

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**AT CHRISTCHURCH**

**ENV – 2026– CHC–**

**UNDER**

the Resource Management Act 1991 ("**RMA**")

**AND**

**IN THE MATTER**

of an application for strike-out of two appeals on the  
proposed Te Tai o Poutini Plan

**BETWEEN**

**ROYAL FOREST AND BIRD PROTECTION  
SOCIETY OF NEW ZEALAND INC**

**Applicant**

**AND**

**BULLER DISTRICT COUNCIL & GREY DISTRICT  
COUNCIL**

**Respondents**

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**LEGAL SUBMISSIONS**

**IN OPPOSITION TO STRIKE-OUT APPLICATION**

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## MAY IT PLEASE THE COURT:

### Introduction

1. The Buller District Council and Grey District Council (**Appellants**) oppose the application by the Royal Forest and Bird Protection Society of New Zealand Inc (**F&B**) under section 279(4)(b) and (c) of the Resource Management Act 1991 (**RMA**) for an order striking out the appeals and section 274 notices lodged by the Appellants on the proposed Te Tai o Poutini Plan (**TTPP**).
2. F&B does not challenge the lawfulness of the appeals and s274 notices.<sup>1</sup>
3. Rather, it (as far as I can distil) submits:
  - (a) The **effect** of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 (**2018 Order**); and the Local Government Reorganisation Scheme (West Coast Region) Order 2019 (**2019 Order** and collectively the **Orders**) was to require the Te Tai o Poutini Plan Committee (**Committee**) to exercise centralised plan-making “functions”.<sup>2</sup>
  - (b) The **purpose** of the Orders was for the District Councils to participate cooperatively and collaboratively in the Committee process.<sup>3</sup>
  - (c) The Appellants have “stepped outside that process”;<sup>4</sup>
  - (d) In doing so, the Committee is undermined<sup>5</sup> as:
    - (i) the Appellants have improperly<sup>6</sup> excluded themselves from participating in Committee discussions and deliberations on the topics;<sup>7</sup>
    - (ii) the Appellants have “removed their expertise from the Committee on matters which they are required to help determine”;<sup>8</sup>

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<sup>1</sup> Memorandum of counsel accompanying the application to strike out, para 54, at [EC.0013]; Legal submissions, para 79 – 81, and 150.

<sup>2</sup> Legal submissions, para 11.

<sup>3</sup> Legal submissions, para 54.

<sup>4</sup> Legal submissions, paras 2 and 152.

<sup>5</sup> Legal submissions, paras 5, 86, 92, 93, and 94.

<sup>6</sup> Legal submissions, para 58.

<sup>7</sup> Legal submissions, paras 3, 56.

<sup>8</sup> Legal submissions, para 3 and 152.

- (e) As a consequence, the “statutory process” is prevented from operating as intended;<sup>9</sup>
- (f) In addition, it:
  - (i) imposes unnecessary additional cost on ratepayers;<sup>10</sup>
  - (ii) creates unfairness (or prejudice<sup>11</sup>) for other participants who now face opposition from multiple ratepayer-funded organisations;<sup>12</sup> and
  - (iii) enables the Appellants to “exercise the same functions as the Committee.”<sup>13</sup>
- (g) This is:<sup>14</sup>
  - (i) “contrary” to the purpose of the Orders; and
  - (ii) undermines the “integrity”<sup>15</sup> of the appeal process.
- (h) This amounts to:
  - (i) The appeals and s274 notices not disclosing a “reasonable or relevant case”;<sup>16</sup> and/or
  - (ii) An abuse of process;<sup>17</sup>

such that this Court should strike out the appeals and s274 notices of the two Appellants the subject of the application.

4. The Appellants disagree.

5. These submissions are structured to address:

- (a) The relevant section of the Act, s279(4);
- (b) The transfer (and delegation) of obligations under the Orders;

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<sup>9</sup> Legal submissions, paras 5 and 57.

<sup>10</sup> Legal submissions, para 3.

<sup>11</sup> Legal submissions, paras 59, 113, and 116.

<sup>12</sup> Legal submissions, paras 3 and 60.

<sup>13</sup> Legal submissions, para 59.

<sup>14</sup> Legal submissions, para 82.

<sup>15</sup> Legal submissions, para 4, 5, 58, 60, 71, 72, 82(b), 84, 107, 109 – 122, 136, and 150.

<sup>16</sup> Legal submissions, para 5, 149, and 153.

<sup>17</sup> Legal submissions, para 108, 109, and 153.

