

**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**

LEGAL SUBMISSIONS FOR THE ROYAL

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

12 May 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. The Te Tai o Poutini Plan and Committee (the TTPP and the Committee) came about following the Local Government Commission's consideration of options for reorganising local government on the West Coast. Amalgamation of the Councils was not the preferred option. Instead, the Commission favoured a joint district planning model, which was implemented through two Orders in Council that established the TTPP and the Committee as the vehicle through which the Regional Council, the District Councils, and Mana Whenua would collectively prepare a single combined district plan.
2. Grey and Buller District Councils (the District Councils) have stepped outside that statutory process by lodging separate and competing appeals and section 274 notices. The appeals and s 274 notices are broad ranging. The District Councils oppose Forest & Bird's appeal on critical matters.
3. The consequence of lodging the appeals and s 274 notices is that the District Councils have created conflicts of interest that exclude them from participating in Committee discussions and deliberations on the topics on which they have appeals or s 274 notices. The District Councils have removed their expertise from the Committee on matters which they are required to help determine. This imposes unnecessary additional cost on ratepayers and creates unfairness for other participants who must now face opposition from multiple ratepayer-funded organisations instead of the single collaborative decision-maker contemplated by the Orders.
4. The RMA provides a pathway for any person, including local authorities, to lodge submissions, appeals, and section 274 notices. However, that right is subject to the Environment Court's strike-out jurisdiction, which exists to ensure that these processes are not misused in a manner that undermines the integrity of the Court's processes.
5. The District Councils' appeals and section 274 notices are contrary to the purpose of the Orders, undermine the Committee, and prevent the statutory process from operating as intended. They also create unfairness. Allowing the District Councils' appeals and section 274 notices to proceed would undermine the integrity of the appeal process. They therefore do not disclose a

reasonable or relevant case and amount to an abuse of process under s 279(4)(b) and (c). They should be struck out.

6. Striking out the District Councils' appeals and section 274 notices does not exclude them from the TPPP process. It restores their participation to the form anticipated by the Orders. This is as members of the Committee, working collectively and cooperatively towards the preparation of the TPPP.

THE ORDERS IN COUNCIL AND THE TPPP COMMITTEE

7. 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
8. In December 2017, after an extensive consultation process, the Commission determined its preferred option. The Local Government Commission's preferred option was for 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.

9. The Local Government Commission subsequently gave notice of this preferred option:³

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

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/

³ www.lgc.govt.nz/assets/Reorganisation-Files/Past-Reorganisation-Applications/2019-West-Coast-Reorganisation/West-Coast-determination.pdf

establishment of a joint committee of the four councils to prepare and approve a combined West Coast district plan.

10. This preferred option was implemented by two Orders in Council: the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 (the 2018 Order); and the Local Government Reorganisation Scheme (West Coast Region) Order 2019 (the 2019 Order and collectively the Orders).
11. 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.
12. 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.
13. 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.
14. 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.⁴
15. 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.

⁴ Clause 7 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018

16. The costs of the preparation of the TTPP are funded by the West Coast Regional Council through a regional rate.⁵
17. The four councils otherwise continue to exist with their usual powers and responsibilities, except for the district plan functions expressly transferred.
18. On 13 August 2025, prior to decisions being issued the Committee was made aware of the difficulties if the member organisations lodged appeals. Wynn Williams provided legal advice that such appeals and s 274 notices could result in difficulties arising from conflicts of interest.⁶

In the event that all member organisations of the TTPP Committee lodge or join appeals on a particular point, this will leave the TTPP Committee in a difficult position. In that situation, it may be that all members of the TTPP Committee that are also members of an organisation that have joined or lodged appeals need to stand aside from discussions on that appeal point. This may leave only the independent chair able to make decisions on the appropriate position for the Committee to take as respondent to the appeals. This may also require a delegation from the Committee to the independent chair to perform this role, to avoid any necessary quorum requirements.

19. While the Regional Council has not lodged an appeal or s 274 notice, the difficulties alluded to by the Wynn Williams legal advice are only marginally less significant given the appeals and s 274 notices by the other member organisations.

