

# **SOUTH WAIRARAPA DISTRICT COUNCIL**

**12 MARCH 2014**

---

## **AGENDA ITEM C2**

### **FILM FRIENDLY AGREEMENTS**

---

#### **Purpose of Report**

To seek Councillors endorsement to join the "Film Friendly" agreement developed for the Wellington region.

#### **Recommendations**

Officers recommend that the Council:

1. *Receive the information.*
2. *Advise Grow/Film Wellington of Council's commitment to meet the (checklist) requirements to become a film friendly area.*
3. *Adopt the standard terms and conditions for filming activities in the Wellington region for South Wairarapa.*

## **1. Executive Summary**

FilmWellington seek to standardise how all Council's within the Wellington region manage requests to undertake filming in their areas through the use of a Film Friendly checklist and setting standard terms and conditions.

By doing this FilmWellington seeks to present an "open for business" image for film makers looking at productions in the region.

## **2. Background**

This initiative follows on from and builds upon other earlier work such as the 2002 NZ Local Government Filming Protocol (a LGNZ document) which also set out to "smooth the way" for film makers unaccustomed to dealing with the many national and local legal requirements that exist (e.g. Health and Safety law, Building and Resource Consents, Transport Act).

Council had responded to this early work by including in the combined District Plan provisions that allowed filming to take place for up to 3 months (including erecting film sets and service facilities) as a permitted activity (this timeline caters for all but long term TV series).

However there are other matters outside of the District plan that still need to be addressed. These can include road closures and "exclusive" use of

public places and spaces, removal and reinstatement of publicly owned structures, the need for security barriers and traffic control.

With all these matters in mind, the FilmWellington group considered that wider coordination across all Council's in the region could be beneficial. In essence it had the potential to streamline approvals and open up a wider "film set".

As such the checklist and standard terms and conditions have been developed through the GrowWellington and the FilmWellington programmes as they engaged with film makers. Film makers include in this context everything from TV commercials, documentaries through to feature films and TV series.

### **3. Discussion**

#### **3.1 Purpose**

FilmWellington have consequently suggested through the Wairarapa Mayoral forum that;

- There be one point of contact for all Councils or one for each Council, preferably a Senior Manager or higher;
- A signed MOU between Film Wellington and each Council to be negotiated (checklist) based upon the Local Government Film Friendly Protocol 2002;and
- Regulatory processes are appropriate for each Council, but consistent across all Councils and legal for them to administer (standard terms and conditions);

#### **3.2 Checklist**

If Council adopts the checklist a number of subsequent actions will be required. These are set out in the attached document. In essence FilmWellington will require evidence that Council has adopted internal processes and systems to enable it to quickly and consistently deal with any approvals required to enable filming within the South Wairarapa. This should be readily achievable.

#### **3.3 Standard Terms and Conditions**

FilmWellington have indicated that they are promoting, a "one stop shop" approach, with that organisation issuing all permits "on behalf" of the signatory Council's (TA's within the region).

The "standard terms and conditions" agreement would be the basis of the permits it would issue under that delegation. In order to provide some Council overview to that process it seems that they are suggesting a senior officer of Council be appointed as their "contact" with all proposals being "run by" that officer before approvals are given.

A second option which seems to have been put forward is to have the Council "contact" act as the local conduit through which FilmWellington will obtain all necessary permissions from Council on behalf of the film maker.

This would operate in light of Council meeting the “checklist” requirements in terms of having appropriate internal systems and commitment to a film friendly Wellington to quickly deal with any request to film.

### **3.4 Legal issues**

The preferred FilmWellington option could run into difficulties as in a number of permitting/licencing/consenting areas, Council cannot delegate its powers to FilmWellington. In addition many such approvals require sound local knowledge so that they are properly evaluated before approval is granted. Given this it would seem a better choice to go down the path of option 2 above.

## **4. Conclusion**

If Council goes down the path of option 2, it would readily satisfy the checklist requirements generally and become “film friendly”, but retain the powers to decide permits in accord with its duties in law. Council would identify a key internal contact for this work to be co-ordinated through and for Film Wellington to interact with on behalf of the film maker.

## **5. Appendices**

Appendix 1 – FilmWellington Film Friendly Checklist

Appendix 2 – FilmWellington Standard Terms and Conditions

Contact: Murray Buchanan, Group Manager, Planning and Environment

# **Appendix 1 – FilmWellington Film Friendly Checklist**

## *Film Wellington FILM FRIENDLY checklist*

### **Purpose**

The purpose of this guide is to assist those Councils that are yet to gain *Film Friendly* status, by providing some helpful templates and checklists. These will simplify the processes for many smaller local authorities or areas that currently have limited filming activity, yet see the potential of film production as a local cultural and economic driver.

