

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV- 2025-CHC-

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

IN THE MATTER

of an appeal under Clause 14 of the
First Schedule of the Resource
Management Act 1991

AND IN THE MATTER

of the proposed Te Tai o Poutini Plan

BETWEEN

**FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED**

Appellant

AND

**TE TAI O POUTINI PLAN COMMITTEE
Respondent**

**MEMORANDUM OF COUNSEL FOR THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

2 April 2026

Royal Forest and Bird Protection Society of New Zealand Incorporated

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MAY IT PLEASE THE COURT

1. This memorandum responds to the Court's direction that any applications to strike out appeals or section 274 notices are to be filed by 2 April 2026.
2. Forest & Bird has serious concerns about the appeals and section 274 notices lodged by the Buller District Council, Grey District Council, and Westland District Council (the District Councils).
3. The District Councils are members of the Te Tai o Poutini Plan Committee (the Committee), which is responsible for exercising the district plan-making powers transferred to it under the relevant Orders in Council.
4. The lodging of appeals and section 274 notices by the District Councils raises concerns about the integrity of the appeal process, given the issues that arise from the District Councils being both appellants and s 274 parties on almost all of the topics in the Te Tai o Poutini Plan (TTPP), while also being members of the Committee.
5. Forest & Bird has raised its concerns with the District Councils, but this has not resolved its concerns. Forest & Bird proposes to work through these concerns and seeks to have the direction requiring it to file applications for strike out by 2 April 2026 suspended.

Background

6. Through the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 and the Local Government Reorganisation Scheme (West Coast Region) Order 2019 (the Orders), the district plan functions of the District Councils were transferred to the West Coast Regional Council and delegated to the Committee. The Committee is the statutory decision-maker for the TTPP.
7. The District Councils are each represented on the Committee by their respective mayor and another elected member.¹
8. The District Councils submitted on the proposed TTPP and subsequently lodged appeals and section 274 notices against the Committee's decisions. Grey District Council and Buller District Council lodged s 274 notices opposing the Forest & Bird

1. Clause 7 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 provides:

7. Establishment of the West Coast District Plan Committee

(1) The reorganisation scheme must provide that:

(d) The initial membership of the West Coast District Plan Committee, to at least such time as the combined district plan becomes fully operative, must comprise:

- (i) an independent chairperson:
- (ii) the chairperson of the West Coast Regional Council and one other elected member from, and appointed by, the West Coast Regional Council:
- (iii) the mayor of the Buller District and one other elected member from, and appointed by, the Buller District Council:
- (iv) the mayor of the Grey District and one other elected member from, and appointed by, the Grey District Council:
- (v) the mayor of the Westland District and one other elected member from, and appointed by, the Westland District Council:
- (vi) one representative appointed by Te Rūnanga o Ngati Waewae:
- (vii) one representative appointed by Te Rūnanga o Makaawhio.

appeal. Westland District Council did not lodge a s 274 notice on the Forest & Bird appeal.

9. The effect of this is that the District Councils are now parties before the Court on matters arising from decisions made under powers that were previously theirs but have since been transferred.
10. Forest & Bird has significant concerns about whether it was lawful or an abuse of process for the District Councils to lodge appeals on decisions made using district plan-making powers that have been transferred to, and are now exercised by, the Committee. Forest & Bird is also concerned about how the integrity of the appeal process will be maintained.
11. Forest & Bird raised these concerns with the District Councils. In response, the District Councils engaged Bronwyn Carruthers KC to provide an opinion, which was provided to Forest & Bird on 31 March 2026. Ms Carruthers KC did not accept Forest & Bird's position.
12. Notwithstanding Ms Carruthers KC's opinion, Forest & Bird retains serious concerns about the District Council appeals and s 274 notices and the implications for the integrity of the TPPP appeal process. However, it has not had sufficient time since receiving Ms Carruthers KC's opinion to consider what is an important issue, if appropriate, discuss the matter further with the District Councils and decide whether to apply to strike out the District Council appeals and s 274 notices.