THE APPEALS AND SECTION 274 NOTICES

20. The TTPP was notified on 14 July 2022. Forest & Bird filed a comprehensive submission and a further submission. After decisions were made, Forest & Bird lodged a comprehensive appeal on the TTPP.
21. Critical issues for Forest & Bird in its submissions and appeal include provisions relating to:
 - a. the protection of indigenous biodiversity, primarily in the ECO chapter, which Forest & Bird sought to strengthen to give effect

⁵ Clause 10 of the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018

⁶ Affidavit of Rex Williams, page RW106

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).
22. 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.

23. The decision responded to this concern and included a 15 km setback from the coast in Rule Light R5.⁷ Forest & Bird supports the 15 km setback.

24. The District Councils also filed appeals. Both appeals challenge the 15km setback in Rule LIGHT R5 and seek its deletion. In making the appeal the District Councils are, in effect, seeking to exercise functions under s 73 and the First Schedule of the RMA.

25. This is evident from the appeals. The Grey District Council's appeal includes the following reason for opposing the 15 km setback:⁸

⁷⁷ This occurred through the addition of the fourth bullet in Rule LIG HT 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.

⁸ Paragraph 19(a)

The 15km buffer zone as described does not uphold the objectives and policies of the Light Chapter that enable artificial lighting to support activities and health and safety and is more restrictive than necessary to uphold the objectives and policies that are protective of indigenous biodiversity. appropriate way to achieve the objectives of the TTPP.

26. This reference to the buffer zone not upholding the objectives policies demonstrates that the Grey District Council seeking to fulfil the plan preparation functions that it no longer has.
27. Ms Soderland refers to the functions of the Grey District Council and the activities that it undertakes to fulfil these functions.⁹ Ensuring that the provisions in the plan “uphold the objectives and policies of the Light Chapter” does not fulfil these functions.
28. Buller District Council challenges the 15 km setback on the grounds that it lacks certainty and is not supported by an appropriate s 32 analysis. This is a planning reason and is the exercise of planning functions that the Council no longer has.
29. The District Councils are using the opportunity to submit, appeal and lodge s 274 notices to, in effect, exercise the powers relating to the preparation that were transferred to the Committee.
30. Forest & Bird filed s274 notices opposing both appeals by the District Councils, including the appeal on Rule LIGHT R5.
31. The District Councils filed s 274 notices. The District Councils oppose the relief sought by Forest & Bird in relation to critical issues for Forest & Bird including:
 - a. indigenous biodiversity;
 - b. mining;
 - c. infrastructure;
 - d. the coastal environment.
32. Mr Pickford says that¹⁰

... many of BDC’s s 274 positions were directed towards those broader plan integrity concerns including the coherent administration and implementation of the TTPP,, consistency and workability of provisions across chapters and overlays, and the

⁹ Affidavit of Joanne Soderland, 8 May 2026, paragraphs 8(a)-(f)

¹⁰ Affidavit of Simon Pickford, 8 May 2026, paragraph 26

avoidance of unintended consequences or impractical implementation outcomes”.

33. This view is not consistent with the s 274 notice on the Forest & Bird appeal. Buller District Council is interested in all parts of the Forest & Bird appeal and opposes it all.
34. Ms Soderland explains that the Grey District Council were “to target the notices to the most significant issues for the GDC” and that “GDC limited its opposition/ support to the relief that was deemed significant”.¹¹
35. Ms Soderland sets out the issues of significance for Grey District Council. This includes the “coherence and workability of the proposed amendments” and “opposing proposed amendments to the TTPP where the existing wording was considered adequate and supporting those that were justified and sensible”. These matters relate to the plan making functions that have been transferred to the Committee.
36. The apparent focus on issues of significance is at odds with the s 274 notice on the Forest & Bird appeal. Forest & Bird’s appeal on the ECO Chapter is extensive. Grey District Council has opposed every one of the 28 appeal points.
37. Forest & Bird also appealed the CE Chapter. Again, Grey District Council opposed every appeal point Forest & Bird raised in this chapter.
38. Mr Pickford and Ms Soderland have characterised their involvement in the appeals as advancing interests other than related to the planning functions. This creates an artificial distinction. The reality is that the functions are purporting to advance through their appeals, and s 274 notices are, for all intents and purposes, planning functions.
39. After appeals and s 274 notices were lodged, the matter was referred to mediation.
40. Mr Williams' affidavit includes an attachment that sets out the extent of the conflict issues arising from members of the Committee lodging appeals and s 274 notices. This is set out in the

¹¹ Affidavit of Joanne Soderland, 8 May 2026, paragraphs 38

Table titled “*Topics to Which TTPP Committee Member Organisations are Appellants or s274 Parties*”.¹²

41. This shows the interests are extensive, with many topics having three and often four of the members organisations with interests as appellants or s 274 parties.
42. After the lodgement of s 274 notices, the appeals were referred to mediation. Counsel for the Committee filed a case management memorandum on 3 March 2026 which addressed, among other things, the provision of position papers in advance of mediation.
43. The Committee considered potential conflicts of interest that arose from Committee members filing appeals and s 274 notices. The approach adopted by the Committee was that members who had appeals or s 274 notices on a topic were excluded from participating:¹³

“where any member’s Council or Runanga is an appellant or section 274 party on the topic(s) that are on the agenda for any meeting of the TTPP Positions Subcommittee, that member will be expected to recuse themselves from the meeting”.
44. In its memorandum of 5 May 2026, the Grey District Council acknowledged that it had been excluded from some Committee decision making due to its status as an appellant and s 274 party.¹⁴
45. Appendix B to the Memorandum of Counsel for the Committee of 3 March 2026 is titled Topics and subtopics. It sets out the appellants and s 274 parties to the topics and sub-topics.
46. The District Councils have extensive interests in the appeals.
47. Light is Topic 16. This deals with the 15km setback from the coast discussed above. Grey and Buller District Council are listed as both appellants and s 274 parties in this topic.
48. There are three topics related to mining;
 - a. Topic 18: Mineral Extraction;
 - b. Topic 19: Mineral Extraction: Buller Coalfield Zone Subtopic; and

¹² Affidavit of Rex Williams, page RW184

¹³ TTPP Positions Subcommittee Procedures, 4 March 2026, paragraph 5(b)

¹⁴ Memorandum of Counsel for Grey District Council, 5 May 2026, paragraph 10(c)

c. Topic 20 - Mineral Extraction: Mineral Extraction Zone Subtopic.

49. Forest & Bird is an appellant and s 274 party on all these topics.
50. Grey District Council is an appellant on Topic 18, Buller and Grey District Councils are s 274 parties on all three topics. Grey District Council is an appellant on the Buller Coalfield subtopic.
51. Topic 22 is infrastructure. Forest & Bird is an appellant and Grey and Buller District Councils are s 274 parties on this topic.
52. Topic 30 is the coastal environment. Forest & Bird, Grey and Buller District Councils are listed as appellants and s 274 parties on this topic. All members of the committee, except the Regional Council and the independent chair, have conflicts on this topic.
53. The same applies to Topic 33: Ecosystems and Indigenous Biodiversity.

STRIKE OUT

54. The District Councils' appeals and s 274 notices do not disclose a relevant or reasonable case and are an abuse of process. The purpose of the Orders is to provide for the preparation of the TTPP, with District Councils participating cooperatively and collaboratively in the Committee process.
55. 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.
56. 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.
57. The Order provides the District Council's engagement with the TTPP appeals through membership of the committee. The appeals and s 274 notices prevent the Council from engaging in the TTPP process as anticipated by the Orders. Appeals and s 274 notices that are contrary to the purpose of the Orders do not disclose a relevant or reasonable case.
58. It is improper for the District Councils to choose to exclude themselves from the Committee process. This undermines the

integrity of the Committee process, most obviously by creating a conflict of interest that deny the Committee the benefits of the District Councils participation in it. These conflicts are so broad-ranging that the Regional Council and the independent chair are the only non-conflicted members of the Committee on many topics.

59. The District Councils' participation as appellants and s 274 parties is prejudicial. As is usual on an appeal, Forest & Bird must deal with the Committee as the respondent, properly exercising the plan-making functions vested in it. In addition, Forest & Bird faces almost complete opposition from two additional District Councils who are, in substance, seeking to exercise the same functions as the Committee.

60. 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.