- (c) The operation of the Committee during the period between notification of the plan and the decision on submissions, including:
  - (i) The role of the elected members on the Committee;
  - (ii) The appointment of an Independent Hearing Panel (**IHP**) to hear submissions and make recommendations to the Committee and the limited options available to the Committee on receipt of the IHP recommendations; and
  - (iii) The “expertise” provided by the District Councils to the IHP and/or Committee.
- (d) The decision-making processes of the Appellants to lodge the appeals and s274 notices;
- (e) The role of the Committee and the Court on appeal.
- (f) The impact of striking out the appeals and s274 notices, both on:
  - (i) The Appellants; and
  - (ii) The other appeals and s274 notices similarly filed by “member organisations”,<sup>18</sup> namely Westland District Council, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.

#### **Section 279(4)**

- 6. The Court has a discretion under s279(4) to strike out the whole or any part of the appeals and s274 notices if, and only if, your Honour considers:
  - (a) that they disclose no reasonable or relevant case in respect of the proceedings; or
  - (b) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.
- 7. The strike-out jurisdiction under s 279(4) is a narrow one, to be exercised sparingly and only where the court is satisfied that it has the requisite material before it to reach a certain and definite conclusion.<sup>19</sup> The high threshold is particularly important in the RMA context where the statutory scheme

<sup>18</sup> Legal submissions, paras 19, 41, 58, and 96.

<sup>19</sup> *Morris v Marlborough DC* (1993) 2 NZRMA 396 and *Hern v Aickin* [2000] NZRMA 475 (EnvC).

encourages participation. The Court should therefore be slow to remove those participatory rights at an interlocutory stage absent a clear case falling within s 279(4).

8. This is not such a case. Nor is there anything in the authorities relied on by F&B to suggest it is, or even that it is finely balanced.
9. It is indeed curious that the application is limited to only two of the 5 appeals by “member organisations”, being those appeals challenging a critical issue of concern to F&B.<sup>20</sup> The strike out would remove the relief of most concern to F&B.<sup>21</sup> Rather than strike out that relief and avoid the debate, the proper approach is for the merits of the relief sought in the appeals to be tested and determined through the appeal process.<sup>22</sup>
10. I explain below why, with respect, the F&B submissions are misguided and there is no basis on which the Appellants’ appeals and s274 notices should be struck out.

#### **Transfer (and delegation) of obligations**

11. F&B submit that:
  - (a) the effect of the Orders was to transfer then delegate district plan “functions” to the Committee. (There are 30 references to these “functions” in the submissions.<sup>23</sup>)
  - (b) by filing the appeals (and presumably the s274 notices), the Appellants are “seeking to exercise [the transferred] functions”.<sup>24</sup> (I understand this argument relies on the fact that valid planning reasons are provided in support of the relief sought.<sup>25</sup>)
12. These submissions are wrongful mischaracterisations that both misunderstand the Orders as drafted and assume drafting intent not reflected in the Orders.

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<sup>20</sup> Legal submissions, paras 21 – 24 and Memorandum of Counsel accompanying the Application to Strike Out, para 15-19, at [EC.0006]-[EC.0007].

<sup>21</sup> Being the relief sought by the Appellants in relation to LIGHT-R5.

<sup>22</sup> *CSI Property Ltd v Selwyn District Council* [2025] NZEnvC 187 at [51] to [53]; *Zhao v New Zealand Transport Agency – Waka Kotahi* [2025] NZEnvC 317 at [29].

<sup>23</sup> See Legal submissions, paras 11, 13, 17, 24, 26, 27, 28, 35, 38, 59, 90(a), 90(b), 90(d), 99, 110, 111, 114, 115, 141, 144, and 146.

<sup>24</sup> See for example Legal submissions, paras 24, 29, 59, 74, 110, 121, 122, 141, 145, and 146.

<sup>25</sup> See for example Legal submissions, paras 25 and 28.

*Local Government Act 2002*

13. The Local Government Act 2002 (**LGA02**) allows for the reorganisation of local government to promote good local government by enabling and facilitating improvements to local governance.<sup>26</sup>
14. Section 24 of the LGA02 enables reorganisation to provide for, among other matters:
- ...
- (e) *the transfer from one local authority to another of –*
- (i) *a **responsibility, duty** or power conferred by an enactment; or*
- (ii) *a discretionary function:*
- ...
- (g) *the performance and exercise by a local authority of both –*
- (i) *the responsibilities, duties, and powers of a regional council in respect of a region; and*
- (ii) *the **responsibilities, duties,** and powers of a territorial authority in respect of a district that constitutes a part only of that region*
- ...
- (h) *the establishment of 1 or more joint committees and the delegation of **responsibilities, duties,** and powers to those committees:*
- (emphasis added)*
15. In addition, Schedule 3 of the LGA02 applies to a reorganisation and provides detail on the process, powers of the Local Government Commission, and content of orders.
16. For a reorganisation plan to transfer the responsibility, duty, power or discretionary function, the Commission must ensure the Plan complies with cl 19A of Schedule 3. Clause 19A(5) provides:
- (5) *If a reorganisation plan includes the transfer of a discretionary function, the plan may –*
- (a) *prohibit the local authority from which the discretionary function is to be transferred from undertaking any specified activity or incurring expenses for any specified purpose; and*
- (b) *require the local authority to which the discretionary function is to be transferred to achieve specified service levels in the provision of that function.*

