

Regulatory Impact Statement: Changes to recount provisions for local elections

Coversheet

Purpose of Document	
Decision sought:	<i>This analysis and advice has been produced for the purpose of informing key policy decisions to be made by Cabinet.</i>
Advising agencies:	<i>The Department of Internal Affairs</i>
Proposing Ministers:	<i>Minister of Local Government</i>
Date finalised:	<i>8 October 2021</i>
Problem Definition	
<p>The statutory sequencing of events in a tied local authority election and the timeframes in which judicial recounts can be heard, result in greater and longer uncertainty than is necessary in finalising the election results, which impacts negatively on the mana of candidates, and public respect for and trust in, the integrity of the election.</p>	
Executive Summary	
<p>When an election is tied, the electoral officer draws lots to determine which candidate is elected. The electoral officer then publishes the official result of the election, including the outcome of the lot draw. Only after the publishing of the official result can a candidate of a tied election apply for a judicial recount. A candidate can also only apply for a judicial recount of a close election result until after the official results have been published.</p> <p>Local authorities must hold their first meeting after an election as soon as practicable. At the first meeting, candidates have to make their declaration before acting as a member, including those candidates who have been declared elected based on the official results.</p> <p>The sequencing of events, and the timing in which judicial recounts can take place, can mean a local authority holds their first meeting before a judicial recount has been completed, which can result in a different candidate being declared the winner, after the recount. The person who has already made their declaration is removed from office and the newly declared winner makes their declaration and takes their place instead.</p> <p>While tied and close results in local elections are rare, the removal of members after they had made their declaration and took office happened twice in 2019. The situations created significant confusion for candidates, local authorities and communities as well as reducing the mana for candidates and their whānau. Following the confusion, the Minister of Local Government directed officials to investigate and make changes to the recount process.</p> <p>The Department engaged in targeted consultation after the 2019 election with those local authorities who had been impacted, including officials from Whakatāne District Council and Queenstown-Lakes District Council, and Taituarā – Local Government Professionals Aotearoa’s Democracy and Governance Working Party and Electoral Sub-committee. This targeted consultation helped the Department to understand councils’ experiences and helped ensure any proposals were workable and not heavy-handed regulation.</p>	

As a result of consultation and Ministerial agreement, it was decided that several alternative options to resolve a tie were not to be considered, including conducting an immediate run-off election between the tied candidates, holding a by-election, and enabling the council to appoint someone to fill the seat that is tied. The Minister also ruled out automatic judicial recounts for close elections because it would be too difficult to set a definition that is practical for all elections (discretionary recounts still remain available for close elections).

The Minister of Local Government's direction to solve the problem of tied election results by requiring an automatic judicial recount for tied results has limited the range of options available to analyse.

Government intervention is required to amend the legislation governing tied election results and the first meeting procedures of councils.

There are four options proposed in this RIS:

1. **The status quo**
2. **Option Two:** Requirement for a mandatory judicial recount for a tied result but no changes to first meeting procedure.
3. **Option Three:** Requirements for a mandatory judicial recount for a tied result and changes to the first meeting procedure (**preferred option**)
4. **Option Four:** All candidates whose election is subject to a recount are precluded from making their declaration, but no mandatory delay to first meeting

Option Three best meets the criteria used to analyse the options. A mandatory judicial recount would occur when there is a tied result and a local authority would not be able to hold their first meeting if the local authority are waiting on the results of a recount (this inability to meet would apply whether the recount was an automatic one or a discretionary one instigated by a candidate). However, chief executives would have the flexibility to call a special meeting if there is urgent business to attend to in which candidates subject to a recount would not be able to attend.

Changes to the first meeting procedure means Option Three provides greater certainty for candidates, local authorities and the community by removing the ability for a candidate to be removed from office after making their declaration. Option Three also respects a candidate's mana by taking away the ability to be removed from office after making their declaration which can be embarrassing for candidates and their whanāu. Option Three also provides greater transparency around the electoral process for candidates, local authorities and the community.

There will be costs for an automatic judicial recount, but these are often covered by local authorities' insurance. This could lead to a small increase on insurance premiums for local authorities.

