

# Impact Summary: Changes to the process for establishing Māori wards and constituencies

## Section 1: General information

**Purpose**

The Department of Internal Affairs is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be made by Cabinet, on preparing legislative amendments.

**Key Limitations or Constraints on Analysis**

This impact analysis was prepared in a very short timeframe to enable proposed legislative changes to be enacted prior to certain statutory deadlines and electoral process deadlines.

The Minister of Local Government has announced the intention to remove the polling provisions component of the process for establishing Māori wards and constituencies as soon as possible.

The Minister of Local Government has directed that the legislative changes are to be done in two stages:

- *Stage 1* - remove the ability for binding polls to be conducted on establishing Māori wards/constituencies (including polls on council resolutions made in this local government term); and
- *Stage 2* - establish a new process for decisions on whether to establish Māori wards that is better aligned with the current process for establishing general wards and constituencies (these changes would be enacted in time to apply to the 2022-2025 local electoral term).

The objectives and options in this analysis were developed within the scope of the Minister’s directions as mentioned above.

This regulatory impact analysis only relates to the Stage 1 changes. Separate regulatory impact analysis of Stage 2 legislative changes will be undertaken as those policy options are developed.

To achieve the Stage 1 changes in a way that is as transparent as possible, and minimises voter confusion about the validity of any poll demand, the legislative changes need to come into effect before 22 February 2021.

The short timeframe for developing the policy options and undertaking the impact analysis means there has been minimal consultation on the specific Stage 1 proposals. Further consultation, particularly with the local government sector and electoral officers, will occur during the legislative drafting phase but the short timeframes mean this will be constrained also.

It has not been possible to provide monetised cost estimates of the proposed approach as compared to the status quo. In two instances (communications costs and electoral service provider costs) this is due to the time constraints and access to what is likely to be commercially sensitive information. In relation to the Local Government Commission's costs it is not possible to estimate this until the final list of councils which opt to establish Māori wards is known.

**Responsible Manager (signature and date):**



Michael Lovett  
Acting Deputy Chief Executive  
Central/Local Government Partnerships Group  
Department of Internal Affairs

*To be completed by quality assurers:*

**Quality Assurance Reviewing Agency:**

Department of Internal Affairs

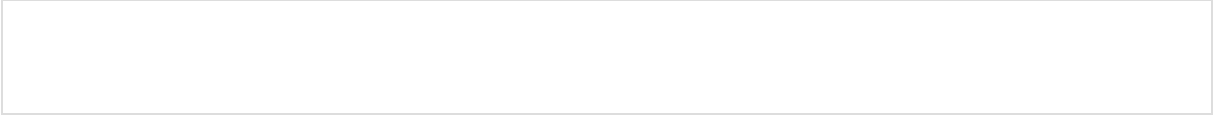
**Quality Assurance Assessment:**

The RIA partially meets the quality assurance criteria.

**Reviewer Comments and Recommendations:**

Overall, the RIA puts forward a convincing case for legislative change to the Māori wards system, and is concise and easy to read. The inclusion of a status quo option within the RIA gave more balance to the analysis, however the option could have been used to test the robustness of the assumption that immediate legislative change is required.

The RIA acknowledged the significant time limitations. This meant that consultation on the proposed Stage 1 legislative changes with the general public, local authorities, and iwi/hapū, was not possible. However, the RIA noted that there was consultation with five government agencies, and some stakeholder views were gauged from earlier engagement on the issue.



## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

The Local Electoral Act 2001 was amended in 2002 to provide councils and electors with the option of establishing Māori wards (in the case of territorial authorities) and constituencies (in the case of regional councils). Māori wards provide New Zealanders on the Māori electoral roll with dedicated elected representation on councils.

Māori wards are a mechanism through which councils can both achieve better representation of Māori members of their communities in council decision-making, and ensure Māori issues are much more visible within council thinking and processes.

