BEFORE A HEARING PANEL
CONSTITUTED BY HORIZONS REGIONAL COUNCIL

IN THE MATTER	of an application dated 21 December 2020 for regional consents by Grenadier Limited to develop the Douglas Link Golf Course at 765 Muhunoa West Road, Ōhau
IN THE MATTER	of Part 6 of the Resource Management Act 1991

LEGAL SUBMISSIONS FOR GRENADIER LIMITED

Applicants' Consultant:

Land Matters Limited
20 Addington Road
Otaki

Attn: Tom Bland
tom@landmatters.nz
027 877 894

Counsel acting:

John Maassen
BARRISTER

john@johnmaassen.com
johnmaassen.com
04 914 1050
04 473 3179

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Overview

Application

[1] Grenadier Limited ('Grenadier), in a single suite of Form 9 applications and an accompanying AEE, applied for land use consents from Horowhenua District Council and for regional consents from Horizons Regional Council. The required regional consents are summarised in Ms Morton's s42A report and in Mr Bland's s 41B report. They include:

(a) Land use consents for earthworks, including earthworks affecting Schedule F habitat;

(b) A water permit for a groundwater take; and

(c) Discharge permits including a permit under the NES -FM because of the proximity of the discharge to the saltmarsh at the mouth of the Ōhau River.

[2] The consents that Grenadier seeks are to enable a golf course to be built, operated and maintained at 765 Muhunoa West Road, Ōhau, to be called the Douglas Links Golf Course.

[3] Horowhenua District Council granted a resource consent for the activities within its jurisdiction on 5 October 2021 under RM No. LUC/501/2020/229 and a copy of that consent is attached as **Appendix 1**.

[4] The activities requiring regional consents (other than earthworks affecting Schedule F habitats) are 'vanilla' activities with minimal effects. They are comprehensively addressed in both the technical and planning evidence before the Panel.

[5] It is common ground between Ms Morton and Mr Bland that, as a whole, the activities should be assessed as non-complying following the principle of bundling. That should not undermine the One Plan's discrete treatment of the constitutive elements of the proposal in its planning framework.

[6] Policy 12-7 of the One Plan makes provision for assessing activities without applying the bundling principle. The Environment Court has observed the possibility of applying that provision where Schedule F habitat triggers a non-complying consent in *Day v. Wanganui Regional Council*.[1] The Court correctly concluded at [3-111] that there was a discretion not to apply the principle following that policy. Probably nothing turns on that, but the provision is drawn to your attention.

The issues addressed by these submissions

[7] The matters where the Panel may obtain assistance through legal submissions are the following:

(a) Natural character and its relationship to appropriate coastal management.

(b) Indigenous biodiversity management under the One Plan and the ecological impacts on Schedule F habitat.

(c) Cultural heritage.

(d) The 'gateway' tests in RMA, s 104D.

(e) Consent conditions.

Grenadier's witnesses

[8] Grenadier's witnesses are:

(a) Mr Hamish Edwards – director and visionary.

(b) Mr Phillip Tataurangi on the cultural values of Ngāti Kikopiri.

(c) Dr Vaughan Keesing on ecology.

(d) Dr Frank Boffa on landscape and natural character.

(e) Jim Dahm on coastal science.

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[1] *Day v. Wanganui Regional Council* [2012] NZEnvC 182 at [3-111].

(f) Ms Mary O'Keeffe on archaeology

(g) Mr Darius Oliver on the golf course design.

(h) Ms Alexandra Johansen on hydrogeology.

(i) Mr Tom Bland on planning.

[9] Grenadier's witnesses are mostly available in person, but some (Mr Oliver, Mr Dahm and Dr Boffa) will need to present their evidence by Audio Visual Link.

[10] Messrs Robert Kuiti and Dennis Paku, who are kaumatua from Ngāti Kikopiri, are also present to support Mr Tataurangi and are available to answer questions.

A Links course and its benefits

[11] Often, in New Zealand, the idea for a new golf course emerges as an adjunct to the primary development objective of selling superior residences in an attractive environment. Arguably, New Zealand does not need any more of these.

