

# Improving the mechanism for establishing Māori wards and constituencies at local government

## Coversheet

<b>Advising agencies</b>	Department of Internal Affairs
<b>Decision sought</b>	This analysis has been prepared to inform Cabinet decisions regarding consultation on improving the mechanism for establishing Māori wards and constituencies at local government
<b>Proposing Ministers</b>	Minister of Local Government

## Section A: Summary: Problem and Proposed Approach

### Problem Definition

#### What problem or opportunity does this proposal seek to address? Why is Government intervention required?

There are separate processes in law for local authorities (“councils”) to consider establishing Māori wards and constituencies (“Māori wards”) and general wards and constituencies (“general wards”). As a first step to improving the alignment between these two processes, in February 2021 the Government amended the Local Electoral Act 2001 (“the Act”) to:

- Repeal all mechanisms for local authorities (“councils”) to conduct binding polls on whether to establish Māori wards and constituencies (“Māori wards”); and
- Provide councils with additional time to consider establishing Māori wards ahead of the 2022 local elections.

Even with the poll option repealed, there remain other differences between the Māori ward process and the general ward process. There is an opportunity to improve the alignment and sequencing of these processes and potentially providing more time for decision-making and/or consultation, and an opportunity to establish an enduring, streamlined process that is easier for councils and the public to understand.

### Summary of Preferred Option or Conclusion (if no preferred option)

#### How will the agency’s preferred approach work to bring about the desired change? Why is this the preferred option? Why is it feasible? Is the preferred approach likely to be reflected in the Cabinet paper?

A preferred approach will be developed following public consultation, which is proposed for mid-2021.

This analysis identifies a package of issues, most of which are interrelated components of the representation review process. We are considering, and public consultation will inform, which issues, if any, to address – and how to do so.

## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

Costs and benefits will be assessed following public consultation once a preferred option has been determined.

### Where do the costs fall?

Costs and benefits will be assessed following public consultation once a preferred option has been determined.

### What are the likely risks and unintended impacts? how significant are they and how will they be minimised or mitigated?

Risks and impacts will be assessed following public consultation once a preferred approach has been determined.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

Issues resulting from differences between the Māori wards process and general wards process have been known for some time. Due to the unprecedented number of councils making Māori wards decisions in 2020 and 2021, these processes have come under increased scrutiny in media reporting and public discourse (for example, in public submissions to local authorities and debating points made by individual councillors in council meetings).

Select committee submissions on the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill in February 2021 demonstrated public interest in Māori ward processes and for these to be improved. During a two-day submission period, 12,508 written submissions were received. Analysis of the submissions in the Departmental Report showed that 2,948 supported the initial reforms proposed by the Bill. While there were many more submissions opposed to the Bill, in part because of the way the Government used urgency to expedite its passage, some opposed submitters acknowledged there was room for the two processes to be brought closer together.

Peak bodies have called for change for some time. In 2018, Local Government New Zealand wrote to the Government highlighting the problems with the poll provisions and their preference for a legislative framework “that will enable mature and constructive conversations about options for Māori representation.” This followed several years of reports by the Waitangi Tribunal<sup>1</sup> and Human Rights Commission<sup>2</sup> on the level of Māori representation in local government. These reports have reiterated that the Crown’s obligations under Te Tiriti o Waitangi/the Treaty of Waitangi must be upheld when Crown functions are delegated to local government, including upholding the equal rights of Māori with other citizens to participate in democratic electoral processes. Further, these reports have warned that unless positive steps are taken to improve Māori representation in local

<sup>1</sup> Waitangi Tribunal. September 2010. *Tauranga Moana, 1886–2006* (chapter 6). <https://waitangitribunal.govt.nz/news/tauranga-moana-18862006-released-2/>.

<sup>2</sup> Human Rights Commission. October 2010. *Māori Representation in local government: the continuing challenge / He kanohi Māori kei roto i te kawanatanga ā-rohe: te taki Moroki*. [https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010\\_16-07-00\\_MaoriRepresentation\\_web.pdf](https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010_16-07-00_MaoriRepresentation_web.pdf).

government, Māori will continue to be underrepresented. Māori representation does appear to be slowly improving on its own, but we acknowledge the evidence around the proportion of councillors who identify as Māori is poor and subject to wide regional variation. This is discussed further in section 2.3.

