

## 5.7. WONDERLAND SPIEGELTENT - RESOURCE & PERFORMANCE AGREEMENT

<b>REPORT AUTHOR(S)</b>	Gary Kerr, Executive Officer
<b>GENERAL MANAGER</b>	Darryl Crees, General Manager Corporate Services
<b>DEPARTMENT</b>	CEO Unit - Connecting Communities

### RECOMMENDATION

#### That Council:

- **Resolves to enter into a three year Resource and Performance Agreement with Wonderland Entertainment and Leisure Pty Ltd for \$56,700 (Ex GST) plus \$10,000 in-kind, per annum, to provide Wonderland Spiegel tent for the 2019, 2020 and 2021 Port Douglas Carnivale subject to conditions contained within this report; and**
- **delegates to the Chief Executive Officer in accordance with section 257 of the *Local Government Act 2009* the authority to finalise any and all matters associated with this three year Resource and Performance Agreement.**

### EXECUTIVE SUMMARY

Wonderland Entertainment and Leisure (WEL) have been providing the Wonderland Spiegel tent as part of the Carnivale Festival for the last three years and has become a well attended attraction. The Resource and Performance Agreement covering this period expired on the 13 July 2018. WEL have provided a proposal to provide the Spiegel tent for the next three years at a discounted rate compared to the previous year.

### BACKGROUND

WEL have been providing the Wonderland Spiegel tent as part of the Carnivale Festival since 2016. This addition to the festival has been well received by those attending Carnivale with over 4,000 people attending shows in 2018. It is estimated that the Spiegel tent and people attending Port Douglas for the attraction generate around \$800,000 per year into the local economy.

### COMMENT

The Spiegel tent delivers a high quality attraction to the week leading up to, and during the Carnivale festival, and has become an expected part of the activities. The Spiegel tent also adds to the Carnivale activities by including a float in the street parade, entertainment for the Longest Lunch and makes the facility available for community use.

### PROPOSAL

That a three year Resource and Performance Agreement be entered into with Wonderland Entertainment and Leisure Pty Ltd to provide the Wonderland Spiegel tent for the 2019, 2020 and 2021 Carnivale festival for \$56,700 (Ex GST) plus \$10,000 in-kind per year with the following Key Performance Outcomes:

- Wonderland Entertainment and Leisure provide the Wonderland Spiegeltent and Spiegeltent programming for a minimum of 9 days including 3 days of Carnivale.
- The Spiegeltent to be available for use by community groups to hold 3 events per year, to be held outside of regular programming, with an A/V technician supplied free of charge for standard House lights and sound for each event.
- Supply and curate a Mini sideshow tent to provide 6 free family shows over the 3 day Carnival period, scheduled as part of the event program.
- Lighting activation added to Dixie Park at WEL's cost.
- Attraction / Ride brought in to accompany Spiegeltent area activation.
- WEL will be responsible for all costs associated with the Spiegeltent, including but not limited to, permits, security, performers, transport, safety measures, event management planning, all associated documentation etc.
- The provision of 10 tickets, free of charge, to one headlining show within the Spiegeltent and to make available 20% discounted tickets to offer as part of package deals.
- Performers to conduct / promote community workshops with the local performing arts / gymnastic groups.
- Collaborate with current Carnivale endorsed events i.e: Longest Lunch, Street Parade and future events.

Refer to attached draft Resource and Performance Agreement

## **FINANCIAL/RESOURCE IMPLICATIONS**

Included in 2018/19 budget as part of the Carnivale 2019 budget

## **RISK MANAGEMENT IMPLICATIONS**

### **Failure to acquit funds**

Risk Management procedures in relation to outstanding Outcome Reports will consist of the following:

- Requests for extension of project timelines and/or Outcome Report deadlines are to be submitted in writing to appropriate Council officer.
- Extensions of project timelines and/or Outcome Report deadlines on a case by case basis when such requests are deemed to be justified.
- Council officer contacts grantees who have obtained extensions on projects on a regular basis to monitor progress.

At times grantees may face circumstances beyond their control which impact on project timelines so Council officers will try to support artists and organisations in such situations to achieve the original outcomes of awarded projects.

Clear terms, conditions and reporting requirements will mitigate the inappropriate use of public funds.

