

**BEFORE THE HEARINGS COMMISSIONERS
AT MATAMATA**

UNDER	the Resource Management Act 1991
IN THE MATTER OF	Proposed Plan Change 50 to the Matamata- Piako District Plan
TO	MATAMATA-PIAKO DISTRICT COUNCIL
BY	RINGS SCENIC TOURS LIMITED ("RST")

REPLY SUBMISSIONS OF COUNSEL FOR RST

Harkness Henry

SPECIALIST LAWYERS

www.harknesshenry.co.nz

Phone (07) 838 2399
Fax (07) 839 4043
Address Level 8, KPMG Centre,
85 Alexandra Street, Hamilton 3204
Mail Private Bag 3077, Hamilton 3240,
New Zealand, DX GP 20015

Counsel Acting:
Dr Joan Forret
Joan.Forret@harkness.co.nz

MAY IT PLEASE THE HEARING COMMISSIONERS:

- 1 These submissions are in reply to the submissions and evidence given at the Rings Scenic Tours Ltd hearing on 8th – 9th April 2019.

Private Plan Change 50: MPDC District Plan

- 2 This application is to create a Development Concept Plan that will form part of the MPDC District Plan. It is **not** a resource consent application.
- 3 The DCP will cover activities that are already occurring on a site that has been identified as the largest generator of external tourist visits in the North Island and one of the top 3 tourism sites in New Zealand.
- 4 The scale and nature of the operation has resulted in the need for this special planning provision. There is a need for the operation to be provided for under the District Plan rather than trying to operate under prescriptive resource consents. This is **not** a normal piece of rural Waikato. Nor is it an activity operating within the rural zone that needs to conform with rural zone standards. It is a significant tourism activity that will operate within its own zone (equivalent) and according to its own performance standards.
- 5 The activity is operating outside the resource consent that it has currently because of unexpected growth. That growth has now resulted in a capacity level that will not be exceeded because of constraints on the site itself and the need to retain a quality visitor experience.
- 6 It is intended that the DCP will encompass the nature of activities currently operating on site to provide more regulatory certainty for the existing operation and future development. The performance standards are designed to ensure that the site's integrity is maintained and that there will not be unmitigated adverse effects on the environment.
- 7 The DCP needs to be consistent with other DCPs for the district and it needs to be fair to the owners and operators of Hobbiton. Most of all, it needs to operate like a district plan provision and not a resource consent.
- 8 In relation to the questions put to counsel and following information provided by counsel for MPDC in relation to the types of provisions found in DCPs, the following is relevant when considering the standards proposed by Council for monitoring and management plans. (Comments regarding the other performance standards and consistency with DCPs in the district will follow).

- (a) Ms Abraham submitted at the hearing, the 2014 Statford District Plan and Auckland Unitary Plan contain provisions that are indicative of those proposed by MPDC for the Hobbiton DCP as they deal with activities of a similar degree. With respect, these are distinguishable on multiple fronts from the proposed Hobbiton DCP, as addressed below.
- (b) Of greater importance, are Second generation DCPs (**Attachment C**) that are provided for in the Matamata-Piako District Plan including:
 - (i) the Milk Processing Site (Tatua Dairy Factory) approved in March 2019;
 - (ii) Poultry Processing Site (Inghams) approved in December 2015;
 - (iii) Dairy Processing Site (Open Country Dairy) at Waharoa approved in January 2019 (together referred to as the **2nd GDCP**).
- (c) The proposed standard that requires extensive monitoring and consultation is more prescriptive than the level required in the existing consent, and exceeds the consultation levels required in comparative 2nd GDCP. Again noting that the existing consent is the existing legal environment. None of these **2nd GDCPs** require day to day procedures to ensure compliance with permitted activity standards and monitoring, reporting, daily accurate measurement of vehicle numbers or compliance with noise standards.
- (d) We are not aware of any District Plan that charges for monitoring of permitted activities as the monitoring of the plan is a Council function.
- (e) I note that the only monitoring required under the existing resource consent conditions is in relation to the number of visitors and events. We have agreed to keep records of these in the DCP.
- (f) The Stratford District Plan states *"in accordance with s36 of the RMA, the cost of any work incurred by the District Council in – assessing and monitoring the compliance of **permitted activities** with applicable standards, conditions, and terms in this Plan: and"*. The key phrase is 'in accordance with s36 of the RMA'. Under s36 the only clause that permits charges for permitted activities is 1(cc) which states *"charges payable by a person who carries out a permitted activity, for the monitoring of that activity, if the local authority is empowered to charge for the monitoring in accordance with section 43A(8)"*. Section 43A(8) however states *"A national environmental standard may empower local authorities to charge for monitoring any specified permitted activities in the standard"*. In this case there is no national environmental standard

and therefore no authority to charge any person for monitoring a permitted activity in the context of the Hobbiton DCP. From my review of s36 there is no ability to impose charges for Council carrying out its s35 functions.

- (g) Rule E33.6.1.1(2) of the Auckland Unitary Plan requires a spill response plan to be met. The contents of the plan are set out in table E33.9.1. Neither of these provisions address monitoring and reporting. The plan also does not require certification by Council. RST is not opposed to preparing a management plan for a specific activity – the requirement for a noise plan is an example. The Site Management and Monitoring Plan (“SM&MP”) however goes beyond preparing a plan to address an environmental effect. The SM&MP requires a plan to demonstrate how the activity is meeting the permitted activity standards, how monitoring is being undertaken, how the monitoring is being reported, and then requires the landowner to pay Council for administering the monitoring. All of this is beyond what a performance standard can ask for in a District Plan. A resource consent could ask for that outcome but not a performance standard.
- (h) RST is willing to enter into voluntary neighbourhood consultation and is developing a Community Engagement Plan. However it is not appropriate that such engagement is a performance standard in the DCP. We are not aware of any other DCP that has a community consultation or engagement requirement. Mr Alexander recognises that a prudent business will maintain good relationships with its neighbours and accepts that the rapid expansion at the site has meant that this aspect has not been addressed recently. That omission is to be rectified as part of the Community Engagement Plan.

