



**BYRON
SHIRE
COUNCIL**

DRAFT Policy

Busking

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Related Legislation	Local Government Act 1993 Protection of the Environment Operations Act 1997
Related Policies	Not applicable

Related Standards, Procedures, Statements, documents	Code of Practice -Pavement Art as a form of Busking – Annexure 1
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Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

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Introduction

1.1 Objectives

The objectives of Byron Shire Council's Busking Policy are:

1. To encourage activities that contribute to the colour and life to the town centres and provides opportunities for public performances
2. To provide an equitable system of use for popular busking sites in the town centres among the buskers earning a living through their art form.
3. Identify and qualify locations suitable for different busking types.
4. Minimise complaints, criticism and other problems associated with buskers operating in the Byron Shire area.

1.2 Scope

This policy shall provide clear guidelines to buskers and the general public as to the requirements for busking in Byron Shire.

1.3 Definitions

List here all the terms and acronyms used in the Policy, and their definitions. List in alphabetical order.

Policy acronym	Definition
Busking*	Entertainment provided through performances or practices for the public by playing a musical instrument, dancing, singing, pavement art, clowning or juggling, tarot card and palm readers, fortune readers, or doing other acts of a similar nature in public places.
Circle acts	Structured performances requiring the audience to stop and watch or participate in the performance.
Dangerous materials and implements	<p>Materials and implements that pose a risk, hazard or uncertain outcomes for people.</p> <p>Dangerous materials include flammable materials and chemicals, fire, fireworks, smoke, flares, heated elements, or anything giving off a level of heat or toxicity that poses a threat of harm or damage to members of the public and public property.</p> <p>Dangerous implements include knives, spears, swords, spikes, and sharp implements of any kind that pose a threat of harm to the general public.</p>
Designated sites	Specified sites within restricted areas where busking can occur under defined conditions.
Offensive noise	Noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted or noise that interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted.
Offering for sale	The display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money (for example, audio recordings, paintings etc.).
Pavement Art	Chalk drawings rendered directly onto the pavement, or renderings done in other materials on removable surfaces, such as canvas or plastic, laid out on the pavement
Percussion	Musical instruments played by striking with the hand or with a stick or beater, or by shaking, including drums, cymbals, xylophones, gongs, bells, rattles and the like.
Performance	Musical, dramatic or other entertainment substantially involving musical, theatrical, or circus performance skills.

Soliciting of funds	The act of asking, begging or requesting money or goods from members of the public.
Special Events	An event/s of a public nature utilising wholly or in part public land, public roads and/or footpath areas.
Walk-by acts	Spontaneous performances where the audience is not required to stop and watch.

* The activities listed below are not considered busking under the terms of this guideline.

- vendors of any kind – including flowers, jewellers and other merchandise sellers
- massage, chiropractic treatment or any other physical manipulation
- artists selling pre-fabricated work
- face or body painting / temporary tattoo applications
- education / demonstration activities
- solicitors of money for any purpose, or
- any like activity.

Statement

This policy applies to busking in Byron Shire.

Authorised busking is permitted in the Byron Shire under the conditions outlined in this policy. Byron Shire Council reserves the right to limit the number of busking permits issued at any time.

Despite the provisions of this policy, any busking activity carried out in accordance with an existing busking permit remains valid until the lapsing date of the permit.

2.1 Public Liability Claims made against buskers

Busking is an activity over which Council has inherently only a limited ability to control. Accordingly, Council requires every application for a busking permit to provide documentary evidence that the applicant has obtained public liability insurance of a minimum \$20 million. This insurance must be extended to indemnify Council against any liability arising from busking activities.

2.2 Obtaining a permit to busk within the Byron Shire:

1. Buskers must hold a permit to busk, issued by the Byron Shire Council. Applications for permits may be made, during business hours, from the Byron Shire Council Chambers, Station Street, Mullumbimby following payment of appropriate Council fees where applicable. Busking permits may also be applied for via an online application form on Council's website.
2. Applicants will be required to present or provide the following items at the time of application :
 - a. Proof of identity in one of the following forms:

- i. a current motor vehicle driver's licence,
 - ii. a student identity/proof of age card
 - iii. a current passport
 - iv. Another document containing a signature, a recent photograph and date of birth which establishes the person's identity to the satisfaction of Council.
- b. Proof of parental consent for applicants under the age of 18 years. Consent forms signed by applicants' parents or guardians must be lodged at the time of application for a permit to busk.
- c. Documentary evidence that the applicant has obtained public liability insurance of a minimum \$20 million. This insurance must be extended to indemnify Council against any liability arising from busking activities
3. A passport-sized photograph of the applicant busker must be submitted with the application form. This will be used to ensure that the identity of a performing busker corresponds to the identity of the permit holder.
4. Busking Approvals may be issued to individual buskers or groups. However, the name of each busker in a performance group must be listed on the application form and all performers listed on the approval must be performing when the group is performing. Members of the group cannot be omitted or substituted. Groups are limited to a maximum of four (4) performers.
5. Details of buskers holding permits to busk will be entered into a Register of Approvals granted by Council pursuant to section 113 of the Local Government Act 1993. Additionally, pursuant to sections 113(2) and 113(5) of the Act, the information recorded will include the name and address of the person or persons to whom the approval is granted, and this information will be available for public inspection without charge during ordinary office hours.
6. Permits are not transferable or refundable.
7. The following is not considered to be busking under the terms of this policy and as such a permit will not be issued:
 - a. artists selling previously produced work;
 - b. massage, chiropractic treatment or any other physical manipulation,
 - c. vendors of any kind – including flowers, jewellers and other merchandise sellers),
 - d. face or body painting / temporary tattoo applications
 - e. education / demonstration activities
 - f. solicitors of money for any purpose, or.
 - g. any like act or activity.
8. By signing the Application for Permit to Busk in the appropriate space, applicants must agree to comply with:
 - a. The requirements for obtaining busking permits, and,

