

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

**I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA**

Decision [2026] NZEnvC 076

IN THE MATTER

of an appeal under cl 14 of Schedule 1 of
the Resource Management Act 1991

BETWEEN

GUILDFORD TIMBER COMPANY
LIMITED

(ENV-2024-WLG-000056)

Appellant

AND

UPPER HUTT CITY COUNCIL

Respondent

Court: Environment Judge L J Semple sitting alone under s 279 of the
Act

Hearing: 22 October 2025 at Wellington

Appearances: A Beatson and P Tancock for Appellant
D Randal with Mr Kerbers for Respondent
P Anderson for Silverstream Railway Inc
T Williams for Royal Forest and Bird Protection Society of New
Zealand Inc

Last case event: 22 October 2025

Date of Decision: 14 April 2026

Date of Issue: 14 April 2026

**DECISION OF THE ENVIRONMENT COURT
ON SCOPE AND DISCLOSURE**

A. A proposal to amend Rule TP-R6 to exclude a road through the Silverstream spur with the effect that such a road would default to be determined in accordance with Rule NU-R27 as a discretionary activity (known as “Option

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2”) is on the variation and within the scope of submissions and the appeal.

B. No order for disclosure is made.

REASONS

[1] By way of background, Proposed Plan Change 49 (PC 49) was promulgated as a response to a review of the open space provisions and areas in the Council’s District Plan. A number of submissions to PC 49 requested that the Silverstream Spur which was zoned General Residential and General Rural be re-zoned open space.

[2] As this was outside the scope of the original PC49, the Council promulgated Variation 1 to PC 49 which proposed to:

- (a) Rezone the Silverstream Spur as Natural Open Space.
- (b) Enable site-specific provisions for infrastructure including a transport corridor.
- (c) Protect identified significant natural areas on the Silverstream Spur from development.

[3] Of particular relevance to the matter before us Variation 1 proposed the addition of a new policy (NOSZ-P6) and a new rule (NOSZ-R15) in the Natural Open Space Zone that would provide for a “road and associated network utility infrastructure ... on the Silverstream Spur Natural Areas” as a controlled activity.

[4] The Appellant (Guildford Timber Company or GTC) made a submission on Variation 1 which supported aspects of the Variation but overall opposed it on the basis, among other things, that:

... the provisions duplicate, or conflict with, other chapters in the operative District Plan – for example in the earthworks chapter, the ecosystems and biodiversity chapter, and the transport and parking chapter.

[5] Specifically, the submission indicated that while GTC supported in principle the use of a controlled activity rule to implement the “enabling direction” of proposed policy NOSZ-P6, “the drafting of rule NOSZ-R15 as notified lacks sufficient clarity and efficacy”. With relevance to the question at hand, the submission goes on to say that “GTC supports the controlled activity pathway under the proposed rule, but a corresponding cross reference is required within the Transport Chapter to avoid duplication and enhance the efficient implementation of proposed policy NOSZ-P6”.

[6] The relief sought in relation to this submission point includes making “consequential amendments to the ... Transport & Parking ... Chapter[s] to address the matters summarised” including:

... consequentially **amend** the ... Transport & Parking ... Chapter[s] to exclude activities subject to proposed Rule NOSZ-R15 from corresponding provisions in those chapters.

[7] A note is included in the relief column of the submission stating, “alternative drafting solutions may be appropriate for the purposes of affecting this relief”.

[8] For completeness I note a further submission was lodged by GTC in relation to Variation 1. With respect to the Forest and Bird submission GTC indicated its opposition to Forest and Bird’s submission that the “inherent tensions in the variation provisions” be resolved by making the provision of a road subject to an effects management hierarchy that favours the protection of biodiversity values. The further submission reinforces the GTC position “that a reasonable and navigable consenting pathway needs to be assured for a proposed transport corridor on the Spur”.