- 9 Again, this DCP has to be lawful, fair and consistent with other like provisions in the District Plan.

Precinct Plans

- 10 RST has provided a further plan that shows how the area sought regarding both Precincts compares with the notified areas. The difference in Precinct 1 is that it encompasses the consented stormwater area and in Precinct 2 it encompasses the wastewater disposal areas (refer to **Attachment A**).
- 11 In our submission it is preferable that these areas are included in the DCP as they arise directly out of the activities that occur within the precincts.

- 12 We note that the wastewater and stormwater facilities for the other DCP sites in the MPDC are included within the DCP boundaries. They are not outside those boundaries as is being recommended by MPDC in this case. For consistency RST submits the amended plans should be approved.
- 13 We note further that the area occupied by the stormwater wetland system that has been consented for Precinct 1 would preclude any further development and therefore there is no change to the effects on the environment from that amended area. Performance Standard 1.1.2 (a) is amended in the RST response to reflect the changed area of Precinct 1 and to ensure that there is no increase in building coverage (refer to **Attachment B**).

Vehicle Numbers

- 14 RST has proposed a hard cap of 3500 visitors per day for the tours. Those tours include the evening banquets because those are the last tour of the day. We note also that those banquet visitors may be on site for 4.5 hours by the time they have had their movie set tour, dinner and lantern tour. They are part of the existing evening traffic that some submitters have concerns about.
- 15 It is not proposed that the limit also applies to the special events as these are governed by separate provisions and operate at times when there will not be the same intensity of effects on the environment.
- 16 RST cannot operate with a daily vehicle limit (calculated as a daily average over a 7-day period) as proposed by MPDC for the following reasons:
- (a) This is a tourism venture that depends on the quality of experience offered to its visitors. That visitor experience is also important to New Zealand as a whole in terms of its image as a tourism destination. Turning pre-booked visitors away because the vehicle cap has been reached on a given day can only damage the reputation of Hobbiton and NZ.
 - (b) A vehicle cap will not mitigate any effects of traffic on Buckland Road. That is because the majority of tour tickets are pre-sold. The most likely scenario for a vehicle cap to be exceeded would be in peak season. That is between Christmas and New Year or over Easter. Hobbiton's extensive records from years of operation show that the tours at that time are usually fully sold for the afternoon and evening banquet tour. It is the early morning tours that are most likely to have spaces for walk-ins. Thus if the gates are locked at 3pm because the daily limit has been reached the people booked for the later tours (who will have paid

for their tickets and will be excited to attend) will still travel along Buckland Road because they won't know the tour is cancelled. If they are able to rebook they will do so and will thus represent twice the traffic than otherwise.

- (c) Vehicle caps work on some other sites (such as quarries and at the Inghams and Tatua DCP sites) as they have direct control over the volume of traffic they generate, enabling them to manage their total daily traffic volumes. They are either managing their own vehicles or they are dealing with known suppliers that they can contact. They are not dealing with the various vehicles transporting thousands of pre-booked and paid for visitors that may have no alternative date on which to arrive.
- (d) RST can manage the total visitors by limiting the number of spots available in the tours. Mr Alexander talked to the robust nature of the computer booking system. He noted that in the past year 86% of all bookings for the site were made electronically through the booking portal, and this was expected to increase to around 90% within the next few years. The BBO traffic report and evidence has demonstrated that a cap on daily tour visitors is the appropriate mechanism to manage vehicle numbers on Buckland Road.

17 The 3500 visitor limit reflects essentially the number of visitors to the site during peak periods at present. Thus the effects are going to be no greater than those in the peak period at present and the evidence has shown that with current mitigation in place the safety of Buckland Road and surrounding roading network has improved.

18 RST is adamantly opposed to having a fixed daily vehicle cap because it will not be able to manage the site in light of its pre-sold tickets or the expectations of those visitors (who will likely still arrive at the site in their vehicles). Quite apart from anything else it is difficult to see how RST would practically prevent any further vehicles from entering the site and any system of gates over the entrance is likely to result in confusion with visitors trying to access through the exit. It would also be reactionary if a daily cap is reached and therefore achieve little, with visitor traffic being turned away after having already travelled on Buckland Road to get to the site.

19 In addition, there is likely to be the added problem of visitors trying to park along Buckland Road so that they can enter into the site's ticket office to try

- and sort out why they are prevented from parking inside and participating in their pre-booked tour (and trying to arrange refunds and/or re-bookings).
- 20 A further issue is what happens to the banquets, food and staff who will already be organised for the visitors attending during that final tour of the day? Is it intended that all of that food and preparation is to be wasted purely because on a given day more people have come in single vehicles than is the case for the majority of the year?
- 21 It is entirely foreseeable that a vehicle trip limit is likely to result in greater adverse effects than those the standard intends to address.
- 22 If it is not intended that Hobbiton closes the entry gate if the trip limit is reached one must ask what is the enforcement action intended to follow such a trip generation cap.