Limitations and Constraints on Analysis

Following the 2019 election result in the Murupara-Galatea ward of the Whakatāne District Council,¹ the Minister of Local Government issued a press release announcing the Government will consider making changes to the local electoral legislation to fix the problems that occurred where elections were settled by a coin toss. The Minister's

¹ Where one candidate was declared elected on a coin toss and assumed office, only to be removed after a recount of the votes resulted in the other candidate being declared the winner

proposal was that if there is a tied result, there should be an automatic judicial recount (as occurs in parliamentary elections).

The Minister's statement that there should be an automatic judicial recount in a tied result has limited the options available to the Department for analysis.

When the Minister requested initial advice on changes to the recount provisions, the Department engaged in targeted consultation with Whakatāne District Council, Queenstown Lakes District, and Taituarā's Democracy and Governance Working Party and the Electoral Sub-committee. We acknowledge that this targeted consultation was limited and may not reflect all views in local government, but targeted consultation was required to provide advice to the Minister in a timely fashion and Taituarā's Working Party and Sub-committee do represent a wide range of views from across the local government sector.

Following targeted consultation, we also provided further advice to the Minister of Local Government on alternatives to a coin toss. The alternatives included: conducting an immediate run-off election between tied candidates, holding a by-election, and enabling the council to appoint someone to fill the seat that it tied. The advice deemed that a coin toss was still the best solution to solve a tied result and it was agreed by the Minister that no further analyse of alternatives needed to take place.

A proposal to have automatic judicial recounts for close elections has also been ruled out by the Minister. Defining a close result through legislation is an arbitrary distinction and it would be difficult to set a definition that is practical for all elections. This is because of population disparity between electoral districts around the country². However, the existing discretionary recount option remains available for unsuccessful candidates.

Through this targeted engagement process it was decided not to make any changes to the interim governance arrangements that councils use between a triennial election and the swearing in of the new council. The rationale to this decision was that the current arrangements (which typically see the chief executive delegated additional authority for a limited period) seem to be working well.

The solution to the identified problem needs to be made as an amendment to the Local Electoral Act 2001 and Local Government Act 2002.


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Quality Assurance (completed by QA panel)

Reviewing Agency: The Department of Internal Affairs

² For example, the number of electors who can vote for the Mayor of Auckland is more than 1 million, while other councils' community boards may have only a few hundred electors. Using a percentage measure, such as a margin of 0.1% could equate to less than half a vote in some elections.

Panel Assessment & Comment:

The panel considers that the information and analysis summarised in the RIA meets the quality assurance criteria.

The RIA explains the history and context of the policy problem, and the constraints and limitations on options to address it resulting from Ministerial directions. It identifies and describes options that are consistent with those limitations and identifies criteria for assessing those options based on aspects of the policy problem. The RIA describes the consultation that has taken place which, while weighted towards those involved with recent incidents that have prompted this proposal, does include nationally representative local government organisations. The RIA does not, however, fully meet clarity and conciseness criteria, largely in relation to the descriptions of the options and criteria and in the analysis and assessment of the relative merits of the options. As a result, the argument in favour of the preferred option is not as robust and convincing as it could be. These weaknesses are not sufficient to preclude a "meets" assessment.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Local elections are run under the Local Electoral Act 2001 and the Local Electoral Regulations 2001

1. The local electoral framework sets out that local government elections are administered by an electoral officer on behalf of the local authority.
2. It is the responsibility of the electoral officer to ensure that the election is run in accordance with the principles of the Local Electoral Act 2001 (the LEA), which include public confidence in, and public understanding of, local electoral processes through the provision of impartial mechanisms for resolving disputed elections and polls (s 4 LEA refers).

If an election result is tied, the winner is decided by lot

3. After voting closes for the local elections all the votes are counted. Counting is typically done by computers.
4. If there is a tie, the successful candidate will be determined by lot (often a flip of a coin or by pulling names out of a hat). Before the drawing of lots, the electoral officer will have counted the votes several times to be certain.
5. After a winner has been determined by lot, the candidate is declared elected and the electoral officer publishes the official result of the election.

Candidates may request a recount for a tied electoral result

6. Under the LEA, a candidate can only lodge an application for a judicial recount of a tied electoral result after a winner has been determined by lot (often a coin toss) and the official results have been publicly notified.

7. Candidates have three days to apply for a judicial recount following the declaration of the results. They must pay a deposit of \$750. A District Court Judge must be satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that in a recount the applicant might be elected.
8. This process is different to parliamentary elections where, with a tied result, a recount is automatic. The Electoral Commission is required to apply to the District Court for a recount “without delay” before the declaration of the results. If the result following the recount is tied, the successful candidate is determined by lot. The return of the writ is delayed until all recounts have been completed and no members take office until after the writ is returned.

