

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2026] NZEnvC 143

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of
Schedule 1 to the Act and an
application by Forest & Bird to strike
out two appeals on the proposed Te
Tai o Poutini Plan

BETWEEN GREY DISTRICT COUNCIL

(ENV-2025-CHC-130)

BULLER DISTRICT COUNCIL

(ENV-2025-CHC-131)

Appellants

AND TE TAI O POUTINI PLAN
COMMITTEE

Respondent

Court: Environment Judge K G Reid

Hearing: 22 May 2026

Appearances: AH Balme and TM Ellis for Te Tai o Poutini Committee
PD Anderson and M Downing for Royal Forest and Bird
Protection Society Incorporated
BS Carruthers KC for Grey District Council and Buller
District Council

Date of Decision: 17 June 2026

Date of Issue: 17 June 2026

GREY DISTRICT COUNCIL & BULLER DISTRICT COUNCIL v TE TAI O POUTINI
PLAN COMMITTEE



**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION TO STRIKE OUT APPEALS**

- A: The application to strike out the Buller and Grey District Councils' appeals and s274 notices is dismissed.
- B: Costs are reserved but not encouraged. Any party wishing to apply for costs should do so within 14 days of this decision. Any reply is due within a further seven days.

REASONS

[1] The Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) has applied to strike out appeals and s274 notices filed by the Buller and Grey District Councils on the proposed Te Tai o Poutini Plan (TTPP).

[2] Forest & Bird's application alleges that the appeals and s274 notices disclose no relevant or reasonable case and/or are an abuse of process. However, argument has focused on the submission that the appeals and s274 notices are an abuse of process.

[3] The application is opposed by the Buller and Grey District Councils. The Te Tai o Poutini Plan committee (the TTPP committee) appeared to assist the court but took a neutral position on the application. No other party to the TTPP appeals took a formal position nor participated in the hearing.

Background

[4] A number of background affidavits were provided relating to the establishment of the TTPP committee and its role in developing a combined district plan for the West Coast. The court had the benefit of helpful affidavits from Robert Williams, the current chair of the TTPP committee (filed by TTPP),

Nicola Snoyink (filed by Forest & Bird), Joanne Soderlund (filed by Grey District Council) and Simon Pickford (filed by Buller District Council). The following background draws on these affidavits.

[5] There are three district councils and one regional council covering the West Coast. These are the Buller, Grey and Westland District Councils (District Councils) and the West Coast Regional Council (Regional Council).

[6] In 2015 the Local Government Commission (Commission) commenced a process of considering options to streamline the West Coast councils' functions, duties and powers.

[7] In 2018 the Commission recommended that district planning on the West Coast be reorganised, with the obligations of the District Councils under the RMA to prepare district plans for their districts being transferred to the Regional Council. It was further recommended that the Regional Council then be required to delegate these transferred obligations to a joint committee (later called the TTPP committee).

[8] This reorganisation proposal was adopted and later formalised under the process set out in part 2 of Schedule 3 of the Local Government Act 2002 (LGA). The final form of reorganisation is contained in two Orders in Council; the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018 (Final Proposed Order), and the Local Government Reorganisation Scheme (West Coast Region) Order 2019 (Reorganisation Order) which came into force in July 2019 (the Orders).

[9] The combined effect of the Orders was that the obligations of the District Councils under s73 and Schedule 1 of the RMA for the preparation, notification, adoption, periodic amendment and review of the district plans were transferred to the Regional Council. The transferred obligations were required to be met by the preparation, notification, adoption, periodic amendment and review of a combined district plan for the West Coast under s80 of the RMA.

[10] The Orders provided that the Regional Council was to delegate to the TTPP committee the obligations transferred to it by the District Councils. The Reorganisation Order set out terms of reference for the TTPP which included the preparation and notification of a combined district plan.

Terms of the Local Government Reorganisation Orders

[11] Counsel agreed that the issues raised by Forest & Bird mainly turn on the interpretation of the Orders. The Final Proposal Order gave substantial effect to the transfer of obligations from the District Councils. The Reorganisation Order reproduced substantial parts of the Final Proposal Order and also contained additional provisions relating to the operation of the TTPP committee. It is only necessary to set out the detail of one of the Orders. Relevant parts of the Final Proposal Order are:

Final Reorganisation Proposal for the West Coast

4. Final Proposal

This Order gives effect to the final West Coast reorganisation proposal prepared under Part 2 of Schedule 3 of the Act.