## SUSTAINABILITY IMPLICATIONS

- Economic:** Carnivale provides economic benefits to the Shire by increasing visitor spending, encouraging the uptake of overnight accommodation as well as partnering with local businesses to stimulate local business activity or employment.
- Environmental:** Impacts will be limited ensuring correct permits and measures are in place including adherence to Council's Events Policy.
- Social:** Carnivale provides an opportunity to support and promote community celebrations and community involvement; increase opportunities for use of public space and facilities across the Shire, support and build relationships with disadvantaged or vulnerable groups in our communities and promote the Shire as an area of opportunities for families, lifestyle and business.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2014-2019 Initiatives:

#### Theme 1 - Celebrating Our Communities

*1.1.1 - Co-ordinate a community event calendar and promote through various media.*

*1.1.4 - Support and encourage a healthy, active and capable region through sporting, cultural and recreational opportunities, and community wellbeing initiatives.*

*1.3.3 - Foster and support the role of local artists, writers and performers to encourage community vibrancy and wellbeing.*

*1.3.4 - Provide and enhance community facilities and opportunities that cater for the arts, recreational and cultural pursuits.*

#### Theme 2 - Building a Sustainable Economic Base

*2.2.5 - Expand tourism and agricultural business opportunities and benefits through collaborative planning and promotion.*

#### Theme 4 - Engage, Plan, Partner

*4.2.2 - Provide leadership to secure beneficial social, environmental and economic outcomes for the Shire.*

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Facilitator** Bringing people together to develop solutions to problems  
**Part-Funder** Sharing the cost of a program or activity with other organisations.

### **CONSULTATION**

**Internal:** Events Officer, environmental Health Officer, Acting Chief Executive Officer, Councillors

**External:** Tourism Port Douglas Daintree

### **COMMUNITY ENGAGEMENT**

Feedback from IER Research report from 2018 event

### **ATTACHMENTS**

1. DRAFT Resource and Performance Agreement for Knock out events 2019 - 2022  
[5.7.1]



# **EVENT STRATEGY**

## **Resource & Performance Agreement**

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**Douglas Shire Council**

**("Council")**

**and**

**(Wonderland Entertainment and Leisure Pty Ltd)**

**("Recipient ")**

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## Parties

<b>Douglas Shire Council</b> PO Box 723 Mossman QLD 4873 <b>ABN 71 241 237 800</b>	<b>("Council")</b>
<b>Wonderland Entertainment and Leisure Pty Ltd</b>	<b>("Recipient ")</b>

## Background

- A. The Recipient intends to organise, promote and deliver the Event or Project described herein and has sought financial assistance from Council to do so.
- B. Council has agreed to provide Funding to the Recipient towards the Event or Project and the Recipient has agreed to accept the Funding on the terms and conditions set out in this Agreement.

## The Parties Agree:

### 1. SPECIFIC INFORMATION

ITEM NO.	DATA	DETAILS
Item 1	<b>Recipient:</b>	Wonderland Entertainment and Leisure Pty Ltd
	<b>Address for Notices:</b>	Shop 4 101 Waterfront Way, Docklands, Victoria, 3008
	<b>Email:</b>	melissa@knockoutevents.com.au
	<b>Telephone:</b>	03 602 1311
Item 2	<b>Commencement Date:</b>	Upon Signing
	<b>Expiry Date:</b>	30 / 06 / 2021

Item 3	<b>Funding:</b>	<p>Douglas Shire Council will provide:</p> <ul style="list-style-type: none"> <li>• \$56,700 (ex GST) per year for three ( 3 ) years.</li> <li>• Waive of venue hire fees for Dixie Park Port Douglas</li> <li>• Waive of Temporary Entertainment Event Application fee</li> </ul> <p>All other fees associated with the event will be at the cost of Knockout Events.</p>
Item 4	<b>Description of the Event or Project to be organised, promoted and delivered by the Recipient:</b>	<ul style="list-style-type: none"> <li>• \$56,700 will see Wonderland Entertainment and Leisure Pty Ltd (WEL) provide the Wonderland Spiegel tent and Spiegel tent programming for 9 days including 3 days of Carnivale.</li> <li>• The Spiegel tent to be available for use by community groups to hold 3 events per year, to be held outside of regular programming, with an A/V technician supplied free of charge for standard House lights and sound for each event.</li> <li>• Supply and curate a Mini sideshow tent to provide 6 free family shows over the 3 day Carnival period, scheduled as part of the event program.</li> <li>• Lighting activation added to Dixie park at WEL's cost.</li> <li>• Attraction / Ride brought in to accompany Spiegel tent area activation.</li> <li>• WEL will be responsible for all costs associated with the Spiegel tent, including but not limited to, permits, security, performers, transport, safety measures, event management planning, all associated documentation etc.</li> <li>• The provision of 10 tickets, free of charge, to one headlining show within the Spiegel tent and to make available 20% discounted tickets to offer as part of package deals.</li> <li>• Performers to conduct / promote community workshops with the local performing arts / gymnastic groups.</li> <li>• Collaborate with current Carnivale endorsed events i.e: Longest Lunch, Street parade and future events.</li> </ul>