Forest & Bird's concerns

13. Forest & Bird is concerned that the appeals and section 274 notices lodged by the Buller, Grey, and Westland District Councils are unlawful, an abuse of process and undermine the integrity of the appeal process.
14. Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio are also represented on the Committee. Forest & Bird take no issue with their respective appeals and s 274 notices.
15. The District Councils are members of the Committee, which exercises the district plan-making powers transferred to it under the Orders in Council. By appealing decisions made under powers they no longer hold, the District Councils place themselves in a position where they are both appellants and conflicted members of the Committee.
16. Counsel understands that the District Councils will not participate in Committee discussions or decisions on the Committee's position for mediation on topics that are an appellant or s 274 party.
17. Counsel understand that on some appeal topics, all three District Councils, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio are conflicted. This leaves only the West Coast Regional Council and the independent chair to determine the Committee's position. This is the case despite the District Councils being directly affected by the relevant provisions.
18. This is an issue that pervades the entire plan. Buller District Council lodged 23 section 274 notices and the Grey District Council lodged 11. A review of the counsel for the Committee's memorandum of 3 March 2026 indicates that the Grey District and Buller

District Council are parties to the vast majority of topics. In lodging appeals and s 274 notices, the District Councils have abdicated their responsibilities as Committee members in a way not anticipated by the Orders.

19. This undermines the Committee's credibility as it cannot form a position that represents the composition of the Committee. A situation where the Committee position is the position of the Regional Council and the independent chair is contrary to the Orders, which anticipate the District Council participating in Committee discussions on the Committee's position. It also undermines the integrity of the TPPP appeals process.
20. A further concern is that, while they are technically appellants and s 274 parties, the District Councils will administer and enforce the TPPP in their districts. This makes their role indistinguishable in substance from a role traditionally taken by Respondents. They are, in substance, seeking to exercise the district planning functions that were transferred to the Committee.
21. A good example of the issues that arise from the District Council appeal is the potential effects of artificial light on the tāiko / western petrel, which is classified as threatened – nationally vulnerable, and is highly sensitive to artificial light. The tāiko / western petrel colony near Punakaiki is the only place in the world where the species breeds.
22. Forest & Bird has a particular interest in the protection of this species, as a threatened species and also as the owner of the Dick Jackson Reserve, which is near the breeding colony at Punakaiki.
23. In its submissions on the TPPP, Forest & Bird sought stronger safeguards against the adverse effects of artificial light on the tāiko / western petrel. The Committee accepted the need for enhanced protection and adopted a 15-kilometre coastal lighting setback in Rule LIGHT-R5 to reduce light-related mortality risks.
24. Both the Grey and Buller District Councils have appealed that setback, seeking its removal. Forest & Bird has filed s 274 notices opposing these appeals.
25. This is problematic as mediation will involve the District Councils as Appellants in name but Respondents in substance, advocating for the removal of the setback. The Committee, as Respondent, will have formed its position on the 15km setback without the input or expertise of the Grey or Buller District Councils, who are conflicted but who will ultimately administer and enforce the provisions.
26. Forest & Bird has raised these concerns with the District Councils and received a response on 30 March 2026, including the opinion from Ms Carruthers KC. However, there has been insufficient time to consider that response and obtain instructions between 31 March 2026, when Ms Carruthers KC's opinion was provided, and the 2 April 2026 deadline for strike-out applications.

Relief Sought

27. Forest & Bird is still considering Ms Carruthers KC's opinion and is not presently in a position to decide whether or not to apply to strike out the District Councils' appeals or section 274 notices. Forest & Bird seeks that the direction that any applications to strike out the District Council appeals be lodged by 2 April 2026 is suspended while it undertakes this consideration.

28. Counsel are not in a position to advise when they might be in a position to advise the Court of Forest & Bird's position. This is due to a combination of the issue's complexity and importance and upcoming leave commitments.

Dated 2 April 2026

A handwritten signature in black ink, appearing to read "P Anderson" or "M Downing", is centered within a light gray rectangular box.

P Anderson / M Downing

Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated