

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

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

UNDER the Resource Management Act 1991 (RMA)

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

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

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

**LEGAL SUBMISSIONS IN SUPPORT OF NOTICE OF MOTION SEEKING
ORDERS STRIKING OUT APPEAL
1 May 2026**

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MAY IT PLEASE THE COURT:**Introduction**

- 1 Te Tai o Poutini Plan Committee (**TTPP Committee**) seeks a decision that the Notice of Appeal filed by Mr Currie is struck out.
- 2 Mr Currie did not make a valid submission on the Proposed Te Tai o Poutini Plan (**TTPP**) and therefore has no standing to bring an appeal. The Committee submits that this is not a case where the Court has any discretion under section 279(4) of the Resource Management Act (**RMA**) to exercise sparingly. There is a clear jurisdictional barrier, and the appeal should be struck out.

Background

- 3 The TTPP was notified for submissions on 14 July 2022.
- 4 As set out in the affidavit of Ms Easton dated 1 April 2026 (**Easton Affidavit**), Mr Currie attempted to lodge a submission on the Commercial and Industrial Zones Topic of the TTPP on 20 November 2024, well after the period for lodging submissions had closed. He did not seek a waiver to file his submission out of time. Hearings on this topic took place on 1 and 2 July 2024, more than five months prior.
- 5 An email response was sent to Mr Currie from the TTPP Committee on 17 December 2024 explaining that the submission could not be accepted, as the timeframe for public submissions had closed and the submissions process was nearing completion.¹ The email also noted the potential ability of Mr Currie to have his concerns heard by becoming a section 274 party to another appeal on these matters at the appeals stage of the TTPP process.²
- 6 Mr Currie's submission was not considered by the Independent Hearing Panel in making its recommendation to the TTPP Committee, nor in the TTPP Committee's final decision.³
- 7 On 21 November 2025, Mr Currie filed an appeal against the TTPP Committee's decision with the Environment Court.

¹ Affidavit of Lois Margaret Easton in Support of Notice of Motion Seeking Orders Striking Out Appeal dated 1 April 2026, at [21].

² As above, at [21].

³ As above, at [16]-[19].

- 8 Following receipt of Mr Currie’s appeal, Counsel for the TTPP Committee corresponded with Mr Currie and requested that he withdraw his appeal on the basis that he lacked standing.⁴ Mr Currie was again advised of the possibility of joining another appeal as a section 274 party. Mr Currie refused to withdraw his appeal and has not, to date, joined any other appeal as a section 274 party.

Relevant principles

Power to strike out proceedings

- 9 The power to strike out the appeal is provided by section 279(4) of the RMA. An Environment Judge may order that the whole or any part of a person’s case be struck out, if the Judge considers:
- (a) that it is frivolous or vexatious;
 - (b) that it discloses no reasonable or relevant case in respect of the proceedings; or
 - (c) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.
- 10 The general principle is that the discretion to strike out proceedings under section 279(4) of the RMA is used sparingly. However, where the jurisdictional boundaries of the Court are exceeded, there is no discretion to be exercised ‘sparingly’ and the discretionary element falls away.⁵
- 11 In these cases, an appellant’s case ought to be struck out as frivolous or vexatious, and as disclosing no reasonable or relevant case.⁶ This position was recently confirmed in *Liang v Auckland Council*,⁷ where the Environment Court found that it had no jurisdiction to accept Mr Liang’s purported notice of appeal due to Mr Liang failing to make a submission, and that a lack of jurisdiction that cannot be remedied should be dealt with promptly. On that basis, Mr Liang’s notice of appeal was struck out.

⁴ As above, at [26].

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

⁶ *Guardians of the Bay Inc v Wellington International Airport Ltd* [2021] NZEnvC 201, at [17].

⁷ *Liang v Auckland Council* [2024] NZEnvC 241.

Right to appeal

- 12 The right to appeal a decision of a local authority is provided by clause 14 of Schedule 1 of the RMA. Clause 14 imposes the following limitations on appeals against the TTPP Committee's decisions:
- (a) allowing appeals by submitters only, and outlining specific circumstances in which an appeal can be made to the Environment Court (clause 14(1)); and
 - (b) requiring that a person appealing under subclause (1) must have referred to the appealed provision or matter in a submission on the TTPP (clause 14(2)).
- 13 The Environment Court set out a three-stage test in *Re Vivid Holdings Ltd* which determines whether an appellant has standing to appeal under clause 14:⁸
- (a) Did the appellant make a submission?
 - (b) Does the reference relate to either:
 - (i) a provision included in the proposed plan;
 - (ii) a provision the local authority's decision proposes to include;
 - (iii) a matter excluded from the proposed plan;
 - (iv) a provision which the local authority's decision proposes to exclude?
 - (c) If the answer to any of (b) is "yes", then did the appellant refer to that provision or matter in their submission?