The process allows for Māori wards and constituencies to be established either by council resolution or as a result of a poll of electors. If the council makes a resolution to establish a poll or constituency, that resolution can be countermanded by a poll of electors. The poll will only take place if it is demanded by 5% or more of the electors in the relevant district or region.

#### Overarching problem definition

The poll provisions have proven to be an almost insurmountable barrier to establishing Māori wards and constituencies. Between 2002 and 2019, only two councils have been able to use the process under the Local Electoral Act 2001 to establish Māori wards or constituencies. Seven council resolutions have been countermanded by polls, and seven council-initiated polls resulted in a vote against establishment. Participation rates in these local authority polls are typically low (on average approximately 40%) and a simple majority is required to overturn the council's decision.

Over that time Māori representation figures have improved but generally Māori remain underrepresented in local government compared to their proportion of the general population.

The polls process is expensive for local authorities, particularly if it needs to be conducted as a standalone poll. The process of collecting signatures to demand a poll, and the polls themselves, are often a cause of community division and animosity. This is detrimental to community wellbeing and disproportionately affects Māori. For these reasons councils and iwi/Māori sometimes chose not to support establishing Māori wards/constituencies to avoid these problems, rather than due to genuine consideration of the best representation model.

By comparison, the process for establishing new general wards for local authorities does not contain a poll mechanism. Instead this is done through a process which involves: a council proposal, a public consultation process, and an appeal mechanism to the Local Government Commission. This has created a two-tiered system where it is far more difficult for councils to establish new Māori wards to ensure better representation of iwi and Māori than it is to establish general wards. The process barriers have prevented some councils from using this mechanism to assist with obligations to provide opportunities for Māori to contribute to decision-making processes.<sup>1</sup>

<sup>1</sup> Section 81, Local Government Act 2002

The Minister of Local Government intends to progress legislative changes in this parliamentary term to provide for greater alignment between the Māori ward and general ward establishment process, and to remove the polling mechanism from the process for establishing Māori wards and constituencies. Finalising detailed policy proposals for a long-term legislative solution will require several months to complete analysis on the options and undertake consultation.

### **Stage 1 – specific problem definition**

Nine councils have resolved to establish Māori wards for the 2022 local elections. Members of the community in a number of these council areas have signalled that they are collecting signatures to demand a poll, and so polls are possible in a number of areas. If any valid demands are received by 22 February 2021 the relevant council(s) must conduct a poll by 21 May 2021 and the result will apply for the next six years.

Three other councils have also resolved to hold polls in conjunction with the 2022 local elections (to come into effect for the 2025 local elections). The results of those polls will also apply for two local government terms.

The Minister of Local Government has directed that legislative changes be put in place to ensure that no further binding polls take place on whether to establish Māori wards and constituencies. This is to prevent new instances of council decisions being overturned, and the negative aspects of the polling process being incurred at the same time as the Government is progressing changes to replace the existing process with the long-term solution.

## **2.2 Who is affected and how?**

### **Members of the community**

As discussed above, the current legislative process creates an almost insurmountable barrier for those councils seeking to ensure better representation for iwi and Māori in council decision-making. This means that, for councils who do not have Māori elected members, iwi and Māori are limited to participation, engagement and consultation interests rather than having a role in the decision-making function of councils. The policy proposals aim to support more opportunities for Māori to have a role in decision-making.

There are also many people within the community who consider that the community as a whole should be able to make the final decision on whether or not to establish Māori wards or constituencies, and that the polling provisions should remain as a check on elected member decision-making in relation to the council's democratic structures.

More particularly, there are individuals currently collecting signatures to demand polls on recent council decisions to establish Māori wards and constituencies. These individuals are undertaking this action, expending their time and potentially some costs, based on the expectation created by the current legislative provisions that a poll will be held if 5 percent of electors demand it.