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.**

6. Transfer of Statutory Obligations to West Coast Regional Council

- (1) **The obligations of Buller, Grey and Westland district council 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.

7. Establishment of the West Coast District Plan Committee

- (1) The reorganisation scheme must provide that:
- (a) There must be a permanent joint committee between the four West Coast councils and local iwi (the West Coast District Plan Committee).
 - (b) The West Coast Regional Council must delegate to the West Coast District Plan Committee its district plan obligations under clause 6(1) and 6(2).
 - (c) The purpose, and terms of reference for, the West Coast District Plan Committee are to:
 - (i) prepare and notify the proposed combined West Coast district plan (combined district plan):
 - (ii) hear and consider (including through subcommittees as necessary and appropriate) all submissions received on the proposed combined district plan:
 - (iii) adopt a final combined district plan:
 - (iv) monitor implementation of the final combined district plan and the need for amendments:
 - (v) undertake amendments and reviews of the final combined district plan, or ensure these are undertaken, as required.
 - (d) The initial membership of the West Coast District Plan Committee, to at least such time as the combined district plan becomes fully operative, must comprise:
 - (i) an independent chairperson:
 - (ii) the chairperson of the West Coast Regional Council and one other elected member from, and appointed by,

the West Coast Regional Council:

- (iii) the mayor of the Buller District and one other elected member from, and appointed by, the Buller District Council:
- (iv) the mayor of the Grey District and one other elected member from, and appointed by, the Grey District Council:
- (v) the mayor of the Westland District and one other elected member from, and appointed by, the Westland District Council:
- (vi) one representative appointed by Te Rūnanga o Ngāti Waewae:
- (vii) one representative appointed by Te Rūnanga o Makaawhio.

(e) A West Coast District Plan Technical Advisory Team (the Technical Advisory Team) is established to provide technical advice to the West Coast District Plan Committee.

8. Appointment of Independent Chairperson of West Coast District Plan Committee

- (1) The first appointment of the independent chairperson of the West Coast District Plan Committee must be made by the Local Government Commission on the recommendation of the transition board.
- (2) All subsequent appointments of the independent chairperson must be made by the West Coast District Plan Committee.

[emphasis added]

[12] The Reorganisation Order replaced the entity to which functions were to be transferred (the West Coast District Plan Committee in the Final Proposal Order) with the TTPP committee.

[13] In accordance with the Reorganisation Order, the TTPP committee adopted standing orders and a code of conduct. The standing orders set out a range of requirements, including in relation to the conduct of meetings and provisions as to decision-making.

[14] The framework set by the standing orders provides for decisions on behalf of the TTPP committee, to be made by the TTPP committee as a whole, rather than any one representative organisation such as a district council. Mr Williams sets out his understanding of the role of TTPP committee members in his affidavit in the following comment:¹

Elected members from the Councils involved in the Committee are appointed to the Committee by their respective Council to carry out the Committee's functions and they are not representing their individual Council views. I have always considered that it is an important distinction to make. In practice this has meant that in my time as Chair of the Committee almost all decisions have been unanimous because the decisions are focused on what is best for the Committee and the West Coast as a whole.

[15] The standing orders also required that: a quorum requires at least one member of four of the six parties to the TTPP committee; decisions are made by majority vote of members present (unless otherwise provided for in the LGA); and that the independent chair does not have a casting vote. These provisions reflected clauses 10.1, 18.1 and 18.2 of the Reorganisation Order.

The development of the TTPP

[16] Following notification of the TTPP, all three District Councils made submissions. Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (both hapu of Ngāi Tahu) who also have representatives on the TTPP committee, made a joint submission with Te Rūnanga o Ngāi Tahu.

[17] An independent hearing panel (IHP) was established to hear submissions. Hearings took place throughout late 2023-2024.

¹ Affidavit of Mr R Williams, 13 May 2026, at [41].

[18] On 24 September 2025 the TTPP committee accepted the recommendations of the IHP in full and gave notice of this decision on 10 October 2025.

[19] In anticipation of appeals on the plan, TTPP staff obtained legal advice to help guide TTPP member organisations through the appeals process. The advice was sent to the TTPP committee members on 7 October 2025. It covered how the TTPP committee could determine its position on appeals if members of the TTPP committee were also representatives of the parties who had appealed. The advice discussed options to manage potential conflicts of interest.