Discretionary judicial recounts for close elections

9. Similar to tied elections, candidates who lost by a close margin may apply for a recount at the discretion of a District Court Judge, within three days of the publication of the official results.

The Local Government Act 2002 requires the chief executive to call the first meeting of a local authority as soon as practicable after the results of the election are known

10. The chief executive must call the first meeting of the local authority as soon as practicable after the results of the election are known. This means that even if a candidate has asked for a recount (either for a tied or close result) the meeting can take place before the outcome of the recount is known. At the first meeting, newly elected members make a statutory declaration and assume office. Schedule 7 of the Local Government Act 2002 (the LGA) also requires councils to make certain decisions at their first meeting, such as adopting a schedule of meetings.
11. One of the reasons why the meeting may need to be held as soon as practicable is because there is important business to get underway with. For example, local authorities must adopt their annual report before the statutory deadline of 31 October each year. Some local authorities are unable to complete this process before the triennial elections. In 2016, 32 out of 78 local authorities adopted their annual reports after the election. Local elections are held on the second Saturday in October so it is important that the first meeting is called as soon as possible so the annual report deadline can be met, if the council did not do this before the election.

The meeting needs to be called as soon as practicable as there is no caretaker convention in local government

12. At central government, the caretaker convention means that it may be necessary for the government to remain in office for a period on an interim basis after an election until a new government is formed. During such periods, the incumbent government is still the lawful executive authority, with all the powers and responsibilities of the executive office.
13. In local government, governance powers are typically delegated to the local authority chief executive over the electoral period. This means the chief executive remains in charge of non-urgent management decisions until the first meeting of the new local authority.

Tied and close results in local authority elections are rare but they do happen

Galatea-Murupara ward of the Whakatāne District Council

14. In 2019, there was a tie in the Galatea-Murupara ward of the Whakatāne District Council. The stalemate was broken by drawing names out of a hat and Hinerangi Goodman was declared the winner and subsequently made her declaration and assumed office as a councillor. Mrs Goodman's opposition, Alison Silcock called for a recount which was undertaken by a District Court Judge which she won by one vote. Mrs Silcock was declared the new councillor for the ward and Mrs Goodman was removed from the council after just one week as a councillor.

Wakatipu ward seat in the Queenstown-Lakes District Council

15. A close election occurred in the final seat available in the Wakatipu ward in the Queenstown-Lakes District Council in 2019. When the final results were released, Mr Mason was one vote in front of Mr Lewers. Mr Mason made his declaration and assumed office as well as undergoing councillor induction. Mr Lewers applied for a recount which found a single vote had been incorrectly recorded by vote counting software and both candidates were tied. A coin toss was then held to declare the winner. Mr Lewers won the coin toss. He was declared the winner and Mr Mason was removed from the council.

District Court Inquiry

16. Under the LEA, a candidate, or 10 electors, can file a petition demanding a District Court inquiry into the conduct of an election or a candidate or any other person at the election. The Judge of an inquiry initiated in this way must decide whether the election outcome was materially affected, and if so, whether the election should be void. The outcome of the petition could be a direction that an election (for example, in a ward) needs to be re-run or that a different candidate be declared elected. District Court inquiries are rare. Only two have been initiated in the last eight years but none have been picked up by the District Court.

What is the policy problem or opportunity?

17. The statutory sequencing of events in a tied local authority election and the timeframes in which judicial recounts can be heard, result in greater and longer uncertainty than is necessary in finalising the election results, which impacts negatively on the mana of candidates, and public respect for and trust in the integrity of the election.

The current local election recount processes create uncertainty for candidates, local authorities and communities

Uncertainty and loss of mana for candidates

18. The current sequencing of events does not minimise uncertainty for candidates who may believe they have rightfully been declared the winner and made their declaration and assumed office, only for someone else to be declared the winner. This creates uncertainty, but can put pressure on not only the candidate, but also their family.
19. Removing someone after they have made their declaration and assumed office (as happened twice in 2019) diminishes a candidate's mana for themselves and their whānau, the wider community and the council. Hinerangi Goodman said her mana had been trampled on after she attended the ceremony to make her declaration as a councillor only to then be removed. Mrs Goodman said it "was a big insult to the people

who voted for me and my own people who came down and took part in the pōwhiri at the council”.³

