

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV- 2025-CHC-130,131

**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

**BULLER DISTRICT COUNCIL
Appellant**

AND

**GREY DISTRICT COUNCIL
Appellant**

**MEMORANDUM OF COUNSEL FOR THE ROYAL
FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED IN SUPPORT OF APPLICATION FOR STRIKE OUT**

24 April 2026

Royal Forest and Bird Protection Society of New Zealand Incorporated

Solicitor acting: M Downing

Email: m.downing@forestandbird.org.nz

Phone: 0220481970

Counsel: P Anderson

Email: peter@peteranderson.co.nz

Phone: 0212866992

MAY IT PLEASE THE COURT

1. This memorandum is filed in support of the application to strike out the appeals and section 274 notices of Buller and Grey District Councils (the District Councils) and provides further particulars of the application for strike out.
2. This memorandum also addresses how the application and the scheduled mediation process can be advanced. As discussed below, Forest & Bird's position is that, provided the application for strike out is dealt with promptly, mediation can proceed with minimal disruption.

THE ORDERS IN COUNCIL AND THE TPP COMMITTEE

3. In June 2015, the Local Government Commission received an application requesting that it review local government arrangements on the West Coast with a view to potential structural change. The Commission determined that the application satisfied the statutory criteria for assessment, and in August 2015, it resolved to proceed with evaluating the proposal.¹
4. In December 2017, after an extensive consultation process, the Commission determined its preferred option, which was combined district planning on the West Coast.²

The Local Government Commission has determined its preferred option for local government reorganisation on the West Coast is the transfer of district plan preparation from the Buller, Grey and Westland District Councils to the West Coast Regional Council. This will include a joint committee of the four councils to be responsible for developing and approving a new combined West Coast District plan.

5. The Local Government Commission subsequently gave notice of this preferred option:⁴

The Local Government Commission gives notice in accordance with clause 13(1)(a) of Schedule 3 of the Local Government Act 2002 that it has determined its preferred option for local government on the West Coast. This is the transfer of statutory obligations for preparing district plans under the Resource Management Act from Buller, Grey and Westland district councils to West Coast Regional Council, and for the establishment of a joint committee of the four councils to prepare and approve a combined West Coast district plan.

6. This preferred option was implemented by two Orders in Council: the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 (the

¹ www.lgc.govt.nz/our-work/local-government-reorganisation/previous-applications-for-reorganisation-2/2019-west-coast-reorganisation/

² www.lgc.govt.nz/news-and/past-media-releases/commission-no-to-amalgamation-yes-to-combined-district-planning/

⁴ www.lgc.govt.nz/assets/Reorganisation-Files/Past-Reorganisation-Applications/2019-West-Coast-Reorganisation/West-Coast-determination.pdf

2018 Order); and the Local Government Reorganisation Scheme (West Coast Region) Order 2019 (the 2019 Order and collectively the Orders).

7. The effect of the Orders is to centralise district plan preparation functions for the Buller, Grey, and Westland Districts in the West Coast Regional Council, and to require those functions to be exercised through the TTPP Committee.
8. This is achieved by transferring each district council's statutory obligations under section 73 and Schedule 1 of the RMA to the West Coast Regional Council. Those transferred obligations are to be fulfilled by preparing, notifying, adopting, amending, and reviewing a single combined district plan for the three districts under section 80 of the RMA.
9. Critically, the Orders require the Regional Council to delegate its transferred district plan functions to the TTPP Committee, which is responsible for preparing, hearing submissions on, and adopting the combined district plan, and for overseeing its ongoing implementation and review.
10. The Orders require the Committee to have a defined membership until the TTPP becomes fully operative. The Committee must comprise an independent chairperson; two representatives from the West Coast Regional Council (including its chair); the mayor and one elected member from each of the Buller, Grey, and Westland District Councils; and one representative each appointed by Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.⁵
11. The Committee is fundamental to the Orders as it provides the way in which an up to date District Plan for the region is developed. This structure ensures representation from all four councils alongside mana whenua throughout the development of the TTPP.
12. The costs of the preparation of the TTPP are funded by the West Coast Regional Council through a regional rate.⁶
13. The four councils otherwise continue to exist with their usual powers and responsibilities, except for the district plan functions expressly transferred.