[12] The Douglas Links Golf Course project is conceived entirely differently. The vision is to establish a golf course of international quality in the lower North Island that meets the exacting standards of a Links Golf Course. For those inducted into the pleasures of golfing, the prospect of a golf course of this quality in the lower North Island excites real passion. It is an affair of the heart rather than of the head since profit is not the principal driver for this type of activity. Mr Edwards is deeply in love with the game of golf and can think of no better way to give back to the lower North Island community than by providing an outstanding golfing facility.

[13] A Links course is established on dunes and must be intimately situated within the coastal margin, following the Caledonian tradition. The Ōhau River mouth, duneland and adjacent flat is a worthy location for a course that aims to meet the standards required of a Links Golf Course. The evidence of Mr Darius Oliver and Mr Philip Tataurangi on this topic

explains how the site and course design integrate into a credible Links Golf Course package.

[14] The common refrain from tourist and airport operators in the lower North Island is the lack of tourist destinations with an international appeal. Because of the potential of the Douglas Links Golf Course, as explained by Mr Darius Oliver and Mr Philip Tataurangi, it is no wonder that this proposal has received considerable golf-related community support and the support of the Manawatu Chamber of Commerce.

[15] Because the special natural character of the coastal environment and golfing challenges must uniquely coalesce into a delightful package for a worthy Links Golf Course, Grenadier engaged one of New Zealand's premier landscape architects, Dr Frank Boffa, to assist the course designer, Mr Darius Oliver who a golf course designer from Victoria. Their brief was to positively respond to the opportunities and constraints arising from the site's landscape and natural character values. The course designer has been supported by a multi-disciplinary team.

Natural character and indigenous biodiversity

[16] Dr Boffa provided a natural character assessment in the AEE and also addressed this in his evidence. Natural character is a matter within the jurisdiction of the Horowhenua District Council and determined by the unimplemented resource consent in **Appendix 1**. It is therefore not a resource management topic of particular significance to the Panel's task.

[17] With that qualification, it is noted that natural character assessment incorporates an assessment of biotic, abiotic and experiential elements. Therefore, on the coastal and Ōhau river mouth margins, where natural coastal processes dominate, ecological elements and the outcomes achieved by the proposal are very much relevant to the natural character assessment that Dr Boffa made.

[18] Dr Boffa concludes that based on the ecological evidence (and the small differences between Dr Keesing and Mr Whiteley) in combination with the restoration proposal and course design, the overall outcome for the natural

character is beneficial. It is markedly better than what will be achieved by other historical and permitted uses of the District Plan.

[19] Dr Boffa's assessment is relevant because natural character by its nature is more all-embracing than ecological assessments and, therefore, more holistic in assessing and achieving appropriate coastal environmental outcomes.

[20] Dr Boffa's evidence also provides a useful lens through which to assess whether or not, from the basket of available options choosing a blunt total avoidance approach is the best one considering historical and permitted productive uses.

Indigenous biodiversity management under the One Plan and the ecological impacts on Schedule F habitat

[21] Grenadier's starting position under RMA, s 104 is that the most relevant policy is that found in the One Plan under:

(a) Chapter 6 – indigenous biodiversity, landscape and historic heritage – (One Plan, Part 1 – RPC).

(b) Chapter 13 – (One Plan Part 2 – Regional Plan).

[22] While the One Plan was not made under the New Zealand Coastal Policy Statement ("NZCPS"), it had an eye to it. Its provisions on indigenous biodiversity were recognised as *avant-garde*. One particular feature was the fact that the Horizons took the lead role in managing terrestrial biodiversity once thought the exclusive preserve of territorial authorities. That led to the decision of the High Court in *Property Rights New Zealand Incorporated v. Manawatū-Wanganui Regional Council*[2]. The other significant feature is the use of predictive modelling to provide identified habitats by ecological description rather than the more cumbersome exercise of identification

[2] *Property Rights New Zealand Incorporated v. Manawatū-Wanganui Regional Council* [2012] NZHC 1272.

through mapping. The overall approach is summarised by the Environment Court in *Day v. Wanganui Regional Council*[3] at [3-8] and [3-9]:

