only.

26.2 Buskers with Standard Busking Permits may only perform in the defined public areas as advised by the Section Manager, Town Centre Management.

## **27 Restricted Areas**

27.1 Town Centre Management will identify any Restricted at the time of permit issue. Buskers may not perform while special events are in progress in any Restricted Area.

27.2 Buskers must only perform on the hard surface areas and not on grassed areas within the Restricted Areas.

## **REFERENCES**

### **Related Legislation & Standards**

- Anti-Discrimination Act 1977
- Companion Animals Act 1998
- Local Government Act 1993
- Occupational Health and Safety Act 2000

### **Related Policies and Procedures**

- Wyong Shire Council Busking Policy –2016

## **APPROVAL AND REVIEW**

### **Review Period**

***Director, Property and Economic Development*** will review these Guidelines every 2 years.

**Next Review Date: M a r c h 2 0 1 8**

### **TRIM Reference Number**

### **Authorisation**