### **Local authorities**

The proposal to remove the polling provisions from the process is intended to remove the disincentive on councils to engage in debate on establishing Māori wards and constituencies and make it easier for councils to do this if they consider it is in the best interests of community representation. The policy intent is that this will encourage more councils to consider whether establishing Māori wards and constituencies would improve Māori representation and council decision-making, without the distraction of other considerations (poll risk, cost and community division).

Some elected members will have voted in favour of establishing Māori wards or constituencies because of the expectation that the community would have the opportunity to overturn the decision if the majority of participants in a poll disagreed.

### **2.3 What are the objectives sought in relation to the identified problem?**

The objectives are to:

- prevent polls taking place on whether to establish Māori wards or constituencies;
- make it easier for local authorities to establish Māori wards or constituencies if they consider this is the best way to support Māori representation in local authority decision-making; and
- minimise or mitigate unfairness on individuals, elected members or organisations who may have taken actions based on expectations created by the existing legislative rules.

# Section 3: Options identification

## 3.1 What options have been considered?

The criteria used to assess the options are:

- Does it achieve the objectives?
- Does it make the legislative changes as transparent as possible (particularly for those already participating in the process under the existing legislative rules)?
- Does it minimise unnecessary cost on local authorities (e.g., expenditure on processes that are subsequently nullified).

It is relevant to the analysis below to note that, as at the time of writing, the proposal is for the legislative changes to be enacted in the week starting 15 February 2021. This is relevant to the assessment of the options below because:

- the statutory deadline for demanding a poll is 22 February 2021 (if the outcome is to apply to the 2022 local elections); and
- if any valid poll demands are lodged by 15 December 2020 the voting papers would need to be sent out by 22 February 2021.

### Option 1 – Status quo

Under the status quo current and future resolutions by councils to establish Maori wards and constituencies are subject to the right for 5% of electors to demand a binding poll to countermand the resolution. Binding polls can also be initiated by the councils themselves, or by 5% of electors who are seeking for Maori wards or constituencies to be established.

*Advantages:*

- a poll would still occur if a valid demand is lodged in line with the current expectations.

*Disadvantages:*

- this would not meet the objective of preventing polls taking place or making it easier for local authorities to establish Māori wards or constituencies if they consider this is the best way to support Māori representation in local authority decision-making.

### Option 2 – Raise the threshold for a valid demand (e.g. to 20%)

Under this option the electoral officer could only confirm a demand for a poll as “valid” if 20% of registered electors had signed the demand (increased from the current 5%). This new threshold would apply both to future poll demands and demands currently being collated.

*Advantages:*

- a more significant proportion of the community would need to demonstrate dissatisfaction with the council’s decision before a poll was required
- a poll would still occur if a valid demand is lodged (but with a new definition of “valid”), in line with the current expectations.

*Disadvantages:*

- a poll could still be demanded if the higher threshold was met and the council would be required to proceed with the poll

- this lacks transparency by raising the bar required for a valid demand, so late in the process<sup>2</sup> that it is unlikely that petitions could meet the requirement, while still purporting to have allowed a demand for a poll.

### **Option 3 – Change who can sign the demand (e.g. only electors on the Māori roll)**

Under this option only electors on the Māori roll at the time of the previous triennial election would be able to sign the demand for a poll. Any signatures from non-Māori, or Māori who were on the general roll at the previous triennial election, would not count towards the 5% threshold for a valid demand. This new criteria would apply both to future poll demands and demands currently being collated.

#### *Advantages:*

- the poll would only be able to be initiated by those most directly affected by proposals to establish Māori wards and constituencies and the outcome would assist the council to understand if the establishment proposal was the best way to support representation of the local Māori community
- a poll would still occur if a valid demand is lodged (but with a new definition of “valid”), in line with the current expectations.