[20] Appeals were filed by the Grey, Buller and Westland District Councils.² A joint appeal was also filed by Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu.³

[21] Once the appeals were received the TTPP committee set up a process for determining its position on the appeals filed, including for the anticipated Environment Court mediations.

[22] The process ultimately adopted was to set up a position subcommittee and to deal with any conflicts of interest for members whose organisations had lodged or joined an appeal on a topic by way of potentially conflicted members recusing themselves from consideration of the relevant topic, meeting by meeting.

[23] For clarity I record that Forest & Bird does not criticise the internal arrangements established to manage conflicts of interest during the appeals process. Rather, the principal issue is compliance with the intended outcome of the reorganisation of the district planning on the West Coast.

² ENV-2025-CHC-000112 *Westland District Council v Te Tai o Poutini Plan Committee*.

³ ENV-2025-CHC-000134 *Te Rūnanga o Makaawhio & Te Rūnanga o Ngāi Tahu v Te Tai o Poutini Plan Committee*.

Application to strike out – s279(4)

[24] There is little dispute between the parties on the law applicable to applications to strike out in the Environment Court. The court has the discretion under s279(4) to strike out the whole or any part of the appeals or s274 notices if, the court considers amongst other grounds, that:

...

(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.

...

[25] The strike out jurisdiction under s279(4) is a narrow one; it is 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.⁴

[26] In the strike out application Forest & Bird raised a number of grounds. However, the only ground pursued in its submission was that the Buller and Grey District Councils' appeals and s274 notices are an abuse of process under s279(4)(c).

[27] The strike out jurisdiction of the Environment Court where there has been an abuse of process was summarised by the High Court in *Hurunui Water Project v Canterbury Regional Council*.⁵

[83] The jurisdiction of the 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

⁴ *Morris v Marlborough District Council* PT Christchurch, C6/93, 23 February 1993 and *Hern v Aickin* EnvC Auckland, A98/99, 17 September 1999.

⁵ *Hurunui Water Project Limited v Canterbury Regional Council* [2015] NZHC 3098.

to undermine confidence in the administration of justice may entitle a court to act to prevent such abuse.

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

Forest & Bird submissions

[28] Forest & Bird submits that the effect of the Orders was to centralise district plan preparation functions for the Buller, Grey and Westland Districts and the Regional Council, and to require those functions to be exercised through the TTPP committee.

[29] Further, and importantly, it submitted that the Orders provide a process for the District Councils, Regional Council and Te Rūnanga to collaboratively participate in the preparation of the TTPP through the TTPP committee. In filing the appeals and s274 notices, the Buller and Grey District Councils have stepped outside the collaborative process set up by the Orders, which creates extensive conflicts of interest and adds cost.

[30] Forest & Bird submits that the Buller and Grey District Councils' appeals, and s274 notices undermine the integrity of the Orders, the TTPP committee and the appeal process. The appeal process should not be used in a manner contrary to the purpose of the Orders and in doing so, constitutes an abuse of process.

[31] It is also unfair that Forest & Bird faces opposition from three ratepayer funded organisations which, it is submitted, all effectively represent the planning authority, on critical matters.

[32] In written argument, Forest & Bird also submits that correctly interpreted,

the Orders had the effect of removing the “plan making functions” of the District Councils and transferring these functions to the Regional Council (and requiring the subsequent delegation to the TTPP committee).

[33] Forest & Bird’s original submission on the plan, and now its appeal, to this court includes points relating to indigenous biodiversity, mining, infrastructure and transport, and the coastal environment. The Buller and Grey District Councils have filed s274 notices on Forest & Bird’s appeal including relating to all of these identified issues.

[34] Forest & Bird draws the court’s attention to one particular submission point relating to rule LIGHT R5. In its original submission, Forest & Bird submitted that this rule inadequately protected the Westland Black petrel (Tāiko), a threatened, nationally vulnerable species which only breeds in a colony near Punakaiki. The report of the IHP responded to this submission and included a 15 km setback from the coast in rule LIGHT R5.

[35] Both District Council appeals oppose the inclusion of the setback. The Grey District Council asks that the buffer zone be deleted. Forest & Bird opposed both appeals and filed their own s274 notices including on the rule LIGHT R5 issue.