Uncertainty for the community and electoral integrity

20. The current system does not minimise uncertainty for the community who may not fully understand how the electoral legislation works and what the technicalities of a recount involve. This is especially the case when they see that a candidate has made their declaration and assumed office only for them to be removed after someone else has been declared the winner. Residents may also not be fully aware of why a local authority has to meet as soon as practicable when the results are still unclear.
21. In 2019 residents in the Murupara-Galatea ward were left confused and questioned why the Whakatāne District Council held their ceremony for candidates to make their declarations knowing its election results were uncertain. It also led to people in the community calling the election results a “game of musical chairs” that angered many Murupara residents.⁴
22. Whakatāne District council officials expressed concern that the current process could impact on future voter turnout, candidate nominations and engagement with government processes at all levels. Whakatāne District Council officials believed that this could be exacerbated by the fact that the electoral tie and subsequent challenges in 2019 affected some of their most isolated and disenfranchised communities.

Loss of mana for candidates, whānau and communities

23. As noted above, Mrs Goodman explained how her mana was trampled after being removed from the council after making her declaration and assuming office. The Whakatāne District Council Mayor Judy Turner said at the time that it was particularly concerning to the council that legislation guiding elections does not adequately address Te Ao Māori requirements. Mayor Judy Turner said that some adjustments should be made that better reflect the way modern councils, iwi groups and communities work together.⁵ Mayor Judy Turner said the election process had caused profound hurt to both candidates, their supporters and whānau.
24. The statutory declaration by incoming elected members at the first meeting, has been accorded significant symbolic status, particularly by Māori. This is shown by Whakatāne District Council who believe strongly that the appropriate way to welcome elected members at the beginning of the triennium, is through a pōwhiri for elected members, in advance of the first meeting of the triennium. This is what the Council did in 2019, only for the councillor to be removed from office. The Council feels, in hindsight, this was disrespectful for all parties involved and undermined confidence in the system in their communities.

The requirement to call a local authority meeting as soon as practicable creates uncertainty for local authorities

25. As local authorities are required to call the first meeting as soon as practicable after the election they can be required to act on an incomplete result. The requirement to meet

³ <https://www.teaomaori.news/former-council-candidate-taking-legal-action-reclaim-seat>

⁴ <https://www.rnz.co.nz/news/national/402573/debate-rages-after-whakatane-councillor-ousted>

⁵ <https://www.teaomaori.news/whakatane-council-acknowledges-profound-hurt-calls-hui-mahuta>

statutory deadlines means that the new council often feels pressured to meet and start deciding on council matters.

26. The requirement for local authorities to meet means that some councillors make their declarations and assume office, so they can start to vote on local authority business, only to be removed after the results of a judicial recount have been confirmed. It also means that the successful candidate who hasn't made their declaration and assumed office, has to play catch up on any council business. They may also have missed out on voting on a matter that they had campaigned on, or on something they firmly believed in.
27. The requirement to conduct business was the justification given by the Whakatāne Mayor as to why the council had to meet while some of the election results were uncertain. The Mayor said there was pressure to get things back to business as usual as their annual report needed to be approved by 31 October.
28. Local authorities also hold induction programmes for new councillors which is important for them to understand how a council works. In the 2019 Queenstown-Lakes District Council election, one candidate was inducted on to the council, only to be removed, while the eventual successful councillor missed out on the original induction. This forced the new councillor to be inducted by themselves.

Local government representative views on the problem

29. When the Minister requested advice on options to amend the recount provisions, the Department engaged in targeted consultation with officials from Whakatāne District Council and Queenstown Lakes District Council, and Taituarā's Democracy and Governance Working Party and the Electoral Sub-committee. We acknowledge that consultation has been limited and may not reflect all views in local government, although Taituarā's Working Party and Sub-committee does represent a range of people across the local government sector.
30. Whakatāne District Council officials consider that it is of the utmost importance to the Council that any changes to the law considers the principles of transparency, efficiency and democracy in the electoral process. Whakatāne District Council considers that the local electoral process, including recounts, should be as transparent as possible to maintain the certainty and fairness that their communities demand.
31. Engagement with Taituarā and Local Government New Zealand (LGNZ) noted that tied elections are rare, and any solution should be kept in proportion. Taituarā and LGNZ believed that the solution should be dealt with through best practice guidance and support as much as possible, rather than legislative change. Taituarā and LGNZ also believe that most of the situations that arise regarding the timing of the first meeting can be dealt with through pragmatic decision-making by council staff and the chief executive. This would include planning before the election so any delay to the first meeting is not a big deal.
32. We have continued to engage with Taituarā and LGNZ as we have developed policy options. Taituarā and LGNZ representatives support the options discussed below, including those which require legislative change.