THE APPEALS AND SECTION 274 NOTICES

14. The TTPP was notified on 14 July 2022. Forest & Bird filed a comprehensive submission and a further submission and, after decisions were made, lodged a comprehensive appeal on the TTPP.
15. Critical issues for Forest & Bird in its submissions and appeal include provisions relating to:

⁵ Clause 7 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018

⁶ Clause 10 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018

- a. the protection of indigenous biodiversity, primarily in the ECO chapter, which Forest & Bird sought to strengthen to give effect to the National Policy Statement on Indigenous Biodiversity (NPSIB) and the West Coast Regional Policy Statement (RPS);
 - b. mining, primarily in the MINZ chapter, which Forest & Bird sought be deleted;
 - c. infrastructure and transport, where Forest & Bird sought greater recognition of the need to protect indigenous biodiversity;
 - d. The coastal environment, mainly in the CE chapter, which Forest & Bird sought be strengthened to give effect to the New Zealand Coastal Policy Statement (NZCPS).
16. Forest & Bird's submission raised concerns that the provisions relating to light inadequately protect the Westland Black Petrel, a threatened - nationally vulnerable species that only breeds at a colony near Punakaiki. The submission said:
- The provisions of the chapter do not appropriately protect indigenous biodiversity. Artificial light can have significant adverse effects on indigenous biodiversity. Of particular note is the Westland Black Petrel, which mainly lives near the coast, and which is adversely impacted by activities that involve light. In particular, industrial activities that run around the clock and involve artificial lighting are detrimental to them.
17. The decision responded to this concern and included a 15 km setback from the coast in Rule Light R5.⁷⁷ Forest & Bird supports the 15 km setback.
18. The District Councils also filed appeals. Both appeals challenge the 15km setback in Rule LIGHT R5 and seek its deletion.
19. Forest & Bird filed s274 notices opposing both appeals by the District Councils, including the appeal on Rule LIGHT R5.
20. The District Councils filed s 274 notices opposing the Forest & Bird appeal. The District Councils oppose the relief sought by Forest & Bird in relation to critical issues for Forest & Bird including:
- a. indigenous biodiversity;
 - b. mining;

⁷⁷ This occurred through the addition of the fourth bullet in Rule LIGHT R5.

Artificial Outdoor Lighting in the NOSZ - Natural Open Space Zone or, SETZ - PREC3 - Coastal Settlement Precinct and in locations within:

- Outstanding Coastal Natural Character Overlay (Schedule Eight);
- Outstanding Natural Landscapes Overlay (Schedule Five);
- Outstanding Natural Features Overlay (Schedule Six); or
- A distance of 15 kilometres landward of the coastal marine area.

- c. infrastructure;
- d. the coastal environment.

THE LAW REGARDING STRIKE OUT

21. Section 279(4)(b) provides the Environment Court with power to strike out a party's case where it does not disclose a relevant or reasonable case. This power is often used where an appeal raises issues that are not relevant to the planning provisions challenged in the appeal.⁸ It is also used where a party raises matters beyond the jurisdiction of the Environment Court.⁹
22. The District Council appeals and s 274 notices do not disclose a relevant or reasonable case and should be struck out under s 279(4)(b).
23. This is on the grounds that the Orders provide that the District Councils participate in the Committee process. As discussed in detail below, a consequence of lodging appeals and s 274 notices is that the District Councils have excluded themselves from participating in Committee discussions and decision making in relation to the topics on which they have lodged appeals and s 274 notices.
24. It is contrary to the purpose of the Orders for the District Councils to exclude themselves from participating in the Committee's consideration of the appeals by lodging separate and competing appeals and section 274 notices. The Council's engagement with the TTPP appeals should be as a member of the committee. This is what the Orders provide for. The appeals s 274 notices prevent the Council from doing so. Appeals and s 274 notices that are contrary to the purpose of the Orders do not disclose a relevant or reasonable case.
25. Forest & Bird also seeks to strike out the District Councils' appeals and s 274 notices under s 279(4)(c) as an abuse of process. The ability to strike out proceedings as an abuse of process is a flexible remedy that may be applied in a wide variety of circumstances. It is not capable of ready definition.¹⁰
26. The High Court considered the Environment Court's power to strike out proceedings as an abuse of process in *Hurunui Water Project Limited v Canterbury Regional Council*.¹¹ Justice Mander concluded that the power is to prevent its processes being misused, including avoiding bringing the administration of justice into disrepute or undermining the administration of justice:

[83] The jurisdiction of a Court to prevent an abuse of its own process is the means by which a Court can prevent its own procedures from being misused to

⁸ For example, *McCarthy v Mackenzie District Council* [2026] NZEnvC 21

⁹ *Madhava v Auckland Council* [2023] NZEnvC 129

¹⁰ *Waitakere City Council v Kitewaho Bush Reserve Co* [2005] 1 NZLR 208

¹¹ [2015] NZHC 3098

achieve a result which is manifestly unfair to a party to the litigation or would otherwise bring the administration of justice into disrepute among right-thinking people. A misuse of the judicial process which tends to produce unfairness and to undermine confidence in the administration of justice may entitle a Court to act to prevent such abuse.

27. The High Court went on to explain:

[84] Two aspects need to be stressed when considering the legitimate resort to this jurisdiction. Firstly, the jurisdiction relates to the protection of the integrity of the Court's process. The threat must be to the process of the Court which is wrongly being made use of and from which the Court must protect itself. Secondly, a charge that a party is misusing the Court's process is a serious allegation. The threshold to establish abuse of process is a high one.

28. In *Waitakere City Council v Kitewaho Bush Reserve Co*,¹² the High Court made a similar observation that the power to strike out was not lightly exercised and explained this was because it has the effect of shutting out a party from the process.

What constitutes an abuse of process for the purposes of the relevant rules in the general courts and s 279(4) RMA is not capable of ready definition but is designed to be a flexible remedy which may be applied to a wide variety of circumstances. It will not be lightly exercised because it has the effect of shutting out a party from the processes of the court. That can be even more important in the Environment Court where there may be a public interest element in any cases not present in private litigation in the general courts.

29. As discussed further below, this highlights an important feature in this case. The effect of striking out the District Councils' appeals and s 274 notices is not to shut the District Councils out of the TTPP appeal process. The District Councils will still be able to participate as members of the Committee. This is what the orders anticipate, rather than the District Councils advancing separate and competing appeals.

30. In *Te Kura Pukeroa Maori Inc v Thames Coromandel District Council*¹³ Judge Dwyer considered "it might be considered unusual for the Court not to exercise its discretion [to strike out] when it finds that any or all of the grounds identified in s 279(4)(a), (b) and (c) have been made out.

31. In *Auckland Council v Auckland Council*,¹⁴ the Environment Court noted that under civil law generally, there was a rule that you could not sue yourself, but there was no specific authority for that proposition. The key issue was maintaining the integrity of the appeal process.

¹² [2005] 1 NZLR 208 at [66]

¹³ [2007] ELHNZ 360

¹⁴ 2018] NZEnvC 56

32. In determining whether to grant the application and strike out the appeals and s 274 notices, the question is whether the Orders provide for the District Councils to participate in the TTPP appeals through participation in the Committee. If the Court concludes that this is the case, then the appeals and s 274 notices should be struck out under s 274(4)(b) and (c) as not disclosing a reasonable and relevant case and being an abuse of process. Acting contrary to the purpose of the law that provides for the TTPP is an abuse of process and does not disclose a reasonable and relevant case. The effect of such a strike out is that the District Councils will participate in the appeals as members of the Committee, as the Orders provide.