#### *Disadvantages:*

- a poll could still be demanded if the higher threshold was met and the council would be required to proceed with the poll
- this lacks transparency by significantly changing the signatories required for a valid demand, so late in the process that it is unlikely that petitions could meet the requirement, while still purporting to have allowed a demand for a poll
- electors of Māori descent on the general roll, who in future could change rolls to vote in a Māori ward election, would not get to vote on this poll.

### **Option 4 – Repeal the poll provisions and provide local authorities a fresh opportunity to establish Māori wards and constituencies**

Under this option no pending or future polls would take place. This includes council-initiated-polls, and polls initiated by electors seeking to have Māori wards and constituencies established.

#### *Advantages:*

- this option is transparent in the objective and outcome of the legislative change, rather than “shifting the goalposts” during the demand period
- councils would be able to make decisions on whether to establish Māori wards or constituencies without concerns about risks of cost and divisiveness of a possible poll.

#### *Disadvantages*

- current expectations (that a poll will be held if a valid demand is lodged) will not be met.

However, for this option, some transitional provisions would be recommended to mitigate potential unfairness to:

- elected members who voted in favour of establishing Māori wards or constituencies on the understanding that electors would have the opportunity to demand a poll; or

<sup>2</sup> Some petitioners may already have met the 5% threshold when the changes came into effect and stopped collecting more signatures.



- other councils which did not consider whether to establish Māori wards/constituencies for 2022, or which decided against attempting to establish these for 2022, because of the risks and challenges associated with the current legislative process.

As is discussed in Section 6.1 it is proposed that the transitional provisions for the legislative changes would provide a window of time in 2021 for these councils (as well as all other councils who do not already have Māori wards or constituencies) to reconsider whether they wish to establish Māori wards or constituencies by resolution under the new process (the Stage 1 legislative changes).

However, there is a question about whether those local authorities, which have resolved to hold polls at the 2022 local elections, should be able to continue with the planned poll if they prefer. The two options are:

*Option 4a - Allow the local authority to opt to continue with a binding poll at the 2022 election as planned (status quo)*

This option allows the councils to proceed with their preferred process for reaching a decision on whether to establish Māori wards and constituencies, but does not meet the objective of preventing binding polls being held.

*Option 4b - Prevent the local authority from holding a binding poll at the 2022 election*

This option meets the objective of preventing binding polls being held and the final decision-making function would still sit with the local authority which is more in line with the policy objectives for the legislative changes.

#### **Other options discounted**

The Department also considered options relating to changes to the way the poll itself would be conducted, such as raising the threshold for a poll result to overturn the outcome. These options are less preferred as they do not achieve the objectives of minimising the costs to councils and avoiding divisive community processes.

### **3.2 Which of these options is the proposed approach?**

Within the parameters of the direction from the Minister of Local Government (see Key Limitations or Constraints on Analysis), we consider that the best option is for any valid demands for a poll to have no effect, so that the council must not proceed to conduct the poll (Option 4).

Within the identified constraints, this option provides the most transparency about the intended effect of the legislative changes to individuals, elected members and organisations currently involved in the process for councils establishing Māori wards and constituencies.

On the question of transitional arrangements for councils who have resolved to hold a council-initiated poll at the 2022 local elections, we consider that Option 4b is the best for the reasons given in Section 3.1 above.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

<b>Affected parties (identify)</b>	<b>Comment:</b> nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>
<b>Additional costs of proposed approach, compared to taking no action</b>		
Regulated parties	N/A	-
Regulators	The Local Government Commission may receive a higher number of objections and/or appeals from representation reviews.	Low
Wider government	Local authorities' consultation costs before consider/reconsidering establishment will be optional.	Nil
	Communications costs for affected councils.	Low
Other parties	Electoral service providers will not be paid for polling services that are no longer required.	Low-Medium
	Electors who would have been able to vote in any polls demanded in 2021, or in the future, will not have this option.	Medium
	Electors who wish to demand a poll in the future will not have this option.	Medium
<b>Total Monetised Cost</b>		Nil
<b>Non-monetised costs</b>		Low-Medium
<b>Expected benefits of proposed approach, compared to taking no action</b>		
Regulated parties	N/A	
Regulators	N/A	
Wider government	Local authorities are better able to ensure effective Māori representation from after 2022 elections	High
	Local authorities can reduce or avoid costs of polls	(Approx \$30k-\$250k per council, depending on the size of the council)
Other parties	Likelihood of Māori members of the community having greater representation in local authority decision-making.	High