Te Aka Taiwhenua team

33. The Department has engaged with its internal Te Aka Taiwhenua team when working through this policy issue. Te Aka Taiwhenua agreed with the view that resolving an

election through a coin toss is not a mana enhancing way to settle a tie and should be avoided where possible or used only as a last resort.

What objectives are sought in relation to the policy problem?

34. The outcome sought is to provide greater certainty of election outcomes for candidates, local authorities and the community by reducing the ability for members to be removed from office through a judicial recount after they have been declared elected. A secondary objective is to ensure public confidence in, and public understanding, of local electoral processes.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

36. The criteria used to assess the options are:
- **Certainty:** Candidates, local authorities, and the public should have greater certainty in the final election results and only those candidates whose results are finalised should be able to participate in local authority meetings.
 - **Flexibility:** Local authorities should be able to conduct their business without unreasonable obstruction and delays.
 - **Transparency:** Candidates, local authorities and the community should be able to understand and trust the electoral process.
 - **Avoiding loss of mana:** The loss of mana should be avoided for candidates, local authorities and their communities by preventing candidates from being removed from office after making their declaration and taking office.
 - **Representation:** All communities should be represented at the local authorities' meetings.
37. All criteria have been given the same weighting.

What scope will options be considered within?

38. The Minister of Local Government met with the chief executive and Mayor of Whakatāne District Council following the contested election result. Soon after, the Minister of Local Government released a press statement saying the government will act to sort out the 'coin toss problem and that it is the Minister's proposal that if there is a tied result, there should automatically be a recount'.⁶
39. The Minister's announcement has limited the scope of options available in regard to mandatory judicial recounts for tied elections.
40. A proposal to amend the dates in which annual reports are due to be signed off (31 October) has been ruled out of scope. Changing the dates for this decision may remove the pressure to swear councils in quickly after an election, but there are other decisions that need to be taken which may be specific to particular local authorities (for example, planning decisions). We believe this issue can be improved by issuing best practice guidance about trying to get the annual report signed off, and other significant decisions made, before the election.
41. The Department has looked only at scenarios where candidates are removed from office as a result of a judicial recount. It is possible that a candidate could be removed from office after a successful petition of inquiry. A petition of inquiry can be lodged up to 21 days after the election result. The only way to avoid any potential removal from a petition of inquiry would be to prevent the council from meeting while the inquiry was underway. Petitions of inquiry can take several months, and this would effectively remove any local governance for this period. Additionally, we note that petitions of inquiry are extremely rare. We have therefore ruled out any changes to the petitions of

⁶ <https://www.beehive.govt.nz/release/government-acts-sort-out-electoral-%E2%80%99coin-toss%E2%80%99-problem>

inquiry process, including suspending the 'elected' status of the candidate whose election is subject to the inquiry until it is resolved.

42. Non-regulatory options have been ruled out of scope as such option cannot resolve a problem caused by statutory timeframes.

What options are being considered?

43. We have considered four options:

- **Option One** – Status Quo
- **Option Two** – Requirement for a mandatory judicial recount for a tied result but no changes to first meeting procedure
- **Option Three:** Requirement for a mandatory judicial recount for a tied result and changes to the first meeting procedure (**preferred option**)
- **Option Four:** All candidates whose election is subject to a recount are precluded from making their declaration, but no mandatory delay to first meeting

Option One – *Status Quo*

44. Under the status quo, a candidate cannot lodge an application for a judicial recount of a tied election result until a winner has been determined by lot and the official result has been published. A candidate of a close election result can also only apply for a judicial recount after the official result has been published. Local authorities could hold their first meeting as soon as practicable even if the results of any judicial recounts were unknown.
45. The current sequencing of events in which a recount can be applied for does not provide certainty for candidates, local authorities and the public in knowing what the final election results actually are. A candidate could be removed from office after making their declaration and assuming office if the result of a judicial recount goes against them. This can result in a candidate and their whānau losing their mana when they are removed from office.
46. The sequencing of events does not make it easy for candidates and the community to understand and trust the process. The status quo can also mean that communities may be represented by someone the public has not actually voted for if the recount goes against the candidate who has made their declaration and assumed office.