> *"[3-8] The Plan has a focus on habitats, rather than individual species or genetic diversity, as the mechanism to most effectively sustain regional indigenous biodiversity into the future. It categorises habitats into rare, threatened or at-risk habitats. The description in the s42A report of Ms Fleur Maseyk, an ecologist, broadly explains the framework:*
>
> > *... the proposed framework for protection of indigenous biodiversity is based on habitat types rather than individual species. Habitat types were largely identified using predictive modelling. Comparisons between former and current extent of habitat types was conducted to determine degree of loss. Original and current extent of indigenous vegetation cover was primarily projected using robust national spatial data sets and predictive models. The use of these national spatial data sets and predictive models is common practice for analysis of this sort and for determining the need for priorities for protection of indigenous biodiversity. These data sets also serve as key reference data for expected spatial distribution of each habitat type.*
>
> *[3-9] Schedule E of the Plan identifies 32 habitats that are rare, threatened or at-risk habitats. These habitats are not depicted on the maps but are identified in the first table in the schedule (Table E.l). However, for a habitat to then qualify, it must meet at least one of the criteria described in the second table (Table E.2(a)) and not be excluded by one of the criteria in the third table (Table E.2(b)). The criteria in Table E.2(a) set thresholds (particularly size thresholds) above which a habitat type makes a major contribution to biodiversity. The exclusions in Table E.2(b) of the schedule relate to matters such as planted vegetation."*

[3] *Day v. Wanganui Regional Council* [2012] NZEnvC 182.

[23] The benefits of this identification regime were stated by Horizon's staff as including a focus only on the area of interest and consistent treatment, thereby making the process more effective and efficient. The approach in Schedule F is for a suitably qualified expert to be engaged to assist with the Schedule F identification.

[24] The importance of site visits and assessment in establishing the extent of any particular habitat in Schedule F was emphasised by the Regional Council before the Environment Court in *Day v. Wanganui Regional Council,* and at [3-38] of its decision, the Environment Court noted:

> *"[3-38] The DV POP emphasised the importance of site visits in assessing habitats. The evidence of Ms Barton, Ms Maseyk and Ms Hawcroft confirmed that site visits have always been anticipated to check whether a habitat as it exists in the field meets the objective criteria for rare or threatened habitat under Schedule E, Tables 1, 2(a) and 2(b). If the criteria are met, then such habitats are determined to be significant within the meaning of s6(c), and no additional subjective or evaluative exercise is required."*

[25] The Council also advocated for an assessment of the magnitude of ecological effect based on a *case by case* real-world assessment recognising site-specific values and condition. The Environment Court approved that approach in its decision on the One Plan at [3-44] as follows:

> *"[3-44] We agree with Ms Maseyk and Ms Hawcroft that the Council's approach reflects the appropriate process for determining ecological significance (and thus a demonstrated need for regulatory protection and a resource consent process) with the consideration of site-specific values and condition (critical to making sound management decisions) occurring at the resource consent stage. At the resource consent stage, Policy 12-6 (b) requires consideration of:*
>
> > *The potential adverse effects of an activity on a rare habitat, threatened habitat or at risk habitat must be determined by the degree to which the proposed activity will diminish any of*

> *the above characteristics of the habitat that make it significant, while also having regard to any additional ecological values and to the ecological sustainability of that habitat."*

[26] The Environment Court, in determining an appropriate suite of constraining policies for activities affecting *rare*, *threatened* and *at-risk* habitats (now found in Policy 13-4), made the following points about offsetting at [3-63] onwards:

(a) Offsetting is neither harm minimisation nor mitigation.

(b) The primary aim should be on harm minimisation, and therefore in the hierarchy of tools, offsetting should follow harm minimisation and mitigation.

(c) Offsetting is judged against the minimisation response and residual effects.

(d) There should be guidance on the appropriate offsetting recognised by the Plan (now found in Policy 13-4 (d)).

[27] In deciding whether or not appropriate harm minimisation was achieved, the Court preferred an assessment of whether or not the proposal 'reasonably' avoids adverse effects. That was preferred as an objective test that also enabled consideration of all relevant circumstances, including the sensitivity of the receiving environment, financial implications and the aims of the proposal.

Applicant's ecological assessment

[28] Based on Dr Keesing's analysis, Grenadier's position is that:

(a) The residual effect is minor, and all other effects have been reasonably avoided so that Policy 13-4(b)(i) is achieved. The Panel will not the iterative design changes to address a range of matters including a better understanding of the site's ecology.