<b>Total Monetised Benefit</b>		Approx \$30k-\$250k per council
<b>Non-monetised benefits</b>		High

#### 4.2 What other impacts is this approach likely to have?

Members of the relevant communities who are currently collating signatures for demands for a poll will not have their expectations met, even if they meet the current threshold of 5% of electors signing the demand.

Three local authorities resolved to hold a binding poll on whether to establish Māori wards and constituencies at the 2022 local elections. Under the proposed changes they will not be able to hold a binding poll, even if the council preferred to continue with this.

See comments in Section 5 re consultation.

## Section 5: Stakeholder views

### 5.1 What do stakeholders think about the problem and the proposed solution?

#### Consultation on the specific Stage 1 proposals

Due to the short timeframes for policy development, only key government agencies have been consulted on the specific proposals in the Cabinet paper (Ministry of Justice, Te Puni Kokiri, Te Arawhiti, the Department of the Prime Minister and Cabinet and Treasury). No particular concerns were raised about the Stage 1 proposals in the Cabinet paper. Te Arawhiti noted strong support for the proposals while also acknowledging that making changes to democratic processes without consultation will prompt a negative reaction from some members of the public.

We intend to undertake some consultation with the local government sector during the legislative drafting stage (and particularly those councils which have resolved to establish Māori wards and constituencies for the 2022 elections, or which have resolved to hold a poll on the issue at the 2022 elections). However, the legislative timeframes for enactment will put limits on this consultation.

Changes to democratic processes for local government should be accompanied by an opportunity for consultation with the general public, and in this case, specific consultation with local authorities (elected members and staff), electoral officers, and iwi/Māori. This view was endorsed by the Ministry of Justice because of the constitutional nature of electoral processes. This consultation has not been possible within the timeframes.

#### Other consultation processes or commentary

##### *Petitions to Parliament*

There has been an opportunity previously for the public to make submissions on the more general issue of whether the poll provisions should be removed from the Māori wards process. A petition by Andrew Judd<sup>3</sup> that “the House of Representatives consider a law change to make the establishment of Māori wards on district councils follow the same legal framework as establishing other wards on district councils” was considered by the Justice Committee as part of the *Inquiry into the 2017 General Election and the 2016 local elections*. (The process for establishing other wards is briefly described in section 2.1). 27 submitters were in support of the petition and five submitters were opposed. The summary of the submissions on that petition is available at pages 41-45 of this report: [https://www.parliament.nz/resource/en-NZ/52SCJU\\_ADV\\_78888\\_JU68007/27b6dd891ee0dc00f54cd61b8f42b2539db1f4f8](https://www.parliament.nz/resource/en-NZ/52SCJU_ADV_78888_JU68007/27b6dd891ee0dc00f54cd61b8f42b2539db1f4f8)

Submissions in favour of the petition argued that:

- the current process has done little to improve Māori representation in local government
- the current process makes it more difficult for councils to meet legislative requirements to facilitate Māori participation and representation
- having separate processes for Māori wards was detrimental to Māori and inconsistent with the obligations of the Crown under the Te Tiriti o Waitangi/Treaty of Waitangi
- the current process amounts to the majority having the right to make decisions on a matter affecting the rights of a Māori minority.

<sup>3</sup> Petition 2014/0060

Submissions against the petition focussed on opposition to the concept of separate Māori wards more generally and argued that all New Zealanders already have equal rights, and additional representation is unnecessary. Some raised concerns that the petition proposal would limit the right of people to vote for all of their representatives.