### **Checklist to Gaining, and Delivering on, *Film Friendly* Status as referred to in the *Local Government Film Friendly Protocol* booklet**

PROCESS STAGES	CONSIDERATIONS	ACTION
<b>Rationale for gaining <i>Film Friendly</i> status</b>	<ul style="list-style-type: none"> <li>• Level of existing/past film activity.</li> <li>• Part of a regional strategy</li> <li>• Opportunity for economic growth</li> <li>• Local interest and industry capability</li> <li>• Locations offering</li> </ul>	Film Wellington/Grow Wellington to inform of context/history and present current situation
<b>Establishing internal processes and procedures</b>	<p>The following areas need to be addressed :</p> <ul style="list-style-type: none"> <li>• Road Closures and Traffic Management Plans</li> <li>• Use of Public Spaces &amp; Reserves</li> <li>• Handling Non Notified &amp; Notified Consents</li> <li>• Fees</li> <li>• Notification of Affected Parties</li> <li>• Public Liability Requirement</li> <li>• Environmental Management</li> <li>• Health &amp; Safety Requirements</li> </ul>	<p>Talk to Film Wellington about current procedures and processes</p> <p>Establish agreed processes and procedures with the relevant council officers.</p> <p>'Open for business'</p> <p>Allow Film Wellington to be the body for issuing permits on behalf of South Wairarapa District Council (SWDC), Carterton District Council (CDC) and Masterton District Council (MDC)</p>
<b>Council Contact Person</b>	<ul style="list-style-type: none"> <li>• Responsibility of the Economic Development function.</li> <li>• Service delivered by the RFO and regional EDA.</li> <li>• Direct contact within regulatory team.</li> </ul>	Appoint, nominate or further empower a contact person in each organisation (or collectively) who will internally facilitate and expedite applications/requests from Film Wellington.
<b>Formal Council Endorsement</b>	<p>Does the council CE have delegated authority, or</p> <p>Is a council resolution</p>	<p>Report to Council (if required/deemed necessary)</p> <p><b>Terms and Conditions</b></p>

	required.	<b>considered and signed off (see attached)</b>
<b>Signing Film Friendly Agreement</b>	CE or Mayor/Committee Chair to sign on behalf of the Council.	<b>MOU to be created</b>
<b>Communications and Marketing</b>	How will industry users be aware of your film offering, processes and conditions? Options: <ul style="list-style-type: none"> <li>• Link to FW website</li> <li>• Media Articles</li> </ul>	Assist with imagery, local information and contacts for Film Wellington website and other Film Wellington promotional activity
<b>Formalise Procedures</b>	The degree to which agreed processes for film production activity are formalised will depend on the level of activity and potential effects. Options: <ul style="list-style-type: none"> <li>• Internal agreement with necessary council officers</li> <li>• Written procedures and policies</li> <li>• Included in District Plan rules</li> </ul>	Agree on appropriate approach for the Council, community interests and the screen production industry.  Formerly adopt the Film Wellington permit application process (via Film Wellington) and allow Film Wellington to sign off permits for South Wairarapa District Council (SWDC), Carterton District Council (CDC) and Masterton District Council (MDC)
<b>Establish a Regional Film Office</b>		This already exists in the Wellington region in the form of Film Wellington and has done for almost 16 years

## REPORT TO COUNCIL

### Film Friendly Agreement

The purpose of this report is to seek Council approval to sign an agreement with Film Wellington/Grow Wellington that provides formal recognition to South Wairarapa District Council (SWDC), Carterton District Council (CDC) and Masterton District Council (MDC) that they are 'film friendly' and 'open for business'.

# **Appendix 2 – FilmWellington Standard Terms and Conditions**

**Standard Terms & Conditions of Contract between the 'Hirer' (film production company) and 'The Principal' (Wellington City Council, Hutt City Council, Porirua City Council, Kapiti District Council, Upper Hutt City Council, Masterton District Council, Carterton District Council and South Wairarapa District Council) for filming in the Wellington region.**

## **1. Intent**

1.1 The contract is an agreement for the hire of the location between the hirer and the principal for filming.

1.2 The Hirer will have lodged a completed application form with Film Wellington, the Wellington regional film office for consideration ('the Application').

## **2. Programme of Use**

2.1 If the Hirer decided to use the Location for other than as set out in the Hirer's Application then any such changes shall be notified to Film Wellington on behalf of the Principal, in writing, prior to the commencement of the Hire Period.

