

DATED THIS DAY OF 2019

AGREEMENT IN RESPECT OF:

HOBBITON MOVIE SET

BETWEEN:

RINGS SCENIC TOURS LIMITED; AND
MATAMATA-PIAKO DISTRICT COUNCIL

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1. PARTIES

1.1 The parties to this Agreement are:

- a) Rings Scenic Tours Limited (RSTL); and
- b) Matamata-Piako District Council (MPDC).

2. BACKGROUND

- 2.1 RSTL operates Tourism Activities from the site known as Hobbiton Movie Set at 501 and 502 Buckland Road, Matamata. The current activities include tours of the movie set which was used for *The Lord of the Rings* and *The Hobbit* film trilogies, as well as the operation of a restaurant/bar, café, visitor centre with retail and ancillary maintenance and staff facilities. Special events are held from time to time such as movie premieres, weddings, functions and themed concerts.
- 2.2 Set construction at the site initially began in March 1999 for the filming of *The Lord of the Rings* film trilogy. The construction of the movie set at the Site for *The Lord of the Rings* was temporary and following the completion of filming, large parts of it were removed from the site altogether. The movie set was rebuilt in 2011 for filming of *The Hobbit* film trilogy and it is now a permanent tourist attraction. Tours of the Hobbiton Movie Set began in 2002 and the annual number of visitors has increased year on year thereafter, with visitor numbers significantly increasing from 2011. Hobbiton Movie Set is now well established as an internationally renowned and multi award-winning tourist attraction. It is New Zealand's third largest tourist destination, attracting approximately 17% of all international visitors to New Zealand. An economic assessment in August 2017 valued the economic benefit of the Tourism Activities to the Matamata-Piako District at \$78 million additional annual expenditure with additional employment of 393 FTE jobs.
- 2.3 The Site is currently zoned Rural under the OPD. The current Tourism Activities are not provided for in the ODP in terms of specific objectives and provisions which recognise the use of the site for tourism activities. The existing Tourism Activities are therefore subject to Resource Consents which have been granted by both MPDC and WRC. Significant growth in visitor numbers to Hobbiton Movie Set has resulted in non-compliance with a condition of a resource consent granted by MPDC which limits the maximum number of visitors per annum to 300,000 people. There were approximately 552,000 visitors in the financial year April 2016 to March 2017.
- 2.4 RSTL is seeking a Private Plan Change to the ODP to introduce new objectives, policies and rules to enable the ongoing operation and growth of the Tourism Activities within an appropriate planning framework. The Private Plan Change recognises that the activities are well established, are in part non-rural (despite the Rural zoning of the site), and they make a significant contribution to the economic and social wellbeing of the Matamata-Piako District and the Waikato Region. A DCP for the Hobbiton Movie Set will form part of the ODP.
- 2.5 To support the Private Plan Change an ITA was prepared by traffic engineering consultants, Bloxam Burnett and Olliver Limited. The ITA assesses the traffic effects of the existing Hobbiton Movie Set activities and those future activities that would be permitted under the provisions of the DCP (should the Private Plan Change be adopted).
- 2.6 The ITA recommends that RSTL makes the Financial Contribution toward the Works. The Works are needed as a consequence of the accelerated deterioration of pavement on Buckland Road caused by heavy vehicles associated with increased visitor numbers

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to the Hobbiton Movie Set, and in order to construct physical works to improve traffic safety on Buckland Road.

- 2.7 This Agreement records the agreement of the parties in the relation to the Financial Contribution and Private Plan Change. The parties have agreed that they be addressed through this Agreement and potentially as standards of the DCP.

IT IS AGREED:

3. DEFINITIONS AND CONSTRUCTION

Defined Terms

- 3.1 In this Agreement, unless the context requires otherwise:

"Agreement" means this agreement and includes its schedules and annexures.

"Building Consent" means any consent required under the Building Act 2004 relating to the construction of the Works.

"Business Day" means the day on which registered banks are open for business in Matamata, excluding Saturdays, Sundays and public holidays.

"Confidential Information" means any information:

- (a) relating to the terms of this Memorandum;
- (b) relating to the business affairs of any party;
- (c) disclosed by any party to the other on the express basis that such information is confidential; or
- (d) which might reasonably be expected by any party to be confidential in nature

provided that where information relates exclusively to one party, nothing in this Memorandum shall require that party to maintain confidentiality in respect of that Information.

"Construction Contract" means a contract related to the construction of the Works or any part of them.