### *The Orders*

17. An important feature of the West Coast Reorganisation plan is that there was no consideration of the transfer of powers or a discretionary function.
18. The Orders do not include provisions contemplated in cl 19A(5) of Schedule 3.
19. Instead, the relevant transfers in the two Orders are limited to:
- (1) *The **obligations** of Buller, Grey and Westland district councils under section 73 and Schedule 1 of the RMA for there to be a district plan at all times for each district and for the preparation, notification, adoption, periodic amendment and review of the district plan, are transferred to the West Coast Regional Council.*
  - (2) *The transferred **obligations** under subclause (1) for the preparation, notification, adoption, periodic amendment and review of new district plans for the councils **must be met by the preparation, notification, adoption, periodic amendment and review** of a combined district plan for the Buller, Grey and Westland districts under section 80 of the RMA.*
  - (3) *For the avoidance of doubt subclause (2) does not prevent the preparation, notification, adoption, periodic amendment and review of a document that meets the requirements of both the combined district plan and a regional plan, or a regional policy statement, or both, under section 80 of the RMA.*
- (Emphasis added)*
20. The drafting of the Orders transfers a narrow set of obligations (being responsibilities and duties):
- (a) The obligations in section 73 are to:
    - (i) Have at all times a district plan, prepared in the manner set out in Schedule 1;<sup>27</sup>
    - (ii) Prepare a change to the district plan if given a direction under s25A(2);<sup>28</sup>
    - (iii) Amend a proposed or operative plan to give effect to a regional policy statement, in certain circumstances<sup>29</sup> and within certain timeframes.<sup>30</sup>

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27 S73(1).  
28 S73(1B).  
29 S73(4).  
30 S73(5).

- (b) The obligations in Schedule 1 are to:
- (i) Avoid unreasonable delays;<sup>31</sup>
  - (ii) Prepare the plan in accordance with any applicable Mana Whakahono ā Rohe;<sup>32</sup>
  - (iii) Consult in accordance with clauses 3 and 4A;
  - (iv) Follow the process specified in clauses 4 and 9 for the insertion of designations in the district plan;
  - (v) Prepare a s32 report and have regard to the same when deciding whether to proceed with the plan to notification;<sup>33</sup>
  - (vi) Notify the plan in a certain manner and provide copies to specified bodies in accordance with clause 5;
  - (vii) Give public notice of the availability of a summary of decisions requested by submitters and call for further submissions in accordance with clause 7;
  - (viii) Follow the process specified in clause 8AA in the event alternative dispute resolution is undertaken;
  - (ix) Hold a hearing in accordance with clause 8B (unless not needed under clause 8C);
  - (x) Give a decision and publicly notify (and serve) it in accordance with clauses 10 and 11 within 2 years of notification (unless the process in clause 10A is followed);
  - (xi) Make amendments to the plan if directed to do so by the Environment Court under s293;<sup>34</sup>
  - (xii) Once all Environment Court appeals have been disposed of (and the plan provisions amended accordingly), effect the approval of the plan by affixing the seal of the local authority;<sup>35</sup>

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<sup>31</sup> RMA Schedule 1, clause 1(3).

<sup>32</sup> RMA Schedule 1, clause 1A(1).

<sup>33</sup> RMA Schedule 1, clause 5(1)(a).

<sup>34</sup> RMA Schedule 1, clause 16(1).

<sup>35</sup> RMA Schedule 1, clause 17.

- (xiii) Publicly notify the date on which the approved plan shall become operative and provide copies to specified persons and every public library in the area.<sup>36</sup>

21. These are the obligations that were transferred to the Regional Council and then delegated to the Committee.

22. The Orders did not transfer the breadth of powers and discretionary functions provided by the RMA. Rather, these were specifically retained:

(a) clause 5 of the 2018 Order records:

5. *Affected Local Authorities Continue in Existence*

(1) *The West Coast Regional Council, the Buller District Council, the Grey District Council and the Westland District Council, as presently constituted and with their current boundaries, continue in existence.*

(2) *The councils referred to in subclause (1), with the exception of their district plan statutory obligations transferred by clause 6, **continue to have all their current roles, powers and responsibilities by or under law.***

