



**Far North  
District Council**



# **TŪHONOTANGA MINITI ATTACHMENTS MINUTES**

**Ordinary Te Kuaka - Te Ao Māori  
Committee Meeting**

**31 October 2024**

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Waitangi week Calendar of Events  
Waitangi Treaty Grounds 2025 V3

	SATURDAY 1 <sup>st</sup> FEBRUARY	SUNDAY 2 <sup>nd</sup> FEBRUARY	MONDAY 3 <sup>rd</sup> FEBRUARY	TUESDAY 4 <sup>th</sup> FEBRUARY	WEDNESDAY 5 <sup>th</sup> FEBRUARY	THURSDAY 6 <sup>th</sup> FEBRUARY		
4am						<b><u>Dawn Shuttles Commence</u></b> Time: 4am – 7am Location: Waitangi Golf Course – Hobsons Memorial loop		
5am	Staging, Marquees, Sound and Lighting, Stall Site markings, Warratahs, Ropelines, Chairs, to be picked up and installed throughout the week.					<b><u>Dawn Ceremony</u></b> Time: 5.00am-6.30am Venue: Te Whare Rūnanga, Waitangi		
8.00am		<b><u>Pōwhiri for Iwi Chairs</u></b>  Time: 9.00am – 10.00am Venue: Te Whare Rūnanga Catering: Copthorne Pax: 120pax	Iwi Chairs Conference Day 2 – Copthorne Waitangi	<b><u>Proposed time for WNT Meeting</u></b> Time: 8.00am – 9.45am Venue: Learning Centre Catering: WL Pax: 25 Breakfast meeting with Governor General	<b><u>Pōwhiri for Pacific Island Community</u></b> Time: 8.00am – 9.00am Venue: Te Whare Rūnanga Catering: WL (Hokianga)	<b><u>Flag Raising Ceremony</u></b> Time: 7.30am		
8.30am				<b><u>Forum Tent</u></b> Time: 9.00am – 4.00pm Venue: Marquee, Waitangi Treaty Grounds Lower Grounds Facilitator: Ngahuia Harawira	Housing Expo Venue: Sportsfield Waitangi Treaty Grounds Event Organiser: Kaupapa Collective	<b><u>Supreme and High Court Judges Hui &amp; Wananga</u></b> Time: 8.30am – 4.30pm Venue: Learning Centre Catering: WL Pax: 60	<b><u>Breakfast for Working Staff</u></b> Time: 8.30 – 10.00 Venue: Tahuaroa	
9am					<b><u>Briefing for Parliamentary Pōwhiri</u></b> Minister Potaka to brief all parties on protocols/seating Time: 10.00am – 10.45am Venue: Hokianga	Housing Expo Venue: Sportsfield Waitangi Treaty Grounds Event Organiser: Kaupapa Collective	<b><u>Forum Tent</u></b> Time: 9.00am – 4.00pm Venue: Marquee, Waitangi Treaty Grounds Lower Grounds Facilitator: Ngahuia Harawira	<b><u>Waka Kaupapa TBC</u></b> Waka parade in front of Te Tii Waitangi Marae
10am					<b><u>Pōwhiri for Judiciary, Waitangi Tribunal &amp; Diplomatic Corps</u></b> Time: 10.00am – 12.00pm Venue: Te Whare Rūnanga Catering: WL (Tahuaroa) Pax: 60	<b><u>Pōwhiri for the Parliamentarians</u></b> Time: 11.00am – 1.00pm Venue: Te Whare Rūnanga Catering Invited: WL (Tahuaroa) Catering Public: Ngāti Hine (Marquee)	<b><u>Hikoi Arrives at Te Whare Runanga</u></b> 10am TBC <b><u>Church Service</u></b> 10am – 12pm Te Whare Rūnanga Bishop Kito	
11.30am							<b><u>Te Ope Katua o Aotearoa, Defence Force Kapa Haka</u></b> Time: 11.30am Venue: Flagstaff/Stage  <b><u>Royal New Zealand Navy (RNZN) Guard parades at the Flagstaff</u></b> Time: 11.50am Venue: Flagstaff  <b><u>The Waitangi Day 21 Gun Salute by the Royal New Zealand Navy (RNZN) fired from HMNZS MANAWANUI at the Flagstaff</u></b> Time: 12pm Venue: Flagstaff	
12pm								
1pm			<b><u>Pōwhiri for Governor General</u></b>  Time: 1.00pm – 3.00pm Venue: Te Whare Rūnanga Catering: WL (Tahuaroa) Pax: TBC		<b><u>Navv Band Rehearsals</u></b> Time: 1:00pm – 2.00pm Venue: Upper Grounds			
2pm				<b><u>Pōwhiri for Kingitanga</u></b>  Time: 2.00pm – 4.00pm Venue: Te Whare Rūnanga Catering Invited: WL (Tahuaroa)				
5pm			<b><u>Iwi Leaders Gala Dinner</u></b>  Time: 6.00pm Venue: Te Wharau (Marquee) Catering: Self – Catered WL to service bar Attending: 250 Pax	<b><u>Dinner hosted by Chief Justice and Secretary for Justice</u></b>  Time: 5pm – 10pm Venue: Tahuaroa Catering: WL Attending: 120Pax	<b><u>Exhibition Opening – Waitangi Tribunal 50<sup>th</sup> Anniversary Exhibition TBC</u></b>  Time: 6.00pm Venue: Te Kongahu Gallery Catering: WL Attending: 200 Pax	<b><u>Beat Retreat and Ceremonial Sunset</u></b> Time: 5.00pm – 5.30pm Venue: Treaty Grounds, Waitangi Attending: 150 pax		
6pm					<b><u>WNT Commemorations Evening Function</u></b>  Time: 5.30pm onwards Venue: Tahuaroa Catering: WL Attending: 200 Pax			