Lack of valid submission

- 14 Mr Currie's appeal fails at the first step of the *Re Vivid Holdings* test, as he did not make a valid submission on the TTPP.
- 15 When a proposed plan is notified, members of the public have an opportunity to make submissions on the proposed plan within a prescribed timeframe. The process is participatory and people are encouraged to have their say. Any submissions received are then

⁸ *Re an application by Vivid Holdings Ltd* [1999] NZRMA 467 at [18].

publicly notified and people have an opportunity to further submit on matters that are raised in submissions.

- 16 Where submissions are filed out of time, they must be accompanied by an application for a waiver of time to file the submission late. The relevant Council, or in this case the Committee, has the ability to grant a waiver of time under section 37 of the RMA if it is satisfied of certain matters. It must then notify the late submission and allow people the opportunity to make further submissions before hearing and determining the submission.
- 17 The Easton Affidavit filed in support of the Application provides context regarding Mr Currie's appeal and his involvement in the plan-making stage of the TTPP. As set out in the Easton Affidavit, Mr Currie attempted to make his submission well outside the submission timeframe (which ended on 11 November 2022). He was more than two years late. There was no waiver application with his submission.
- 18 Mr Currie was advised that his submission was not accepted. As it was not accepted, the submission was not notified and other people were not afforded the opportunity to make further submissions in response to Mr Currie's submission. The submission was not considered by the Independent Hearing Panel, having been filed after the relevant submissions and evidence had been heard and the process completed. There was no decision on the submission by the Committee as it was not included in the process.
- 19 In *Blue Wallace Surveyors Limited v Waikato District Council*,⁹ Perjuli Developments Limited (Perjuli) did not make a submission on the proposed plan. They did provide information to the hearings panel during the course of the hearing (as they were invited to do so). Perjuli later relied on that information as a submission on the plan giving it the ability to appeal. The Council applied to strike out Perjuli's appeal on the basis that it lacked standing. The Court commented:¹⁰

This is an unfortunate situation. Perjuli could have asked for waiver of the time limit within which to file a submission. However, it did not do so and is now in a position where it cannot alter the fact that it was not a

⁹ *Blue Wallace Surveyors Limited v Waikato District Council* [2022] NZEnvC 186.

¹⁰ As above, at [43].

submitter on the Plan. Retroactively declaring that Perjuli's statement to the hearing commissioners was a submission in terms of Part 1 of Schedule 1 to the RMA would create the possibility that any kind of statement in the hearing process could be advanced as a submission, with all of the consequences, including appeal rights, that must follow from such a declaration. That would make the scope of submissions in the plan making process completely uncertain. For this reason Perjuli does not have standing under Clause 14 of the First Schedule to the RMA to bring an appeal to the Environment Court, as only a person who made a submission on a plan may bring an appeal.

20 Perjuli's submission was struck out on the basis that there was no standing to bring the appeal and therefore the discretionary elements of section 279(4) fell away.¹¹

21 In making this decision the Court referred to *Federated Farmers of New Zealand Inc v Queenstown Lakes District Council* where the Court held:¹²

The discretion to strike out a proceeding under s 279(4) is generally used sparingly. However, where there is an issue that concerns a want of jurisdiction to bring an appeal, the discretionary element falls away. As the court said in *Federated Farmers (Wairarapa Division) v Wellington Regional Council*, '... if those [jurisdictional] boundaries are exceeded ... then there is no discretion to be exercised "sparingly". The case must simply be struck out as legally frivolous or vexatious.'

22 The Committee submits that in the absence of a valid submission, the test in *Re Vivid Holdings* is not met, Mr Currie has no standing, and the appeal must be struck out.

Appellant not excluded if struck out

23 While there is no discretionary element to the application of section 279(4) in situations like this where there is no standing to bring an appeal (and therefore the need to exercise the power to strike out sparingly does not apply), the Committee submits that Mr Currie is not excluded from the process entirely. As Mr Currie has been advised on multiple occasions, striking out the Notice of Appeal will not prevent him

¹¹ As above, at [49].

¹² As above, at [48].

from participating in the TTPP process as a section 274 party. If a notice was filed promptly, accompanied by a waiver application, it is unlikely that any party would be prejudiced given mediation has not yet commenced.

Conclusion

- 24 Counsel for the TTPP Committee submits that Mr Currie's Notice of Appeal fails to meet the requirements for an appeal under both clause 14(1) and (2) of Schedule 1 of the RMA, and so Mr Currie has no standing to bring an appeal against the TTPP Committee's decision on the TTPP.
- 25 Counsel seek that the appeal be struck out.

Dated this 1st day of May 2026



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A H Balme
Solicitor for Applicant