

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of an application for orders under section 279(4) of the RMA

BETWEEN **TE TAI O POUTINI PLAN COMMITTEE**
Applicant

AND **JOHN CURRIE**
ENV-2025-CHC-000100
Respondent (Appellant)

**MEMORANDUM OF COUNSEL IN SUPPORT OF NOTICE OF MOTION
SEEKING ORDERS STRIKING OUT APPEAL
2 April 2026**

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MAY IT PLEASE THE COURT

Introduction

- 1 This memorandum is filed in support of the Notice of Motion by Te Tai o Poutini Plan Committee (**TTPP Committee**) seeking orders under section 279(4) of the Resource Management Act 1991 (**RMA**) that the Notice of Appeal filed by Mr Currie on 21 November 2025 (**Notice of Appeal**) is struck out (**Application**).
- 2 The Application is filed in accordance with paragraph 8(a) of the Court's Minute dated 10 March 2026 directing that any applications for strike out of any appeal or section 274 party be filed by Thursday 2 April 2026.
- 3 Counsel for the TTPP Committee have reviewed the Notice of Appeal and identified that Mr Currie has not made a valid submission or further submission on the TTPP.
- 4 Counsel submit that the relief sought by Mr Currie as set out in the Notice of Appeal lacks the requisite jurisdiction by failing to satisfy clause 14 of Schedule 1 of the RMA.
- 5 As such, the TTPP Committee seeks orders that Mr Currie's Notice of Appeal be struck out under section 279(4) of the RMA on the basis that it discloses no reasonable or relevant case in respect of the proceedings, amounts to an abuse of process and is frivolous or vexatious in the sense that the relief lacks the requisite jurisdiction.

Relevant principles applying to strike out

- 6 The power to strike out the whole or any part of an appeal is provided by section 279(4) of the RMA. Section 279(4) of the RMA provides:

279 Powers of Environment Judge sitting alone

...

(4) An Environment Judge sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers—

(a) that it is frivolous or vexatious; or

(b) that it discloses no reasonable or relevant case in respect of the proceedings; or

(c) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.

...

- 7 The general principle is that the discretion to strike out proceedings under section 279(4) is used sparingly. However, the Environment Court has found that when the jurisdictional boundaries facing the Court are exceeded, there is no discretion to be exercised ‘sparingly’ and the discretionary element falls away. In such circumstances, an appellant’s case ought to be struck out as frivolous or vexatious and as disclosing no reasonable or relevant case.¹
- 8 This position has recently been confirmed in *Liang v Auckland Council*,² where Mr Liang filed a notice of appeal against a plan change, without having made a submission on that plan change. The Environment Court found that it had no jurisdiction to accept Mr Liang’s purported notice of appeal, and while the power to strike out is exercised sparingly, a lack of jurisdiction that cannot be remedied should be dealt with promptly.³ On that basis, Mr Liang’s notice of appeal was struck out.⁴

Relevant principles relating to standing

- 9 The right to appeal against a decision of a local authority made under clause 10 of Schedule 1 of the RMA is provided by clause 14 of Schedule 1 of the RMA. Clause 14 provides:

14 Appeals to Environment Court

(1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—

- (a) a provision included in the proposed policy statement or plan;
- or
- (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or

¹ *Guardians of the Bay Inc v Wellington International Airport Ltd* [2021] NZEnvC 201, citing *Federated Farmers of New Zealand Inc v Queenstown Lakes District Council* [2018] NZEnvC 145 at [5] and *Federated Farmers (Wairarapa Division) v Wellington Regional Council* C192/99 at [17].

² *Liang v Auckland Council* [2024] NZEnvC 241.

³ *Liang v Auckland Council* [2024] NZEnvC 241 at [15 and [16].

⁴ *Liang v Auckland Council* [2024] NZEnvC 241 at [18].

(c) a matter excluded from the proposed policy statement or plan;
or

(d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.

(2) However, a person may appeal under subclause (1) only if—

(a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan;
and

(b) the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.

...

10 Clause 14 of Schedule 1 creates limitations for appeals against the TTPP Committee's decisions by:

- (a) allowing appeals by submitters only, and outlining specific circumstances in which an appeal can be made to the Environment Court (clause 14(1)); and
- (b) requiring that a person appealing under subclause (1) must have referred to the appealed provision or matter in a submission on the TTPP (clause 14(2)).

11 Both requirements are mandatory preconditions that must be satisfied before an appeal can be lodged.

12 The Environment Court's decision in *Re Vivid Holdings Ltd* sets out a three-step test to determine whether an appellant has standing to appeal under clause 14 (footnotes omitted):⁵

(1) Did the appellant make a submission?

(2) Does the reference relate to either:

- (i) a provision included in the proposed plan; or
- (ii) a provision the local authority's decision proposes to include; or
- (iii) a matter excluded from the proposed plan; or

⁵ *Re an application by Vivid Holdings Ltd* [1999] NZRMA 467 at [18].

(iv) a provision which the local authority's decision proposes to exclude?

(3) If the answer to any of (2) is "yes", then did the appellant refer to that provision or matter in their submission (bearing in mind this can be a primary submission or a cross-submission)

Lack of valid submission

- 13 Mr Currie's appeal fails at the first step of the *Re Vivid Holdings Ltd* three-step test, as he did not make a valid submission on the TTPP.
- 14 The affidavit filed by Ms Easton in support of the Notice of Motion provides context regarding Mr Currie's appeal and his involvement in the plan-making stage of TTPP. As set out in that affidavit, while Mr Currie attempted to make a submission on TTPP in November 2024, this submission was made well outside of submission timeframes (which ended on 11 November 2022) and after the hearing of other submissions and evidence relating to the relevant topic had been completed. Mr Currie was advised that his submission was not accepted. His submission was not considered by the Independent Hearing Panel and did not form part of its recommendation to the TTPP Committee nor the TTPP Committee's decision.
- 15 If Mr Currie's submission was now treated as valid (providing a jurisdictional basis for the appeal), this would give rise to natural justice concerns for other submitters. Given that Mr Currie's submission was never accepted and considered by the TTPP Committee, other submitters were not given the opportunity to make any further submissions on it.

Correspondence with Mr Currie

- 16 Counsel wrote to Mr Currie on 5 December 2025 inviting him to withdraw his appeal and also noting the possibility of him joining another party's appeal under section 274 of the RMA. Mr Currie responded on 19 December 2025 refusing to withdraw his appeal. This correspondence is attached to Ms Easton's affidavit as Exhibits G and H.

Mr Currie has no standing

- 17 Counsel for the TTPP Committee submits that Mr Currie has no standing to bring an appeal against the TTPP Committee's decisions on the TTPP

as he did not make a valid submission on the TTPP and fails to meet the requirements for an appeal under clause 14(1) and (2) of Schedule 1 of the RMA.

- 18 Counsel seek that Mr Currie's appeal be struck out as it discloses no reasonable or relevant case in respect of the proceedings, amounts to an abuse of process and is frivolous or vexatious in the sense that the relief lacks the requisite jurisdiction.

Dated this 2nd day of April 2026



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A H Balme / T M Ellis
Solicitor for Applicant