The identification of issues and options has been informed by previous discussions with local government electoral officers and Local Government Commission staff. This evidence base will be supported and expanded through public consultation.

*To be completed by quality assurers:*

#### Quality Assurance Reviewing Agency:

Department of Internal Affairs

#### Quality Assurance Assessment:

The panel considers that the information and analysis summarised in the RIA *meets* the quality assurance criteria, and that the draft discussion document should provide for effective consultation.

#### Reviewer Comments and Recommendations:

The discussion document is concise and describes complex processes in plain English. It convincingly describes the context and the set of issues being consulted. It asks simple questions focused on these issues, while providing space for respondents to share varying ideas. The RIA acts as an interim RIA and the discussion document will support further analysis to inform final decisions.

# Impact Statement

## Section 1: General information

### 1.1 Purpose

The Department of Internal Affairs is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.

This analysis and advice has been produced for the purpose of informing the public and key stakeholders to be consulted on a government discussion document.

### 1.2 Key Limitations or Constraints on Analysis

In February 2021, the Minister of Local Government announced that the Government will undertake a two-stage legislative process to improve the processes for local government to make decisions on Māori wards and constituencies. The first stage removed the ability for binding polls to be conducted on establishing Māori wards and constituencies.

The Minister of Local Government directed that the second stage of legislative changes would 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. The Minister's direction is that the focus of these changes will be particular points of misalignment between the two existing processes, rather than a first-principles review of the role of Māori in local government decision-making and mechanisms for Māori participation in local government.

The Minister also directed that the second stage of legislative changes would be put in place in the current term of Parliament, in time for councils to make decisions about Māori wards in the next term of local government, which begins after the 8 October 2022 local elections. This means that legislation setting out any new representation processes will need to be passed by the end of 2022 so that council decisions can be made in 2023.

The objectives and options in this analysis were developed within the scope of the Minister's directions.

The analysis does not identify preferred options. The purpose of this analysis is to inform stakeholders to be consulted on a government discussion document. Preferred options will be identified as an outcome of this consultation.

### 1.3 Responsible Manager (signature and date):



Martyn Pinckard  
Acting General Manager, Local Government Branch  
Department of Internal Affairs

17 June 2021

## Section 2: Problem definition and objectives

### 2.1 What is the current state within which action is proposed?

#### **Māori wards and constituencies have been part of local government representation arrangements since 2001**

The Local Electoral Act 2001 (“the Act”) provides that local authorities (“councils”) can establish wards (in the case of territorial authorities) and constituencies (in the case of regional councils) to ensure that communities of interest are represented through local democracy (“wards” is often used as a shorthand to refer both to wards and constituencies regardless of the type of council). For example, in a district that includes an urban majority population and a rural minority population, a combination of urban and rural wards can ensure that both communities of interest are represented on council.

The Act was amended in 2002 to provide councils and electors with the option of establishing Māori wards and Māori constituencies. Māori wards provide New Zealanders on the Māori electoral roll with dedicated elected representation on councils, increase the diversity of representation at the council table, and recognise the Māori–Crown relationship at a local level. Māori wards are a mechanism through which councils can ensure that Māori communities are represented on council and, in doing so, both achieve better representation of Māori in council decision-making and improve the visibility of Māori issues within council thinking and processes.

Electoral divisions for the representation of New Zealanders on the general electoral roll are therefore described as general wards.

#### **The processes for councils to consider Māori wards and general wards are separate and inconsistent**

Since the introduction of Māori ward legislation in 2002, councils have been required to consider creating Māori wards and general wards under different (but related) processes.

The process for establishing new general wards is through a single-stage process called a “representation review” (sections 19A–19Y of the Act). All councils are required to complete a representation review at least every six years, between 1 March and 20 November in the year before the next local government election (for example, 2021 for the current term of local government).

Through a representation review, the council must decide:

- How many councillors will be elected;
- Whether there will be any general wards or if all councillors will be elected at large;
- If there will be general wards, whether some councillors will be elected through those wards and some will be elected at large;
- If there will be general wards, the names and boundaries of those wards;
- Whether there will be any community boards; and
- If there will be community boards, the names and boundaries of those community boards.