## CEO Briefing/Update for Te Kuaka Te Ao Māori Committee

Reporting Officer: Guy Holroyd  
Date: 31 October 2024

### Kaitiāia Airport – Charlie Billington

On 28 August 2024, a workshop was held to discuss the Far North District Council's financial commitment to Kaitiāia Airport. During this meeting, Far North Holdings Limited (FNHL) presented information on the airport's operations. Their presentation detailed the investment required to restore airport facilities, outlined income sources and expenses, and highlighted potential risks and opportunities associated with the airport's operations. Council staff also contributed by presenting several options for financial support through a commercial lease, including analyses of total life costs and the implications for rates.

This commitment was formalised on 12 September 2024, when the Council passed a resolution affirming its support for the airport's future. In parallel, the Te Arawhiti commitment of \$5.4 million in funding for resilience upgrades to Kaitiāia Airport remains available. Council staff are currently finalising the contractual details of this funding, with completion expected shortly. This \$5.4 million resilience funding in conjunction with additional capital funding earmarked by council in the 2024/27 Long Term Plan will ensure sufficient upgrades can be made to enable the airport to continue operating into the future.

Progress has also been made on the lease front. Meetings between the Far North District Council (FNDC), Ngāi Takoto iwi, and elected members have advanced the draft terms of a commercial lease (subject to transfer of land). A signing meeting is anticipated in November, marking a significant step towards finalising the agreement and moving forward with the airport's restoration and development.

### Ngākahu/Ngākohu Steering Group – SEE ATTACHMENT FROM DESLEY AUSTEN

- Acknowledge the passing of Mātua Des Mahoney last month.
- Desley Austen (Deputy Chair) is the main contact for the Ngākahu/Ngākohu Ahuwhenua Trust and the same members will remain as in the Steering Committee.
- Cr John Vujcich, as Chair of the steering group, may want to provide a status update.
- FNDC CE suggested that remedial planting could be done by locals and schools. No update as to whether this has been completed
- Staff have been instructed to arrange for the electricity to be reconnected to the shed. This work is underway.

### FCSAL - Esther Powell

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**FAST TRACK: Kaikohe Wastewater Treatment Plant Renewal Application – Losaline Finekifolau**

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The Kaikohe Wastewater Treatment Plant Renewal project is to resolve noncompliance issues and improve the treatment process at the Kaikohe Wastewater Treatment Plant. It will provide adequate wastewater infrastructure to enable planned affordable housing developments.

- A fast-track application was lodged (3 May) to the Ministry for the Environment for the Kaikohe WWTP upgrade.
- The government announced (6 October) the approval of FNDC's fast-track application and therefore the inclusion of the Kaikohe WWTP Upgrade in schedule 2 of the Fast-Track Approvals Bill.
- FNDC now need to decide, in consultation with the Kaikohe Working Group, whether a resource consent for the upgrade work will be lodged under the RMA or under the Fast-Track Approvals Bill.
- The Kaikohe Working Group is due to meet 1 October where discussions will continue re this application.

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**FAST TRACK: The Lake Ōmāpere Restoration Project – Dr Marise Stuart – Hone Dalton**

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The Lake Ōmāpere Restoration project seeks to restore the mauri and water quality of Lake Ōmāpere and provide for the long-term sustainable use of the lake for the benefit of Ngāpuhi through dredging, wetland construction and water level management. The health of Lake Ōmāpere has been plagued over several decades due to changes in land-use management and various short-term interventions.