Themed vs Non-themed events

- 23 Council has not provided any cogent evidence to support separating themed and non-themed events. The separation does not affect the number of events or the performance standards that would apply to them.
- 24 There is no adverse effect on the environment that would arise because a movie or other event was not directly (or indirectly) related to the Lord of the Rings, the film franchise or Hobbiton.
- 25 There are already performance standards to manage the events that occur outside of normal tours. Further separation into themed and non-themed does not avoid, remedy or mitigate any identified effect on the environment.
- 26 In our submission, there is absolutely no different effect on the environment from having 12 themed movie events per year or having 12 non-themed movie events or 6 themed vs not themed concerts (MPDC proposed standards 1.1.9 (c) and (d)). Nor is there any effect that could justify non-compliance for failure to meet a single performance standard in Rule 1.1, as opposed restricted discretionary as sought by RST.
- 27 The definition of 'non-themed' events lists a number of activities that could be non-themed but the definition applies "*only where the activity is not covered by another definition/activity in the Hobbiton Movie Set Development Concept Plan*". Given that 'Non-Themed Events' is a permitted activity included under A2.3, the definition is arguably circular. In any event, as Mr Harkness noted in his evidence, there is no guidance as to what constitutes theming. As he said, does giving everyone a party hat with Bilbo Baggins on the front

constitute theming? Or should every wedding guest be given a small gold ring to satisfy the requirement?

28 Neither is the definition of 'themed' events helpful.

"**Themed Events**" means an activity that involves a gathering of a group of people either as participants or spectators for the purposes of an activity that is principally related to Hobbiton and includes, but is not limited to, themed concerts, festivals, movie screenings, and the like.

Hobbiton encompasses the very wide range of activities listed in A2. It is also the site of one of the country's largest tourism activities. Does that mean that any conference that touches on tourism in its content is therefore themed? Perhaps any conference that considers economic analysis or business, or technology or engineering or infrastructure or....

29 In our submission the separation between themed and non-themed is arbitrary, does not address an adverse effect on the environment, would be unenforceable and result in farcical outcomes if continued in the DCP.

Landscape Plan

30 There seems to be no argument that RST has gone to great lengths to create an authentic and consistent environment in Precinct 1 to complement the movie set experience in Precinct 2. Mr Alexander gave evidence about the advice he receives regarding landscaping and the care and attention to ensuring that planting is done to enhance the Hobbiton experience. His evidence described the many mature trees that have been transplanted into and around the precincts to provide the appropriate impression of permanence and consistency with the image of Hobbiton as seen in the films and described in the books.

31 It is insulting to RST to now be provided with a landscaping plan that prescribes where trees and plants must be located in advance of any future buildings on Precinct 1 (**Attachment D**). It is particularly galling that Ms Gilbert provided her initial input to MPDC before she visited the site and that her first and only visit was less than 10 days before the hearing.

32 Ms Gilbert argued that there was a need for a spatial mitigation plan (referred to at 1.1.4 (a) and (b)) of the proposed standards to provide clarity which is lacking from other options.

33 RST disagrees, and Ms Gilbert's suggested approach is rejected. A fixed spatial mitigation plan does not futureproof the site; it restricts future planning

and the site operator's ability to adapt a planting framework to buildings on the site.

- 34 The proposed standards provide clarity, including about where planting needs to take place. Rather than requiring buildings to be located where Ms Gilbert has shown landscaping on a plan, (and keeping in mind that she has had a single visit to the site thus far) the performance standards proposed by Mr Graham and RST will ensure that landscaping is located so as to mitigate any effects of future buildings.
- 35 Performance Standard 1.1.4 is triggered by new development and responds to both the size and location of any new development within Precinct 1, limiting the propagation of potential visual and amenity effects to the wider environment from development internal to Precinct 1. The proposed strategy references Existing Planting Plan C2 (provided as part of this reply as **Attachment E**) identifying existing specimen trees and hedging to be retained. In addition the proposed strategy focusses on requiring planting immediately around the building, to integrate new buildings into the site, and providing specimen tree screening of the building within the precinct from views outside of Precinct 1, based on a formulae generated of the size of the footprint of the proposed building.
- 36 That strategy is superior to Ms Gilberts suggested approach in that it responds to the siting of actual development within Precinct 1 and directs the planting to be located to mitigate that development, in its location, from sensitive surrounding areas external to the precinct. It does not identify the location of the specimen tree planting but rather the intended outcome. This allows the developer to locate the mitigation specimen tree planting in a manner that is coherent with the existing development, while requiring it to still provide functional screening of new buildings. The required 2 metre wide band of planting (minimum) around 3 sides of the building assists with its integration within the site.
- 37 By contrast the use of a fixed mitigation planting plan that seeks to address an unknown extent, location and size of development has questionable efficiency in that the position of the proposed trees may be incorrectly located to achieve effective screening, and may not respond to the extent of development, being either unnecessary, if limited future development occurs, or inadequate if the location or size of development varies from that currently being considered.

38 The Existing Planting Plan: C2 plan now includes the consented stormwater ponds and wetland that form part of the existing legal environment. The existing WRC stormwater resource consent (copy provided with reply as **Attachment F**) already requires mitigation planting around the wastewater area.

39 The area sits in a dip and is not able to be seen from the road or other public place. In respect of riparian planting around the SW ponds Mr Graham can find no requirement in the RITS or MPDC Development Manual that requires a 10m riparian planting around the entire pond. On the other hand, the proposed consented design shows a width of riparian planting in excess of 10m for the majority of the wetland ponds with a narrower 4 -5 metre margin on the uphill containing slope of the wetland. (Ref Plan C3 drawn from BBO consented wetland plan, provided with reply as **Attachment G**). This planting would align approximately with a contour line around the pond's northern edge. In Mr Graham's view, it would look rather odd if further riparian planting occurred up the hillside unless it was part of an overall extensive revegetation development that considered the wider site contours. From a legal perspective, a requirement for this riparian planting could provide inconsistency with the WRC consent and it is addressing part of the existing, consented environment that does not give rise to adverse effects on the environment.