GROUNDS FOR APPLICATION FOR STRIKE OUT

33. As set out in the application, strike out is sought on the following grounds:

- a. The District Council appeals and section 274 notices do not disclose a relevant or reasonable case and / or are an abuse of process because they are contrary to the Orders;
- b. The District Council appeals and section 274 notices are an abuse of process because they undermine the integrity of the appeal process;
- c. The District Councils will not be excluded if struck out.

34. These grounds are discussed in more detail below.

Appeals and section 274 notices contrary to the Orders

35. The Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 (the 2018 Order) is secondary legislation. The Interpretation Act 2019 defines secondary legislation as meaning “an instrument (whatever it is called) that (a) is made under an Act if the Act (or any other legislation) states that the instrument is secondary legislation”.

36. The 2018 Order was made under s 25(1) of the Local Government Act 2002. Section 25(6) of the Local Government Act 2002 provides that orders made under s 25(1) are secondary legislation. The status of the Local Government Reorganisation Scheme (West Coast Region) Order 2019 is less certain as it is made under s 25(4) of the Local Government Act 2002. Section 25(6) does not apply to orders made under s 25(4). Little turns on this distinction as there is little difference between the substance of both orders.

37. Section 10 of the Legislation Act 2019 requires that the meaning of secondary legislation is to be ascertained from its text and in the light of its purpose and its context.

38. When interpreted in its purpose and context, the 2018 Order provides that the District Councils will collectively participate in the preparation of the TTPP through the Committee. It is contrary to this purpose to allow the District

Councils to lodge separate and competing appeals. This is because such appeals and s 274 notices undermine the Committee and the process set out in the Orders to prepare the TTPP.

39. The Committee and the Orders are undermined because a consequence of lodging appeals or s 274 notices is that the District Councils have a conflict of interest with respect to the matters on which they have appealed or lodged s 274 notices. As noted in counsel's memorandum of 2 April 2026, the District Councils are members of the Committee, which exercises the district plan-making powers transferred to it under the Orders in Council.
40. 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.
41. 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. Counsel also understands that on some appeal topics, all three District Councils, Te Rūnanga o Ngati 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.
42. The breadth of the District Council appeals is such that these conflicts cannot be managed in a way that does not undermine the Committee and the Orders. Counsel for the Committee filed a memorandum on 3 March 2026, which set out the parties to the topics. The District Councils are appellants and/or s 274 parties on many topics, and all topics that are critical to Forest & Bird.
43. The District Councils have expertise and experience in the preparation and administration of District Plans. The Orders provide that this expertise is used to assist the Committee in preparing the TTPP. It is contrary to the purpose of the Orders for the District Councils to be excluded from this process and have the West Coast Regional Council, which does not have district plan preparation functions, and the independent chair, determine the Committee's position on the contents of the TTPP.
44. The problems created by the District Councils' approach can be seen in the duplication of cost. West Coast ratepayers are funding the Committee's operations, including the development of the TTPP and its participation in the appeal process. At the same time, those same ratepayers are funding the District Councils to advance appeals that oppose the Committee's positions. This results in the West Coast ratepayer covering the costs of the Committee and the three District Councils.
45. When purpose and context are considered, the proper approach for the District Councils is to participate in the Committee process for preparing the TTPP. The Orders do not anticipate the District Councils lodging appeals and s 274 notices,

which have the effect of excluding them from participating in the Committee. The District Councils are improperly using the appeal process when they should be participating in the Committee process, as anticipated by the Orders.

46. The District Council appeals and s 274 notices that are contrary to the way in which the Order provides that the TTPP will be prepared and the Committee will operate. As such, they disclose no reasonable or relevant cause and are an abuse of process.