*[Emphasis added]*

(b) clause 4 of the 2019 Order repeats that intent:

4. *Affected local authorities continue in existence*

*As provided for in the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018:*

(a) *The four West Coast councils as presently constituted and with their current boundaries, continue in existence; and*

(b) *The four West Coast councils as referred to in clause 4(a), with the exception of their district plan statutory obligations transferred by clause 6 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018, **continue to have all their current roles, powers and responsibilities by or under law.***

*(emphasis added)*

23. Of those clearly retained powers, Schedule 1, cl (6) of the RMA provides:

(1) *Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.*

(2) *The local authority in its own area may make a submission.*

- (3) *Any other person may make a submission but, if the person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited by subclause (4).*
- (4) *A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed policy statement or plan that—*
  - (a) *adversely affects the environment; and*
  - (b) *does not relate to trade competition or the effects of trade competition.*
- (5) *A submission must be in the prescribed form.*

- 24. The verb “may” is significant. There is no obligation on a person to make a submission.
- 25. The Councils were entitled to make a submission either as a local authority under (2) or as a person under subclauses (3) and (4) in reliance on Council's general competence under the LGA02 and functions under other legislation. There are no restrictions on councils' abilities to make submissions – this includes making submissions on plans outside of its territory.<sup>37</sup>
- 26. The right to appeal in cl 14 of Schedule 1 is similarly a power capable of being exercised. There is no obligation on a submitter to bring an appeal. Clause 14 grants the right of appeal to “a person who made a submission”. It is not disputed that the Councils made submissions on the TTPP nor is it disputed that the Councils participated in the hearing process as submitters. Therefore, the power or right to appeal under cl 14 crystallised.
- 27. Neither of these powers were removed by the Orders. That is accepted by F&B, and it does not challenge the lawfulness of either making the submissions and further submissions or filing the appeals and s274 notices.
- 28. The clear and precise transfer of specified **obligations** cannot be read as having a broader effect than its ordinary meaning and purpose, as F&B attempt to do with their focus on something they call “district plan functions”.<sup>38</sup>
- 29. The District Councils' powers and functions (including those in s31 of the RMA) remain untouched by the Local Government Commission's proposals. In light of the Commission's regulatory function and the fact it received and considered legal advice before issuing their final determination, it cannot be presumed that they meant anything but what is clearly said. Ascribing to

<sup>37</sup> See for example *Hamilton City Council v Waikato District Council* [2024] NZEnvC 51.

<sup>38</sup> See paragraphs paras 11, 13, 17, 24, 26, 27, 28, 35, 38, 59, 90(a), 90(b), 90(d), 99, 110, 111, 114, 115, 141, 144, and 146.

regulation, intent not supported or shown by the ordinary words of the instrument is not consistent with ordinary rules of interpretation.

30. If the Commission or the Minister had intended the Orders to transfer any other obligations, powers or functions, that would have to have been expressed in the Orders. Silence cannot be read as an intention to remove rights, powers or discretionary functions conferred on the District Councils.<sup>39</sup> Statutory rights can only be revoked where there is express provision for their removal.<sup>40</sup>
31. The Orders are clear that it is only the statutory obligations in s 73 and Schedule 1 of the RMA that have been transferred and delegated. The direction regarding the “preparation, notification, adoption” of the district plan does not widen the transfer more generally.
32. F&B submits that “a key question for the Court is whether the purpose of the Orders is for District Councils to participate in the TTPP appeals through collaborative and cooperative participation in the Committee.”<sup>41</sup> Presumably the submission is actually that “the purpose of the Orders is to limit the opportunity for District Councils to participate in the TTPP appeals ~~through to~~ the collaborative and cooperative participation of two elected members in the Committee”. There is nothing to support such an interpretation.

### **TTPP Committee**

33. F&B submit:<sup>42</sup>

*The District Councils have expertise and experience in the preparation and administration of District Plans. The intention of the Orders is that this expertise will assist the Committee in preparing the TTPP.*

*It is contrary to the purpose of the Orders for the District Councils to exclude themselves from the Committee process while they pursue separate and competing appeals.*

34. To address this and related submission points it is important to understand the operation of the Committee during the period between notification of the plan and the decision on submissions, including:
- (a) The role of the elected members on the Committee;
  - (b) The appointment of the IHP and the limited options available to the Committee on receipt of the IHP recommendations;

<sup>39</sup> *McRitchie v Taranaki Fish and Game Council* (CA184/98, 24 November 1998).

<sup>40</sup> *New Zealand Council of Licensed Firearms Owners Inc v Minister of Police* [2020] NZHC 1456 at [36] and [37]; *Waitakere City Council v Estate Homes Ltd* at [43] and [46].