In April 2024 Dr Marise Stuart and others met with FNDC to discuss their (Lake Ōmāpere Trust) intention to restore Lake Omapere, and intention to apply/utilise the Fast Track consent process, as well as the Regional Infrastructure Fund to resource the restoration exercise. They also requested:

- a support letter from FNDC for the Fast Track consent application
- planning support (if possible) to review their application with respect to RMA and/or other LGA or planning constraints

More recently Dr Marise Stuart and Hone Dalton were granted a deputation to speak at the Te Kuaka Te Ao Māori Committee meeting held on 27 June 2024. During their deputation they requested

- that someone be appointed as a representative of the Far North District Council (FNDC) and Northland Regional Council (NRC) so that both entities have a voice from and are feeding back to their respective tables; and,
- that Te Kuaka supports the Lake Omapere Trust in their kaupapa and secondly to create a wider collective that allows FNDC and NRC to participate in a supportive not dictatorial role, building on Guy's notion to deliver on the aspirations of Lake Omapere Trust's kaupapa.

At the time of drafting this update staff are unaware of any appointment of Mayor or Councillors and/or staff of FNDC being appointed to the Lake Ōmāpere Trust or collective.

**From:**  
**Sent:** 30 October 2024 6:32 AM  
**To:** Hilda Halkyard-Harawira <[Hilda.Halkyard-harawira@fndc.govt.nz](mailto:Hilda.Halkyard-harawira@fndc.govt.nz)>  
**Subject:** !

**CAUTION:** This email originated from outside Far North District Council.  
Do not click links or open attachments unless you recognise the sender and know the content is safe.

Kia ora Hilda, I am having issues with my computer so hope you get this just an up date of the work the Bellingham's have done so far, can you please forward on to the steering committee, Moko, Kelly and Guy for me.

Nga Mihi

Desley Austen

Ngakahu/Ngakohu Whanau Ahuwhenua Trust

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**From:**  
**Sent:** Thursday, 24 October 2024 4:27 pm  
**To:**  
**Cc:**  
**Subject:** Ngakahu sub soil drainage.

Good afternoon, Desley and Neveah,

Attached are some photographs of the subsoil drainage completed in the last two days as Des had instructed.

We have removed the waratahs and silt cloth along the edge of the fill material stockpiled beside the old sediment pond which has now been drained along with another wet area toward the old pump house.

We are now ready to begin the final push in relocating all the fill material and contouring of the whole area as soon as we can get two weeks of dry weather and the material is dry enough to be excavated and handled.

We have also tidied up the large sediment ponds.

Below is a list of the work to be carried out to complete the project, for your information.

**November/ December 2024.**

1. *Clean up loose wood and slash from area and along the stream edge in readiness to burn. Check FNDC website to confirm if a fire permit is required.*
2. *Burn wood pile stockpiled in the paddock with southerly or minimal wind. Separate the pile into two heaps to reduce the fire risk and burn when a machine is on site, should it be required to control the burn off.*
3. *Remove the steel standards and Bidim cloth at the base of the earth stockpile prior to pushing topsoil to low areas.*
4. *Complete subsoil drainage, establish excavator to site, excavate drain, lay Bidim cloth supply and place drainage metal and 110mm novaflor drainage pipe.*

5. Excavator and ADT to remove fill material and broken concrete from stockpile up against old quarry face and place it in the bottom of the overburden fill area.
6. Excavate and contour large fill stockpile over low area to develop rolling hill farmland.
7. Place topsoil from stockpile beside Okahu Stream over the areas where it needs it, in readiness for regrassing.
8. Organise fencing contractor, Nick Taffee 021 085 10553, to complete 5 or 6 wire fences, no battens. Approx. 420 lineal metres. Check with Desley on the budget Des had allocated for this job. Include Neveah is positioning of the fence and possible gate.
9. Contact Hilda Harawira to confirm the 6 meter steel floats chained together can be removed from the paddock beside the Okahu stream. Des suggested they might be suitable to be used at Lake Ngatu. Not urgent at this stage.
10. Purchase grass seed and organise to be spread.
11. Tidy up, repair and metal farm access roads damaged by heavy machinery to return farm roads to original condition.
12. Drain and dry out silt drying ponds below overburden stockpile area, level out area so that farm animals can graze the area. (in progress)