[9] It is clear on a thorough reading of the GTC submission and further submission that GTC supported a road on the Spur as a controlled activity and wished to ensure this was not thwarted by conflicting provisions in other chapters of the Plan, particularly the Transport and Parking chapter which had a more restrictive activity status for the same activity. GTC’s answer to this identified conflict was to exclude the Transport and Parking chapter provisions from application to activities in the

Spur, although it indicated its willingness to explore alternative approaches to achieving the same outcome.

[10] The Independent Hearings Panel (IHP) released its recommending report on 31 July 2024. Consistent with the background as I have set out, in relation to the conflicting roading provisions the IHP identified that “the management of a road and associated network utility infrastructure within the SNA on the site via specific provisions in the variation either duplicate or conflict with the existing regulatory framework located in other chapters of the District Plan”.

[11] In reaching its decision, the IHP determined that:

proposed rule NOSZ-R15 would result in regulatory duplication, conflict and uncertainty for plan users. On the one hand, proposed rule NOSZ-R15 clearly intends to specifically provide for road and associated network utility infrastructure outside of the proposed SNA on the site. However ... this intent is overruled by the existing operative rules within other chapters of the District Plan.

[12] Specifically, the IHP found that given the transport specific provisions in the Transport and Parking chapter would render a road non-complying as opposed to controlled under the site-specific provisions in the Open Space Zone, application of the bundling principle would result in the highest activity status applying and accordingly a road through the Spur would fall to be assessed as a non-complying activity, a somewhat incongruous outcome given one of the purposes of the variation was to enable such a road.

[13] Within this context, the IHP reached and recorded an evidential finding that the most appropriate activity category was discretionary such that “the actual and potential effects of a new road through any Natural Open Space zone[d] should be managed via an activity status that enables the Council to decline a resource consent application should it result in unacceptable adverse effects on the environment or conflict with directive policies”. However, it considered that it had some jurisdictional issues in giving effect to this evidential finding, determining that “the objective of the variation could only be met in full via an amendment to rules [in the Transport and

Parking chapter, namely] TP-R5 (Discretionary) and TP-R5 (Non-Complying)” and saying:

Regrettably, after careful consideration of the scope available within submissions to achieve this outcome, we consider there is a problem in that there is insufficient scope available to make the amendments to TP-R5 (discretionary) and TP-R5 (non-complying) as recommended in the right of reply.

[14] The IHP looked specifically at the GTC submission to determine if scope existed to make amendments to the rules in the Transport and Parking chapter and considered it did not, principally because the request for specific amendments in the schedule attached to the submission referenced matter of control (c) of proposed rule NOSZ-R15 which related only to road alignment, location and design. Moreover, the IHP considered that although the GTC submission stated that consequential amendments were sought to the Transport and Parking chapter (among others) to “exclude activities subject to proposed Rule NOSZ-R15 from corresponding provisions in those chapters” together with the note that “alternative drafting solutions may be appropriate for the purposes of affecting this relief”, such relief was limited by the introduction to the relief sought which referenced the reasons for the submission “immediately to the left” (in the table) and those reasons did not specifically reference the relevant rule or its non-complying status in the operative provisions.

[15] I find that to be a particularly narrow interpretation of the submission overall but more specifically the portion of the submission directly referenced. The reasons for submission “immediately to the left” specifically state the Appellant supports the controlled activity rule to implement the enabling direction of the proposed policy but the rule lacks sufficient clarity and efficacy. Specific amendments to “avoid duplication”, “enhance the efficient implementation” of the relevant policy and the need for “exclusionary clauses” to remove the duplication are then identified.

[16] I accept as the panel found that duplication is not necessarily the same as conflict but a thorough reading of the submission provides a clear and unambiguous

statement that:

- (a) GTC had development aspirations in the Southern Growth Area which required road access;
- (b) a road across the Spur was identified as the most “logical and efficient” option and to the extent Variation 1 achieved that outcome GTC supported it, but:
- (c) the Variation 1 provisions and the proposed rule framework were not fit for purpose to achieve that outcome, and;
- (d) the provisions duplicated or conflicted with other chapters in the operative District Plan, for example, in the Transport and Parking chapter which required the variation to be subject to a “comprehensive redrafting” with alternative or consequential changes including with specific reference to the road as a controlled activity (which is supported), amendments to the Transport and Parking chapter to exclude activities subject to proposed rule NOSZ-R15 (the controlled activity rule) from corresponding provisions in other chapters.