<sup>41</sup> Legal submissions, para 75.

<sup>42</sup> Legal submissions, paras 97 - 98.

(c) The limited “expertise” provided by the District Councils to the IHP and/or Committee.

35. The role of the Committee on appeal is addressed later.

*Role of elected members*

36. As per cl 7(1)(d) of the 2018 Order and cl 8(5) of the 2019 Order, the Mayor and one other elected member from each Council are members of the Committee. The elected members are there to fulfill a democratic purpose. They are not planners, nor do they have planning expertise.

37. These appointees are not there to advance solely the interests of their own District Councils:

(a) That would presume the appointees will predetermine their decision-making, despite the clear requirements of the LGA02, the Standing Orders of the Committee<sup>43</sup> and the Code of Conduct of Members.<sup>44</sup>

(b) The Committee members are entitled, as democratically elected members, to independently form views contrary to that of the Council organisations they have a governance function on.

38. In their role on the Committee, the appointees from each Council would have:<sup>45</sup>

(a) Had regard to the s32 report and decided to proceed with the plan to notification in accordance with clause 5;

(b) Notified the plan and provided copies to specified bodies in accordance with clause 5;

(c) Given public notice of the availability of a summary of decisions requested by submitters and called for further submissions in accordance with clause 7;

(d) As explained below, appointed an IHP to hold a hearing in accordance with clause 8B;

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<sup>43</sup> At [EC.0551].

<sup>44</sup> Code of Conduct of the Te Tai o Poutini Plan Committee, version adopted 12 December 2025, available online <<https://tpp.nz/wp-content/uploads/2025/12/Code-of-Conduct-for-TTPP-Committee-12-December-2025.pdf>>.

<sup>45</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW119]-[RW120] of the paginated bundle of exhibits to the affidavit; at [EC.0647]-[EC.0648] of the Bundle of Documents.

(e) Given a decision on the IHP recommendations and publicly notified (and served) it in accordance with clauses 10 and 11 within 2 years of notification.

39. In doing so, they have fulfilled the specific obligations delegated to the Committee by the Regional Council that have arisen to date.

*The Independent Hearing Panel*

40. As noted above, the Committee decided to appoint an IHP to hear submissions and make recommendations on the proposed TTPP.<sup>46</sup>

41. Five independent commissioners were appointed for the various topics in the TTPP.

42. The IHP process was organised, paid for and controlled by the Regional Council, as the agency in control of the Committee and its finances.

43. The IHP heard all submissions and made recommendations to the Committee.

44. At the meeting to discuss and make decisions on those recommendations,<sup>47</sup> the Committee members were correctly advised by the TTPP Principal Planner that they could not change the recommendations but could accept the recommendations in the decision and then appeal any of concern.<sup>48</sup>

*The expertise provided to the Committee*

45. The Regional Council engaged a project manager, planners and experts to support the Committee in preparing the notified version of the TTPP, assisting the IHP, including with section 32 and 42A reports.<sup>49</sup> The Orders specify that the costs must be funded by the Regional Council.<sup>50</sup>

46. The TTPP planning team comprises a project manager and principal planner.<sup>51</sup> Both are contracted by the Regional Council to manage the TTPP process. The project manager is responsible for oversight of the outcomes, including budgets, management of the project team, responding and reporting to the Committee and undertaking shareholder communications and engagement. The TTPP planning team has three planners, Lois Easton the

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<sup>46</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW119]; and at [EC.0647].

<sup>47</sup> Bundle of Exhibits for the Affidavit of Joanne Soderlund, dated 8 May 2026, at [EC.0368].

<sup>48</sup> Bundle of Exhibits for the Affidavit of Joanne Soderlund, dated 8 May 2026, at [EC.0373]; Affidavit of Rex Williams, dated 15 May 2026, at [RW113], and at [EC.0641].

<sup>49</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW116-RW117], and at [EC.0644]-[EC.0645].

<sup>50</sup> CI 10 2018 Order at [EC.0741]; CI 13 2019 Order at [EC.0744].

<sup>51</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW117], and at [EC.0645].

principal planner, Doug Bray the senior planner and Chu Zhao the planning technician.<sup>52</sup> All three were involved during the hearings process. Mr Bray and Mr Zhao are employed by the Regional Council and involved in other roles there.<sup>53</sup>

47. Separate to the TTPP planning team, the Technical Advisory Team (**TAT**) was established by the Orders to provide technical advice. The Deed of Agreement sets out that:<sup>54</sup>

19. *Te Tai o Poutini Plan Committee will be supported by a technical advisory team comprising planners with expertise from across the four councils and local iwi.*

20. *The team will work with the project manager to ensure that Te Tai o Poutini Plan Committee receives technical support throughout the process. The team's contribution in kind to the district plan development process will be supported by their reporting organisation.*

48. Mr Pickford and Ms Soderlund confirm that some technical input was provided by the TAT. However, the TAT's role in the TTPP process was advisory only. In particular:

(a) As explained above, the principal planning expertise supporting the Committee was provided by the Regional Council, not the TAT.