Kind regards

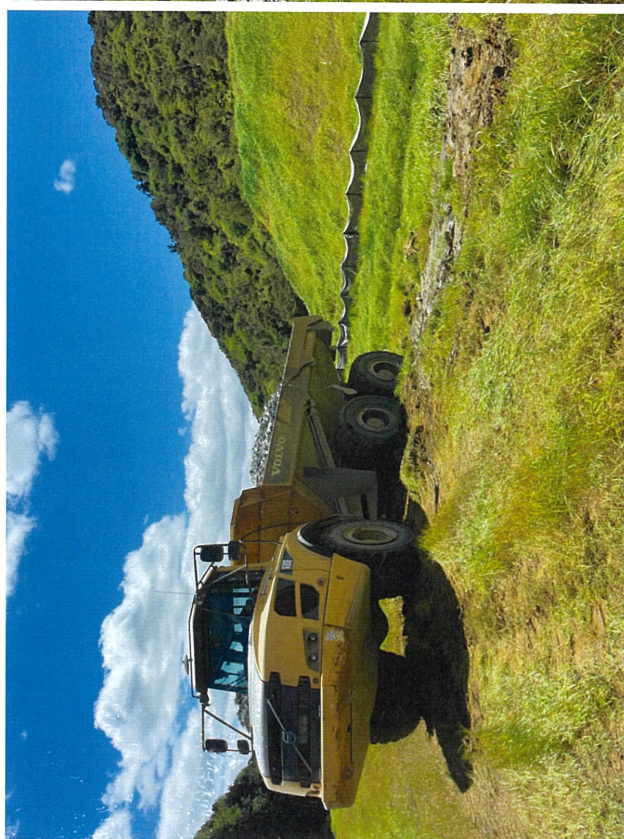
Brian Bellingham











## 7 NGĀ PŪRONGO TAIPITOPITO / INFORMATION REPORTS

### 7.1 SIMPSON GRIERSON LEGAL OPINION - MĀORI WARD POLL REQUIREMENTS

**File Number:** A4947746

**Author:** Marlema Baker, Democracy Advisor

**Authoriser:** Aisha Huriwai, Manager - Democracy Services

#### TAKE PŪRONGO / PURPOSE OF THE REPORT

That Te Kuaka Te Ao Māori Committee receive the legal opinion provided to Taituarā by Simpson Grierson regarding Conduct of Polls of Electors on Division of Electorate into Māori Wards or Constituencies and Māori Ward Poll Requirements.

#### WHAKARĀPOPOTO MATUA / EXECUTIVE SUMMARY

Taituarā sought legal opinion on the legal risks and implications for failing to comply with the Māori Ward poll requirements. This was a question asked by many councils. That legal opinion was provided to its members including the Far North District Council (FNDC). (*attachment a*)

Taituarā also provided legal opinion on whether there would be any reason why a local authority (that is required to conduct a poll) could not promote a position on whether or not to retain Māori wards or constituencies. (*attachment b*)

#### TŪTOHUNGA / RECOMMENDATION

**That Te Kuaka – Te Ao Māori Committee receive the Simpson Grierson Legal Opinions requested by Taituarā on Conduct of Polls of Electors on Division of Electorate into Māori Wards or Constituencies and Māori Ward Poll Requirements.**

#### TĀHUHU KŌRERO / BACKGROUND

At the extraordinary Council meeting held 6 September 2024 Council considered Item 5.1 Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act and resolved as follows:

#### RESOLUTION 2024/1

*Moved:* Cr Tāmami Rākena

*Seconded:* Cr Penetaui Kleskovic

#### That Council:

- reaffirm its decision previously made on 9 May 2024, alongside Mana Whenua and the community, to retain the Nga Tai o Tokerau Māori Ward; and*
- conduct a discriminatory binding poll that is being forced on us against our will with the 2025 local elections on whether Māori Wards will be in place for the 2028 and 2031 local body elections, and*
- direct the CEO to explore the legal implications of the Council not holding a discriminatory binding poll alongside the 2025 local body elections and report back to our Te Tiriti centric Te Kuaka - Te Ao Māori Standing Committee by December 2024.*

*In Favour:* Kahika - Mayor Moko Tepania, Kōwhai - Deputy Mayor Kelly Stratford, and Crs Felicity Foy, Hilda Halkyard-Harawira, Babe Kapa, Penetaui Kleskovic, Steve McNally, Mate Radich, Tāmami Rākena and John Vujcich

**CARRIED**

This report seeks to deliver on part c) of the resolution by providing the legal opinions requested by Taituarā and prepared by Simpson Grierson to the Committee.

**MATAPAKI ME NGĀ KŌWHIRINGA / DISCUSSION AND NEXT STEPS**

This report is information only. Council's current course of action achieves legal compliance. Any alternative course would call into question Council and the CE's obligations to maintain legal compliance, as per the legal opinion presented by this report.

**PĀNGA PŪTEA ME NGĀ WĀHANGA TAHUA / FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION**

The seeking of this advice came at no cost to FNDC. There are no financial implications or budgetary provisions in receiving this report.