[17] For completeness I note that the Appellant’s further submission refers again to the lack of an “enabling road connection” through the Spur and opposes the Forest and Bird submission that seeks to make a transport corridor “subject to an effects management hierarchy” (presumably a discretionary status).

[18] On the basis that it had no scope to amend the rules in the Transport and Parking chapter, the IHP determined that the conflict was most appropriately resolved by removing the enabling site-specific provisions (the controlled activity rule NOSZ-R15) thus defaulting to the non-complying status of a road in an open space zone, an approach it acknowledged was “not as certain” as that proposed by the variation. Given one of the three purposes of the variation was to “enable site-specific provisions for infrastructure including a transport corridor” moving the status of the road from controlled (as notified) to non-complying, makes that something of an understatement.

The Appeal

[19] In its notice of appeal, GTC appealed the whole decision, noting that the notified intent of the variation (to enable a road) was no longer achieved and sought reinstatement of NOSZ-R15 (controlled activity status for a road) and such consequential related or additional relief as was required.

[20] The notice of appeal specifically notes that with the removal of NOSZ-R15, rules in the wider plan “are now relevant” and in particular notes rule TP-R5 (now TP-R6) which would result in a new road through the Spur being assessed as a non-complying activity.

[21] As a result of further discussions between the parties, GTC has now determined that the most appropriate and simple amendment to the District Plan to achieve its aspirations is to amend rule TP-R6 to exclude a road through the Silverstream spur from the non-complying rule with the effect that such a road would default to rule NU-R27 as a discretionary activity (this is known as “Option 2”).

Is such an amendment within scope?

[22] The question for this Court is whether an amendment to TP-R6 as set out above is “on” the variation, and within the scope of the submission.

[23] It is the position of Forest and Bird and Silverstream Railway Inc that the answer to both of these questions is no and thus Option 2 is not available to this Court to consider on its merits.

[24] At its heart the objection relates to a concern that Option 2 “does not seek to enable a specific transport corridor within the Natural Open Space Zone, but instead seeks to reclassify any road within the Silverstream Spur as a discretionary activity under Rule NU-R27 via an amendment to Rule TP-R6”. This is classified as a “shift from site-specific provisions relating to open space on the Spur to a general [sic] in chapters not affected by the variation”, which is not on the plan change, and which

could not have reasonably foreseen. For the s 274 parties it falls squarely in the category of “left field” and/or “completely novel” which the courts have consistently found against.

[25] I do not accept this characterisation. Option 2 would result in a site-specific exclusion from a district wide rule which would result in a road through the Spur being enabled as a discretionary activity. Rather than being completely novel or out of left field this accords entirely with the purpose of the variation and was clearly identified as a possible method to address duplication or conflict between provisions in both the GTC original submission and the further submission.

[26] This is not a new regime not contemplated by the plan change¹ but is simply a means to achieve the outcome that the submitter sought originally – a clear enabling consenting pathway for a road across the Spur. While the method may be debated it is clear from reading the submission and further submission what GTC’s desired outcome was. That does not appear to have changed.

[27] As helpfully set out in submissions for the Council, the matter of a road within the Silverstream Spur was squarely before all parties and decision-makers on the Variation. The status quo was that a road through the Spur would be assessed as a discretionary activity. Putting to one side the conflict between provisions, the variation would have enabled a road as a controlled activity. Option 2 would see a return to the status quo. It is not “beyond” the status quo and thus is within the ambit of the Variation.