Councils must release an initial proposal for public consultation and must issue a final proposal after hearing community feedback. The community may appeal or object to the final proposal. The outcome of any appeals or objections is decided by the Local Government Commission. Both the council and the Local Government Commission are required to consider “fair and effective representation for individuals and communities.” This includes considering:

- Fair representation by ensuring that each ward, where appropriate, has proportionate population to the number of councillors elected by the ward; and
- Effective representation for the council area as a whole (by deciding the total number of councillor positions) and for communities of interest within the council area.

In contrast, the process for establishing new Māori wards is through a two-stage process. In the first stage (section 19Z of the Act), the council may make an initial decision by 23 November two years before the next local government election (for example, 2020 for the current term of local government). Through the Stage 1 amendments, for the 2022 local elections only, this deadline was extended to 21 May 2021.

If a council agrees to have Māori wards at the next election, it must conduct a representation review (section 19ZH of the Act). The representation review will include all decisions about general wards (as listed above) and equivalent decisions about the implementation of Māori wards. These decisions include the number of positions available, whether Māori roll councillor positions will be elected at-large by all Māori roll electors or in wards, and the names and boundaries of those wards. The number of Māori roll councillor positions available is determined by a formula in Schedule 1A of the Act which is designed to ensure that the proportion of Māori roll councillor positions to general roll councillor positions reflects the Māori Electoral Population in proportion to the General Electoral Population.

Councils adopting Māori wards for the first time must also review their general representation arrangements. This is because electors on the Māori electoral roll will no longer be included in any general wards, so general ward boundaries may need to be adjusted to ensure they comply with the guidelines for fair and effective representation.

Once established, the decision to have Māori wards cannot be reviewed until after two triennial elections have been held. However, the implementation of Māori wards can be reviewed after one election in some circumstances. For example, if the council is eligible for more than one Māori roll councillor position, it can change between electing those positions at large by all Māori roll voters and electing those positions in two or more wards.

### **Repealing the poll provisions was a first step to improving alignment...**

One significant difference between the two processes was repealed from the Act under urgency in February 2021. Until that time, when a council resolved to establish a new Māori ward, the Act permitted that resolution to be countermanded by a poll of electors (the “poll provisions”). The poll would take place if it was demanded by 5% or more of the electors in the relevant district or region. There were no equivalent poll provisions for when a council wished to establish new general representation. The only other situation in local government legislation where an automatic binding referendum can be called to overturn a council decision is when a council changes between the First Past the Post and Single Transferable Vote electoral systems.

Over time, the poll provisions came to be seen as an almost insurmountable barrier to establishing Māori wards, in part because of the status of Māori—while tangata whenua—as a minority in New Zealand and the ability of the tauwi (non-Māori) majority to outvote Māori interests. Of eight decisions to establish a Māori ward between 2011 and 2017, seven were overturned by an elector-demanded poll (a poll was not demanded for the eighth). Councils could also agree to initiate their own binding polls; of eight council-initiated polls on Māori wards between 2003 and 2016, only the most recent resulted in establishment.

In 2020, nine councils decided to create Māori wards and three further councils self-initiated polls to be held alongside the 2022 local elections. Any polls to be held on these

decisions were not allowed after the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 (“the Amendment Act”) was passed in February 2021.

The Amendment Act also put in place transitional provisions so that all councils could make decisions about Māori wards in time for the 2022 local elections. From when the Amendment Act came into force on 2 March 2021 until 21 May 2021, councils could either establish Māori wards for the first time, or revoke decisions to establish Māori wards that they had made in 2020. By the end of the transition period, the number of councils with Māori wards increased from 3 at the 2019 local elections to 35.

### ... But further inconsistencies remain

Even though the poll provisions have now been repealed, other differences between the Māori wards process and general wards process remain. Six key differences have been identified. How these could be addressed will be the subject of public consultation. The six issues for consultation are discussed in detail in section 2.3.

While the decisions by the 32 councils that have recently adopted Māori wards cannot be reviewed until after the 2025 local elections, further councils have signalled their intentions to make decisions about Māori wards in the next term of local government. It is therefore timely to review this process before the next round of decision-making. If there are no further amendments to the Act by the end of 2022, future decisions must be made under the existing processes and timeframes, which means:

- There will remain inconsistencies between the Māori wards process and general wards process, such as different requirements for public consultation; and
- Where the processes diverge, decisions will be poorly sequenced (for example, councils will not be able to make any representation decisions between 23 November 2023 and 1 March 2024 because this time was previously ringfenced for electors to demand polls on Māori wards).