**ĀPITIHINGA / ATTACHMENTS**

1. **Attachment a) Simpson Grierson Legal Opinion: Guidance on the Conduct of Polls for Māori Wards and Constituencies in 2025 - A4947751**
2. **Attachment b) Simpson Grierson Legal Opinion: Poll Requirements for Māori Wards - A4947750**





**To** Taituarā – Local Government Professionals Aotearoa **12 August 2024**  
**From** Mike Wakefield and Chris Ryan  
**Subject** Conduct of polls of electors on division of electorate into Māori wards or constituencies

PRIVILEGED AND CONFIDENTIAL

#### Introduction

1. Following the enactment of the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024, local authorities are required to make a resolution to either:<sup>1</sup>
  - (a) in the case of group 1 local authorities, retain or disestablish Māori wards or constituencies; or
  - (b) in the case of group 2 local authorities, rescind or affirm their earlier decisions to adopt Māori wards or constituencies.
2. Those that do not resolve to rescind their earlier decisions or disestablish existing Māori wards or constituencies, are required to hold a binding poll in conjunction with the 2025 triennial elections on the question of whether, from the 2028 triennial elections, their district or region should be divided into 1 or more Māori wards or constituencies (**Poll**).<sup>2</sup>

#### Question and summary answer

3. You have asked whether there would be any reason why a local authority that is required to conduct a Poll would not be able to promote a position on whether or not to retain Māori wards or constituencies.
4. Promoting a 'Council position' on the question that is to be the subject of the Poll would likely constitute a breach of the principles in section 4 of the Local Electoral Act 2001 (**LEA**). Such a breach would be an irregularity that could cause the Poll to be declared void by the District Court, in the event of a petition challenging the conduct of the Poll.

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1 Clauses 11(2) and 29(1) of schedule 1 of the Local Electoral Act 2001 (**LEA**), as amended by the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.  
 2 Clauses 11(2), 29(2) and 39 of the LEA as amended by the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024



**Our reasons**

5. Section 4 of the LEA sets out a number of principles that local authorities and electoral officers must take into account when making decisions under the LEA or any other enactment.<sup>3</sup> The principles of most relevance to this advice are:
  - (aa) representative and substantial electoral participation in local elections and polls;
  - (a) fair and effective representation for individuals and communities;...
  - ...
  - (c) public confidence in, and public understanding of, local electoral processes through – ...
    - ...
    - (ii) the provision of elections that are managed independently from the elected body;
    - (iii) the protection of the freedom of choice of voters and the secrecy of the vote;
    - ...
6. Principle (aa) is reflected in the chief executive's responsibilities under the Local Government Act 2002 (LGA). Specifically, section 42(2)(da) of the LGA states that a chief executive "is responsible to his or her local authority for *facilitating and fostering* representative and substantial elector participation in elections and polls".
7. Principle (c)(ii) directs that elections are to be managed independently from councils (as an elected body), so as to ensure public confidence in electoral processes.
8. This principle is implemented by subsequent sections of the LEA that require the appointment of an electoral officer, who is independent from a council and responsible for the conduct of elections and polls.<sup>4</sup> This arrangement is designed to ensure that there is no perception that the current Council (as an elected body) is in any way involved in interfering with electoral officers' independence or the integrity of elections.
9. Finally, principle (c)(iii) is important in protecting "the freedom of choice of voters". In this instance, this principle guards against attempts to restrict or unduly influence how voters exercise their 'freedom of choice'.
10. The section 4 principles were considered by the District Court in *Aukuso v Hutt City Council*.<sup>5</sup> The decision involved a challenge to a poll relating to the electoral system for future elections by the Hutt City Council, and relevant public communications involving the council in the lead up to the poll (including a column by the mayor in the local newspaper, and various newspaper advertisements). The petitioners contended that the council communications amounted to breaches of the principles in section 4 of the LEA, and as a consequence that:
  - (a) there were irregularities in the conduct of the poll; and
  - (b) the poll should be declared void.

<sup>3</sup> LEA, section 4(2).

<sup>4</sup> There must at all times be an electoral officer appointed by the Council, and who is responsible for conducting polls and elections: LEA, sections 12 and 15. The electoral officer is however independent of the Council: LEA, section 14.

<sup>5</sup> *Aukuso v Hutt City Council* [2004] DCR 322 (District Court, Lower Hutt, 17/12/2003, Judge Davison, MA88/03).



11. The Judge determined that the communications, which took a clear position on the issue that was the subject of the poll (and supported adoption of the first past the post electoral system<sup>6</sup>) were in breach of the LEA principles.<sup>7</sup> The Court went on to comment:<sup>8</sup>

For the Council to embark on a campaign promoting FPP and denigrating STV, if not an irregularity in itself, must undoubtedly have become so when public funds were used to fund that campaign. I have a clear view that this amounts to an irregularity by breach of principles 4(1)(c)(ii), (iii) and (iv) of the Act. The use of public funds to promote one side of such a fundamental electoral debate must in itself, without more, be irregular. As was noted in Hanafin (supra), this "amounted to an interference with the conduct of the referendum ...".