Option Two – Requirement for a mandatory judicial recount for a tied result but no changes to first meeting procedure

47. Under this option, a judicial recount would be required if the official result of the election is tied between two candidates. The electoral officer would be required to request the recount and the notice of the official result would indicate that there is a tie (no winner would be declared elected) and explain the process that will be taken to resolve this. If there is a further (deadlock) tie after a judicial recount, then the tie will need to be broken. A coin toss (or similar chance-based event) would remain the way to break a deadlock tie.
48. This option does not provide transparency as it may still be difficult for candidates and the public to understand the electoral process when a local authority is holding its first meeting while a judicial recount is underway.
49. If a judicial recount is underway, the first meeting of the local authority would be able to be called as soon as practicable to enable the local authority to hold their first meeting

without unreasonably obstructing local authorities' actions. However, candidates subject to a mandatory judicial recount would not be able to attend as no winner has been declared elected, meaning certain communities would be left without representation. In the case of a close election, because one candidate will have been declared elected after the publishing of the official results, the possibility still exists where a candidate who has made their declaration and assumed office could lose their position if another candidate successfully challenges that election through a discretionary judicial recount.

50. Option Two provides greater certainty for candidates whose result ends in a tie as they will be subject to an automatic judicial recount, but it does not provide any greater certainty for candidates, local authorities and the community in the event of a close election result.
51. Under this option, a recount may impact candidates not involved in the recount. For example, if the mayoral election went to a judicial recount and one or more of the candidates had also stood for a councillor position, there could be flow-on effects from the mayoral recount in deciding which councillors are elected. The LEA provides that if a candidate wins a mayoral election and a councillor election, the next-highest placed councillor candidate wins the council position. In this example, the occupant of the final councillor position would not be clear until after the judicial recount of the mayoral election is completed.
52. Because of the diversity of council representation arrangements across the country, it is not possible to plan for every scenario. It is possible, though unlikely, that a large proportion of candidates from a single council could get caught up in the impacts of a recount. This may affect the council's quorum. Best practice would be for the council not to meet if there is a recount underway, particularly if the impact of a recount seems complex.
53. This option is not mana-enhancing for candidates who have a close election result and have requested a judicial recount. Under this option candidates could still find themselves being removed from office after making their declaration and assuming office if the local authority has called their first meeting before the results of the recount are known. This does mean though that a community may have some representation at the first meeting even if they are removed at a later time.

Local Government representative views on Option Two

54. As mentioned above, the Department engaged in targeted consultation with those councils impacted in 2019 from a close and tied election, as well as Taituarā and LGNZ, who represent a significant cross section of the local government sector.
55. Taituarā and LGNZ agree that a judicial recount should occur in the case of a tied election and that it should occur before the determination by lot. Taituarā and LGNZ believe that any issues to do with the first meeting can be dealt with through pragmatic decision-making by council staff and the chief executive. This includes planning before the elections, so any delays to the first meeting are not a big deal.
56. Officials at Whakatāne District Council support an automatic recount being triggered when there is an electoral tie. Officials also support an automatic recount for close elections, but this has been ruled out by the Minister. Officials at Whakatāne District Council do not support making no changes to provisions covering the first meeting. Queenstown-Lakes District Council officials agree that a judicial recount should be

automatic if a result is tied but that the first meeting should not be delayed until automatic recounts are complete.

Option Three – Requirement for a mandatory judicial recount for a tied result and changes to the first meeting procedure – preferred option