"DCP" means the development ~~consent~~ concept plan for the Hobbiton Movie Set forming part of the ODP.

"Financial Contribution" means a one-off payment of \$99,000.00 plus GST (if any).

"Hobbiton Movie Set" means the movie set which was used for *The Lord of the Rings* and *The Hobbit* film trilogies located at the Site.

"Information" includes the whole or any part of, and all copies and other means of reproduction or storage (whether in a visible, electronic or other form) of:

- (a) any intellectual property, including (without limitation) any opinion, projection, idea, concept, process, procedure, plan, design, programme, study, know-how, expertise or such other property; and

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- (b) any document, data, statement, analysis, report, note, notebook, drawing, manual, letter or any other such material in any form.

"ITA" means the Integrated Traffic Assessment (ITA) prepared by traffic engineering consultants, Bloxam Burnett and Olliver Limited dated [REDACTED].

"ODP" means the Operative Matamata-Piako District Plan.

"Drawings" means the drawings attached at Appendix 1 prepared by Bloxam Burnett and Olliver being Drawing No's. 144150/00/P/101 to 144150/00/P/110 Revision B dated 24 November 2017 showing the general location and scheme of the Works.

"Location Plan" means the plan showing the location of the Site and the Hobbiton Movie Set attached at Appendix 2.

"Private Plan Change" means a plan change to [REDACTED]

"Resource Consents" means resource consents which have been granted by MPDC and WRC for the Tourism Activities.

"Signage Strategy" means the Signage Strategy described in Schedule 2.

"Site" means 501 and 502 Buckland Road, Matamata as shown on the Plan.

"Tourism Activities" means tours of the Hobbiton Movie Set as well as the operation of a restaurant/bar, café, visitor centre with retail and ancillary maintenance and staff facilities.

"Works" means the works described in Schedule 1.

"WRC" means Waikato Regional Council.

Interpretation

3.2 In this Memorandum:

- (a) All monetary amounts are stated and are payable exclusive of GST and in New Zealand dollars, unless provided otherwise.
- (b) Where the context permits, the singular includes the plural and vice versa.
- (c) References to any "party" mean a party to this Memorandum and includes the successors and permitted assignees (as the case may be) of that party.
- (d) References to clauses and schedules are to clauses in, and the schedules to, this Memorandum (unless stated otherwise). Each such schedule forms part of this Memorandum.
- (e) Where the context permits, references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.
- (f) Any reference to any asset of MPDC includes any asset held on trust by the ~~WDC-MPDC~~ for any other person or organisation.

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- (g) Any reference to the MPDC includes reference, as may be appropriate, to the MPDC's duly authorised officers, employees, and contractors.

4. FINANCIAL CONTRIBUTION

4.1 RSTL agrees to pay the Financial Contribution to MPDC in cleared funds.

~~4.2~~ The Financial Contribution shall be paid within 20 Business Days ~~of the earlier of:~~

~~4.3 (a)~~ following the date the Private Plan Change becomes operative, ~~and~~

~~4.4.2 (b)~~ 1 August 2019?;

~~4.54.3~~ The Financial Contribution is to be applied by MPDC toward MPDC's costs associated with the Works. The parties have agreed that a one-off financial contribution of \$99,000.00 (plus GST) for pavement deterioration, based on the increase in Hobbiton Movie Set traffic on Buckland Road associated with 650,000 visitors per year (equivalent to 387,000 vehicle movements/year).

Commented [RA1]: Amended to be consistent with CI 3.1 of signed agreement between MPDC and RSTL.

Reference to 387,000 vehicle movements made consistent with evidence of A Black, paras 38-40.

5. COOPERATION

5.1 The Parties agree to cooperate with each other to design and construct the Works.

5.2 In designing the Works the Parties shall have reference to the Signage Strategy. Designs for the Works shall be approved by the Parties. A Party shall not unreasonably withhold approvals of the designs.

5.3 The Parties agree that the design and construction of the Works will be completed as soon as reasonably practicable following the execution of this Agreement.

5.4 Each Party shall:

- (a) provide the other Party with such documents and information it has in its possession or control that is reasonably required by the other Party for the purpose of designing and constructing the Works;
- (b) keep the other Party regularly updated on that party's progress toward completion of any designs or Works which are the responsibility of that Party;
- (c) sign all documents, and do all things reasonably required to design, construct and maintain the Works, including but not limited to entry in a Construction Contract with the prior agreement of the other Party which shall not be unreasonably withheld or delayed.