12. If local authorities were to use their resources to promote a particular position in relation to a Poll, our view is that there would be a relatively high risk that a Court would find there to be an irregularity in the conduct of the Poll (if a petition was brought<sup>9</sup>). There is also a risk, although it is difficult to consider in the abstract, that the Court would determine that the irregularity was one that materially affected the result of the Poll, such that the Poll would be declared void.<sup>10</sup>

13. Subsequent "good practice guidance" released by the Auditor-General addresses communications in the pre-election period, and sets out the following two principles:<sup>11</sup>

**Principle 12** – A local authority must not promote, nor be perceived to promote, the re-election prospects of a sitting member. Therefore, the use of Council resources for re-election purposes is unacceptable and possibly unlawful.

**Principle 13** – A Council's communications policy should also recognise the risk that communication by or about Members, in their capacities as spokespersons for Council, during the pre-election period could result in the Member achieving electoral advantage at ratepayers' expense. The chief executive officer (or his or her delegate) should actively manage the risk in accordance with the relevant electoral law.

14. In our view, and in light of the *Aukuso* decision, those principles should be considered applicable to Polls on whether to retain Māori wards or constituencies. The reason we say this is that using Council resources to promote the retention of Māori wards or constituencies would involve the promotion of one of the options subject to the Poll, and (if relevant) it could also be perceived as promoting the election prospects of sitting elected members elected from those wards or constituencies.

15. A breach of the principles in the Auditor-General's guidance would not itself amount to an irregularity in the conduct of a Poll, but could support a Court finding that there has been a breach of the LEA principles referred to above.

<sup>6</sup> *Aukuso* at [18] and [41].

<sup>7</sup> While the Court found that an irregularity occurred, it did not overturn the poll result because there was insufficient evidence that the irregularity had in fact materially affected the outcome of the poll: *Aukuso* at [119].

<sup>8</sup> *Aukuso* at [95] and [99].

<sup>9</sup> Under section 93 of the LEA a candidate or 10 electors may file a petition in the District Court demanding an inquiry into the conduct of a poll.

<sup>10</sup> The District Court has the power to declare a poll void if there was an irregularity that materially affected the result: LEA, section 99.

<sup>11</sup> Controller and Auditor General *Government and parliamentary publicity and advertising* (17 June 2005) <<https://oag.parliament.nz/2005/govt-publicity/docs/publicity.pdf>> at Appendix 4.



16. We note that the section 4 principles include that all qualified persons have “a reasonable and equal opportunity to... cast an informed vote...”. In our view, that principle infers that local authorities can legitimately help ensure that electors are informed about the Poll and the issues to be determined. However, given the other section 4 principles, in fulfilling that statutory role local authorities must be careful to avoid advocating for a particular outcome.
17. As a precursor to any Poll, and to avoid any doubt, if councils chose to consult before making decisions about whether to rescind their earlier decisions, or to disestablish their existing Māori wards or constituencies, we consider it is open to them to have a preferred position when undertaking consultation. In our view, the electoral context of a formal Poll (as a consequence of the earlier resolution made by the local authority) is materially different from consulting in advance of making a decision under the LGA.
18. Please do not hesitate to get in touch if you have any questions.



## Our advice

<b>Prepared for</b>	Raymond Horan, Susan Haniel and Janice Kerr, Taituarā
<b>Prepared by</b>	Mike Wakefield, Jonathan Salter and Oscar Wilson
<b>Date</b>	30 September 2024

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### Māori Ward Poll Requirements

<b>Background</b>	<p>The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 (<b>Act</b>) reinstated provisions that enable electors to demand a poll on whether to establish Māori wards or Māori constituencies (in this advice referred to as <b>Māori wards</b>).</p> <p>The effect of the Act (relevant to this advice) is to require local authorities that introduced Māori wards, without first holding a poll of their residents, to hold a binding poll alongside the 2025 triennial elections or decide to abandon the proposed Māori wards. In the event that a poll is held, and favourable to the proposal, the establishment of a Māori ward will be possible from the date of the 2028 triennial elections.</p> <p>We understand that a question has been asked about what would happen if a decision had been made to hold a poll on an existing or proposed Māori ward, and a council was then to not hold the poll at all. In other words, what would happen if an attempt was made to set up a Māori ward without the poll required by the Act?</p> <p>We note that previous advice on the Act (when it remained a Bill) was provided via memorandum dated 11 August 2024.</p>
<b>Questions</b>	<b>What are the legal risks and implications for failing to comply with the poll requirements?</b>
<b>Answers</b>	<p>Once the decision has been made under the Act to retain a Māori ward(s), the obligation to conduct a poll in conjunction with the 2025 triennial general election passes to the electoral officer. An electoral officer is an independent officer and should not be subject to any practical direction from a local authority in terms of how an election or poll is conducted.</p> <p>Were an electoral officer to accept, and comply with, a direction to not hold a poll, that would amount to a non-compliance with the Local Electoral Act 2001 (<b>LEA</b>) and an offence that is punishable by a fine.</p>