Item 5	<b>Performance Indicators or Measures:</b>	<p>WEL will provide Douglas Shire Council with the following:</p> <ul style="list-style-type: none"> <li>• The number of tickets purchased and provided free of charge for each show during the run dates.</li> <li>• To make available specific Port Douglas ticketed database for promotion / survey purposes.</li> <li>• Evidence of Marketing undertaken by Knockout Events promoting Port Douglas, Carnivale and the Spiegeltent.</li> <li>• Evidence of Community engagement / events / workshops</li> <li>• Permission to access and use publicly all photographs and videos captured during programming to promote Douglas Shire and future events.</li> <li>• Payment of all suppliers within agreed terms..</li> </ul>
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Event or Project Milestone	Due Date ( Annual )	Cash Assistance (ex GST)
Submission of preliminary Event Program	On or before 14 FEB	
Submission of final Event Program	On or before 28 FEB	\$25,000
Submission and approval of application forms as required	On or before 31 MARCH	
Submission of all Food Licence applications and fees. If required.	On or before 30 APRIL	\$20,000
Return of all signage and banners as provided.		
Provision of KPI report	By 11 JULY	\$11,700

## 2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:-

**"Address for Service"** means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service;

**"Agreement"** means this Funding Agreement;

**"Application Form"** means the Recipient's application.

**"Approvals"** means any approvals required to be issued by any Authority in connection with the Event or Project and all changes to those Approvals which may need to be agreed to by that Authority;

**"Authority"** means any federal, state or local government or regulator which is required to approve all or any aspect of the Event or Project;

**"Business Days"** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Queensland;

**"Commencement Date"** means the date the Agreement commences;

**"Council Logo"** means the current graphic representation/symbol of Douglas Shire Council

**"Event or Project"** means the Event or Project referred to in Item 4;

**"Event or Project Milestones"** means the Event or Project Milestones;

**"Expiry Date"** means end date of the Agreement;

**"Force Majeure"** means an act, omission or circumstance over which Council could not reasonably have exercised control, including without limitation, cyclone, employee strike, terrorist incident, floods and the like;

**"Funding"** means the payment and/or other consideration to be provided by Council to the Recipient under this Agreement, as specified in Item 3;

**"GST", "Supply", "Supplier" and "Tax Invoice"** have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999*;

**"Insolvency Event"** occurs if the Recipient becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors;

**"Item"** means the item number in clause 1 Specific Information;

**"Laws"** means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law;

**"Specific Information"** means the information table in clause 1 of this Agreement; and

**"Term"** means the term of this Agreement as specified in Item 2, calculated from and including the Commencement Date to and including the Expiry Date.

## 3. AGREEMENT

3.1 The Agreement will remain in full force and effect for the Term, unless the parties otherwise agree in writing.

- 3.2 The Agreement may not be varied other than by written agreement between the parties expressly stating that the terms of this Agreement are varied.
- 3.3 Any waiver or relaxation by Council partly or wholly of any provision of this Agreement is valid only if in writing and signed by Council. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to that particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision.
- 3.4 Reference to money is to Australian dollars.