40 It appears that proposed performance standard 1.1.19 (c) has been drawn from the 'Auckland Council Wetland Restoration Guide' which states;
"A 10m minimum riparian buffer width either side of a stream or wetland is recommended. However, this will be dependent on the practicalities of your site."

Mr Graham notes that the Guide cites a 2001 Auckland Regional Council Technical Publication 148 (ATP148) *Riparian Zone Management*. That report drew on research relating to widths of water way plantings from an ecological perspective (ie focussing on the sustainability of the indigenous vegetation and not the waterway). While it concluded as above, it did also state that *'if water quality improvement alone is the main objective, however, especially the reduction of nutrient and sediment runoff to waterways, then a grass buffer zone is an effective option.'* In this case the ponds and wetland are being constructed in order to manage and improve stormwater from the Precinct 1 development and does not warrant the type of performance standard proposed.

- 41 Ms Gilbert raised a concern that the increased area would allow more development on Precinct 1 however that is also incorrect. The stormwater ponds and wetland clearly will not sustain further development and RST has amended the performance standards applying to building coverage (1.1.2 (a)) to reduce the percentage coverage from 10% to 7.4% which correspondingly reduces the actual building area to within 20m² of what has been agreed by MPDC.

Noise

- 42 RST remains committed to the hours and noise levels sought in performance standard 1.1.9 a, c and d, for the operational and methodological reasons set out in Mr Alexander's and Mr Bell-Booth's evidence.
- 43 Again, this is a plan change. Hobbiton is entitled to request a higher noise level than applies in the neighbouring rural zone. The higher noise level should be considered on its merits sought for the Hobbiton precincts.
- 44 The 50dBA limit in the rural zone currently finishes at 8pm. RST is requesting that limit applies from 10pm. Only one submitter (McCosh) other than MPDC has objected to noise and the McCosh submission clearly states that their concerns are about noise effects on animals other than people. The McCosh submission does not really outline what noise concerns they have, or where on the property those effects are felt. We note that Mr McCosh did not appear at the hearing.
- 45 The MPDC submission seeks to retain the existing rural zone noise level and Mr Hegley has supported that on the basis that RST has not identified that their existing activities are having trouble complying. Hobbiton has activities operating after 8pm and therefore it is clear that noise limits need to be extended to account for these activities which, even without the events, are likely to generate similar noise levels to those that apply during the daytime. Mr Hegley also argues that a minimum of 8 hours is provided for sleep. In our submission the period from 10pm to 7am is 9 hours which should more than satisfy that requirement.
- 46 There is a consistency argument in that the District Plan allows other DCP sites (based in rural areas) to have higher noise levels than their rural neighbours. The DCP sites for Te Aroha Skin Processers, Fonterra Waitoa, Tatua Dairy Co-Operative and Greenlea Premier Meats have noise levels of 50dBA from 7am to 10pm. The Inghams Poultry Processing DCP site has a 50dBA level from 5am to 9pm. Therefore the levels proposed by Hobbiton are

not precedent-setting within the MPDC and we would argue that Hobbiton is every bit as economically and operationally significant and necessary within the district as any of the other sites.

47 In relation to the movie screenings, we note: they are long; occur at night (to be seen); and in summer (to be warm). Movies therefore need to start later so it is dark enough to see the screen. Three hour movies that can't start until 8pm need an 11pm finish.

48 Mr Bell-Booth gave evidence regarding the noise levels required for concert events. His expert evidence was that it is impractical to turn the level down 30 minutes before the end of a concert. Again it is relevant to consider the nature of the receiving environment.

49 Mr Hegley highlights clause 1.3 of NZS 6802 (copy attached with reply as **Attachment H**) that notes that the degree of protection afforded to receivers needs to be based on the nature of the area under consideration. The Rural Buffer Area is presently used as an operational farming activity. In this regard, there are a number of activities that are permitted as of right within the Rural Zone, including: Farming; Accessory buildings to any permitted activity; and Temporary Activities listed in Rule 4.11.¹.

50 In our submission there is already a reasonably high expectation of noise and adverse visual effects associated with building forms and noise from rural production activities in the Rural Zone which are likely to be greater than those of the Hobbiton Movie Set and The Shire's Rest activities proposed by the Proposed Plan Change. Those effects would not be subject to mitigation as is proposed by RST for the Hobbiton site via the performance standards that will apply.

51 Performance standard 1.1.9 (g) provides that a noise management plan will be required for each event type before it is first undertaken. That plan will be finalised following assessment of the monitoring that is undertaken during the first event to ensure that noise levels will comply with the limits in the performance standard. It is not a situation where there is no management or monitoring proposed for any of the movie or concert events proposed. This is also relevant when considering RST's opposition to a monitoring and management plan for the site. The effects of noise will be subject to specific plans that are tailored to the different types of events. All other effects are

¹ Includes temporary offices, storage sheds, storage yards, builders' workshops, ablution facilities and similar activities incidental to a building or construction project, up to two farm sales per year in the Rural Zone and portable sawmilling of trees grown on the property in the Rural Zone.

managed through the performance standards with any non-compliance triggering the need for resource consent. This is an appropriate mechanism within a DCP and is consistent with the approach in other DCPs.