- b. The conditions for busking in the shire

2.3 Conditions for busking in the Shire:

The following conditions apply to busking within the Shire:

1. **Display of approvals:** Buskers must display their Permit to Busk and copy of the passport-sized photograph submitted with the application in a prominent, highly visible position in the busking site at all times during their acts.
2. **Approval Period:** Approvals may be issued for a 1 month, 2 month or 12 month period. Approvals are not transferrable or refundable.
3. **Renewal of Permits:** Permits must be renewed before the expiry date. Activities cannot be undertaken on land owned or managed by Council unless a valid approval is in place. Enforcement action may be initiated where unauthorised or expired permits are used.
4. **Offensive noise:** Busking must not result in the emission of offensive noise as defined by this Policy and the *Protection of the Environment Operations Act 1997*.
5. **Variation of content:** Buskers must vary their content and performances must not be repetitive in nature.
6. **Public amenity and pedestrian and vehicle access**
 - a. Buskers must not interfere with pedestrian flow or public amenities or cause obstruction to traders or delivery vehicles or emergency vehicles, including by way of encouraging audience formation in such a manner as to cause interference. There must be a minimum two (2) metre pedestrian corridor. In maintaining this corridor the busker must take into consideration other obstructions on the footpath (e.g. outdoor dining areas, public seats, power poles) so that a continuous corridor is maintained parallel to the roadway.
 - b. Authorised officers of the Byron Shire Council or the NSW Police Force may at any time request a busker to cease busking if the officer is of the opinion that the performance is causing public inconvenience or is likely to cause harm to the public or property. The busker must immediately comply with such a request.
 - c. Council reserves the right to modify or revoke any Busking Approval if the performance results in offensive noise, within the terms of the Protection of the Environment Operations Act 1997. Further, authorised Council officers and Police officers are empowered, under provisions of the Local Government Act 1993 and the Protection of the Environment Operations Act 1997, to require the immediate cessation of any performance that results in excessive or offensive noise.
 - d. Where a complaint has been received about excessive noise, music of a repetitive nature, or excessive duration of an act, particularly in relation to the proximity of that act to a place of work or residence, and the complaint is deemed to be justified, a busker may be directed by authorised Council Officers to cease their performance immediately.

- e. Buskers must comply with directions issued by authorised officers of the NSW Police Force, Ambulance, Fire and any other Emergency Services.
- f. Council and other authorised officers reserve the right to prohibit use of a designated site or such area as may be specified by it while public works are in progress.
- g. Buskers must not obstruct pedestrian or vehicular access to any land
- h. Buskers must not interfere with the operation of businesses (including those that play their own recorded or live music)
- i. Buskers must not perform without the permission of affected shop or property owners, whilst the businesses are open.

7. **Distance between walk-by acts:** The distance between Walk-by busking acts shall be a minimum of fifty (50) metres.

8. **Prohibited areas:** Busking is prohibited on any corner of the Jonson and Lawson Street Roundabout.

9. **Hours:** Buskers may perform for a maximum of:

- a. two (2) hours at any one site anywhere in the Shire, or
- b. one (1) hour at the designated sites.

Busking must cease at 12.00 midnight, with no busking to occur between 12.00 midnight and 8.00 am.

Buskers must rotate sites every 24 hours to ensure that any busker does not perform at the same site on consecutive days.

10. **Amplified busking:** In Byron Bay amplified busking is permitted only at designated sites as shown in maps in Annexure 2 of this Policy.

Amplified busking is permitted at any other location in Byron Shire provided that it is carried out in accordance with all other requirements of this Policy.

Amplified busking is permitted within Byron Shire only between the hours of 6.00 pm and 10.00pm.

Where electrically amplified sound equipment is used, it must not be powered by main power or generators. Only battery power from sealed (gel) or dry cell batteries may be used.

11. **Percussion instruments:** The use of percussion instruments for busking is permitted only at designated sites as shown in maps in Annexure 2 of this Policy.

12. **Circle Acts:** Circle acts are only permitted at designated sites as shown in maps in Annexure 2 of this Policy.

13. **Group busking:** Each busker in a performance group must be listed on the busking permit and all performers listed on the permit must be performing when the group is

performing. Members of the group cannot be omitted or substituted. Groups are limited to a maximum of four (4) performers.