(b) Therefore, the Restoration Management Plan is not required under the Policy 13 hierarchy but should be counted as an additional positive benefit of the proposal under RMA, s 104(1)(ab).

[29] Even if the ecological effects are assessed as more than minor (which is not accepted), then the policy hierarchy in Policy 13-4 is met because the combination of the evidence of Dr Boffa, Mr Oliver and Dr Keesing is that effects that cannot be reasonably avoided have been remedied or mitigated at the point where the adverse effect occurs, and there is a pragmatic offset leading to an indigenous biological diversity gain.

[30] The difference between ecologists (Mr Whiteley for Horizons and Dr Keesing for Grenadier) concerns the magnitude of effect. In planning terms, that translates into the following difference:

(a) Dr Keesing's analysis leads to a view that Policy 13-4(b)(i) is satisfied, so no further response is required.

(b) Mr Whiteley's evidence leads to the conclusion Policies 13-4(b)(ii) applies. Therefore, Policy 13-4(b)(ii) must be satisfied. Subject to final confirmation of the detail of the Restoration Management Plan, Mr Whiteley considers Policy 13-4(b)(ii) can be satisfied.

[31] Consequently, from a planning outcome perspective, there is no material difference between Mr Whiteley and Dr Keesing because both analyses lead to the same result that the One Plan policy requirements are satisfied by the proposal and offered conditions.

[32] The reason for the difference between the ecologists lies in the assessment of the magnitude of effect. That difference appears to have three causes:

(a) Differences in the assessment of the extent of Schedule F habitat affected.

(b) The scale used for judging the degree of effect.

(c) The assessment of the impact on what can be described as "*additional ecological values*" under Policy 13-5(b).

[33] Concerning the question of the assessment of the extent of habitat that is Schedule F, the One Plan expects a professional ecological assessment. Horizons made a number of further information requests on the ecology topic when processing Grenadier's application, as demonstrated in the attachments to Mr Bland's evidence. That further assessment included a further REECE assessment undertaken by Dr Keesing's team at Boffa Miskell. That team is more qualified than Mr Whiteley on terrestrial ecology and Mr Whiteley has made no independent assessment. The Panel should accept the Applicant's expert assessment.

[34] Mr Whiteley incorrectly describes the ecological classifications of *active dune land* and *stable dune land* as substrate classifications, thereby incorporating more bare active dune. Where substrate classifications apply in Schedule F, it is very clear in Schedule F. For example, coastal rock stacks and cliff scarps, tors of quartzose rock. The *active dune* definition includes indigenous vegetative assemblages in the definition.

[35] Also, Mr Whiteley is wrong and has no basis to imply that a reduction in the Schedule F area between the initial assessment by Boffa Miskell in the AEE and the further information response was an attempt by Grenadier to reduce the scale of effect and the degree of offset required. Horizons considered that a more detailed assessment was required by the Applicant, and that was undertaken. Mr Whiteley cannot now challenge the second more detailed assessment against what he and Horizons decided was an inadequate assessment let alone imply the second assessment had a incorrect purpose.

[36] In terms of assessing the magnitude of effect, Policy 13-5(b) of the One Plan states:

> "*The potential adverse effects on activity on a rare habitat threatened habitat or at risk habitat must be determined by the degree to which the proposed activity will diminish any of the above characteristics of the habitat that makes its significant, while also having regard to ecological values and to its ecological sustainability of that habitat.*"

[37] Dr Keesing's assessment is against those habitat characteristics in Policy 13-5(a), none of which in the affected areas are particularly notable habitats except that they are regionally uncommon. Dr Keesing could have applied the regional scale used by the predictive modelling of the One Plan. Instead, Dr Keesing has taken a more conservative approach and applied a reasonable locality scale and then undertaken a quantification of the degree of effect. That is a reasonable approach. In all other respects there is nothing about the affected habitats which would suggest a higher assessment of the impacts.