- 52 RST does not accept MPDC's proposed performance standard that limits the type or noise limits from fireworks (1.1.14. (c) and (d)). Mr Bell-Booth considers that 1.1.14 (d) will be both unenforceable and unrealistic and doubts that the hazard classifications specifically reference a noise level.²
- 53 RST anticipates that fireworks displays are likely to involve the use of domestic fireworks purchased lawfully from approved outlets. Such fireworks are not subject to noise limits if used by anyone else in the district and there is no justification to applying arbitrary limits when used by RST.
- 54 RST proposes that any professional fireworks displays involving non-domestic fireworks should be subject to a management plan including prior notification to neighbours. Having reviewed the amended provision in the MPDC response, RST proposes a revised performance standard that separates out domestic and professional displays to ensure that such events are reasonably managed within the DCP area. (See RST Performance Standards 1.1.14 (a) and 1.1.14 (b))

MPDC evidence and revised DCP

- 55 Attached is a copy of the Amended Provisions showing the proposals now sought by MPDC and the RST response (**Attachment B**). Differences are tracked on the RST version (right hand columns).

Activity Schedule

- 56 RST remains opposed to any non-complying status. There is no rationale for differentiating between themed and non-themed events and any non-compliances with the performance standards in Rule 1.1 can be targeted as restricted discretionary or discretionary activities.

Issues, Objectives and Policies

- 57 The District Plan is set out with issues, objectives and policies according to specific themes. Thus all of the transportation-related policies are set out in

² Mr Bell-Booth notes that typical domestic fireworks would only likely comply if launched a distance of around 1.4km from any receiver's notional boundary. This is driven by the Laeq criteria. The Lamax criteria would comply at around 400-500m. These are estimates based on the minimal data available. Fireworks noise levels change from year to year with variety and the manufacturing noise standard to which they must comply is really vague/poor. Mr Bell-Booth is skeptical whether manufacturers (who are generally overseas) even test the noise levels of their products. The hazard classifications may refer to the COP, which, in his view, is somewhat vague and he understands is under revision.

the same chapter. The District Plan doesn't have specific issues and policies for individual sites or zones. Thus it is inappropriate to try and include issues relating to infrastructure and roading into a DCP on tourism. Likewise policies on roading are already included in the transportation chapter. This DCP should sit within the existing framework in the District Plan so that those using it can do so consistently with other DCPs and zones.

- 58 RST opposes any reference to either the Local Government Act 2002 or the Local Government (Rating) Act 2002. This is a DCP to deal with resource management provisions for a significant tourism site. Its lawfulness derives from the RMA and no other statute and it is inappropriate to impose issues and policies aimed at dealing with outcomes involving other legislation.

Performance standards

- 59 RST accepts the wording of amended performance standards 1.1.1 (Building Envelope) and 1.1.2 (Building Coverage) except to amend building coverage within Precinct 1 to reflect the boundary expansion and maintain the same building coverage as notified.
- 60 Amended performance standard 1.1.3 relating to visual form is accepted except that brick and stone are now also included as accepted wall materials to reflect their listing in standard 1.1.3 (d).
- 61 RST does not agree with the amendments made to performance standard 1.1.4 (Landscaping for New Buildings) in relation to the mitigation plan as above. Alternative wording to reflect Mr Graham's advice is included in 1.1.4 b together with Existing Planting Plan C2.
- 62 Performance standard 1.1.5 (Car Parking) is accepted.
- 63 Performance standard 1.1.6 (Access) fails to address that the site is also a working farm, and reasonable access that would be normally provided in a rural setting should not be limited. RST proposes amending the reference to "vehicle accesses" which is consistent with wording on the notified Precinct Plans.
- 64 RST agrees with most of the changes made to performance standard 7 (Road Safety) but does not accept the following:
- (a) 1.1.7 (k) daily cap on trip generation;
 - (b) 1.1.7 (l) daily, weekly, monthly and annual site monitoring of trip generation by vehicle type. The burden of "accurately monitoring and recording" the daily trips is excessive and unnecessary given the total cap on visitor numbers.

- (c) 1.1.7 (p): RST does not have control over land that would need to be altered in order to provide 114m stopping sight distance from the accesses to 385 and 399 Buckland Road. Likewise RST cannot control any subsequent steps taken by MPDC that might affect that piece of road and it would be unlawful to place a requirement on a landowner through such a performance standard where there is no control over the outcome.

There have been discussions with the landowners about removing the bank to improve sight distance. Despite the submitters agreeing at the hearing that they would provide access to Council and/or RST to undertake investigations and site work, that approval has not been forthcoming. We understand that those discussions have not crystalized an agreement due to concern by the landowners that works to lower the crest on Buckland Road will not be done. Each of Gregan, Howl and RST agree that the sightline problem outside those entrances has primarily been caused by road pavement reconstruction work undertaken by MPDC in recent years. The problem caused for those entrances is not a problem that should be fixed by RST or any other third party. It is MPDC that needs to remedy that problem. Mr Smith, as trustee for the Gregan Family Trust has provided a letter confirming their view that it was the roadworks that caused the sight distance problem.

In our submission this problem constitutes a disturbance to the land owned by Gregan and Howl and should be rectified by Council pursuant to s 60 Public Works Act 1981 which allows for claims by landowners in respect of disturbance to private land arising following a public work.

- (d) 1.1.8 (a) RST agrees to a cap of 3,500 movie set tour visitors per day. That is the number on which its traffic and other reports are based. Visitor numbers outside the movie set tour hours are either less than 501 (assuming private vehicles) or they are managed by way of resource consent that considers adverse effects on the environment. Visitor numbers can be 1000 outside movie set hours but only if no more than 500 come in private vehicles.