[36] Forest & Bird made submissions about the scope and nature of the Buller and Grey District Councils’ s274 notices. In its s274 notice the Grey District Council has opposed all of Forest & Bird’s appeal points related to the indigenous biodiversity and coastal environment chapters. Equally, the Buller District Council is interested in all parts of the Forest & Bird appeal and opposes all appeal points. The breadth of the issues raised in the Buller and Grey District Councils’ appeals and s274 notices is submitted to be key. The wide range of issues raised means that (potential) conflicts of interest cannot be effectively managed without undermining the Orders.

[37] Forest & Bird makes several points in submissions to the court about the

content of the appeals and s274 notices, which raise “planning” reasons in support of the relief sought.

[38] An example referred to in the Grey District Council’s appeal again relates to rule LIGHT R5, where the Council submits that the buffer zone “... 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 is necessary to uphold the objectives and policies that are protective of biodiversity ...”.⁶

[39] If I understand the submissions correctly, Forest & Bird is saying that by filing the wide-ranging appeals raising *inter alia* planning grounds, the Buller and Grey District Councils are in effect seeking to exercise functions under s73 and Schedule 1 of the RMA, which have been transferred to the TTPP committee. Additionally, the Buller and Grey District Councils are, Forest & Bird submits, in effect exercising the *powers* relating to the preparation of district plans that have also been transferred.⁷

[40] In making all the above submissions, counsel for Forest & Bird states that it is not saying the filing of the appeals and s274 notices is unlawful but only that they are for the reasons identified an abuse of process.

Consideration

[41] No cases have been cited by counsel where there has been a strike out of an appeal or s274 notice in circumstances analogous to the present. The current proposed strike out appears to be factually novel.

[42] I accept that the strike out discretion might be available if by filing the appeals, the Buller and Grey District Councils were acting unlawfully or in breach

⁶ Grey District Council Notice of Appeal, at [19].

⁷ Forest & Bird submissions, dated 12 May 2026, at [29].

of the terms of the Orders. That situation would be akin to an appellant who files an appeal with no power to do so.⁸

[43] However, Forest & Bird’s submissions go further in suggesting that filing of the appeals and s274 notices, while legal, is otherwise an unfair and inappropriate undermining of the plan development process as set out in the Orders, (and therefore this court’s procedures). In that context, in my view, Forest & Bird needs to clearly articulate how the court’s procedures are being abused so as to justify the court’s intervention.

[44] I am also conscious that the Environment Court’s limited jurisdiction to strike out an appeal as an abuse of process is not a general supervisory jurisdiction to scrutinise the TTPP committee and District Council processes and decision-making, as in a judicial review.

What was the effect of the Order?

[45] Forest & Bird submits that the intention behind the Orders was to:

- (a) transfer and require the delegation of the district “planning functions” of District Councils, and/or;
- (b) set up a “collaborative process” which was the only way the District Councils could be involved in the TTPP plan process.

[46] The filing of appeals and s274 party notices relating to the TTPP is said to be inconsistent with the Orders in both respects. I start therefore, by considering the effect of the Orders and what they did and did not transfer.

[47] In submissions for the Buller and Grey District Councils, Ms Carruthers KC, tracked through the LGA provisions relating to local government

⁸ Section 279(4)(b) allows appeals to be struck out where there is no power or jurisdiction to bring an appeal on the basis that there is no “reasonable” or “relevant” case.

reorganisation. Under s24 there are a wide range of matters that local government reorganisation may provide for. These include relevantly:

- ...
- (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:
- ...

[48] The relevant transfer sections of the two Orders were the same and required the transfer of the *obligations* of the District Councils under s73 and Schedule 1. Neither s73 nor Schedule 1 expressly use the word “obligation”. But several provisions clearly create obligations on district councils. The principal obligation created by s73 is that at all times district councils must have a district plan for each district prepared in the manner set out in Schedule 1. There are also a range of obligations created by Schedule 1; these include to avoid unreasonable delays,⁹ to prepare the plan in accordance with any applicable Mana Whakahono ā Rohe,¹⁰ to follow the process in clauses 4 and 9 for the insertion of designations into a district plan. There are many other procedural and substantive requirements district councils are required to meet when preparing district plans.