[38] Mr Whitley has applied an *additional ecological value* and elevates a mix of *active dune land* and *stable dune land* not spatially defined as material on the basis that any divisions could be artificial and understate the significance of total ecological context. That approach is against the One Plan regime that is designed with the ability to apply boundaries with certainty and consider these effects in accordance with the framework of the One Plan. Relevant passages in the Environment Court decision were referenced earlier.

[39] A more detailed but still draft Restoration and Management Plan is provided as part of Grenadier's case attached to Dr Keesing's evidence that shows an increase in the indigenous habitat of the type Schedule F seeks to protect in the order of five times the loss. That is a significant positive benefit following Grenadier's analysis. Even if one follows Mr Whiteley's analysis, it is a more than sufficient response in light of the offset strategy in Chapter 13 of the One Plan.

Cultural heritage

Grenadier's approach to consultation engagement with tangata whenua

[40] Consultation and engagement where multiple hapū or iwi assert mana whenua status over particular resources are challenging for an applicant wishing to undertake culturally appropriate consultation. A traditional approach (seen in the training of commissioners) is that competing claims to manawhenua status are not determined by the Panel. By implication, the Applicant should not try to do the same.

[41] That position must now be seen as somewhat simplistic in light of the recent decision of Whaata J in *Ngāti Maru Trust and Ngāti Whātua v.* Ōrākei *Whaia Maia Limited*[4] at [113] Whaata J said:

> *"[133] Overall, therefore, in regards to the third issue, I am satisfied that when addressing the s 6(e) RMA requirement to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga, a consent authority, including the Environment Court, does have jurisdiction to determine the relative strengths of the hap*ū*/iwi relationships in an area affected by a proposal, where relevant to claimed cultural effects of the application and wording of the resource consent conditions. But any assessment of this kind will be predicated on the asserted relationship being clearly grounded in and defined in accordance with tikanga Māori and mātauranga Māori and that any claim based on it is equally clearly directed to the discharge of the statutory obligations to Māori and to a precise resource management outcome."*

[42] Grenadier does not seek to use manawhenua status as an instrument of division amongst hapū and iwi because that would be inappropriate and against the spirit of Whaata J's judgment. Further, Ngāti Kikopiri with whom Grenadier consulted first have always made it plain that other hapū/iwi have valid claims to input on the assessment of cultural effects in the locality of the proposal and have tried to obtain a collective view. There is also the acknowledged intertwined nature of hapu members that whakapapa to multiple iwi.

[43] Grenadier considered, on advice, that to initiate appropriate consultation, it was appropriate to identify the lead hapū/iwi. That hapū/iwi could then assist in facilitating input from other hapū/iwi. In that sense, to use a Latin phrase, Grenadier treated Ngāti Kikopiri (based on historical occupation and propinquity to the resources)as *primus inter pares* (first among equals) and thus the first point of call.

[4] *Ngāti Maru Trust and Ngāti Whātua v.* Ōrākei *Whaia Maia Limited* [2020] NZHC 2768.

[44] Mr Tataurangi explains in his evidence how that process of engagement with Ngāti Kikopiri and other hapū/iwi unfolded and the problems that arose with Covid-19 in completing arrangements with Ngāti Kikopiri and then making a stepping stone to engagement with the two other iwi with an interest, Ngāti Tukorehe and Muaūpoko Tribal Authority ("MTA" or "Muaupoko").

[45] Since February 2022, further engagement has occurred with Muaūpoko and Ngāti Tukorehe.

[46] Representatives of Grenadier and Muaūpoko met and are in the advanced stages of negotiations on a Memorandum of Understanding for the implementation of the consent in a culturally appropriate way.

[47] A meeting was held with Ngāti Tukorehe on 12 April 2022. The face-to-face meeting enabled issues to be aired and considered.

[48] Grenadier understands that Ngāti Tukorehe wants to provide their perspective to the Panel, which is their right.

[49] The following issues were identified at the meeting on 12 April 2022 between Grenadier and Ngāti Tukorehe:

(a) A framework for good relationships going forward.

(b) Proper input into any implementation of the project.

(c) The impacts in particular of hole 14. .

(d) Input into processes for implementation, including around design, acknowledgement of history and discovery protocols.