Lay evidence from neighbours focussed on traffic effects. There will be significantly less traffic from 500 evening visitors than compared to normal visitor hours. None of the neighbours produced evidence from an expert traffic engineer. The performance standard proposed by

MPDC does not limit when the visitor numbers can occur and therefore does not either raise or address any after-hours traffic issues, and none of the traffic engineers suggested there was a safety or other reason to limit evening traffic.

RST is adamantly opposed to a visitor cap that encompasses normal movie set tours **and** event visitors and there has been no evidence to support such a limit in terms of adverse effects on either the transport or wider environment.

65 1.1.9 re noise is addressed above. In addition we note that there is already a requirement to record data for events under performance standard 1.1.13 (c). New performance standard 1.1.9 (f) provides for monitoring of noise for the purposes of preparing an event management plan. Performance standards 1.1.9 (c) and (d) already provides for the location of monitoring (notional boundary) and the deletions proposed in the RST version largely address duplication.

66 Performance standard 1.1.10 (Lighting and Glare) is accepted except 1.1.10 (b) where the additional exception to extend the hours to accommodate movies and concerts until 11pm is sought.

67 Performance standards 1.1.11 (Street Lighting) and 1.1.12 (Signage) are accepted.

68 Performance standard 1.1.13 (Themed and Non-themed Events) is strongly rejected to the extent it differentiates between themed and non-themed events for the reasons above.

Reference to a site management and monitoring plan is also opposed for the reasons above.

69 Performance standard 1.1.14 (Fireworks) is accepted in part. RST proposes alternative wording to differentiate between displays involving domestic fireworks purchased from a retail outlet as opposed to professional displays. That wording is set out in the RST revised set of performance standards and would result in RST being treated in the same way as any other neighbour in respect of domestic fireworks which were lawfully purchased being set off on private land. Like any other member of the public, RST would be subject to specific controls and a management plan for a professional display.

70 Performance standard 1.1.15 (Earthworks and Cleanfill) is accepted.

71 Proposed standard 1.1.16 is rejected in its entirety. The basis from which the proposed accommodation amendments have been made is not clear.

- (a) 1.1.16 (a) – maximum visitor numbers. This rule appears to be meant to address 2 issues: traffic and visual/amenity. In terms of traffic, people are coming to the site anyway so there is no increase in traffic numbers. In addition, RST is improving safety by people staying on the site rather than driving at night when fatigued. In our submission there is no traffic impact whether there are 2 people staying or 100 because the rule does not address a traffic effect.

In terms of amenity, it is Mr Graham's opinion that the locations identified for visitor accommodation and camping are irrelevant from a landscape and visual effects perspective, as the site itself is largely contained and screened by landform and existing vegetation from most close proximity view locations. Any new buildings will be screened with additional planting as proposed in 1.1.4 (b).

- (b) 1.1.16 (b) – camper vans. This rule seems to be addressing traffic effects but as above, the traffic will already be there and the likely effect will be to reduce traffic travelling away from Hobbiton at night.

There will be no adverse amenity effects for the reasons articulated by Mr Graham above and it is unreasonable to expect RST to undertake a plan change to relocate camper van parking in the event of changes to Hobbiton's operational needs.

- (c) 1.1.16 (c) – monitoring. There will be no adverse effects on the environment needing monitoring even if it was agreed this might be appropriate in a DCP, which it is not.

It is Council's role to undertake monitoring of permitted activities it is not the role of the landowners that occupy the sites.

72 Proposed standard 1.1.17 (community liaison) is opposed in its entirety due to many of the activities being of a permitted nature. It attempts to place an enforcement burden on RST and is not consistent with any other DCP and is inappropriate in this context.

73 Proposed standard 1.1.18 (Site Management and Monitoring Plan "SMMP")- is also opposed in its entirety for the reasons set out above. The operative status of a plan change cannot be determined on the basis of ongoing information to be provided. The level of detail sought for business performance is unnecessary and the performance standard is inconsistent with all other DCPs in the district.

74 Proposed standard 1.1.19 (c) (Riparian planting around stormwater pond) This is an already consented activity that has a planting requirement

incorporated into the consent. This further planting requirement is opposed for the reasons set out above.

Matters of Discretion

- 75 It remains RST's view that there is no need to repeat the matters of discretion under 1.2. The performance standards in 1.1 are sufficiently detailed to be the matters of discretion for any restricted discretionary activity triggered by non-compliance with a performance standard.
- 76 As above RST opposes there being any separation between themed and non-themed events and sees no rationale for that separation. There is also no rationale for creating a non-complying activity status when any non-compliances can be assessed as restricted discretionary or fully discretionary activities.

Definitions

- 77 As above, the themed vs non-themed distinction is not accepted.
- 78 RST opposes any performance standard that targets vehicle movements rather than visitor numbers. As such a definition of 'trip' is not required.

Memorandum of Understanding

- 79 Mr Bigwood argued that the Memorandum of Understanding (MoU) should not be appended to the DCP as the mitigation proposed had been contemplated by the experts. MPDC has accepted that argument and removed the MoU but says its position would change if the MoU was not signed in the form provided to RST following the hearing.
- 80 The hearings panel addressed a number of questions to Mr Bigwood. These primarily focused on what matters were already covered off in the existing resource consents and whether development contributions and other monies had been paid in relation to these consents. Mr Bigwood was able to confirm that all monies relating to existing consents had been paid, and that any new monies to be contributed should be captured in the side MOU as opposed to the DCP.
- 81 Addressing the content of the MoU, Mr Bigwood noted that Hobbiton was not willing to consider:
- (a) a roundabout at SH29 and Hopkins Road; or
 - (b) physically lowering Buckland Road.
- In part this is due to the associated costs of these two activities.
- 82 The latest version of the MoU, as sought by MPDC is tabled with this reply with the RST preference on the right hand side (refer to **Attachment I**). We

accept that the MoU is not part of the hearing panel's decision to the extent it is removed from the DCP, but wish to identify the areas of change sought by RST for completeness in terms of the mitigation being proffered.