(b) The TAT was not the primary source of planning advice to the Committee.

(c) Any input from the TAT was confined to technical and implementation matters relating to proposed provisions.<sup>55</sup>

(d) Overall, the TAT's function was consultative and technical, rather than substantive or decision-making in nature.<sup>56</sup>

49. This means there were no dedicated advisors (such as a s 42A reporting officer) from either Appellant directly engaged to support the IHP or the Committee's subsequent decision-making.

50. Thus, the only practical way the Appellants could have input into the Plan following notification as representatives of their communities and

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<sup>52</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW117], and at [EC.0645].

<sup>53</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW117], and at [EC.0645].

<sup>54</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW018], and at [EC.0646].

<sup>55</sup> Affidavit of Simon Pickford, dated 8 May 2026, at para 29, and at [EC.0420].

<sup>56</sup> Affidavit of Joanne Soderlund, dated 8 May 2026, at para 19 and 20, at [EC.0051].; Affidavit of Simon Pickford, dated 8 May 2026, at para 24, at [EC.0419].

administrators of the Plan was by making submissions. This has not changed for the appeal process.

51. What has also not changed, is the expertise provided by the TTPP planning team. These technical experts assisting the Committee with appeals<sup>57</sup> include the same planners, employed by the Regional Council, who have been involved in extensive consultation and hearings. Those planners have extensive experience and expertise in all relevant matters.
52. The planning expertise available to the Committee has not changed as a result of the Appellants' appeals.

**The decision-making processes of the Appellants to lodge the appeals and s274 notices**

53. The suggestion that the Councils are seeking to take back plan-making functions is not borne out by the nature or scope of the appeals and s 274 notices. In bringing those proceedings, the Councils exercise the same rights as any other party and have no elevated status in the appeal process.
54. This is clearly explained in the three affidavits prepared in response to the application.<sup>58</sup>
55. F&B have mischaracterised the Appellants' actions by inappropriately in the wrong forum without sufficient supporting evidence alleging that public officials are attempting to subvert statutory responsibilities. This is despite extensive publicly available documentation showing the manner in which the Appellants have approached matters consistently with their statutory obligations and in good faith to promote and uphold the wellbeing of their communities.

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<sup>57</sup> Affidavit of Rex Williams, dated 15 May 2026, at [RW117], at [EC.0645].

<sup>58</sup> See Affidavit of Joanne Soderlund, dated 8 May 2026, at paras 24 -39, at [EC.0052]-[EC.0057] and Affidavit of Simon Pickford, dated 8 May 2026, at paras 24 – 28, at [EC.0419]-[EC.0420].

## The role of the Committee and the Court on appeal

56. F&B submits:

(a) At para 60:<sup>59</sup>

*At mediation, Forest & Bird has to convince three ratepayer funded opponents on every key issue of the merits of its appeal. If matters are not resolved at mediation, Forest & Bird will likely face three "Councils" at an Environmental Court hearing. **This is despite the statutory scheme providing for a single collaborative decision-maker.** The duplication of opposition is unfair, distorts the balance of the appeal process and undermines its integrity.*

*(emphasis added)*

(b) At para 99:<sup>60</sup>

*The effect of appeals and s 274 notices is that 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.***

*(emphasis added)*

(c) At para 102, that the "proper" approach is for the District Councils to "participate in the Committee process for preparing the TTPP."<sup>61</sup>

(d) At para 104 that:<sup>62</sup>

*When the Orders are interpreted in light of their text, purpose, and context, **they do not contemplate, let alone authorise,** the District Councils excluding themselves from the Committee process in order to **pursue adversarial positions against the Committee***

*(emphasis added)*

(e) At para 107 that:

*...the District Councils undermine the integrity of the Court's appeal process. This occurs because the District Councils **seek to use the appeal in a way contrary to the statutory framework set out in the Orders governing their role, while simultaneously preventing themselves from performing the role the Order provides for.***

*(emphasis added)*

57. F&B claims there is "significant prejudice"<sup>63</sup> from the Appellants exercising their legal rights. With respect, there is no substance to such a claim.

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59 Legal submissions, para 60.