[28] Moreover, it is difficult to see any prejudice to any person in allowing such a submission. Again, as the Council succinctly put it, any person who had an interest in a road through the Spur had clear notice that Variation 1 would address that matter. The full ambit of views on whether such a road should be allowed at all, let alone as

¹ As observed in *Burdon v Queenstown Lakes District Council* [2025] NZEnvC 122, if a submission seeks a new management regime for a resource, a further matter for inquiry is whether the district plan’s management regime for the particular resource is altered by the plan change.

a controlled activity as notified is clearly discernible from the submissions and further submissions.

[29] Amending TP-R6 in the way sought in Option 2 is constrained to a road within the Spur. As such I am not convinced by the argument from s 274 parties that this option constitutes a novel, left field departure from what submitters or those who might have submitted could expect. The existence or otherwise of a road and its status was squarely signalled in the Variation. An option which enables a road through the Spur as a discretionary activity can hardly be said to be outside the ambit of the Variation.

Was there scope in the submission?

[30] I have already traversed in some detail the content of the GTC submission. The submission specifically sought that the provisions of the Transport and Parking chapter be reviewed and if necessary amended to ensure their alignment with the new site-specific provisions. While it is true that the exact rule conflict was not identified, the issue of misalignment (duplication or inefficiency) as between the provisions was squarely raised numerous times in the submission.

[31] As outlined by counsel for the Council, the decisions version has resulted in a significantly altered set of provisions with the site-specific rule NOSZ-R15 being entirely deleted and district wide provisions being utilised as the default regulation mechanism. For the reasons expressed earlier in the decision, I am not satisfied the panel was correct in determining this was the only course open to it. Irrespective, we are where we are and given the significant shift which has occurred, it is open to the Appellant to accept discretionary status rather than controlled and seek to implement that in the most efficient and effective manner. That is all within the scope of the original submission and is a logical progression of GTC's relief given the decision made by the IHP.

Is Option 2 within the scope of the appeal?

[32] As set out previously, the whole decision is appealed on the basis that the notified intent of the variation has effectively been thwarted by the removal of NOSZ-R15. It seeks the reinstatement of NOSZ-R15 or alternative relief to the same effect or “[s]uch consequential or related relief ... as may be necessary to give effect to [the Appellant’s] concerns”.

[33] Option 2 is an option which would give effect to the Appellant’s concerns in that it would make a road through the Spur a discretionary activity rather than non-complying, as the decisions version does. While the submission and appeal support controlled activity status for such a road, the Appellant is entitled to seek a reduced form of relief.

[34] I am satisfied that Option 2 is within the scope of the submission and the appeal and does not prejudice any party or other entity.

[35] For completeness, I confirm that I do not accept Forest and Bird’s argument that Option 2 would represent a very different planning approach and consenting pathway for new roading in the Spur NOSZ. Specifically I do not think the claim that “Option 2 makes provision for any number of roads within the Spur NOSZ” is warranted. However, to the extent that this is a concern to the s 274 parties I accept GTC’s suggestion that the wording of Option 2 be amended to refer to “a single access road” for the avoidance of any doubt that what is sought is one road across the Spur.

[36] Finally, I do not accept the argument from the s 274 parties that Option 2 would create an unmanaged conflict between objectives relating to network utilities and those in the NOSZ, and “provides no direction on how to resolve the inevitable conflict between diametrically opposed policies in different chapters of the district plan”.

[37] As submitted in reply by Counsel for GTC, the fully discretionary activity status would allow for all relevant objectives and policies to be weighed and considered when making a decision on any application for consent. This is not unusual. In any event, the merit of the Option is still to be determined. This decision only goes to whether Option 2 is within scope, not whether it should be granted as sought.

[38] For the reasons set out above, I determine that Option 2 is within the scope of the Variation and the submissions and appeal are “on” the Variation. The appeal may be argued before this Court on its merits.

Disclosure

[39] In addition to a finding on scope, the s 274 parties seek disclosure of an unredacted version of the Appellant’s fast-track listing application for Silverstream Forest Development. The publicly available version redacted information relating to proposed development on the Spur.