The law regarding strike out

61. Section 279(4)(b) provides the Environment Court with the 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.¹⁵ It is also used when a party raises matters beyond the Environment Court's jurisdiction.¹⁶

62. 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.

63. In *Commerce Commissions v Giltrap City Ltd*¹⁷ the Court of Appeal described an abuse of process as the use of Court processes for an ulterior or improper purpose:

¹⁵ For example *McCarthy v Mackenzie District Council* [2026] NZEnvC 21

¹⁶ *Madhava v Auckland Council* [2023] NZEnvC 129

¹⁷ (1997) 11 PRNZ 573 at 579

Primarily, an abuse of process, as spoken of in the rule, occurs when a litigant uses the processes of the Court for an ulterior or improper purpose.

64. This was phrased slightly differently but with the same meaning in set out in *Reid v New Zealand Trotting Conference*,¹⁸ where the Court of Appeal referred to an abuse of process as the misuse of the Court's process, which tends to produce unfairness and undermine confidence in the administration of justice.
65. The reference to an abuse of process is technical and does not necessarily have pejorative connotations.¹⁹
66. 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.²⁰
67. 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*.²¹ 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 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.

68. The High Court went on to explain that the:

[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

¹⁸ 1984 NZLR 8 at 9

¹⁹ *Te Rununga o Ngai Tahu v Durie* [1998] 2 NZLR 103 at 107

²⁰ *Waitakere City Council v Kitewaho Bush Reserve Co* [2005] 1 NZLR 208

²¹ [2015] NZHC 3098

a serious allegation. The threshold to establish abuse of process is a high one.

69. *Hurunui Water Project* is consistent with the Environment Court's decision in *Auckland Council v Auckland Council*.²² This case concerned whether the Auckland Council as an applicant for a resource consent, could appeal the decision of the Auckland Council as consent authority.
70. The situation at hand raises similar issues. The District Councils are not appealing their own decision(s) in a strict sense. However, they are appealing decisions made using the statutory power that the District Councils had, but which have been transferred to the Committee.
71. In *Auckland Council*, 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.
72. This is where the problem arises. The District Councils' appeals and s 274 notices undermine the integrity of the appeal process.
73. In *Waitakere City Council v Kitewaho Bush Reserve Co*,²³ 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.

74. In *Te Kura Pukeroa Maori Inc v Thames Coromandel District Council*²⁴ Judge Dwyer considered "it might be considered unusual for the Court not to exercise its discretion [to strike out] when it

²² [2018] NZEnvC 56

²³ [2005] 1 NZLR 208 at [66]

²⁴ [2007] ELHNZ 360

finds that any or all of the grounds identified in s 279(4)(a), (b) and (c) have been made out.”

75. In determining whether to grant the application and strike out the appeals and s 274 notices, a key question 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. 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.
76. It is not accepted that “*questions of “appropriateness”, governance, or institutional design do not form part of the statutory test under s 279(4)”*²⁵ Abuse of process is a flexible remedy available when the appeal process is being improperly used. If governance and institutional design contribute to an abuse of process, they are relevant.
77. Acting contrary to the purpose of the Order 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 through membership of the Committee, as the Orders provide.
78. 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.
79. 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 s274 notices are lawful.
80. 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

²⁵ Memorandum of Counsel opposing strike out, 8 May 2026, paragraph 13

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

81. 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.

GROUNDINGS FOR APPLICATION FOR STRIKE OUT

82. 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.

Appeals and section 274 notices contrary to the Orders

83. Applying the key elements from case law above, an abuse of process is the misuse of the appeal process, which does not maintain the integrity of the process or cause unfairness.

84. The District Councils are using the appeal process in a way that is contrary to the purpose of the Orders. This is a misuse of the Court's process, undermining the integrity of the appeal process and causing prejudice.

85. This is perhaps best illustrated by the fact that, if the Committee's "Conflict of Interest Guideline" is followed, then the Committee position on the highly controversial topic of indigenous biodiversity is set by the Regional Council and the independent chair. The same applies to the coastal environment.

86. The Orders provide that the District Councils are to participate in the preparation of the TTPP through membership of the Committee. It is an abuse of process for the District Councils to take steps that prevent them from participating as anticipated by the Orders where the effect is to undermine the Committee's ability to perform its role.