60 Legal submissions, para 99.

61 Legal submissions, para 102.

62 Legal submissions, para 104.

63 Legal submissions, paras 115 – 120, 122.

58. The simple fact of the matter is that:

- (a) The Committee fulfilled its obligation in clause 10 of Schedule 1 to give the Regional Council's decision on the provisions and matters raised in submissions;
- (b) A number of parties, including the Appellants, have exercised their legal right to appeal that decision to this Court;
- (c) The Environment Court will determine the outcome of the appeals. In doing so:
  - (i) It is obliged, by s290A, to have regard to the decision subject to appeal;
  - (ii) Its role is to test and weigh the differing views of the parties;<sup>64</sup>
  - (iii) It will not remit the matter back to the Committee, rather it will decide the planning provisions itself;<sup>65</sup>
  - (iv) In doing so, its jurisdiction to make amendments is limited by the scope of the appeals before it.<sup>66</sup>

*A shorthand way of describing the Environment Court's scope on appeal is that it is an outcome which is in "the range between what was in the decision being appealed and the relief sought in the appeal".<sup>67</sup>*
  - (v) It must undertake an evaluation of any amendments it proposes to make to the planning provisions in accordance with section 32(1) to (4), as required by s32AA.
- (d) On receipt of the Court's determination of the appeals, the Committee must fulfil its obligation under clauses 17 and 20 of Schedule 1. Until that time, it has no "obligations" under Schedule 1.

59. There is nothing in this process that offends the Orders.

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<sup>64</sup> *Federated Farmers v Ashburton County* (1975) D A2925 (TCPAB) and *Re an Application by Petralgas Chemicals* (1981) 8 NZTPA 106 (PT) at 113.

<sup>65</sup> *Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257 (CA), pages 9 – 10.

<sup>66</sup> *Federated Farmers Southland Inc v Southland Regional Council* [2024] NZHC 726, at [40] at [42].

<sup>67</sup> Citing *Gertrude's Saddlery Ltd v Queenstown Lakes District Council* [2020] NZHC 3387, (2020) 22 ELRNZ 298 at [23] referring to *Transit New Zealand v Pearson* [2002] NZRMA 318 (HC) at [48]–[50].

60. The fact that some members may need to stand aside from internal discussions on particular topics does not invalidate the Committee structure, remove the planning expertise it is provided, undermine the integrity of the statutory appeal process, nor support any suggestion of abuse of process.

**The impact of striking out the appeals and s274 notices**

61. Contrary to the F&B submission,<sup>68</sup> the threshold for exercising the power to strike out is not reduced or lowered.
62. The submissions for F&B have focused entirely on the fact that the Mayor and another elected member of each Appellant would remain on the Committee and could participate in its discussions and deliberations in relation to the relief sought in the appeals and the Committee's position in relation to the same.<sup>69</sup>
63. That argument completely overlooks the fact that the relief sought in the appeals (to the extent it is not sought in another appeal) would no longer be before the Court. The matters raised on appeal are neither new, nor brought out of spite. They are matters the Appellants have been seeking as relief as legitimate submitters throughout the TTPP process. From a high-level analysis of the relief sought in all appeals,<sup>70</sup> it is clear that:
- (a) The extent of the Appellants' interests is narrow and confined to a small group of topics in the context of the large number of topics the Plan addresses.
  - (b) There is limited alignment with relief sought by other parties, either due to the fact that the same provision has not been appealed or where it has the relief is either of a different focus or seeking to amend the provision in the opposite direction.
  - (c) Meaning that a successful strike out will deprive the Appellants the opportunity to have these matters addressed in the appeal process as there would be no jurisdiction for most of the desired changes.
64. The RMA was designed to enable participatory processes which consequentially involves tensions in perspectives. However, these are not tensions that are appropriate to be resolved through strike out procedures. The Courts have always been cautious about striking out an issue which goes

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<sup>68</sup> Legal submissions, para 133.

<sup>69</sup> Legal submissions, para 123 – 133.

<sup>70</sup> See attached table in appendix A.

to the merits of the disputes.<sup>71</sup> F&B have offered no justification to erode this principle.

65. The Appellants' appeals challenge a "critical issue" for F&B.<sup>72</sup> This undisputed fact lies at the heart of this focussed application to strike out two of the five appeals. Using a strike out application as a tactic to challenge the scope of the substantive issues before the Court is a gross misuse of the process, which will inevitably have cost implications in due course.

66. There is also the question of what it would mean for the other appeals and s274 notices similarly filed by "member organisations",<sup>73</sup> namely Westland District Council, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio. While not the subject of this application, the same argument applies (although the relief sought in those appeals is presumably not as egregious to F&B).

### Conclusion

67. In conclusion, I submit:

- (a) there is no reason to strike out any part of the appeals or s274 notices;
- (b) even if there were, the Court should not exercise its discretion to do so.