6. CONSTRUCTION OF WORKS

6.1 MPDC will ~~at its sole cost~~ be responsible for the design and construction of that part of the Works that are located within the road reserve of Buckland Road for which MPDC is responsible as the territorial authority.

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6.2 RSTL will ~~at its sole cost~~ be responsible for the design and construction of the Works that are located ~~on~~ any part of the Site which is owned, leased or occupied by RSTL or used by RSTL as part of the operation of the Hobbiton Movie Set and Tourism Activities.

6.3 The design and construction of all Works shall be undertaken by the Party responsible for those Works in accordance with the relevant NZ Transport Agency guidelines and manuals and Austroads design guidelines.

~~6.3.4~~ 6.2 RSTL will be responsible for the cost of construction of the Works referred to in 6.1 and 6.2.

Commented [RA2]: Amended to be consistent with Clause 7.3 of the signed agreement

7. MAINTENANCE OF WORKS

7.1 MPDC will be responsible for the ongoing maintenance of Works located within the road reserve of Buckland Road in accordance with MPDC's obligations as road controlling authority.

7.2 RSTL will be responsible for maintenance of Works that are located on any part of the Site which is owned, leased or occupied by RSTL or used by RSTL as part of the operation of the Hobbiton Movie Set and Tourism Activities.

7.3 The Works will be maintained by the Party responsible to a high standard in a proper and workpersonlike manner and in accordance with NZ Transport Agency guidelines and manuals and Austroads design guidelines.

~~7.3.4~~ 7.2 RSTL will be responsible for the cost of maintenance of the Works referred to in 7.1 and 7.2.

Commented [RA3]: Amended to be consistent with Clause 7.4 of the signed agreement.

8. ACCESS

8.1 Each Party agrees to give the other Party reasonable access to any land under its possession or control for the purpose of enabling the other Party to design and construct the Works including all preliminary investigations and surveying.

8.2 RSTL grants MPDC a licence to enter the Site and Hobbiton Movies Set on reasonable notice for all purposes connected with this agreement where MPDC reasonably requires access for design, construction or maintenance of Works.

9. ANNUAL NOTICE

9.1 RSTL will send out annual notices to all tour bus operators advising them that the recommended travel route to and from Hobbiton Movie Set is via the eastern end of Buckland Road.

9.2 RSTL shall send a copy of the notice required under clause ~~9.6~~ 1 to MPDC for its records.

10. NO DEALINGS

~~10.1~~ RSTL will ~~not sell transfer or otherwise dispose of its interest in the Site or the Hobbiton Movie Set unless:~~

~~10.2~~ 10.1 During the term of this Agreement RSTL agrees it will not, without the express prior written consent of MPDC, sell, licence, transfer, lease, assign or otherwise dispose

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of, or part with, possession, management or ownership of the Site or the Hobbiton Movie Set.

~~40.3~~10.2 The consent of MPDC under clause 10.2 will not be unreasonably withheld or delayed in the event that RSTL provides reasonable evidence to MPDC demonstrating that the purchaser, licensee, lease, transferee of the Site or the Hobbiton Movie Set from RSTL:

- (a) is responsible and respectable;
- (b) has the financial and other means to fulfil the obligations of RSTL under this Agreement; and
- (c) has entered into a deed of covenant in a form acceptable to MPDC agreeing to be bound by the terms of this Agreement as fully and effectually as if it was an original party.

11. DISPUTE RESOLUTION

- 11.1 All disputes arising between the Parties in relation to this Agreement shall be resolved in accordance with this Clause 11 and, for the avoidance of doubt, no Party may start court proceedings relating to the dispute (unless that Party seeks urgent interlocutory relief) without first complying with this Clause 11.
- 11.2 A Party claiming that a dispute has arisen concerning this Agreement must give written notice to the other Party specifying the matter in dispute.
- 11.3 After a Party has given notice under Clause 11.2 the representatives of the Parties identified in Clause 18 will have authority to settle the dispute. The representatives must try in good faith to resolve the dispute within 15 Business Days of notification of the dispute.
- 11.4 If the dispute is not resolved under Clause 11.3 then the Parties may agree at any time in the next 5 Business Days to invite the President for the time being of the New Zealand Law Society (or his/her nominee) to appoint a mediator to enable the Parties to mediate and settle the dispute. All discussions in the mediation shall be without prejudice and shall not be referred to in any later proceedings. The Parties shall bear their own costs in the mediation and shall share equally the mediator's costs.
- 11.5 Any dispute not resolved under Clause 11.4 or otherwise remaining unresolved for a period of not less than 40 Business Days, may be finally resolved by the courts of New Zealand.