#### **4. FUNDING**

- 4.1 Council will provide the Funding to the Recipient, and in consideration, the Recipient will comply with the conditions imposed by Council under this Agreement.
- 4.2 The Recipient must only use the Funding towards the operation of the Event or Project.
- 4.3 Council will provide the Funding to the Recipient subject to the Recipient:-
- (a) providing a valid Tax Invoice (unless GST is not applicable, upon which the Recipient will provide Council with an invoice) for the Funding of the Event or Project Milestones; and
  - (b) meeting the conditions contained in clause 1, item 3; and
  - (c) completing each of the Event or Project Milestones (if applicable) to Council's satisfaction and providing evidence to Council of same.
- 4.4 Notwithstanding clause 4.3:-
- Where the Recipient's expenditure for a particular Event or Project Milestone is less than the amount of Funding allocated for that Event or Project Milestone:
- (a) Council will only provide the Recipient with the portion of Funding that is equal to the Recipient's expenditure for that Event or Project Milestone; OR
  - (b) if Council has already provided the full amount of funding then Council may require the recipient to repay to Council unexpended funds.
- 4.5 Where the Recipient's expenditure for a particular Event or Project Milestone is more than the amount of Funding allocated for that Event or Project Milestone, the Recipient must bear the difference between these amounts.

#### **5. EVENT OR PROJECT**

- 5.1 The Recipient must complete the Event or Project during the Term and must:-
- (a) conduct the Event or Project in accordance with the details set out in the Recipient's Application (although the Recipient may make minor changes to the Event or Project without Council's consent if such changes do not alter the level of community benefit that the Event or Project will deliver compared to that contained in the Recipient's Application);
  - (b) use its best endeavours to promote the Event or Project to potential participants within a reasonable time before the Event or Project is held;
  - (c) conduct the Event or Project with professionalism and competence;

- (d) conduct the Event or Project in compliance with all Laws and in accordance with the requirements of all applicable Authority; and
- (e) comply with any reasonable requests or directions by Council in respect of the Event or Project.

5.2 The Recipient warrants to Council that the contents of the Recipient's Application, reports and all other information provided by it to Council is true and correct, and the Recipient must notify Council within 24 hours of any changes to the details of these.

## 6. REPORTING

6.1 Prior to the Commencement Date, the Recipient must conduct, on terms satisfactory to Council, a thorough assessment of risks of any nature in respect of the Event or Project which could impose liability on the Recipient, and provide a report detailing these risks to Council.

6.2 The Recipient must maintain and retain for 5 years following the Event or Project accurate records of:-

- (a) the income, expenditure and any other details necessary to ascertain the financial performance of the Event or Project; and
- (b) statistical data in respect of the participants and spectators at the Event or Project (including the number of and locality of these persons) and other pertinent details regarding the Event or Project.

6.3 Within 12 weeks of the completion of the Event or Project, the Recipient must provide, on terms satisfactory to Council, a final report to Council containing the following in respect of the Event or Project:-

- (a) a financial statement (including evidence of expenditure reports);
- (b) a report quantifying the performance of the Event or Project (both financial and otherwise) against the projections and key performance indicators for the Event or Project contained in the Recipient's Application; and
- (c) any other pertinent information in respect of the performance of the Event or Project (including but not limited to copies of media coverage, date list of television and radio interviews and publications regarding the Event or Project).

6.4 Council may at any time during the Term reasonably request that the Recipient provide to it other details in respect of the Event or Project and the Recipient must promptly comply with any such request.

6.5 Where Council has provided Funding to the Recipient which the Recipient has not expended on the Event or Project, the Recipient must refund this amount to Council within 14 days of the completion of the Event or Project.

## 7. PUBLICITY

7.1 In all advertising, signage and other promotional material in respect of the Event or Project, the Recipient must use the statement "*The (EVENT OR PROJECT NAME) is sponsored by Douglas Shire Council*" and Council's Logo is to be conspicuously displayed.

7.2 The Recipient must gain approval for use of Council's Logo on promotional material, advertising etc. prior to publication.

- 7.3 Council may use the Recipient's reporting information and any other details in respect of the Event or Project for any promotional and other purposes as Council considers appropriate.
- 7.4 The Recipient will promptly provide Council with copies of all promotional brochures, media material, notice of any awards and any other promotional information in respect of the Event or Project.

## 8. INSURANCE AND LIABILITIES

- 8.1 The Recipient must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000 per incidence and otherwise in respect of the Recipient's activities and potential liabilities to Council and third parties under this Agreement and the Recipient must cause Council's interests to be noted on its relevant insurance policies. The Recipient must provide Council with evidence of these insurances prior to the Commencement Date.
- 8.2 Council will not in any way be liable to the Recipient for loss or damage the Recipient suffers in connection with this Agreement.
- 8.3 The Recipient indemnifies Council against all losses, claims or damages Council incurs as a result of the Recipient's Event, negligence or failure to comply with the terms of this Agreement.