57. Like Option Two, under Option Three, an automatic judicial recount would be required if the official result of the election is tied between two candidates. However, compared to Option Two, changes to the first meeting procedure means the council would not be able to hold their first meeting while a recount was underway. The prohibition on holding the first meeting would also apply if a discretionary judicial recount is taking place.
58. The chief executive would have the discretion to call a special meeting if there is urgent business that must be considered. The chief executive would have to advise all elected members and candidates who could be elected through a judicial recount of the meeting but those subject to a judicial recount (mandatory or discretionary) could not make their declaration and participate as members. Only urgent business could be considered and decisions that are otherwise mandatory (such as adopting a schedule of meetings) are deferred to a future meeting. If the recount is resolved before the meeting date, then the meeting can go ahead as usual.
59. Compared to Option Two, Option Three may prevent the situation where a judicial recount has flow-on effects for other candidates by not allowing the local authority to meet unless there is urgent business to consider. If they did call an urgent meeting, then candidates subject to a recount would not be able to attend. If there are several candidates subject to recount it could impact on a local authority being able to meet quorum by not allowing candidates subject to a recount to attend, however the chance of this happening in practice is very low.
60. Option Three provides greater certainty in the results for candidates, local authorities, and the public, as any final result will be final and only those candidates whose results are finalised can participate in meetings. It also prevents people who are subject to a recount, from making their declaration and acting as members, before subsequently being removed. This would remove the loss of mana for candidates and their whānau.
61. This option does not unreasonably obstruct or delay local authorities' actions as there still remains the ability to call a special meeting if there is urgent business to attend to. It provides greater transparency for candidates, local authorities and the public, in understanding and trusting the electoral process, by knowing that no one can make their declaration and assume office until the final results are known.
62. Under Option Three, a first ordinary meeting cannot take place if a judicial recount is underway meaning that the first ordinary meeting of a local authority will have representation from all communities around the table. Although if a special meeting is called, then there does remain the possibility that some communities will not be represented if those candidates are subject to a judicial recount.
63. An example of when communities may not be represented is if the chief executive considers adopting the annual report to be an urgent item of business that cannot wait until after the recount outcome is finalised. Decisions around what is urgent will be at the discretion of the chief executive and does involve the risk that council consideration of urgent matters is made without representation from certain communities if those candidates are subject to a recount.

Local Government representative views on Option Three

64. Sector representatives agreed that a judicial recount should be automatic if a result is tied. Some sector representatives believed that the first meeting should not be delayed until automatic recounts are complete, but any first meeting should not include any candidates who are subject to a recount.
65. Whakatāne District Council officials support automatic recounts being triggered where there is an electoral tie, and support delaying the first meeting until all recounts have been completed, so that no elected member can make their declaration while there is a possibility of a recount for their seat.
66. Whakatāne District Council officials believe that not even a special meeting should be able to be called until all the results are known because it could leave open the possibility that decisions are made without representation of certain communities. While we note the concerns of Whakatāne District Council officials, there are several other examples when communities might not be represented (for example absences, leave, or extraordinary vacancies).

Option Four – All candidates whose election is subject to a recount are precluded from making their declaration, but no mandatory delay to first meeting

67. Under this option any candidate who is subject to a recount (either a mandatory judicial recount for a tied result, or a discretionary recount) would be precluded from making their declaration and assuming office. Local authorities would be able to hold their first meeting without delay.
68. This option would provide greater certainty for candidates, local authorities and the public in the final results, as only those candidates whose results are finalised will be able to participate in the first local authority meetings. It also allows local authorities to call their first meeting without delay.
69. Candidates, local authorities and the community should be able to understand and trust the process, but some confusion may remain as to why a local authority is still meeting without all the candidates. This option would mean that certain communities would not be represented around the table while the local authority starts conducting their business.
70. This option would allow candidates and their whānau to avoid loss of mana, as candidates subject to a recount would not be able to make their declaration and assume office, meaning the ability to be removed from office is gone.

Local Government representative views on Option Four

71. There was some support for this option where representatives agreed that councils should not be prohibited from holding their first meeting after an election, even if judicial recounts are yet to be resolved. Representatives did agree if a first meeting was to go ahead then it should not include any elected members whose elections are subject to a judicial recount. Whakatāne District Council officials said that no meeting should go ahead until all the results are known.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Requirement for a mandatory judicial recount for a tied result but no changes to first meeting procedure	Option Three – Requirement for a mandatory judicial recount for a tied result and changes to the first meeting procedure – preferred option	Option Four - All candidates whose election is subject to a recount are precluded from making their declaration, but no mandatory delay to first meeting
Certainty	0 The sequencing of events for when a candidate can apply for a judicial recount does not provide certainty in the election result for candidates, local authorities and the public.	+	+	+
Flexibility	0 Local authorities can hold their first meeting where candidates make their declaration, assume office and begin conducting business, but candidates can then be removed which may further delay any future local authority business.	0	+	+
Transparency	0 Candidates, local authorities and the community do not understand and trust the electoral process based on the current sequencing of statutory events, which can be confusing for all involved.	-	+	0
Mana-enhancing	0 Candidates of a tied or close election result can be removed after making their declaration and assuming office which is not mana-enhancing for candidates and their whānau.	0	+	+
Representation	0 Candidates can make their declaration and assume office, even if their result may be subject to a recount, meaning communities will still have representation around the table.	-	+	--
Overall assessment	0	-	+(5)	+(1)