[49] In my view, the effect of the Orders was to transfer and require the delegation of this narrow set of obligations.

⁹ Schedule 1 clause 1(3) RMA.

¹⁰ Schedule 1 clause 1A(1) RMA.

[50] The detail of the process around reorganisation is set out in Schedule 3. For a reorganisation plan to transfer a responsibility, duty, power or discretionary function, the Commission must ensure that the plan complies with clause 19A of Schedule 3. Clause 19A(5) provides:

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.

[51] Of the range of matters local government reorganisations may provide for under s24 LGA, the Orders did not provide for the transfer of any *discretionary functions* and there are no provisions of the kind set out in clause 19A(5).

[52] Significantly, the Orders did not transfer the breadth of powers and discretionary functions provided by the RMA, and which were retained by clause 5 of the 2018 Final Proposed Order and clause 4 of the 2019 Reorganisation Order (set out at [11]). This clause provided that with the exception of the transferred statutory obligations, the councils “continue to have all their current roles, powers and responsibilities by or under law”.

[53] One discretionary power retained by the District Councils is that found in Clause 6 of Schedule 1 of the RMA relating to the making of submissions on proposed plans. This clause 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.

[emphasis added]

[54] The use of the word *may*, indicates that the power to make a submission is discretionary. District councils do not have an obligation to make a submission.

[55] The District Councils are entitled to make a submission either under the express right in subclause (2) for a local authority to make a submission on a plan within its own area, or as a person under subclauses (3) and (4) in reliance on the councils’ general power of competence under the LGA. A council may make a submission, including on plans outside its territory.¹¹

[56] The right to appeal in clause 14 of Schedule 1 is a discretionary power accruing to any “person who made a submission”.

[57] No objection was taken by Forest & Bird at the time the first instance submissions on the TTPP were filed by the District Councils, nor is any objection now taken to those submissions. Having made a submission (and accordingly participated in the hearing process) the right of appeal under clause 14 has crystallised.

[58] Turning to the submission that the Orders set up a collaborative process inconsistent with the filing of appeals and s274 notices. When asked to identify the features of the Orders which are relied upon to support this submission,

¹¹ *Hamilton City Council v Waikato District Council* [2024] NZEnvC 51.

Mr Anderson pointed to the following:

- (a) the make-up of the TTPP committee – which comprises an independent chair and two representatives from each council and one each from Te Rūnanga;
- (b) the requirement for the TTPP committee to remain in place until the plan is operative;
- (c) the combined funding where a special rate is levied by the Regional Council to fund plan development; and
- (d) the requirement for a quorum of at least one member of four of the six parties to the TTPP committee and the other procedural requirements set out at clause 11(2).

[59] I take it that what is meant by “collaborative” is that co-operation amongst TTPP committee members was required, such that the concerns of the District Councils were to be resolved only through participation by the council appointees in the TTPP committee.

[60] The District Councils’ role in the TTPP committee process as set out above is in my view quite limited with no formal process for the Councils themselves to raise issues about the contents of the TTPP during the plan preparation process (other than through participation of the appointees on the TTPP committee). Further, as Mr Williams points out, the TTPP committee was run on the basis that all members, including those appointed by the District Councils, were there to carry out the TTPP committee’s functions, and were not representing the views of individual District Councils. The TTPP committee participation was therefore not set up as a comprehensive alternative mechanism for each of the District Councils to raise issues they wanted considered within their districts.

[61] The key issue is whether these arrangements set out above were intended to limit the participation of the District Councils in the TTPP appeals to the participation by the two elected members on the TTPP committee, and to exclude

what would otherwise be the District Councils' usual discretionary right to appeal following the making of a submission. I do not see anything in the arrangements set out above which would lead to that conclusion.

The role of the TTPP committee and Environment Court on appeal

[62] The TTPP committee was expressly directed to adopt its own standing orders governing meetings. The adopted standing orders and other arrangements deal with conflicts of interest arising amongst members related to the filing of appeals on the TTPP.

[63] Conflicts of interest have arisen as a result of the filing of appeals and s274 notices by the Buller and Grey District Councils (and Te Rūnanga), but Forest & Bird accepts that these have been appropriately managed by the TTPP committee, and its chair. That is notwithstanding the apparent wide range of appeal topics with which the Buller and Grey District Councils are involved.

