

**IN THE ENNVIRONMENT COURT  
CHRISTCHURCH REGISTRY**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**ENV-2025-CHC-000130  
ENV-2025-CHC-000131**

**IN THE MATTER OF**

An application under section 279 to strike out appeals under clause 14 of Schedule 1 of the RMA against decisions of the Te Tai o Poutini Plan Committee on the Te Tai o Poutini Plan and section 274 notices.

**BETWEEN**

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

**Applicant**

**AND**

**GREY DISTRICT COUNCIL**

**AND**

**BULLER DISTRICT COUNCIL**

**Appellants**

**AND**

**TE TAI O POUTINI PLAN COMMITTEE**

**Respondent**

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**MEMORANDUM OF COUNSEL SEEKING DEFERRAL OF MEDIATIONS**

Dated 5 May 2026

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**Presented for filing by:**

Corcoran French  
74 Armagh Street, Christchurch Central 8013  
PO Box 13001, Christchurch 8141

Telephone: (03) 379 4660  
Email: geraldine@cflaw.co.nz  
jonathon@cflaw.co.nz  
Solicitor: Geraldine Biggs  
Jonathon Sylvester

## MEMORANDUM OF COUNSEL SEEKING DEFERRAL OF MEDIATIONS

**To:** The registrar at the Environment Court

**And To:** The Te Tai Poutini Plan Committee, Buller District Council, Royal Forest and Bird Protection society, and all other parties.

**May it please the court:**

### Previous Directions and Timetabling

1. By its minute dated 10 March 2026, the Court directed any applications for a strike out of any appeal or s274 party were to be filed by 2 April 2026.
2. On 2 March 2026, Grey District Council (**GDC**) provided its comments on the proposed case management memorandum to counsel for the TTPP Committee. GDC requested that the commencement of mediation should be pushed out by one month to allow for any strike out applications to be made in advance. The TTPP Committee reflected this approach in the directions sought in the case management memorandum.
3. On 2 April 2026, the Royal Forest and Bird Protection Society (**Forest and Bird**) filed a memorandum requesting an indefinite extension of the deadline for it to apply to strike out the appeals or s274 notices of GDC, Buller District Council (**BDC**) and Westland District Council (**WDC**).
4. In its minute dated 7 April 2026, the Court:
  - (a) recognised a challenge to the District Councils' involvement in the TTPP process had the potential to be very disruptive to the mediations and wider appeal process and needed to be resolved as a matter of priority;
  - (b) extended Forest and Bird's deadline to file any strike out application, affidavit in support and accompanying memorandum relating to appeals and/or s274 notices filed by the District Councils to 24 April 2026; and
  - (c) set the deadline for the respondents to file a notice of opposition, supporting affidavits and memorandum to 8 May 2026.
5. Forest and Bird applied on 25 April 2026 (which was a Saturday in Anzac weekend, so it is deemed to have been received 28 April 2026) to strike out the appeals and 274 notices of GDC and BDC (the **Application**). A sworn version of affidavit in support was not filed until 29 April 2026.
6. By memorandum of counsel dated 1 May 2026 Bathurst Resources Limited and BT Mining Limited, Birchfield Coal Mines Limited, Birchfield's Ross Mining Limited, BRM

Developments Ltd, Tāiko Critical Minerals Limited, Tasman Mining Limited, and the New Zealand Minerals Council requested an adjournment to the mediation schedule until the Application was resolved. The parties to that memorandum noted the prejudice created by uncertainty for mediation.

7. By memorandum dated 4 May 2026, the TTPP Committee opposed the above application to adjourn the mediations.
8. On 4 May 2026, the Court further directed Forest and Bird to file submissions in respect of the Application by 12 May 2026, the respondents (GDC and BDC) to file submissions by 18 May 2026 and a hearing to be held on 22 May 2026 in Christchurch.

### **GDC's Position**

9. GDC acknowledges and thanks the TTPP Committee and its counsel for the considerable work that has been undertaken in preparing a mediation schedule and accommodating the parties' and the Commissioner's availability.
10. GDC submits that the prejudice to it created by the Application outweighs the inconvenience and cost of re-scheduling the mediations for the following reasons:
  - (a) The Application goes to the heart of whether the organisations that contribute members to the TTPP Committee are entitled to participate in the appeal process as appellants. This core question potentially affects the WDC and Poutini Ngai Tahu appeals and s274 Notices as well as those of GDC and BDC.
  - (b) The Application raises administrative law questions about the operation and decision-making of the TTPP Committee, including in setting its positions on appeals for the mediations.
  - (c) GDC has so far been excluded from participating in some Committee decision-making due to its status as an appellant and s274 party on various topics. If mediations continue and Forest and Bird's theory of the law (which GDC does not accept) is accepted, then GDC may have its appeals and/or s274 notices struck out, despite also having been excluded from participating in the TTPP Committee's decisions in preparation for mediation.
  - (d) The Application raises broad and novel issues and the effects of the Court's decision on the mediation process cannot be predicted fully. Any agreement reached at the mediations may be called into question if GDC's appeals

and/or s274 notices are subsequently struck out. Mediations may potentially have to be repeated.

(e) The cost of GDC's participation in the mediations as an appellant and/or s274 party may be wasted if the Application is successful.

11. The prejudice created by the Application is already being felt by GDC:

(a) The time required for preparing GDCs opposition diverts internal staff and external counsel time from preparing for mediation. The Application is wide ranging and requires extensive preparation in response

(b) The date of the hearing in Christchurch falls between two mediations on the West Coast to which GDC is a party.

12. GDC acknowledges there is a difficult balance required between enabling the mediations to occur and enabling all parties' effective participatory rights. The wide-ranging public law nature of the Application has created a situation where the decision-making function of the TTPP Committee could be adversely affected if successful.

13. GDC respectfully submits the appropriate way to minimise the prejudice is for the mediations in May and early June to be deferred. GDC notes that it is in the Court's hands as to how promptly a decision can be issued on the Application after the hearing. It considers that mediation should be deferred until that time, which should not require completely rescheduling all mediations.

14. GDC notes that the TTPP Committee has scheduled back up mediation dates in December which could possibly be used to accommodate some of these dates. Alternatively, the affected mediations could be rescheduled to later in June or July and held online to address the issues of venue hire and travel.

### **BDC's Position**

15. Counsel has discussed this application with counsel for BDC. BDC notes that its interests in the mediations scheduled for May to July 2026 are as a s 274 party only and in this way differ from GDC's interest in, notably Topic 14: Cross Plan beginning on 25 May. Nonetheless BDC advises that it supports the application of GDC and the eight mining interests on the basis set out in this memorandum.

### **Conclusion**

16. GDC respectfully requests directions that mediations are deferred until a decision of this Court on the Application.

Dated 5 May 2026

A handwritten signature in blue ink, appearing to read 'J C Sylvester', is positioned above a horizontal line.

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**G A Biggs / J C Sylvester**

Solicitor for the first Respondents