12. COUNCIL'S REGULATORY FUNCTIONS

- 12.1 MPDC has statutory and regulatory functions in its capacity as a local authority outside of the terms and conditions of this Agreement including without limitation under the Resource Management Act 1991, Building Act 2004, Local Government Act 2002 and any other Act, regulation or by-law. Where MPDC is exercising these regulatory functions it shall be deemed not to be acting in those circumstances as party to this Agreement. Nothing in this Agreement:
 - (a) will override MPDC's regulatory role which will prevail in the event there is a conflict between that regulatory role and the provisions of this Agreement.

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- (b) implies any approval by Council in its regulatory role.

13. DISCLOSURE OF INFORMATION AND MEDIA RELEASES

- 13.1 RSTL shall ~~and will~~ ensure that its directors, employees, contractors, agents, officers and members, shall not, make public announcements or statements to the media or otherwise disclose any information relating to this Agreement or the Works without the express prior written consent of MPDC.
- 13.2 MPDC shall ~~not, and will~~ ensure that its councillors, employees, contractors, agents, officers and members, shall not, make public announcements or statements to the media or otherwise disclose any information relating to this Agreement or the Works unless MPDC has given not less than 2 Business Days prior notice to RSTL. Such notice shall include the reasons for the proposed disclosure and the nature and extent of the matters proposed to be disclosed.
- 13.3 Any objection or concern raised by RSTL in relation to a proposed disclosure of information relating to this Agreement or Works by RSTL shall be referred to the Chief Executive Officer of MPDC, who shall determine whether the information should be withheld, or released in a different form or manner. In determining whether information should be released, the Chief Executive Officer of MPDC shall have regard to whether the information proposed to be released is commercially sensitive. The decision of the Chief Executive Officer of MPDC shall be final and binding on the parties.
- 13.4 Nothing in this clause 13 shall restrict the ability of MPDC to release information pursuant to Local Government Official Information and Meetings Act 1987 where the Chief Executive Officer of Council (whose opinion shall be final) considers there are no grounds to withhold information under that Act, or that the grounds for withholding are outweighed by other considerations that make it desirable, in the public interest, to make that information available.

14. NO REPRESENTATION

- 14.1 Nothing in this Agreement shall imply any representation on the part of MPDC as to the likelihood of any consent or approval for the Works being successful, or the Private Plan Change being approved and adopted.

15. CONFIDENTIALITY

- 15.1 Each Party shall maintain as confidential at all times, and shall not at any time, directly or indirectly:
- (a) disclose or permit to be disclosed to any person; or
 - (b) use for itself; or
 - (c) use to the detriment of any other party,
- any Confidential Information except:
- (i) as required by law; or

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- (ii) as is already or becomes public knowledge, otherwise than as a result of a breach by the party disclosing or using that Confidential Information of any provision of this Agreement; or
- (iii) as authorised in writing by any other party; or
- (iv) to the extent reasonably required by this Agreement.

16. GENERAL

- 16.1 Except where expressly stated otherwise in this Agreement, no amendment to this Agreement shall be valid and enforceable unless in writing and executed by all parties.
- 16.2 If any provision in this Agreement is held to be illegal under any enactment or rule of law such provision shall, to that extent, be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 16.3 Any facsimile or email copy of this Agreement or any notice given pursuant to this Agreement (including any signature on any such document) may be relied upon by the parties as though it were an original.
- 16.4 No waiver of any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way limit or waive the right of any such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 16.5 This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 16.6 Each party shall make all applications, do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.
- 16.7 Except as provided for in section 10, No one of the Parties shall be entitled to assign any of its rights or obligations under this Agreement without the written consent of the other Party. Any change in control of a party shall be deemed to be an assignment requiring the consent of the other party for the purposes of this clause.
- 16.8 Each party shall take reasonable steps to mitigate any losses and liabilities it may suffer under this Agreement.
- 16.9 Each party shall use its best endeavours and shall consult and cooperate with the other parties in order to facilitate and expedite the ~~implantation~~ implementation of this Agreement.