The Government has signalled that further changes will be made to the Act to improve the mechanism for establishing Māori wards in future, and that these changes will:

- Further align the Māori ward processes and general ward processes as much as practicable and sequence them where appropriate; and
- Apply to the next term of local government (i.e., after the 2022 local elections).

Future legislative change will focus on achieving a better alignment between the separate processes. The way that this will be achieved will be determined following consultation.

## 2.2 What regulatory system(s) are already in place?

### Local electoral regulatory system and interested agencies

The regulatory system in place is the local electoral regulatory system as set out in the Local Electoral Act 2001 (the Act), the Local Electoral Regulations 2001 and (to a limited extent) the Electoral Act 1993. Separate statutes relevant to individual local authorities include the Bay of Plenty Regional Council (Māori Constituencies Empowering) Act 2001 and the Local Government (Auckland Council) Act 2010. The regulatory system gives local authorities the responsibility for delivering their own elections within the principles of the Act and pursuant to the Act and its regulations, including the responsibility for proposing their own representation arrangements. It is part of the wider local government regulatory system, for which the Local Government Act 2002 is a principal statute.

Government regulation of local election processes ensures:

- Representative and substantial electoral participation in local elections and polls;
- Fair and effective representation for individuals and communities;
- All qualified persons to have a reasonable and equal opportunity to participate in local elections; and
- Public confidence in and public understanding of local electoral processes.

In the public sector, agency interest in the local electoral regulatory system includes interest by:

- *All 78 New Zealand local authorities*: they are responsible for operating within and implementing the local electoral regulatory system;
- *The Department of Internal Affairs*: it is the responsible agency for local government policy;
- *The Electoral Commission*: it is responsible for implementing some aspects of the regulatory system (for example, maintenance of Māori and general electoral rolls) and as the agency responsible for New Zealand's parliamentary elections;
- *The Ministry of Justice*: it is responsible for parliamentary election policy;
- *Statistics New Zealand*: it is responsible for calculating the Māori Electoral Population for each local authority; and
- *Local Government Commission*: it is responsible for considering and deciding appeals on local government ward boundaries under the Act.

In addition, there is interest in the regulatory system by:

- *Iw/hapū/whanau*: tangata whenua hold formal relationships with local government under various statutes including the Resource Management Act 1991 and Treaty of Waitangi settlement legislations;
- *Peak bodies*: Local Government New Zealand ("LGNZ") is the representative organisation for mayors, councillors and community board members. Taituarā Local Government Professionals Aotearoa ("Taituarā") is the equivalent representative organisation for local government staff members.
- *Individuals*: all eligible New Zealanders have the right to vote in public elections and an interest in our electoral systems but New Zealanders on the Māori electoral roll, including mataawaka (Māori living in a rōhe/place where they do not belong to a local mana whenua group), will have particular interest in the changes that are possible through this consultation as their voting entitlement is directly affected when councils create Māori wards.

### **Overall fitness-for-purpose of regulatory system**

The traditional roles and functions of local government are in the process of changing. The work programmes the Government is advancing to overhaul the three waters sector and the resource management system are foremost among a suite of reform programmes that will reshape our system of local government. A review into the future for local government is underway and aims to identify how the New Zealand system of local democracy and governance needs to evolve over the next 30 years, to improve the wellbeing of New Zealand communities and the environment, and actively embody the Treaty partnership. A final report will be presented by April 2023.

Against this backdrop of pending change, the Local Electoral Act 2001 is in need of significant review and revision. Exploratory work has been done with the local government sector to take a stocktake of the issues, and preliminary work has been done



on problem definition and evidence gathering for some of the higher priority issues. A comprehensive review of the legislation is recommended but is not a priority for the Government in this parliamentary term.

However, the issues to be discussed in the discussion document relate primarily to the representation review process for councils to review and update their representation arrangements (numbers of councillors and ward/constituency boundaries). The representation review process is a part of the existing legislation that is otherwise working reasonably well and is not in need of significant or urgent reform.