## 9. DEFAULT AND TERMINATION

- 9.1 The obligations set out in clauses 4 (Funding), 5 (Event or Project), 6 (Reporting), 8 (Insurance and Liabilities) and 10 (Assignment) are essential terms of this Agreement. The failure to label a clause as being essential does not in itself preclude that clause from being an essential term.
- 9.2 Where a party ("defaulting party") fails to:-
- (a) comply with an essential term of this Agreement; or
  - (b) comply with any other term of this Agreement and fails to remedy that non-compliance within 48 hours of receiving notice from the other party ("non-defaulting party") to do so,
- then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 9.3 Where:-
- (a) Council considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the Recipient;
  - (b) the control or beneficial ownership of the Recipient changes; or
  - (c) the Recipient becomes subject to any Insolvency Event during the Term,
- then Council may terminate this Agreement by giving written notice to the defaulting party.
- 9.4 Upon termination of this Agreement, Council will not be required to provide any further Funding to the Recipient and may require the Recipient to refund Council all or part of the Funding (at Council's discretion) within 14 days of Council's request to do so.
- 9.5 The parties rights under this clause are in addition to that at Law.

**10. ASSIGNMENT**

This Agreement may not be assigned by the Recipient without Council's written consent, which consent may (at Council's sole discretion) be granted, granted with conditions or withheld.

**11. FORCE MAJEURE**

11.1 If Council is rendered unable, wholly or in part, by Force Majeure to carry out or observe any of its obligations under this Agreement, it shall give to the Recipient prompt written notice providing full details of the Force Majeure.

11.2 Subject to sub-clause 11.1 the obligations of the parties under this Agreement, to the extent affected by Force Majeure, will be suspended and no claim by either of the parties against the other party will avail by reason of such Force Majeure provided that Council must, to the extent practicable, take all reasonable steps to remove the Force Majeure as soon as possible. Such reasonable steps will not require Council to settle any reasons for the Force Majeure on unfavourable terms.

**12. APPLICABLE LAW**

12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.

12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

**13. NOTICES**

A notice will be deemed to be served on a party if it is addressed to that party at its Address for Service (and if the notice is to be served on Council, marked to the attention of the Chief Executive Officer) and it is delivered by hand to that address or sent by registered mail to that address.

**14. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties in relation to the Funding.

**15. FURTHER ASSURANCES**

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

**16. LEGAL FEES**

16.1 Each party is responsible for its own legal fees in relation to the negotiation, preparation and execution of this Agreement.

16.2 Unless specified otherwise, the Recipient must comply with its obligations under this Agreement at its own cost.

**17. DUTY**

Any duty on this transaction is payable by the Recipient.

**18. DISPUTE RESOLUTION**

18.1 If a dispute arises in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.

- 18.2 A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- 18.3 Within 14 days after a notice is given under clause 18.2 of this clause (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- 18.4 If the dispute is not resolved within 14 days, any party may take legal proceedings to resolve the dispute.
- 18.5 The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

## **19. RELATIONSHIP OF PARTIES**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

## **20. GOODS AND SERVICES TAX**

- 20.1 The amounts payable by Council under this Agreement are inclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the Recipient with a Tax Invoice.

## **21. DISCLOSURE OF INFORMATION**

- 21.1 Other than as provided in this Agreement, the Recipient must not disclose the terms of this Agreement to any third party without Council's written consent.
- 21.2 Council may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

# Executed As An Agreement

**SIGNED for and on behalf of DOUGLAS SHIRE COUNCIL by its duly authorised representative,**

**in the presence of:**

**Witness**

\_\_\_\_\_  
(Please Print Full Name)

) \_\_\_\_\_  
 ) Julia Leu  
 ) Mayor  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 ) \_\_\_\_\_  
 ) Mark Stoermer  
 ) Chief Executive Officer  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 ) \_\_\_\_\_  
 ) Witness Signature  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

**EXECUTED on behalf of the Recipient by its Chairperson and Secretary**

**in the presence of:**

**Witness**

\_\_\_\_\_  
(Please Print Full Name)

) \_\_\_\_\_  
 ) Chairperson  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 ) \_\_\_\_\_  
 ) Secretary  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 ) \_\_\_\_\_  
 ) Witness Signature  
 ) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_