68. When the involvement by the Appellants is properly understood, it is clear the decision to make submissions and further submissions was informed by a responsible attitude to assisting the plan-making process. The most effective way for the District Councils to advance the interests of their communities and to address the matters of concern to them was to submit and raise issues directly with the decision-makers as a party to the hearing process and, now, through the appeals. There has been no other realistic way to do that effectively since notification of the plan.

69. F&B are inviting this Court to make a novel ruling that would cut across statutory participation rights – recognised by the Supreme Court<sup>74</sup> as being fundamental to the RMA – on the basis that a party that is **able** to be

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<sup>71</sup> *Couch v Attorney General* [2008] 3 NZLR 725 at [32] and [33]; *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5 at [84]; *Hauraki Māori Trust Board v Waikato Regional Council* [2004] ELHNZ 66 at [15] to [18], and [21]; *Simon Hill Station v Royal Forest and Bird Protection Society of New Zealand Inc* [2014] NZHC 1362 at [43]; *CSI Property Ltd v Selwyn District Council* [2025] NZEnvC 187.

<sup>72</sup> Legal submissions, paras 21 – 24 and Memorandum of Counsel accompanying the Application to Strike Out, para 15-19, at [EC.0006]-[EC.0007].

<sup>73</sup> Legal submissions, paras 19, 41, 58, 96.

<sup>74</sup> *Auckland Council v Wendco (NZ) Limited* [2017] NZSC 113.

represented or participate in a process in a more limited capacity through a different legal entity should be **required** to do so. There is no basis for such an approach.

**Dated** 18 May 2026

A handwritten signature in blue ink, appearing to be 'B S Carruthers', is written over a light blue rectangular background.

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B S Carruthers KC

Counsel for Grey District Council and Buller District Council

**Appendix A: Table analysing Grey and Buller District Councils Appeals on the TPPP**

Provision	Appellant	Other Appeals seeking consistent relief? Y/N & party	Comments
Definition – ‘site coverage’	GDC	No	Technical appeal point related to the implementation of the definition when interpreting and applying the Plan
NOISE-R3	BDC & GDC	No	KiwiRail have appealed but seek relief that has contrary effect to that sought by BDC and GDC. Its s 274 interests oppose relief sought by BDC and GDC.
LIGHT-R5	BDC & GDC	Yes – Buller Conservation Group	<p>Concerns unlikely to be aligned as the general relief is to improve environmental protections. The relief sought is a further discussion and is unlikely to be valid without further particulars.</p> <p>Forest and Bird have additionally appealed this rule. Due to the information provided in the affidavit, memorandum and submission, it appears they are seeking to strengthen the rules restrictions on light. Although their notice of appeal obtusely seeks to ensure “adequate protection for indigenous wildlife.” It is unclear if there is possibility for alignment with GDC’s road safety concerns.</p>

Provision	Appellant	Other Appeals seeking consistent relief? Y/N & party	Comments
GRUZ-R11	GDC	Yes	<p>Birchfield Mining seeks to revert this rule to the notified version, which GDC opposed.</p> <p>WMS and Taiko align with GDC's relief sought.</p> <p>Bathurst's relief partially aligns.</p> <p>Buller Conservation's relief contradicts the relief sought.</p>
ECO-R1.1(iii)	BDC	No	<p>Federated Farmers has appealed ECO-R1.1 but does not seek any amendments to (iii).</p> <p>The Director-General of Conservation has appealed but seeks opposite outcome to BDC.</p>
ECO-R4	GDC	No	Relief seeks consistent treatment for Runanga with other urban areas in the District.
NH-O5, P3,P7, P9, P12, R2-4	BDC	No	The Director-General of Conservation has appealed some provisions but appeal have different focus.
NH-R4	GDC and BDC	No	Relief seeks a permitted activity status for infrastructure repair, maintenance and upgrades for existing natural hazard mitigation structures.
Coastal Environment Overlay	BDC	No	Relief seeking removal of the Coastal Environment Overlay at Westport (including Carters Beach) and other urban areas of Westport

<b>Provision</b>	<b>Appellant</b>	<b>Other Appeals seeking consistent relief? Y/N &amp; party</b>	<b>Comments</b>
CE-R4	BDC & GDC	Yes – Federated Farmers	Relief consistent but not identical – seek to amend the restrictions on buildings in the Coastal Environment.
EW-R1	BDC	No	BDC ground of appeal linked to relief sought to Natural Hazard Mitigation Structures constructed by a Statutory Agency, in light of the proposed Westport Flood Protection Scheme. <sup>75</sup>
EW-R4	GDC	No	Birchfield and Taiko seek contradictory relief to GDC.

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<sup>75</sup> The proposed Westport Flood Protection Scheme is a significant local issue for BDC and especially the people of Westport following significant floods, including in July 2021.