



8.2	PALAIS THEATRE - FAIR COMPETITION & CONFIDENTIALITY POLICY
WARD:	LAKE
GENERAL MANAGER:	CHRIS CARROLL, ORGANISATIONAL PERFORMANCE
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TRIM FILE NO:	20/15/42
ATTACHMENTS:	1. Palais Theatre Fair Competition & Confidentiality Policy ("Booking Policy") 2. Report - expert panel 3. Terms of reference - expert panel

PURPOSE

To seek Council's approval of the proposed Fair Competition and Confidentiality Policy for the hiring of the Palais Theatre.

1. RECOMMENDATION

That Council:

- 1.1 Notes that the Palais Theatre lease requires the tenant to prepare a fair competition and confidentiality policy for the hire of the premises.
- 1.2 Approves the Palais Theatre Fair Competition and Confidentiality Policy (Attachment 1).

2. BACKGROUND

- 2.1 Live Nation Australia Venues Pty Ltd ("Live Nation") leases the Palais Theatre in St Kilda.
- 2.2 The lease is governed by agreement dated 30 June 2016 between City of Port Phillip as landlord, and Live Nation as tenant, (the "Lease").
- 2.3 The terms of the Lease were developed with and subsequently approved by the Victorian Government.
- 2.4 The Lease – of thirty years – commenced 1 April 2017.
- 2.5 The lease requires that Live Nation develop a fair competition and confidentiality policy for the hire of the Palais Theatre, (the "Policy") – within sixty days of the lease commencement – for approval by City of Port Phillip.
- 2.6 Live Nation has drafted and submitted such policy for approval, (the "draft Policy").



3. KEY INFORMATION

- 3.1 Intent
- 3.1.1 The Policy is required to be consistent with the set of the Fair Competition and Confidentiality Principles (“Principles”) stipulated in the Lease.
- 3.1.2 The Principles comprise:-
- Principle 1
Protection of confidential information at each stage of the venue hire process.
 - Principle 2
Maintenance of competitive neutrality between the Tenant’s related hirers and other hirers.
 - Principle 3
Transparent and equitable approach to all hirers.
 - Principle 4
Implement a standard hiring agreement to apply to all hirers.
 - Principle 5
Implement a venue hiring fee policy to apply to all hirers.
 - Principle 6
Venue to be operated at arm’s length from remainder of Tenant’s related entities’ businesses.
- 3.2 Rationale
- 3.2.1 The Policy requirement was included in the lease to address the concerns raised by community and industry members during the leasing process. The concerns relate to the integrated corporate group structure to which Live Nation belongs – a broader business including venue management, promotion and ticketing entities. Specifically, that Live Nation may favour or advantage its related entities in the way it handles bookings of the venue, and the confidential information related to those bookings.
- 3.2.2 The Policy is a special obligation intended to provide a supplementary mechanism to mitigate the risk – beyond existing protections such as industry self-regulation and the regulation of the Australian Competition and Consumer Commission.
- 3.3 Title
- 3.3.1 Note that Live Nation have titled the draft Policy “Booking Policy” – for consistency with terminology understood to be commonly used in the industry.
- 3.4 Advisory panel
- 3.4.1 Officers have assembled an independent panel of experts – (“the Panel”) – to review the draft Policy, and its earlier iterations.