[64] The TTPP committee's ongoing role in resolving the appeals is now very limited. The TTPP committee's substantive decision-making role on plan provisions was completed when the IHP report was adopted. The Environment Court is now the decision-maker with the statutory function of determining the appeals, not the TTPP committee.

[65] As is the normal process, the Environment Court is obliged by s290A to have regard to the decision subject to appeal, and will test and weigh the differing views of the parties in the context of the hearings.¹² The court makes its own decision on appeals and does not remit the matter back to the TTPP committee.¹³ All this takes place without reference to the TTPP committee.

¹² *Federated Farmers v Ashburton County Council* TCPAB 220/75, 25 November 1975 and *Re an Application by Petralgas Chemicals* (1981) 8 NZTPA 106 at [33].

¹³ *Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257.

[66] The TTPP committee will need to determine what position it will take in court assisted mediation and its position before the Environment Court in any hearing. But that is via the process established to avoid potential conflicts of interest already discussed.

[67] I therefore can see no undermining of the procedure or functionality of the TTPP committee, nor the plan preparation process more generally resulting from the filing of the appeals and s274 notices by the Buller and Grey District Councils.

Are the Buller and Grey District Councils engaging in planning functions they no longer have?

[68] Forest & Bird argues that by raising certain planning related matters in their appeals, the Buller and Grey District Councils are attempting to “exercise planning functions”.

[69] To illustrate the point being made, Mr Anderson referred to the content of the two District Council appeals. Each appeal follows a similar format. Both set out reasons for each appeal point. The Grey District Council in a more narrative format by comparison with the Buller District Council’s use of schedules.

[70] Each appeal contains reasoning that is in part based on references to higher-order planning documents under the RMA, or issues of consistency with the policies and objectives of the TTPP. Mr Anderson submitted that these submission points showed that the Buller and Grey District Councils were attempting to exercise planning functions that had been transferred by operation of the Orders.

[71] I am unclear what *planning functions* the Buller and Grey District Councils are said to be attempting to exercise. Those words are not used in the Order nor in s73, nor indeed in Schedule 1. As set out above, the Orders had the effect of transferring *obligations* under those provisions. In any event, it is clearly not the case that the Buller and Grey District Councils are literally attempting to take any

action under s73, nor Schedule 1 of the RMA – no such process has been commenced or is contemplated.

[72] The suggestion that the Buller and Grey District Councils are in some way seeking to take back plan-making functions is not borne out by the nature and scope of the appeal and s274 notices. The appeals and s274 notices raise grounds and reasons for the appeals, including matters of consistency with policies and objectives and higher order instruments as is typically seen in appeals to the Environment Court. There is nothing in the appeals and s274 notices to suggest that the Buller and Grey District Councils are seeking any elevated status in the appeal process.

[73] In short, I do not see any basis for criticism of the content of the appeals and s274 notices simply because planning matters are referred to as grounds in support of the points made.

Is the filing of appeals and s274 notices unfair to Forest & Bird?

[74] In their appeals the Buller and Grey District Councils seek changes to the TTPP that Forest & Bird oppose. Equally, in the s274 notices the Buller and Grey District Councils oppose relief sought by Forest & Bird in its appeal. Forest & Bird maintains that it is unfair for them to face this opposition from these well-funded and resourced participants in the process.

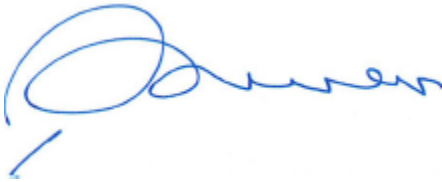
[75] Forest & Bird's submission about unfairness largely flow from the alleged conflict between the Buller and Grey District Councils' appeal and s274 notices and the plan preparation process for the TTPP. As set out above I do not see any such conflict.

[76] Nor does the addition of these two well-funded Council participants *per se* result in any substantive or procedural unfairness to Forest & Bird. I doubt that a party's better relative resourcing could ever be an appropriate ground to strike out an appeal so as to prevent that party from participating in the court's process. The

court is however, always concerned to ensure that all parties, regardless of resourcing, can participate appropriately in the court's process.

Outcome

[77] The application by Forest & Bird to strike out the Buller and Grey District Councils' appeals and s274 notices is declined.



K G Reid
Environment Judge