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[www.simpsongrierson.com](http://www.simpsongrierson.com)



While, in statutory terms, a council decision and direction to **not** hold a poll would have no legal effect, if it were made several risks could arise for the council concerned. This includes that:

- Any attempt to influence or direct non-compliance with the poll requirements of the Act or LEA would amount to a clear statutory non-compliance, which could also be found to invalidate any consequent election that sought to establish (and fill) a Māori ward seat.
- Deliberate non-compliance with the procedural obligations of the Act or LEA (by direction) would likely be seen as a serious matter that could trigger Ministerial intervention under Part 10 of the LGA. If non-compliance was being considered, or became likely, to avoid electoral uncertainty the Minister would likely appoint a Crown Manager to rectify any procedural breach, or ensure that no breach was to occur.
- Any council direction to an electoral officer to not hold a poll, would likely be interpreted as a significant failure to perform a statutory duty, which could trigger Ministerial intervention. It could also give rise to declaratory or judicial review proceedings, which would likely succeed.



## Reasoning explained

### The legislation requires the holding of a poll

1. The Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 enabled councils to resolve to establish Māori wards without holding a poll. Many did so.
2. The Act has reversed this change and requires all councils with Māori wards to either:
  - 2.1 Resolve to retain Māori wards and hold a binding poll at the 2025 triennial elections; or
  - 2.2 Resolve to disestablish their Māori wards or to rescind their decision to establish them.
3. Councils had until 6 September 2024 to make these decisions. By the same date, any councils that opted to rescind or disestablish also needed to decide how they would implement the decision.<sup>1</sup>
4. If a council did not disestablish their Māori wards or rescind their decision to establish them, clause 39 of Schedule 1 of the LEA requires that a poll is held in conjunction with the 2025 triennial elections.
5. The requirements for that poll are set out in clause 40 of Schedule 1, with the electoral officer responsible for the conduct of the election required to:
  - 5.1 include public notice of the poll in the notice of election required to be given under section 52; and
  - 5.2 conduct the poll in conjunction with the election.
6. Electoral officers have statutory responsibilities to conduct elections and polls in accordance with the LEA (section 15).<sup>2</sup> An electoral officer that fails to comply with clause 40 would commit an offence under section 131 of the LEA.

### The risks of failing to comply with the poll requirements vary, but could

#### Risk to the electoral officer

7. Considered against the legislative context, once the decision to retain a Māori wards has been made, the conduct of the required poll is not a

<sup>1</sup> Note, the changes in the Act have no effect on Tauranga City Council's (TCC) recent general election. Under the Act, TCC has until 30 November 2026 to make the decision on whether to resolve to disestablish its Māori ward (with effect from 2028) or to hold a binding poll before the 2028 local elections

<sup>2</sup> LEA, s15.





**involve both the  
electoral officer  
and the council**

council responsibility. Instead, it is the responsibility of the electoral officer under the LEA to conduct the poll.

8. The electoral officer is an independent statutory official, and is not subject to any direction from a local authority (refer section 14(1) of the LEA). Providing direction in this way would undermine the independence of the electoral officer, and involve outside influence in the conduct of, and process for, elections.
9. In the event that a council was to give (or seek to give) direction to an electoral officer to not hold a poll, that would be a very clear statutory breach. Compliance with such a direction would also be a statutory breach and the commission of an offence, by the electoral officer.<sup>3</sup>

**Risk to the Council**

10. Through the Select Committee process, the Select Committee Report on the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill highlighted that if local authorities were unable to implement the requirements of the Act, this could constitute a problem in terms of Part 10 of the Local Government Act 2002 (LGA).<sup>4</sup>
11. Section 253(b) of the LGA confers powers on the Minister to intervene in the affairs of local authorities in certain situations. Part 10, Subpart 1 provides the Minister with a range of options where a local authority is considered to have a *problem*, as that term is defined in section 256. A problem includes a significant<sup>5</sup> or persistent failure by the local authority to perform 1 or more of its functions or duties under any enactment.
12. Under Part 10, the Minister may exercise any of the options under the powers of assistance and intervention. The options vary according to the nature and scale of assistance or intervention required to address the problem. These include that the Minister may: require information from a local authority (s 257), appoint a Crown Review Team (s 258), appoint a Crown Observer (s 258B), appoint a Commission (s 258D), or postpone a general election when appointing a Commission (s 258I).