2.2 The Principal retains the right to cancel this Contract should the notified changes result in (in the opinion of the Principal) a substantial alteration to the details in the Application.

## **3. Obligations of the Principal**

3.1 Subject to clause 15, the Principal shall provide the Location for the Hire Period (as set out in the Contract Form).

3.2 As well as Film Wellington, the Principal may nominate an internal representative(s) with whom the Hirer shall liaise.

## **4. Obligations of Hirer**

4.1 The Hirer shall be responsible for the Location and any obligations under the Contract Documents.

4.2 Where the Principal deems it necessary, the Hirer shall provide all barriers, fencing and the like necessary to establish the area for the hired use. Such barriers, fencing and the like shall be free-standing and in accordance with the special conditions.

4.3 The following additional obligations (to be determined by the Principal) may be placed upon the Hirer in the use of the Location ("the special conditions"):

- public notification/consultation
- restriction to hours of use
- liaison with relevant Principal representative
- signage
- barriers
- temporary structures

4.4 The Hirer will not bring the reputation of relevant Council or the representatives of relevant Council into question as a result of their activities on Council land.

## **5. Damage and Loss**

5.1 Any damage to the Location; vegetation, structures etc or any other property or any loss incurred by any person whatsoever resulting from the Hirer's use of the Location, as determined by the Principal, is the responsibility of the Hirer and the Hirer is liable to pay all amounts as a result of such damage or loss to the Principal (or as the Principal directs) and do any other thing necessary to make good such damage or loss.

5.2 Prior to undertaking any repair works the Hirer shall obtain the Principal's consent.

## **6. Bonds and Fees**

6.1 A Bond may be payable in advance by the Hirer by cheque or cash to the Principal's representative at the time the Contract is signed by the Hirer or no later than the specified date in the contract ("the Last Date For Payment Of The Bond")

6.2 Within three (3) working days of the end of the Hire Period the Principal shall authorise the refund all money held under the Bond or give details of the respects in which the Principal contends that the Hirer has failed to perform the Hirer's obligations under the Contract Documents.

6.3 If after three (3) working days from the end of the Hire Period the Principal believes the venue is not in substantially the same state as it was in immediately prior to the event taking place, then the Principal shall be entitled to restore the Location to that state at the Hirer's expense and apply all or any part of the Bond for this purpose.

6.4 Expenditure of all or any part of the Bond by the Principal shall not release the Hirer from any of its obligations in the Contract Documents which remain unfulfilled nor shall the Principal be required to use the Bond before:

- (i) exercising any other of its rights under this Contract to ensure performance by the Hirer of its obligations; or

(ii) requiring the Hirer to meet its obligations under this Contract.

6.5 The fee is payable in advance by the Hirer by cheque or cash to the Principal's representative at the same time as the Bond, but no later than the date specified in the contract (the "Last Date For Payment Of The Fee"). If the fee is paid by cheque, a cheque separate to the Bond payment must be used.

## **7. Indemnity and Insurance**

7.1 The Hirer indemnifies the Principal against:-

(i) all damage or loss resulting from any act or omission on the part of the Hirer or the Hirer's employees, contractors or invitees. The Hirer shall recompense the Principal for all expenses incurred by the Principal in making good any damage to the Location or other property resulting from any such act or omission;

(ii) all actions, suits, proceedings, claims, costs (including legal and debt collection fees) and demands whatsoever which may be made or brought against the Principal by reason of the use of the Location by the Hirer, its servants, agents or invitees or by reason of any act or omission or negligence of the Hirer or its servants, agents or invitees.

7.2 If the Principal requests the Hirer shall, at its cost from the beginning of the Hire Period or earlier, take out with a reputable insurance company public liability insurance with a minimum cover of \$1,000,000 in respect of its operations pursuant to this Contract in the joint names of the Hirer and the Principal and shall produce to the Principal immediately upon written demand being made by the Principal a copy of the policy and a receipt for the current premium paid.

## **8. Permits and Consents**

8.1 The Hirer shall comply with all laws, regulations, by-laws and rules applicable to the use of the Location, including but not by way of limitation, the Health and Safety in Employment Act, and is responsible for obtaining and complying with the provisions of necessary approvals, consents and licences from any person including any department of the Principal

8.2 The Hirer is responsible for identification of underground/above ground services which may be affected by their activities and the obtaining of any relevant service authority's permission to operate above/below.

8.3 The cost of the consents, licences or permits shall be met by the Hirer.

### **8.4 Health and Safety in Employment Act Compliance**

8.4.1 The Hirer shall take all practicable steps to ensure that the provisions of the Health and Safety in Employment Act are met at all times to assure the health and safety of their staff, Principal staff and the general public.