Appeals and section 274 notices undermine the integrity and fairness of the appeal process

47. The District Councils' appeals and s 274 notices undermine the integrity of the Environment Court's appeal processes.
48. The District Councils are, in substance, using the appeal process to exercise functions related to the preparation of the district plan that, but for the Orders, they would have under s 73 and the First Schedule of the RMA. However, the District Councils no longer have these functions.
49. It undermines the integrity of the appeal process to allow the District Councils to seek to exercise functions that they no longer have. This is particularly the case where it seeks to take a position contrary to that of the Committee, which has exercised the functions formerly held by the District Councils. An example of this occurring is with Rule Light R5.
50. This leads to unfairness to other appellants, including Forest & Bird. Appellants on plans would usually have to deal with a single Council exercising plan preparation functions as Respondent. However, the effect of the District Councils' appeals and s 274 notices means that Forest & Bird has to deal with opposition from the Committee, properly exercising its functions in the preparation of plans. There is no problem with this.
51. The problem arises because Forest & Bird also has to deal with opposition from the District Councils, who are, in substance, exercising plan preparation functions they no longer have. The opposition of the District Councils is a significant prejudice. At mediation, Forest & Bird not only has to convince the Committee of the merits of its appeals. Forest & Bird will also have to convince an additional two District Councils.
52. Counsel anticipates that the argument against a strike out is that the RMA provides the Councils with the right to submit, appeal, and lodge s 274 notices, and they are simply exercising this right. In other words, the Councils' appeals and s 274 notices are lawful.
53. This rather misses the point. Section 279(4) provides the power to strike out appeals and section 274 notices which disclose no reasonable or relevant case or are an abuse of process. The purpose of providing the power to strike out is to

ensure that the right to participate in appeals is exercised in a way that does not undermine the Court's processes.

54. There would be no point in providing an ability to strike out appeals if it were necessary to show that the appeals and s 274 notices were also unlawful. The question is not whether the appeals and s 274 notices are lawful. The question is whether they disclose a relevant or reasonable case or constitute an abuse of process.

District Councils not excluded if struck out

55. The case law has two slightly competing themes. The first is that the power to strike out is exercised sparingly, as it usually excludes the struck out party from participating in the proceedings. The second is that once the grounds for strike out are made, it would be unusual for the discretion to strike out not to be exercised.
56. The justification for using the power sparingly does not apply in this case, as striking out the District Council appeals and s 274 notices does not exclude the District Councils from participating in the TTPP process. The District Councils remain members of the Committee and can participate in its discussions and deliberations. This is what the Orders anticipate, rather than the separate and competing appeals and s 274 notices.
57. Because the Councils retain a full participatory role through the Committee, striking out their appeals does not have the usual consequence of excluding the Councils from the proceeding. This reduces the threshold for exercising the power to strike out.

PROCESS FROM HERE

58. In its minute of 7 April 2026, the Court expressed concern that any application for strike out might cause severe disruption to the mediation programme and considered that any application should be treated with priority. Counsel has considered this issue carefully and reached the view that, provided the application can be resolved promptly, mediation can proceed with minimal disruption to the mediation schedule.
59. Forest & Bird considers that mediation can continue in accordance with the schedule approved by Commissioner Wilkinson. The Grey and Buller District Councils can attend the mediations in the usual way while the strike-out application is being considered.
60. If Forest & Bird is successful, the appeals and section 274 notices filed by the Grey and Buller District Councils will be struck out, and their involvement in subsequent mediation sessions as appellants and s 274 parties will fall away. The District Councils will still have a role as Committee members. If Forest &

Bird is unsuccessful, the mediations will continue to run their course, without interruption to the programme.

61. Either way, mediation will proceed as anticipated. Forest & Bird does not support suspending the mediation schedule while the application for strike out is being considered.
62. The exception to this is the mining mediation scheduled for 16-19 June 2026. The District Councils oppose Forest & Bird's relief. Forest & Bird considers that there may be merit in vacating this mediation, as two weeks of mediation are scheduled for mining matters in the weeks of 13 and 20 July. If further mediation is required, it could be scheduled for the week of 24 August 2026, which is currently scheduled for mediation but with no topics identified for mediation.

Dated 24 April 2026



P Anderson / M Downing
Counsel for Royal Forest and Bird Protection Society of New Zealand
Incorporated