The Justice Committee did not reach an agreed position on the petition and no recommendations were issued.

A further petition urging the repeal of the poll provisions was delivered to the House of Representatives by ActionStation on 2 December 2020.

#### *Support from Local Government New Zealand*

Local Government New Zealand wrote to the Government on [22 March 2018](#) seeking removal of the poll requirement when establishing Māori wards and constituencies.

#### *Recommendations to take steps to improve Māori representation*

In 2010, the Waitangi Tribunal heard, through its inquiry into claims brought by tangata whenua in Tauranga Moana, that “the current composition of local bodies does not adequately reflect or represent Māori interests [and] the Crown needs to intervene to ensure that Māori are represented on councils.” The Tribunal’s report found that the Crown must ensure that its te Tiriti/Treaty obligations are upheld, even when it delegates functions to local government, and that this includes the equal rights of Māori with other citizens when participating in democratic electoral processes afforded by Ko te Tuatoru/Article 3 of te Tiriti/the Treaty.

Also in 2010, the Human Rights Commission reported that Māori constituencies can help councils to better meet their obligations for Māori participation under the Local Government Act 2002, and stated that unless positive steps are taken to improve Māori electoral representation at local government, the Māori voice “will continue to languish well below the proportion of Māori in the population.”

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

The Stage 1 changes are to be made through amendments to the Local Electoral Act 2001. Timing for these changes will be subject to Cabinet decisions and the parliamentary process but the policy intent is that the changes will take effect before 22 February 2021.

Plans for communicating the changes to local authorities have not yet been developed but this is likely to be done through direct communications or through sector representative organisations (Local Government New Zealand and the Society of Local Government Managers).

The proposal in the Cabinet paper is that, once the legislation comes into effect, local authorities will be required to treat any demands lodged for during the current local government term as having no effect, including any lodged before the legislation took effect. In practical terms this means that local authorities will not be able to conduct elector-initiated polls on the recent council resolutions to establish Māori wards or constituencies, nor will they be able to conduct binding council-initiated polls. If electoral officers have begun the processes to conduct elector-initiated polls, they will need to stop.

It is proposed that the transitional provisions for the legislative changes will provide a window of time in 2021 for all councils that do not already have Māori wards or constituencies to reconsider whether they wish to establish these under the new process (the Stage 1 legislative changes). This opportunity includes those councils that had already decided to establish Māori wards or constituencies, or those who resolved to hold a poll on the issue at the 2022 local elections.

The implementation of the new arrangements will be the responsibility of electoral officers for the local authorities and of the local authorities themselves. Consultation with these parties has not yet taken place and will be part of the legislative drafting phase (see sections 4.2 and 5.1 above) so some implementation risks may yet be identified.

The Stage 1 changes are proposed to come into effect following royal assent and the intention is that this will occur in the week beginning 15 February 2020. This timeframe is designed to minimise the risk of any voting papers having been sent out for polls before the demand for a poll is deemed to be of no effect. The Department will work with electoral officers during the legislative drafting phase to support successful implementation of the legislative changes. However, we note that the timing of the legislative changes means that some councils may incur costs involved in preparing polling documentation (as required under the current legislative rules) even though the polls will not proceed if the legislation is enacted.

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

The Department will monitor the progress of implementation of the changes by following local authority meeting agendas and minutes, and maintaining contacts with electoral officers and local authority officials.

This information will be used to update the Department’s current tracking of council and poll decisions on establishing Māori wards and constituencies (a table of data on polls and decisions).

## 7.2 When and how will the new arrangements be reviewed?

The proposed Stage 1 changes will be reviewed as part of the work to put in place a longer-term solution (within the current parliamentary term). The scope and approach of the policy development for the Stage 2 work is yet to be developed but the Department envisages that broad consultation will be undertaken prior to introduction of legislation.