- 83 RST proposes to reintroduce the provision of convex mirrors opposite the entrances to 399 and 385 Buckland Road because these mirrors will assist with vision and safety irrespective of whether any additional road works are done outside those properties.
- 84 RST also proposes changes to Schedule 3 – Additional Works, to clarify the works to be done on Buckland Road and on the Buckland Road/Puketutu Road intersection (new clause 3). The reference to the splitter island, signage and lighting as agreed in the evidence of Mr Black to the hearing (paragraph 69 of his evidence).
- 85 There is clarification to new clause 4 regarding location of the signage on the curve.
- 86 Clause 5 is also amended to provide clarity as to the road markings.
- 87 Clause 6 is amended to reference the directional arrow markings on Buckland Road to remind road users of the side of the road to use. Again this was agreed in Mr Black's evidence.
- 88 Former clause 6 regarding the lowering of Buckland Road is deleted for the reasons set out above.
- 89 Clause 7 is amended to clarify the nature of signage to be installed outside Hobbiton to dissuade pedestrian crossings.
- 90 Clause 8 is reworded to provide clarity.
- 91 Clause 9 is amended to remove reference to Rangitunuku Road and to remove a requirement to ensure that staff used the eastern Buckland Road route. RST has no control over the driving habits of its staff and can only recommend travel routes.

Evidence from David and Eveline Reichmuth

Audio

- 92 RST notes it has been transparent in the applications for consents and the performance standards for the DCP. The existing consent provides that activities up to 300 people can take place on the site without it being considered an event, and restricts gatherings that exceed 300 people (events) to 12 per year. The proposed performance standard lifts the total event number to 18, comprising 12 screenings and 6 performances.

- 93 Mr Reichmuth alleged that evening noise generated from the banquet tours was more than minor. The evening tours are restricted to 48 people. The tours contain a walking component, and then proceed inside where visitors attend a banquet. The tour concludes approximately 4.5 hours after commencing. In summer this is approximately 10:00pm and in Winter 8:00pm. There is a small window that follows during which traffic departs the site.
- 94 RST rejects the suggestion that the evening events have more than minor effects. Evening events are few and far between in the past three years and the amended performance standards provide that no more than 12 movie screenings, and 6 amplified music concert events will take place annually.
- 95 The provision for overnight accommodation in the DCP may also reduce traffic related night noise. Whilst the concept of accommodation has been challenged by the Reichmuths, it has been challenged from a need perspective, as opposed to an effect basis.
- 96 RST does not agree that the acoustic effects are more than minor. Acoustic amenity is determined through considering frequency, volume and duration. The frequency of events are minor. Whilst the tours may be frequent they do not generate excessive noise (level) and conclude within a reasonable time frame.

Privacy

- 97 Privacy breaches were also raised. These are acknowledged, but RST is unable to control the private and illegal actions of tourists. The number of tourists attending the site will not increase during the peak season under the proposed DCP, but it is acknowledged that there may be slight uplift in the shoulder season. The issues raised could equally apply to the neighbourhoods surrounding any tourist attraction within New Zealand.
- 98 RST notes, however, that there is an increase in the numbers of tourists travelling via arranged transport as the bookings move to being online. This may also assist with rubbish, and other amenity concerns.

Evidence from New Zealand Transport Agency (NZTA)

- 99 The manner in which visitors booked and subsequently attended the site was not, initially, understood by Mr Swears, expert for NZTA due to his not being supplied with either Mr Alexander's statement or Mr Inder's rebuttal. No NZTA representative was present during the expert traffic evidence presented by either Mr Inder or Mr Black.

- 100 Mr Alexander was asked, and subsequently explained to the hearing that due to the manner in which the site operates, which includes staggered staff shifts, mean that there are no peak traffic periods, and therefore no associated peak traffic problems. Mr Alexander stressed that a key consideration for tourists who did self-drive was a lack of familiarity with New Zealand roads, and the area. This led to a reliance on signage. Mr Alexander highlighted that a tourist who knew where they were, was a safer tourist.
- 101 Mr Swears relied upon the ITA and appeared to misunderstand some of the nuances in this document, in particular those relating to visitor numbers to the site. Mr Inder, in his rebuttal evidence, explained how the numbers had been reached and what he considered to be reasonable assumptions around vehicle movements in light of the data collected. The annual vehicle cap suggested by Mr Swears is rejected by the RST.
- 102 NZTA failed to engage with the hearing on what the national standards were for advanced directional signage of key tourist attractions (Hobbiton is the third largest tourist attraction in New Zealand). This lack of engagement fails to reflect the new Government's Policy Statement – whereby safety is the key strategic priority. Mr Swears referred to 'widespread' signage proposed by the RST. This was actually reference to three (3) signs in 2 locations.
- 103 At the hearing Mr Swears remained intent on capping vehicle movements as opposed to visitor movements. He proposed an amended daily average cap of 2,100 vehicle movements over a 7 day period at Performance Standard 1.1.7 (I). This proposal is rejected. The figure of 2,100 was drawn from the ITA, and Mr Inder noted in his evidence that it should only relate to vehicles associated to the movie set tours if it had to be used, and that in reality did not, as the visitor limit effectively controlled the number of vehicles visiting the site. The practical reasons for opposing this cap are set out above and we note that none of the other DCPs or examples proposed by NZTA or MPDC involve tourism operations where the mode of transport is outside the control of the site operator.