<sup>3</sup> Most of the electoral offences in Part 7 of the LEA are defined in specific terms which do not apply to this situation. However, an intentional omission contrary to the LEA is an offence liable to a maximum fine of \$2000 by virtue of section 131.

<sup>4</sup> We note that this was the majority view of the Select Committee: see page 7 of the Select Committee report.

<sup>5</sup> Per s 256, definition of "significant", the term "significant", in relation to a problem of a local authority, means that the problem will have actual or probable adverse consequences for residents and ratepayers within the district or region of the local authority.






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**Summary assessment of risks**

13. The risks to an electoral officer are set out above.
  14. If a council was to direct an electoral officer **not** to hold a binding poll on the retention of a Māori ward (or perhaps takes active steps to influence the outcome of the poll in breach of section 122, LEA) in our opinion that would be likely to:
    - 14.1 Amount to a legal non-compliance with the Act, or the LEA;
    - 14.2 Potentially invalidate any election held on an electoral system that is subject to this procedural non-compliance (we note that as a matter of law, a nomination for a candidate for a Māori ward seat, would be technically invalid until the 2028 elections);
    - 14.3 Would almost certainly trigger the appointment of a Crown Manager under section 258D of the LGA to rectify the constitutional non-compliance;
    - 14.4 Could give rise to successful declaratory or judicial review proceedings alleging legal or process-related breaches or error of law, and seeking that the decision be quashed or substituted for one that complies with the legal requirements. Depending on the timing of any legal challenge, relative to the election period, this could have a highly disruptive effect on the local elections, particularly if injunctive relief is sought at the same time; and
    - 14.5 It is also conceivable (although we have not in the time available run this risk to ground) that in pursuing this course of action, a council could incur costs that would be the subject of an adverse audit report under section 44 of the LGA, which raises the potential of liability to elected members.
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# MOTUTI SLIP

## REPAIRS 2024



As you are likely aware, there have been significant slips in the area, and we wanted to take this opportunity to reach out and provide some important information regarding the upcoming repairs to the West Coast Road slip in Motuti.

CLL will be commencing works on the 24th of October and we are committed to keeping you informed throughout the process. Regular updates will be provided to nga hāpu o te whenua, to ensure you are aware of the progress and any impacts to the surrounding area.

If you would prefer to receive these updates via email, please send your details to [motuti@cll.net.nz](mailto:motuti@cll.net.nz)

For whānau living outside the region who would also like to stay updated, we encourage you to register via the email above, so we can ensure you are included in these updates electronically.

If you have any questions or require further information, please don't hesitate to get in touch. We are here to assist and appreciate your patience and understanding as we undertake this essential work.



Issue One - Whiringa-ā-nuku 16 2024



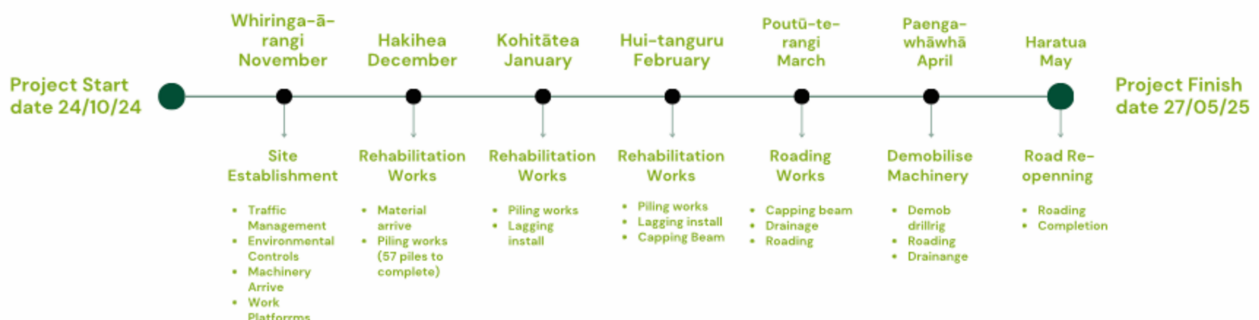


Issue One - Whiringa-ā-nuku 16 2024

## KO WAI TATOU?

Over 35 years ago, CLL started out providing fencing and landscaping services. Today, we've grown to offer a wide range of large-scale construction solutions. What makes us stand out is our use of unique techniques—some we've developed ourselves and others we've adopted from cutting-edge technologies around the world. We pride ourselves on delivering the best practices in piling, retaining, ground stabilization, and improvements.

## Project Timeline



The above project construction timeline is indicative only and outlines the key stages and milestones of this project. At CLL, we will use this timeline to keep the community informed about the progress of our work, ensuring transparency on when certain activities will occur and how long the project is expected to take. Regular updates will be shared to highlight any changes or achievements, so the community remains aware of what's happening and can plan accordingly.

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