The representation review process and creation of Māori wards has links with four other statutes:

- *Local Government Act 2002*: This Act continues the New Zealand system of local government, describes the purpose of local government and confers powers upon local authorities. It establishes principles and requirements for local government that are intended to facilitate participation by Māori. Local authorities must act in accordance with the principle that they should provide opportunities for Māori to contribute to decision-making processes. This principle is exercised in many ways including through Māori wards. This Act also requires local authorities to adopt a Significance and Engagement Policy which sets out their general approach to determining the significance of proposals and decisions and how the local authority will engage with communities on significant and other matters.
- *Local Government (Auckland Council) Act 2010*: This Act limits the Auckland Council governing body to 20 councillors and 1 mayor. Auckland Council has identified that this limit is a barrier to Auckland Council establishing a Māori ward because it would need to dramatically reconfigure its general representation arrangements and the new general wards would not be aligned to Auckland Council local boards. The Department of Internal Affairs is considering changes to Auckland Council governance arrangements separately from the consultation on Māori ward processes.
- *Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001*: This Act provides that the Bay of Plenty Regional Council always has at least one Māori constituency. The Bay of Plenty Regional Council is therefore not subject to the provisions in the Local Electoral Act 2001 about establishing new Māori representation.
- *Electoral Act 1993*: This Act (a responsibility of the Ministry of Justice) provides for the collection and maintenance of electoral rolls including the option for electors of Māori descent to change between the general electoral roll and Māori electoral roll after each New Zealand Census.

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

#### **An opportunity to improve the processes by which individuals and communities can be represented through local government elections**

The Amendment Act changed the way that councils consider Māori wards. Without the poll provisions, it became easier for Māori wards to be established. This has been shown by 32 councils confirming the establishment of Māori wards during the Amendment Act transition period, compared to only 2 councils under the previous provisions. The increased uptake of Māori wards is expected to improve Māori representation in local

government after the 2022 local elections.<sup>3</sup> Local government in New Zealand has a broad remit, including roles within the social, environmental, cultural and economic domains and across issues where Māori have historically been underserved. Improved Māori representation can ensure that Māori perspectives are much more visible within council thinking and processes across all domains.

However, the removal of the poll provisions has highlighted further inconsistencies between the two separate statutory processes for councils to determine representation arrangements. The Māori ward provisions were designed around elector-demanded polls acting as a “check and balance” and, albeit retrospectively, an opportunity for public input on the councils’ decisions. While many councils have acted to provide opportunities for public input on Māori ward decisions in the transition period, a lack of any statutory requirement to do so in any particular way has resulted in a divergence of practice between local authorities. Further, the time allowed for the poll process is now not filled – leaving a three-month gap where formal decisions on representation cannot be made. It is reasonable to now consider new statutory requirements for public input or checks and balances, and how the Māori ward and general ward decisions are aligned or sequenced.

This is also an opportunity to improve council representation processes. Some public submissions and comments reported in the media identify an information gap at the point of councils’ initial decisions on Māori wards. Because the number of councillors to be elected via Māori wards is not known until the number of councillors is decided in the representation review (after 1 March), it is not possible to know the impact of creating Māori wards on a council’s wider representation arrangements when the initial decision is taken (before 23 November in the previous year). This contrasts to the process for general wards where this information is always available up-front. A streamlined process, with greater consistency between the decisions for Māori and general wards, might be easier for the public and councils to understand.

While many councils have already made decisions under the current, transitional provisions, more councils have signalled that they intend to make decisions about Māori representation alongside their scheduled reviews of general representation after the 2022 local elections. In addition, 2 of the councils that previously created Māori wards will be due to review their representation arrangements at the same time. The 32 councils that most recently created Māori wards will be in a position to review their representation arrangements after the 2025 local elections. It is timely to consider the differences between the two existing processes and implement any changes before these decisions will be made, to support council decision-making and public input in the future.

### **Evidence base**

The Crown has obligations under te Tiriti o Waitangi/the Treaty of Waitangi by which Māori have the right to make decisions over resources and taonga which they wish to retain and by which the Crown’s obligations to New Zealand citizens are owed equally to Māori. The Waitangi Tribunal has 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.