14. **Pavement Art:** Buskers who are utilising pavement (chalk) art as a form of entertainment may only do so under the terms and conditions outlined in Annexure 1.
15. **Use of dangerous materials and implements:** The use of dangerous materials and implements is not permitted at any location.
16. **Use of animals is prohibited:** The use or display of any animal is prohibited in any busking act.
17. **Soliciting of funds is prohibited:** Buskers may receive voluntary donations from the audience but may not solicit funds. For clarity, soliciting includes the busker nominating the amount of the voluntary donation.
18. **Advertising/selling:** Buskers may not offer goods and services for sale, display, demonstrate or advertise goods for sale or associate themselves with such advertising in conjunction with their performance. The only articles that may be sold by the busker are recordings consisting of the busker's own work.
19. **Enforcement of Busking Permit and Policy:** Authorised officers of the Byron Shire Council may:
 - a. Confiscate permits without notice from any person in possession of any permit if they are not the person to whom the permit was issued. Where a permit is confiscated, the person to whom it was issued may apply to Council to have the permit returned to them.
 - b. A permit may be revoked or modified in any of the following circumstances:
 - i. if the permit was obtained by fraud, misrepresentation or concealment of facts,
 - ii. for any cause arising after the granting of the permit which, had it arisen before the permit was granted, would have caused the Council not to have granted the permit (or not to have granted it in the same terms),
 - iii. for any failure to comply with a condition of the permit.
 - c. In any of the above circumstances, before revoking or modifying a permit, the authorised officer must:
 - i. inform the holder of the permit, by notice in writing, of Council's reasons for proposing to revoke or modify the permit; and
 - ii. give the holder of the permit the opportunity of appearing before the Council (or a person appointed by it) or making written submissions to the Council to show cause why the permit should not be revoked or modified.

Note: In addition to Clauses 19 a) and b) above, provisions of the Local Government Act 1993 empower Council in some cases to take other action particularly, where there is a risk to public safety. Those provisions do however similarly require Council to follow rules of procedural fairness.

20. Behaviour:

- a. Activities must not include any act that could be considered a public nuisance such as the use of excessive noise, offensive language or anti-social behaviour. The use of political, religious, racial, sexually explicit or discriminatory material that may be deemed unduly persuasive, offensive or discriminatory is strictly prohibited as determined by the NSW Anti-Discrimination Act 1977.
- b. Buskers must not consume drugs or alcohol or perform under the influence of drugs or alcohol.

21. Cleanliness: Buskers must keep the site in use clean while they are working and ensure that their use of the site does not pose a threat to public safety and amenity.

22. Self-regulation encouraged: Council encourages informal self-regulation by individual buskers and the busking industry to ensure that compliance with this Policy is achieved at all times.

2.4 Designated Sites

The following additional special conditions apply to busking activities at Designated Areas identified in Annexure 2.

- a. Use is subject to review.
- b. Amplified busking, percussion busking acts and circle acts are only permitted in those areas shown in the Designated Site maps in Annexure 2 of this Policy.
- c. The Designated Sites are reserved for amplified busking, percussion busking acts and circle acts only. Any other type of busking is not permitted at the Designated Sites.
- d. Buskers must not perform during special events, unless busking forms part of that event.
- e. Buskers must be mindful of and respect the rights of patrons using the park for recreation.

Legislative and strategic context

Local Government Act 1993

Protection of the Environment Operations Act 1997

Sustainability

1. Byron Shire has a strong tradition of busking and buskers contribute to a sense of place in the Shire.
2. Buskers make an important contribution to the cultural life of a town by reflecting styles, values and the issues of society at large.
3. Buskers provide entertainment and thought-provoking experiences to tourists and members of the general public.

4. Busking is a valid means for people to make a living.
5. Busking should not interfere with pedestrian traffic, the conduct of business, or contribute to a lack of safety.

Annexure 1 – Pavement art as a form of busking

Code of Practice

This code of practice only covers the areas that are the responsibility of Byron Shire Council. For areas managed by other organisations contact the authority responsible for busking policy in that area.

Busking may include *pavement art* where it can be seen as a form of public entertainment under the guidelines of the Byron Shire Council Busking Policy with all the above existing conditions applying, and including the following specific applications of Byron Shire Councils policies to pavement art:

1. Pavement art, for the purposes of this policy, is defined as:

‘Chalk drawings rendered directly onto the pavement, or renderings done in other materials on removable surfaces, such as canvas or plastic, laid out on the pavement. ‘

2. Drawing directly on the pavement may only occur where:

- a. The material used is removable by water and does not leave a residue, and,
- b. The material used must be non-toxic, dustless and biodegradable.
- c. The surface is of a non-porous material, such as bitumen and concrete. Surfaces not able to be drawn directly upon include sandstone, granite and other porous surfaces.
- d. Individual renditions of the artist's work may not be offered for sale, or sold to the public.
- e. Any proposed material to be used in carrying out pavement art must not be slippery (whether wet or dry) and must not be such as to be likely to cause a public hazard.
- f. There must be no complaints received from any shop owner regarding walking of chalk into shops.

Annexure 2 – Designated site maps

Apex Park



Railway Park



Byron Visitor Centre