Evidence from J Swap Contractors Limited (J Swap)

- 104 In response to questions from the Commissioners, Mr Harkness stated that the MoU should not form part of the DCP, but that the key information in the schedules be lifted into the DCP. In particular, the general arrangements that were set out in Schedule 1 of the MoU (referring to road markings, safe pull

over zones, and convex mirrors at #399 and #385 Buckland Road). We agree with that submission.

- 105 As above RST also agrees with Mr Harkness that the themed vs non-themed distinction is unhelpful and unenforceable.
- 106 RST does not agree with Mr Harkness or J Swap that Hobbiton and RST has not paid its share of development contributions or financial contributions to the district.
- 107 RST has contributed to road infrastructure since inception, and has met all of its historical development contributions and has met the additional ones set out in the MOU (bar convex mirrors).
- 108 RST is a major tourism draw card for the district and spends considerable sums on marketing which include promoting Matamata itself and the district.
- 109 The impact of Hobbiton is set out in the Economic Impact Report prepared for RST. That Report was provided to MPDC as part of the Plan Change application documents but we are unsure if it was provided to the panel. A copy is provided with these reply submissions (as **Attachment J**). The report was referred to in Mr Alexander's evidence at paragraph 18.

Evidence from Gregan Family Trust

- 110 The RST responses relating to mitigation regarding safety issues raised by the Trust are set out above. Mr Gregan also raised a concern regarding the potential for noise from proposed activities. Those submissions were addressed in Mr Bell-Booth's evidence. Neither the Gregan nor McCosh submission mentioned the extension sought for the daytime period.

Evidence from John Evans

- 111 RST agrees with Mr Evans and Ms Conder that safety is a significant issue at the intersection of SH 29 and Hopkins Road. NZTA has indicated it is undertaking traffic improvements at that intersection and RST supports those improvements.
- 112 Like Mr Evans and Ms Conder, RST urges NZTA to complete the safety upgrade at that intersection as a matter of urgency.
- 113 Mr Evans also supported a lowering of the speed limit for Buckland Road. While outside of the powers of the DCP process, RST records that it would support any lowering of the speed limit should MPDC decide to initiate this.

Evidence from Glenda O'Sullivan

- 114 Mrs O'Sullivan acknowledged that Buckland Road East has been improved with the mitigation works undertaken by RST already and that her concerns focused on tourist driving, and behaviour including going onto her private property and creating a biosecurity risk and risk to children playing.
- 115 There will be further improvements with the mitigation still to be undertaken under the MoU.
- 116 Mrs O'Sullivan called for measures that would address the behaviours of tourists. This is a New Zealand-wide issue and is not something within the control of RST. RST notes that tourist behaviour can be an issue whether there are 300,000 tourists (being the number currently consented) or less/more as good or bad behaviour is an individual trait which is beyond anything over which RST has control.

Evidence from Derrys Farm

- 117 Mrs Broomhill stated that a lowering of the speed limit, and additional signage was required to stop traffic coming through her fences, and too fast around the corner into Buckland Road. It is submitted that there has been a significant improvement to the traffic environment at the corner of Buckland Road and Puketutu Road and further improvement will follow the mitigation set out in the MoU (**Attachment I**).

Evidence from Matamata-Piako District Council

- 118 Ms van Kuijk emphasised the need for MPDC to future proof the site. She argued in order to do this, some activities needed to be classed as non-complying rather than discretionary, or the ability of MPDC to regulate was removed. That is not agreed. What is agreed is the need for certainty. To provide certainty there needs to be clear performance standards that allow for permitted activities without the need for resource consents.
- 119 We also note that it is inappropriate to refer to a 2011 application for resource consent as evidence for having a distinction between themed and non-themed events. We are proposing a DCP for a significant tourism site and the performance standards need to be certain, understandable and functional.

Conclusion

- 120 Again we submit this is a Plan Change hearing. It is important that the District Plan is consistent and that DCPs added to it also fit within the existing planning framework and are reasonable when compared to each other.
- 121 The second generation DCPs referred to by Ms van Kuijk do not include overall site management plans, monitoring plans or community consultation provisions.
- 122 The other second generation DCPs do have varying noise levels that are not the same as those applying in the adjoining zone/s. That is consistent with their being specific sites and operations that justify separate zoning and different performance standards.
- 123 Some of the DCPs do have vehicle movement caps however they relate to sites where the site operator has control over those vehicle flows. None of them are sites that have tourists comprising the principle traffic and none involve visitor numbers approaching 3,500 per day.
- 124 Hobbiton is a unique site within the District and it needs unique, practical and workable performance standards that will provide certainty and will be enforceable.
- 125 For the reasons set out above, in Mr Alexander's evidence, the evidence of RST's experts and in opening legal submissions we consider that the DCP provisions as proposed in these reply submissions should be adopted.

29 May 2019



Dr Joan Forret
Counsel for RST

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| Attachment A: | Comparative DCP Plans |
| Attachment B: | Amended DCP Provisions |
| Attachment C: | Second Generation DCPs from Matamata-Piako District Plan |
| Attachment D: | Bridget Gilbert Plan Recommended by MPDC |
| Attachment E: | MGLA Plan C2 |
| Attachment F: | WRC Stormwater Consent for Precinct 1 Stormwater Wetland |
| Attachment G: | MGLA Plan C3 |
| Attachment H: | NZ Noise Standards NZS 6801 and 6802 |
| Attachment I: | Amended MOU by RST in Response to MPDC Recommendations |
| Attachment J: | Economic Assessment Report, August 2017 |