Example key for qualitative judgements:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

72. Compared to the status quo, option three best meets the criteria identified and is the preferred option. This option best addresses the problem by providing greater certainty around the timeframes for when a judicial recount for a tied election is to take place. Changing the first meeting procedure also means that candidates, subject to a close election result, cannot attend the first meeting which provides greater certainty for candidates.
73. Option Three provides certainty for candidates, local authorities and the community by ensuring that a candidate cannot be removed from office through a judicial recount after they have been declared elected. This option also ensures that a candidate's mana is not diminished by being removed from office.
74. Public respect and trust in the integrity of the electoral system is enhanced under option three as the process is simple for candidates, local authorities and the community to understand.
75. Under option three, local authorities still have the flexibility to call a special meeting if there is urgent business. While any candidate subject to a judicial recount would not be able to attend a special meeting and some communities won't be represented, the trade-off is in the certainty it provides, where the ability to be removed from office is eliminated.
76. The costs for requiring an automatic judicial recount for a tied result will be minimal as tied election results are rare. These costs are often picked up by a local authority's insurance.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups: Local Authorities	Cost of a judicial recount for a tied result but these are likely to be covered by insurance. Insurance premiums could go up.	Low	Medium
Regulators			
Others (e.g., wider govt, consumers, etc.)			
Total monetised costs		Low	Medium
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
Regulated groups Local Authorities	Greater certainty in election outcomes and first meetings' procedures.	Medium	Medium
Regulators Electoral officers	Greater clarity in the process for tied and close results	Medium	Medium
Others (e.g., wider govt, consumers, etc.) Candidates	Is mana-enhancing for candidates and their whānau.	Medium	Medium
Communities	Provides greater certainty, transparency, and integrity in the electoral system.	Medium	Medium
Total monetised benefits			
Non-monetised benefits		Medium	Medium

78. Costs of recounts vary based on size and population. Hamilton City Council estimated the mayoral recount in 2016 cost between \$30,000 to \$35,000 but this was covered by insurance.⁷

⁷ [https://www.hamilton.govt.nz/our-council/Council meetings and public information/elections2016/Pages/Election-Process.aspx](https://www.hamilton.govt.nz/our-council/Council%20meetings%20and%20public%20information/elections2016/Pages/Election-Process.aspx)

Section 3: Delivering an option

How will the new arrangements be implemented?

79. The preferred option would amend the Local Electoral Act 2001 and Local Government Act 2002. The proposal is intended to be part of an omnibus bill for local electoral reform. Separate regulatory impact statements have been completed for the separate proposals of this bill where they are required.
80. Any law change impacting on tied elections will not come into effect in the fourth quarter of 2022, after the 2022 local elections. The next triennial elections will not be until 2025. However, a tied result may arise in a by-election after the 2022 local elections and the proposed law change is expected to be in force for these.
81. Taituarā already provides guidance as part of their Elections Toolkit to electoral officers about the process they need to follow for judicial recounts. The two main election service providers also have experience in managing tied results and judicial recount scenarios and provide guidance to their local authorities on the electoral side of the process.
82. We will work with Taituarā and the two main election service providers to update any guidance following any amendments made to the Local Electoral Act 2001.
83. The Department does not see any implementation issues arising. There is a possibility that one or more local authorities may not be able to adopt their annual report by the due date if there is a recount and a first meeting is not called, however this is no different to the current position now where a local authority may be unable to adapt their annual report by the due date. There is no penalty for failing to do so.

How will the new arrangements be monitored, evaluated, and reviewed?

84. Tied elections are rare and the earliest this amendment could be put into practice is after the 2022 local authority elections (for example in a by-election following the 2022 local authority elections or a later triennial election).
85. If there is a tied election result, the Department will work with Taituarā and electoral officers to monitor how local authorities are implementing any changes. The Department will also offer any assistance if needed.
86. Feedback on the effectiveness of any law change will be communicated to the Department directly by local authorities, LGNZ, electoral officers, and Taituarā.
87. Depending on the feedback, the Department will review the current legislative settings and decide whether any further policy work or changes will need to be made.