87. 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”.²⁶
88. 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.
89. 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.
90. When the words are interpreted in light of purpose and context, the 2018 Order provides that the West Coast Councils and Mana Whenua, will collectively and co-operatively participate in the preparation of the TTPP through the Committee. This is evident from the scheme of the Order:
- a. The removal of the plan-making functions under s 73 and the First Schedule of the District Councils, the transfer of that power to the Regional Council, under Clause 6(1) and (2) of the 2018 Order, and its subsequent delegation to the Committee under Clause 7(1)(b). The Committee, not the District Councils, is responsible for preparing the TTPP.
 - b. Under Clause 6(2) the transferred functions” 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.” The District Councils have no ability to prepare of a District Plan for their districts.
 - c. The membership of the Committee includes representatives from the West Coast Regional Council, the District Councils and Mana Whenua under Clause 7(1)(d). The intention is that

²⁶ Legislation Act 2019 s 5

the District Councils will participate collaboratively and co-operatively in the work of the Committee.

- d. The Committee is a permanent joint committee. The District Councils have their functions under s 73 and the First Schedule transferred permanently.
- e. This membership will be retained until the plan becomes operative.

- 91. The Orders demonstrate a statutory purpose that the West Coast Councils and Mana Whenua will work collaboratively and co-operatively to bring about an operative TTPP.
- 92. It is contrary to this purpose to allow the District Councils to lodge separate and competing appeals and s 274 notices. Such appeals and s 274 notices undermine the Committee and the process set out in the Orders to prepare the TTPP.
- 93. 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. They can no longer participate in the Committee on any topics on which they have an interest as an appellant or s 274 party
- 94. The breadth of the District Council appeals and s 274 notices is such that these conflicts cannot be managed in a way that does not undermine the Committee and the Orders.
- 95. 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.
- 96. This is confirmed by Mr Williams affidavit. This confirms that on a large number of topics at least three, and in many instances, four of the member organisations of the Committee have interests as appellants or s 274 parties.²⁷
- 97. 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.

²⁷ Affidavit of Rex Williams, page RW184

98. 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.
99. 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.
100. The problems created by the District Councils' approach can be seen in the duplication of cost. Under Clause 10(1) of the 2018 Order, West Coast ratepayers are funding the Committee's operations, including the development of the TTPP and its participation in the appeal process.
101. 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.
102. 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 the District Councils 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.
103. An appeal that is premised on an approach contrary to the purpose of the Orders does not disclose a reasonable or relevant case.
104. 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.
105. The District Councils' appeals and s 274 notices constitute an abuse of process because they are inconsistent with the statutory scheme established by the Orders, which require the West Coast Councils and Mana Whenua to participate collaboratively and co-operatively in preparing the TTPP through the Committee.

106. By lodging separate and competing appeals, the District Councils have created conflicts of interest that prevent them from participating in the Committee on matters the Orders provided they would participate in. The appeals and s 274 notices undermine the Committee's decision-making, duplicate public expenditure, and frustrate the purpose and structure of the Orders.
107. In doing so, 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.
108. The District Council appeals and s 274 notices do not disclose a relevant and reasonable case and are an abuse of process. They should be struck out.

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

109. In addition to being an abuse of process for misusing the appeal, the District Councils' appeals and s 274 notices result in unfairness to appellants and s 274 parties which undermines the integrity of the Environment Court's appeal process.
110. 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.
111. Allowing the Council's to participate in the appeal process where they are, in substance, exercising functions that now rest with the Committee undermines the integrity and fairness of the appeal process.
112. The plan appeal process typically involves an appellant lodging an appeal. The decision maker, usually a Council, is named as the Respondent. Other interested parties join in opposition or support under s 274.