8.4.2 The Hirer shall comply and adhere with the Code of Practice for Safety & Health in the New Zealand Film and Video Production Industry known as the ' White Book' and/or if applicable a Health and Safety Plan/Programme prior to the starting of the Contract.

8.4.3 The Principal will identify, where possible, potential hazards relating to the Contract.

8.4.4 The Principal considers the Hirer to be in control of the Location during the Contract Period and able to take all practical steps to prevent any harm occurring.

8.4.5 As such, the Hirer shall identify and notify the Principal of other possible hazards relating to this Contract.

8.4.6 The Hirer shall notify the Principal of the procedures to take all practical steps to prevent/isolate such hazards (including those identified by the Principal). Such notification shall occur prior to contract works starting.

8.4.7 If contract works are stopped by the Department of Labour because of the Hirer's failure to comply with the Health and Safety in Employment Act, the Hirer shall be liable for any resulting additional costs to the Principal over and above the contract sum.

## **9. Safety and Convenience of the Public**

9.1 The Hirer is responsible for the safety of all users of the Location during the Hire Period.

9.2 There is no undue inconvenience to traffic or pedestrian flows through the area of the film shoot and pedestrians must never be forced to step onto the adjoining roadway without adequate protection from vehicles. Pedestrian access on to properties is to be maintained at all times.

9.3 That all building egress and driveways are kept clear at all times. Where vehicular access cannot be maintained at all times, then property owners are to be notified at least three days in advance. A copy of notification is to be forwarded to Film Wellington at least two days prior to filming activity.

9.4 The Hirer is responsible for the provision, placement and removal of all signs, cones and barricades to the satisfaction of the Principal.

9.5 The Hirer is responsible for providing suitably qualified and identifiable marshals for traffic control to the satisfaction of the Principal.

## **10. Rubbish and Litter Collection**

10.1 The Hirer shall collect and dispose of all rubbish and litter resulting from the use of the Location.

10.2 If the Hirer fails to collect and dispose of all rubbish and litter within twenty four (24) hours of the Hire Period ending or the Principal is of the view that the rubbish or litter still remains at the Location at that time then, notwithstanding anything else in this Contract, the Principal shall be entitled to have the rubbish and litter removed. The cost of this to be borne by the Hirer directly either by deduction from any Bond or payment direct from the Hirer.

#### **11. Principal's Instructions**

11.1 The Hirer shall comply with all reasonable instructions given by the Principal or nominated Principal's representative(s) at any time.

#### **12. Waiver**

12.1 Failure of either party at any time or times to require performance or any provision of this Contract shall in no manner affect its rights to enforce such provisions at a later time.

12.2 Such of the conditions inserted by the Principal or the Hirer for their respective sole benefits may be waived by the party having the benefit of the condition in question.

#### **13. Interest on Unpaid Money**

13.1 Should any amounts payable by the Hirer under this Contract not be paid within fourteen (14) days of demand (as defined in the Chattels Transfer Act 1924) being made by the Principal such amounts shall accrue interest at the rate of 8 percent per annum from the date of demand to the date payment is made.

#### **14. Costs**

14.1 The Hirer shall be responsible for the Principal's legal or debt collection costs of and incidental to the enforcement or attempted enforcement of the Principal's rights, remedies and powers under this Contract.

#### **15. Unavailability of Location**

15.1 If due to, but not limited to, any fire, storm, earthquake, emergency or disaster, whether man-made or not, or for any other reason the Location is not available, the Principal's liability under this Contract is limited to refunding the Bond and endeavouring to arrange an alternative venue and/or time if possible.

#### **16. Regulatory Function**

16.1 Nothing in this Agreement shall be read as limiting or otherwise affecting the proper and valid undertaking or exercise of any regulatory or statutory power or function by the Principal or any part of its operations.

## **17. Location Clearance**

17.1 In addition to the Hirer's obligations in clause 4, the Hirer has the right:

(i) to represent the Location as being another real or fictitious place according to the requirements of the television series/film/commercial.

(ii) to use and exhibit the film and stills photographs with or without the scenes photographed in any medium, either now known or hereafter devised, and without any restrictions whatsoever throughout the world in perpetuity.

17.2 If the Principal believes that as a result of the Hirer's activities, any reputation has been damaged, clause 17.1 will not apply.

## **18. Special Conditions**

18.1 The Principal may impose special conditions on the Hirer in addition to the standard terms and condition of contract listed above.