17. NOTICES

- 17.1 Any notice, demand or consent to be given or made under this Agreement shall be given or made in writing and shall be given or made to the Parties as follows:

Matamata-Piako District Council
35 Kenrick Street
Te Aroha

Rings Scenic Tours Limited
501 Buckland Road
Hinuera

Matamata-Piako District Council

Rings Scenic Tours Limited

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PO Box 266
Te Aroha 3342

RD2
Matamata 3472

17.2 Or at other such addresses as may from time to time be agreed in writing by the parties for the purpose of this clause.

17.3 Any communication sent by post shall be deemed to have been given or made 3 Business Days after posting.

18. REPRESENTATIVES

18.1 The representatives of each party are:

- a) Russell Alexander, General Manager, Rings Scenic Tours Limited
- b) Don McLeod, Chief Executive Officer, Matamata-Piako District Council

EXECUTION

SIGNED on behalf
MATAMATA-PIAKO
DISTRICT COUNCIL
in the presence of:

)
)
)
)

(Don McLeod – ~~Mayer~~Chief Executive Officer)

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

SIGNED on behalf of
RINGS SCENIC TOURS LIMITED
in the presence of:

)
)
)

(Ian Rennie Alexander - Director)

(Russell Ian Alexander - Director)

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SCHEDULE 1

Description of Works

- a) Pavement mark white direction arrows in each lane on Buckland Road east at 900m, 2660m and 4410m to reinforce to tourists that New Zealand drives on the left.
- b) Install 100mm white painted edge lines on both sides of Buckland Road from 0 to 5370m.
- c) Install double yellow "no passing" centre line on Buckland Road from 1800m to 6000m, inclusive of lead in markings.
- d) Install no stopping edge line markings on the eastbound lane and no stopping signs on the eastbound berm of Buckland Road from 2610m to 3510m and from 3760m to 4540m. These are unsafe locations that tourists regularly pull over to take scenic photos.
- e) Create safe, chip sealed surfaced pull off areas in the berm at 3750m and 4550m on the northeast side of Buckland Road, for tourists to park off the road shoulder to take photos.
- f) Construct gated speed calming entrance signs (threshold treatments) on Buckland Road either side of Hobbiton at 5210m and 4540m, with "Welcome to Hobbiton Movie Set" or similar wording agreed with MPDC. Threshold treatments to be in accordance with Council standards.
- g) Complete the Recommended Safety Improvements for Buckland Road proposed in the ITA (Appendix D). For example, only one of the pull off areas proposed in the ITA has been constructed and the truck signs have not been removed.
- h) Erect appropriate motorist service signs in advance of the pull-off areas.
- i) Install no-stopping markings and signs adjacent to 21 Buckland Road for a minimum of 140m on Puketutu Road and 600m on Buckland Road.
- j) Remove the northbound arrow marked on Puketutu Road (just south of the intersection with Buckland Road)
- k) Design and construct further improvements to improve visibility of the Buckland Road/Puketutu Road intersection. As a minimum, this should include a splitter island, signage and lighting.
- l) Install chevron and speed advisory signs near 1241 Buckland Road.
- m) Install centreline along length of Buckland Road (west), noting that this will require works within Waipa DC.
- n) Design and construct improvements to provide 140m sight distance at the vehicle crossings to 385 and 399 Buckland Road to mitigate the crash risk. This is likely to require lowering of Buckland Road.
- o) Reduce the risk of pedestrian crashes at the Hobbiton site accesses by installing "No Pedestrian Access" signs at the entrance and exists to The Shires Rest to discourage pedestrians crossing the road. improving barriers to pedestrians crossing the road or providing designated photo opportunities within the site.
- p) Provide a designated photo opportunity within the site to discourage pedestrians crossing the road.

Commented [RA5]: This is considered necessary for amenity rather than safety reasons. Specifically, the clause:

- avoids a sprawl of cars along the roads, an outcome which would reinforce the distinctly non-rural nature of the activity. Such an outcome would be inappropriate from a landscape perspective (given potential numbers, frequency and duration)
- directs parking in a part of the development (ie Precinct 1) where there is specific provision for its screening/integration into the rural landscape.
- Responds to the Reichmuth submission.

Commented [RA6]: Addition as a result of evidence provided during hearing.

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- o) Provide additional travel information to staff ~~to ensure that staff~~ and delivery ~~ies~~ companies to use the preferred Buckland Road (east) route when travelling to and from the site. ~~Travel information should specifically state that Rangitunuku Road should be avoided.~~

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SCHEDULE 2
Signage Strategy

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APPENDIX 1

Drawings

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APPENDIX 2
Location Plan

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