113. However, the effect of the District Councils' appeals and s 274 notices means that the appeal process is unbalanced in a way that is prejudicial to appellants.
114. At mediation Forest & Bird has to convince the Committee, properly exercising its functions in the preparation of plans, of the merits of its appeals. If this is not resolved it will have to convince the Court, with the Committee as the Respondent. This is routine and there is no problem with this.
115. 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.
116. The opposition of the District Councils is a significant prejudice. The District Councils have signalled complete opposition to everything raised in Forest & Bird's appeal.
117. Buller District Council has done this in general terms. Grey District Council has gone through every appeal point and advised it either does not have an interest or opposes. It does not appear to support any of Forest & Bird's appeal points.
118. At mediation, Forest & Bird not only has to convince the Committee of the merits of its appeals. In relation to key issues, it will also have to convince an additional two District Councils.
119. Forest & Bird does not object to having to convince one respondent, properly the Committee, representing the planning authority, of the merits of its appeal.
120. However, facing complete opposition from an additional two District Councils is a significant prejudice. This outcome would not be possible but for the unique arrangements set up by the Order.
121. By advancing competing positions through the appeal process, the District Councils are attempting to exercise a function in the preparation of the TTPP that the statutory scheme of the Orders no longer permits them to perform.
122. This creates significant and unfair prejudice for other parties, who are required to face opposition from an additional two publicly funded Councils, each seeking to exercise the same function as the Committee.

District Councils not excluded if struck out

123. The case law discloses two principles regarding the exercise of the power to strike out.
124. In *Kitewaho* the High Court noted that the power to strike out is exercised sparingly, recognising that it ordinarily excludes a party from further participation in the proceeding.
125. In *Te Kura Pukeroa Maori*, the Environment Court noted that, once the grounds for strike-out are established it would be unusual for the Court not to exercise the discretion to strike out.
126. This is logical. For example, if the Court concluded that an appeal raised matters beyond the jurisdiction of the Environment Court, it would make no sense not to allow the appeal to proceed when it was doomed to fail.
127. While there is some apparent tension between these principles, they operate together. The Court will approach the question of strike out with care but once satisfied that the grounds for strike out are made out, exercising the discretion to strike out will usually follow.
128. This is particularly so where case management will not resolve the issues raised.
129. The justification for using the strike out power sparingly does not apply in this case.
130. The approach to strike out by the Environment Court under s 279 reflects the administrative law context of the RMA²⁸ and the importance of public participation.²⁹ Neither of these principles would be compromised by the striking out of the appeals and s 274 notices as it does not exclude the District Councils from participating in the TTPP process.
131. The District Councils have members on 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.

²⁸ *Federated Farmers (Wairarapa Division) v Wellington Regional Council* EnvC C192/99 at [17].

²⁹ *Fonterra Co-Operative Group Ltd v Manawatu-Wanganui Regional Council* [2013] NZEnvC 32 at [18] and [26]

132. In addition, it would be a much more streamlined process for the Court and the parties if the District Councils participated in the appeal process through the Committee, rather than through separate, competing appeals.
133. 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.

Response to Opposing Memorandum

134. The Memorandum of Counsel opposing the application for strike out³⁰ (the opposing Memorandum of Counsel) seeks to create a distinction between an abuse of the Environment Court's processes and an abuse of the process established by the Orders.³¹
135. This distinction has no merit.
136. The Environment Court's power to prevent abuse of its processes includes the use of those processes contrary to the way anticipated by the Orders. It is not tenable to suggest that the Environment Court should be forced to stand by when its processes are being used in a way that is contrary to the purpose of the Orders. This would undermine the integrity of the appeal process.
137. It is an abuse of the Environment Court appeal process in a manner contrary to the processes provided by the Order.
138. The opposing Memorandum of Counsel submits that "*where a single entity occupies dual or overlapping roles, the Courts have treated that as a matter to be managed procedurally, rather than as a bar to participation*".³²
139. This highlights the problem with the breadth of the appeals and s 274 notices. The conflicts may have been managed if the District Councils had limited their interests to a few critical points. However, they have not. The District Council appeals and s 274 interest are so wide and address so many topics that the ensuing conflicts cannot be managed procedurally without

³⁰ Dated 8 May 2026

³¹ Opposing Memorandum of Counsel, 8 May 2026, paragraph 12

³² Opposing Memorandum of Counsel, 8 May 2026, paragraph 19

undermining the Orders. As discussed above, this is obvious on the many topics where the Regional Council and the independent chair are the only parties not conflicted.