- 3.4.2 This is in accordance with the approach approved by Council at its 13 September 2016 meeting for the review and approval of a draft policy.
- 3.4.3 The Panel comprises the following members:-
- Andrew Bell
Mr Bell is a former Assistant Director of enforcement at the Australian Competition and Consumer Commission. A Barrister of Law, Competition law is one of his principle practice areas.
 - Greg Randall (Chair)
Mr Randall's experience in performing arts management and operations includes over ten years as Director of Programming for Arts Centre Melbourne (Victorian Arts Centre), and three years as Director of Glen Street Theatre, Sydney. He is the Director of Arts Management Consultancy Randall Arts Management.
 - Rob Robertson
Mr Robertson is a retired senior manager in the performing arts industry. His experience includes General Manager of the Princess Theatre, Managing Director of Orchestra Victoria, and executive in charge of venue operations at the Adelaide Festival Centre.
- 3.4.4 In accordance with its Terms of Reference (Attachment 3), the Panel has considered whether the draft Policy:
- as worded, complies with each of the Principles; and
 - is in practice likely to maintain fair competition and confidentiality in the hire of the premises.
- 3.4.5 The Panel has interviewed Live Nation's Palais Theatre General Manager to clarify and confirm various issues. It has also reviewed and provided feedback on earlier iterations of the draft Policy, (and associated supporting documentation, including the Palais Theatre's Hiring Cost schedule, the additional costs outlined in the Palais Theatre Technical Specifications, and the Palais Theatre Standard Hiring Agreement).
- 3.4.6 The final report of the Panel is included as Attachment 2. In it the Panel concludes that each of the Principles are complied with. It summarises that the draft Policy "aligns with commonly understood industry practice" and that Live Nation has "demonstrated [its] ability and willingness to comply with the Fair Competition and Confidentiality Policy requirements of the Lease".
- 3.5 Modification
- 3.5.1 Once the Policy comes into effect, it may be varied only with the written approval of City of Port Phillip, which must not be unreasonably withheld.
- 3.6 Compliance
- 3.6.1 Live Nation is to provide an annual report on its compliance with the Policy. City of Port Phillip as landlord is entitled to audit Live Nation's compliance with the Policy.

AGENDA - ORDINARY MEETING OF COUNCIL – 2 AUGUST 2017



- 3.6.2 Live Nation's compliance with the Policy is fundamental to the lease agreement – persistent non-compliance entitles City of Port Phillip to terminate the contract.
- 3.7 Competition Law training
 - 3.7.1 Live Nation is required to provide suitable induction and annual refresher training in the *Competition and Consumer Act 2010* to its management staff throughout the term of the lease.



FURTHER SUPPORTING INFORMATION

4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 The Report aligns with Council Plan focus 5.3: A City where arts, culture and creative expression is part of everyday life.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 By email of 15 June 2017 Live Nation sought feedback on the draft Policy from its current and past hirers of the venue, plus parties they have identified as likely future hirers. The email, sighted by Officers, was sent to over seventy recipients from sixty-five organisations.
- 5.2 By 27 June 2017, the closing date for feedback, one response had been received. No further feedback has subsequently been received by the time of the writing of this report. The single response is a query reflecting a misunderstanding about booking status. It is not one considered by Officers to require a modification to the draft Policy, and the misunderstanding is currently being addressed by the General Manager of the Palais Theatre.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Approval of the Policy will support Lease compliance.

7. SUSTAINABILITY – Triple Bottom Line

7.1 ENVIRONMENTAL IMPLICATIONS

- 7.1.1 The Policy is not considered to have material environmental implications.

7.2 SOCIAL & CULTURAL IMPLICATIONS

- 7.2.1 The intention of the Policy is to directly promote fair booking of the premises for social and cultural events.

7.3 ECONOMIC IMPLICATIONS

- 7.3.1 Fair and competitive booking of the venue is likely to support the long terms economic success of the Palais Theatre, and by extension the economic viability of the local economy.

7.4 FINANCIAL IMPLICATIONS

- 7.4.1 The Policy is not considered to have material budgetary implications.

8. IMPLEMENTATION STRATEGY

8.1 TIMELINE

- 8.1.1 On approval the Policy will come into immediate effect.



8.2 COMMUNICATION

8.2.1 Key messages:-

- Council is committed to the long term success of the Palais Theatre.
- This includes working with new tenant Live Nation to ensure that its commitments are fulfilled.
- The Policy helps ensure fair and confidential booking of the premises for event promoters and artists.

9. OFFICER DIRECT OR INDIRECT INTEREST

- 9.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.