[50] One of the pieces of information Ngāti Tukorehe wanted was details of the predicted golf ball dispersion from use of the golf course. Diagrams presenting this information prepared by experts were supplied to Ngāti Tukorehe on or about 25 April 2022. These are available and can be explained if required.

Cultural heritage assessment

[51] The approach to cultural heritage assessment needs to be relevant and appropriate for its use in the relevant resource management process.

[52] As Whaata J said at [110]:

> *"[110] All of this serves to emphasise that when iwi make mana whenua-based claims, those claims must be clearly defined according to tikanga Māori, directed to the discharge of the RMA's obligations to Māori and to a precisely articulated resource management outcome. In this regard, I apprehend that the largely unqualified claim to pre-eminent mana whenua status per se by Ngāti Whātua Ōrākei diverted the decision-makers from their primary task of ascertainment of the applicable tikanga Māori for the purpose of discharging the RMA's duties to Māori."*

[53] The High Court also cited with approval the approach taken by the Environment Court in *Ngāti Hokopu Ki Hokowhitu v. Whakatane District Council*[5] where at [53] the Court developed the following methodology for competing claims:

> *"[117] To resolve this dispute, the Court developed the following methodology for assessing divergent claims about iwi and hapu values and traditions, that is, by listening to, reading and examining (amongst other things):*
>
> *[53] …*
>
> - *whether the values correlate with physic world (places, people);*
> - *people's explanations of their values and their traditions;*
> - *whether there is external evidence (e.g. Maori Land Court Minutes) or corroborating information (e.g. waiata, or whakatauki) about the values. By 'external'*

[5] *Ngāti Hokopu Ki Hokowhitu v. Whakatane District Council* (2002) 9 ELRNZ 111.

we mean before they become important for a particular issue and (potentially) changed by the value-holders;

- *the internal consistency of people's explanations (whether there are contradictions);*
- *the coherence of those values with others;*
- *how widely the beliefs are expressed and held."*

One Plan's approach to heritage of tangata whenua

[54] The One Plan's approach to cultural heritage can be found in the following Chapters:

(a) Chapter 2 – Te Ao Māori (Part 1 - RPS).

(b) Chapter 6 – Indigenous Biodiversity, Landscape, Historic Heritage (Part 1 - RPS).

[55] Of these, the most specific is Chapter 6.

[56] The One Plan correctly identifies indigenous habitat and biodiversity concerns as an aspect of Te Ao Māori. Issue 2-3 identifies the continued threat to indigenous flora and fauna as a resource management issue for tangata whenua. The response to that issue is principally through Chapter 6 and Chapter 13. Grenadier submits that the scientific method evident in the framing of Chapter 13 provides you with a fair approximation of the likely scale of cultural effect and is a useful proxy for assessing the effects that Issue 2-3 addresses.

[57] Another identified issue in Chapter 2 concerns the disturbance of wāhi tapu and wāhi tūpuna. Of this, the most important issue identified is potential damage or disturbance to areas of significance; see Policy 2-2(b) and (c).

[58] Policy 2-2(d) states:

> *"The Regional Council must ensure that resource users and contractors have clear procedures in the event wāhi tapu and wāhi tūpuna are discovered."*

[59] Chapter 6 in section 6.1.4 of the One Plan treats cultural heritage under the umbrella of 'historic heritage' being *sites of significance to Māori, including wāhi tapu and surroundings associated with natural and physical resources.*

[60] The One Plan also in that section expressly acknowledges the intersection with the work of other agencies, including the Department of Conservation, Heritage New Zealand and the New Zealand Archaeological Association.

[61] Issue 6-3 provides a clear demarcation between issues of historic heritage for which territorial authorities are responsible and those relevant to the discharge of regional functions. Issue 6-3 states:

> "***Issue 6-3: Historic heritage***
>
> *Development and land use can damage and destroy historic heritage of significance in the Region. In the context of the Regional Council's role, this includes activities in the coastal marine area and discharges to land and water.*
>
> *Outside of the coastal marine area, Territorial Authorities are responsible for managing the effects of land use activities on historic heritage, including under s9(2) RMA for activities in the beds of rivers and lakes."*

[62] Following that regime, Policy 6-11 directs local authorities to prepare a historic heritage management regime. The anticipated environmental result is that historic heritage is recorded in District Plans and Regional Coastal Plans. That, of course, follows High Court authority that requires appropriate certainty for landowners concerning cultural heritage values.