140. The opposing Memorandum of Counsel argues that “*the suggestion that the Councils are seeking to take back plan-making powers is not borne out by the nature or scope of the appeals and s 274 notices*”.³³
141. This submission is untenable when the breadth of the appeals and s 274 notices is considered. To the contrary, the breadth of the appeal and the s 274 notices support the Forest & Bird position that the District Council is seeking to exercise its planning functions.

Response to Buller and Grey District Council Opposition

142. Mr Pickford and Ms Soderland discuss the District Council's opposition to the application for strike out. These grounds are similar and the response to those are set out below.
143. Mr Pickford says that, if the Buller District Council's appeals are struck out, its interests as a consenting authority will not be addressed in the appeal process.³⁴ Ms Soderlund makes a similar comment but also notes that the Council's interest is an infrastructure provider.³⁵
144. The matters the District Councils are seeking to advance fall squarely within the planning function. They seek to justify advancing these matters by saying they are exercising different functions, as a “consent authority” or infrastructure provider”.
145. This justification should not be accepted. The District Councils are seeking to influence the contents of the TTPP. In substance, they are exercising a planning function, which they no longer have and now exercised by the Committee.
146. The appeal process is about preparing the TTPP. The Buller District Council had functions in preparing the district plan that were transferred to the Committee. It is untenable to argue that the District Councils are advancing its interest as a consent authority or infrastructure provider. The way in which they are

³³ Opposing Memorandum of Counsel, 8 May 2026, paragraph 20

³⁴ Affidavit of Simon Pickford, 8 May 2026, paragraph 46

³⁵ Affidavit of Joanne Soderland, 8 May 2026, paragraph 47(a)

advancing these matters is indistinguishable from the planning functions that were stripped from them. The Council is, for all intents and purposes, seeking to exercise the functions that it no longer has.

147. Mr Pickford³⁶ and Ms Soderland³⁷ also complain that, if struck out, the District Councils will be constrained to participation through the Mayor and the elected member appointed to the Committee. This is the process that the Orders anticipate, and there can be no valid complaint in having to act in accordance with the Orders.
148. Finally, Mr Pickford refers to wasted time and costs in preparing for some mediations. The legal advice obtained by the Committee highlighted the difficulties associated with the member organisations well before the appeals were lodged. Mr Pickford can have no complaint about wasting time and costs when the problems with lodging appeals and s 274 notices were clearly set out in multiple pieces of legal advice.

Conclusion

149. The question for the Court is whether the District Councils' appeals and section 274 notices should be struck out on the basis that they do not disclose a reasonable or relevant case and constitute an abuse of process.
150. The RMA provides a pathway for any person, including local authorities, to lodge submissions, appeals, and section 274 notices. However, the Environment Court's strike out jurisdiction exists to ensure that those processes are not misused in a way that undermines the integrity of the Court's processes.
151. Nothing in this application criticises the District Councils for seeking to advance the interests of their ratepayers. The difficulty arises because the local government reorganisation on the West Coast created a specific statutory process for preparing the TTPP. This was set out in the Orders, which provide for the Regional Council, the District Councils, and Mana Whenua to work collaboratively and collectively through the Committee to prepare the TTPP.

³⁶ Affidavit of Simon Pickford, 8 May 2026, paragraph 46

³⁷ Affidavit of Joanne Soderland, 8 May 2026, paragraph 47(a)

152. Grey and Buller District Councils have stepped outside that statutory process by lodging separate and competing appeals and section 274 notices. The effect is to remove their expertise from the Committee on the matters their expertise is required to help determine, to add unnecessary cost to ratepayers, and to create unfairness for other participants in the appeal process who must now face opposition from multiple ratepayer funded organisations instead of the single collaborative decision-maker, as contemplated by the Orders.
153. The District Council appeals and section 274 notices are contrary to the purpose of the Orders, undermine the Committee and prevent the statutory process set out in the Orders from operating as intended. Allowing such appeals and s 274 notices to proceed undermines the integrity of the appeal process. The appeals and s 274 notices do not disclose a reasonable or relevant case and amount to an abuse of process under s 279(4)(b) and (c).
154. Striking out the District Councils' appeals and section 274 notices does not exclude them from the TTPP process. Rather, it restores their participation to the form anticipated by the Orders. They will participate as member organisations of the Committee, working collectively and cooperatively towards the preparation of the TTPP.

Dated 12 May 2026



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