[40] It seems common ground that the unredacted version shows residential development on the Spur. Counsel for GTC says that was to preserve an option for the future but would require land/access from the Council, which the Council has made clear will not be happening. On that basis the Appellant says the option is now defunct and if the unredacted plan is released it will likely only cause mischief, with the community being concerned with something that has already been ruled out.

[41] Forest and Bird argue that assurances were made in the first instance hearing that such plans were not being pursued and yet the application for fast-track which includes the unredacted plan post-dates those assurances thus there is a credibility issue at play which they would seek to pursue at the hearing.

[42] On the basis of the tests in *Challenge Charters Ltd v America's Cup Village Ltd*, it is clear that the document exists and is in the possession of the Appellant but not the Council.² Whether the document is relevant to these proceedings is more complex. Put simply, as the Court understands it, the plan depicts a conceptual residential development plan that could be enabled by the Plan Change if land or access was obtained from the Council. However, the Court has been provided with clear undertakings by counsel that the concept is not being pursued and is not supported by the Council such that the necessary land swap or access will not be occurring.

[43] Variation 1 seeks to zone the Silverstream Spur as a natural open space and enable infrastructure including a road to access potential development of the Southern Growth Area. The general nature and form of development enabled by Variation 1 should it be approved is a matter of relevance to the Court's determination. However, on the evidence before the Court, resource consents will still be required to advance any specific form of development and whether such consents are sought by a fast-track or RMA process, those consents will be processed in light of the zoning ultimately determined. A plan showing one particular form of development, which may or may not be applied for, and which the Appellant is saying with some conviction will not be applied for, does not seem particularly relevant. Specifically within a *Challenge* sense it is difficult to see how it would advance the s 274 parties' case or damage that of the Appellant. Rather, as discussed with counsel during the hearing, it would appear to simply constitute an unwarranted distraction to determination of the appeal.

[44] Counsel for Forest and Bird argued that a matter that is firmly before the Court in the plan change was the extent of the SNA and that if the arguments being put forward regarding the extent of the SNA were in fact a trojan horse designed to facilitate housing as shown in the redacted plan, that would be information of importance and relevance to the Court in making its determination on the plan change. I do not accept that this submission is made out at this time. The whole area in question which is not under appeal is proposed to be zoned Open Space so even if

² *Challenge Charters Ltd v America's Cup Village Ltd* EnvC Auckland A10/99, 8 February 1999.

the SNA overlay was reduced, the underlying plan provisions would not enable development in the form I understand the redacted plan demonstrates. For that reason it is difficult to ascribe relevance.

[45] The final matter raised related to an issue of credibility. As previously set out there is some concern expressed by Forest and Bird that a decision was taken to include the area of housing on the redacted plan provided with the fast-track application after evidence had been given at the Council hearing that such a plan was not being pursued. Forest and Bird consider that it may be necessary to put the unredacted plan to witnesses to establish questions of credibility. I do not consider it necessary that Forest and Bird has the unredacted plan in its possession to pursue those questions. Plans showing some housing are already in the public domain and the transcript of this hearing itself sets out an agreed position that the unredacted plan shows housing. There is no need to put the plan to a witness to ask questions about the timing of the decision to abandon such housing and how that decision timeline relates to the application to the EPA for fast-track status.

[46] During the course of the hearing there was some suggestion that a decision on the disclosure question need not be issued at this time and that it may be appropriate to defer the matter until the hearing. I consider that the Court is apprised of sufficient information to make its decision at this time but reserve leave to Forest and Bird to revisit its application for disclosure should further or different information come to light during the course of the substantive hearing.

[47] The application for disclosure is accordingly declined, subject to the leave reserved in the preceding paragraph.

Conclusion

[48] Option 2 is on the variation and falls within the scope of the GTC submissions and appeal. As such, this option may be pursued at the hearing of the Variation 1 appeal if GTC chooses to do so. A notice of hearing will issue in due course.

[49] The application for disclosure is declined.


L J Semple
Environment Judge