[63] Against that backdrop, the cultural heritage strategy of the One Plan is:

(a) Earthworks controlled to protect Schedule F habitats are a sufficient response to tangata whenua natural heritage values.

(b) Local authorities are to identify and manage other areas of cultural heritage value.

[64] As noted, the site is not identified in the Horowhenua District Plan as an area possessing cultural heritage value. Further, the Horowhenua District Council has already granted consent.

The position Grenadier has reached on cultural heritage

[65] There are legal and planning limitations on the use of an earthworks consent under the One Plan as a vehicle for cultural claims to control development. The consents are required for soil conservation and indigenous biodiversity management reasons. There is a planning vacuum here on cultural matters that is not intended to be filled by an open-ended discretion of the Panel.

[66] Also, tikanga is never a one-way street. For example, dimensions of manaakitanga require that tangata whenua respect and act generously towards the reasonable aspirations of the landowners.

[67] The position reached on cultural heritage is that Ngāti Kikopiri and probably Muaūpoko consider that the proposal is culturally appropriate with the draft conditions proposed by Mr Bland with estimable measures to ensure culturally appropriate management of archaeological and kōiwi discoveries. Other cultural matters have been implemented through involvement in the design and implementation of management plans.

[68] Grenadier has extended an offer to Ngati Tukorehe for similar arrangements to those entered into with Ngāti Kikopiri.

[69] Recognising the framework above and the acknowledgements of other hapū, Grenadier remains interested and listens with interest to any information presented by Ngāti Tukorehe and will respond following that presentation.

[70] Finally, Ngāti Kikopiri and probably Muaūpoko (as I understand it) consider the activity appropriate on grounds very sympathetic to the views of Dr Boffa. They see the restoration and celebration of natural character that the proposal secures as respecting the Maūri and wairua of the place. For this tangata whenua, there is a happy meeting of minds with Grenadier and its experts `even though they come from different cultural paradigms.

The 'gateway' tests in RMA, s 104D

[71] Either of the 'gateway' tests may be passed, and Grenadier says both RMA s 104D gateway tests are passed. Concerning the gateway test in RMA, s 104(1)B, it remains the law that one should undertake a fair appraisal of the relevant objectives and policies bearing on the application.[6] See *Royal Forest & Bird Protection Society v. NZTA*[7].

[72] In *Day v. Wanganui Regional Council,*[8] the Environment Court selected the non-complying status for activities affecting Schedule F habitats because that would provide a greater focus on the relevant objectives and policies in Chapter 13 when assessing the second gateway test. At [3-115], the Court found that a proposal that demonstrates that it is designed to take reasonable measures to first avoid more than minor effects, secondly take reasonable measures to remedy or mitigate effects and finally offset residual effects would pass the gateway test. Therefore, the non-complying status was not seen as unreasonably restrictive.

Conditions and conclusion

[73] Ms Morton and Mr Bland have a working set of conditions. There is also a draft Restoration Management Plan for the Panel's consideration which can be finalised or improved depending on the Panel's assessment of its adequacy. Grenadier is happy to provide reasonable measures to achieve the outcomes its experts seek and any reasonable measures that the Panel

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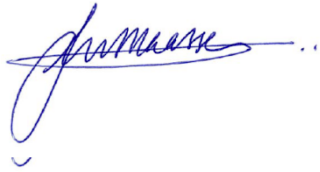
[6] *Dye v. Auckland Regional Council* [2002] 1 NZLR 337 (CA).
[7] See *Royal Forest & Bird Protection Society v. NZTA* [2021] NZHC 390.
[8] *Day v. Wanganui Regional Council* [2012] NZEnvC 182.

considers appropriate. It does not consider some management plans recommended by Horizons for lizards and katipo to be appropriate.

[74] The decisions in *Day v. Wanganui Regional Council*[9] and *Ngāti Maru Trust v. Ngāti Whātua*[10] cited in these submissions are available electronically.

Nga Nihi

Dated 2 May 2022



John Maassen
Counsel for the Applicant

[9] Ibid.
[10] Ibid.

Appendix 1