Statutory processes, or poor understanding of these processes, can be a barrier for councils to create Māori wards and for Māori to be represented in local government. The Waitangi Tribunal reported in 2010 that “the current composition of local bodies does not adequately reflect or represent Māori interests [and] the Crown needs to intervene to

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<sup>3</sup> As discussed further below, aggregate data on Māori representation in local government suggests that Māori are underrepresented in local government compared to their proportion of the population and is subject to local variability.

ensure that Māori are represented on councils.” It has also said that there needs to be “much more vigorous pursuit of [Māori seats in local government] if development sensitive to Māori views and aspirations is to flourish.”<sup>4</sup>

Also in 2010, the Human Rights Commission reported 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.”<sup>5</sup> While Māori representation in local government is improving, the current proportion of Māori elected members (13.5% – an estimated figure which includes mayors, councillors, local board members and community board members)<sup>6</sup> is below the proportion of Māori in the wider population (16.7%).<sup>7</sup> However, nationwide statistics hide the stark differences between some local authorities: for example, more than 18% of the Tauranga population is Māori but it has been widely reported that no Māori members have been elected to Tauranga City Council in approximately 30 years.<sup>8</sup>

The issues and options in this Regulatory Impact Analysis have also been informed by discussions with local government electoral officers and Local Government Commission staff. The evidence base will be supported and expanded through public consultation.

### **A package of issues for consideration**

We have identified six differences between the process for creating general wards and the process for creating Māori wards. These issues are often interrelated.

- *Issue 1 – Requirement to consider:* Councils are required to consider general wards every six years but are not required to regularly consider Māori wards
- *Issue 2 – Timing of decisions:* Māori ward decisions are made in two stages over two years. General ward decisions are made in a single process over one year. The initial Māori ward decision is made before any consideration of general wards can begin. The original rationale for this distinction is that time needed to be available to hold elector-demanded polls before councils could proceed with the implementation of Māori wards through a representation review.
- *Issue 3 – Opportunities for public input:* Councils must run a consultation process on general ward proposals but are not required to follow any engagement process for the initial decision on Māori wards. Previously the only opportunity to object to a council’s initial Māori wards decision was through an elector-initiated poll (now repealed). Community members may appeal the councils’ final representation proposals to the Local Government Commission.
- *Issue 4 – Decision-making rights and role for Local Government Commission:* The Local Government Commission can hear appeals and objections on the introduction of new general wards and overrule that change. Objections to the introduction of Māori wards for the first time cannot be appealed to the Local Government

<sup>4</sup> Waitangi Tribunal. September 2010. *Tauranga Moana, 1886–2006* (chapter 6). <https://waitangitribunal.govt.nz/news/tauranga-moana-18862006-released-2/>.

<sup>5</sup> Human Rights Commission. October 2010. *Māori Representation in local government: the continuing challenge / He kanohi Māori kei roto i te kawanatanga ā-rohe: te taki Moroki*. [https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010\\_16-07-00\\_MaoriRepresentation\\_web.pdf](https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010_16-07-00_MaoriRepresentation_web.pdf).

<sup>6</sup> Local Government New Zealand. October 2020. *Elected members’ profile 2019–2022*. <https://www.lgnz.co.nz/assets/Elected-member-profile-2019-2022.pdf>.

<sup>7</sup> Statistics New Zealand. November 2020. *Māori population estimates: At 30 June 2020*. <https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30-june-2020>.

<sup>8</sup> *Waikato Times*. 25 August 2020. “Māori ward to be established for Tauranga City Council in 2022 local election.” <https://www.stuff.co.nz/waikato-times/news/300090768/maori-ward-to-be-established-for-auranga-city-council-in-2022-election>.

Commission. However, the Commission can adjust boundaries of Māori wards in the same way it can for general wards.

- *Issue 5 – Discontinuance process and period in force:* There is a clear process for councils to move between representation arrangements with only general wards and those which are entirely at large, but not between having and not having (i.e., to discontinue) Māori wards. Māori wards, where established, remain in force for 2 elections and cannot be discontinued in the interim, although the council may reconfigure how these are implemented after 1 election. General wards are nominally in force for 2 elections but may be discontinued after 1 election.
- *Issue 6 – Types of polls:* Councils can initiate binding and non-binding polls on general wards, but only non-binding polls on Māori wards.

Public consultation will help to determine which of these issues are to be addressed, and how.

## 2.4 What do stakeholders think about the problem?

Key stakeholders are the local government sector and iwi Māori.

- *Local government sector:* Stakeholders include representative groups such as Taituarā Local Government Professionals Aotearoa (“Taituarā”), Local Government New Zealand (“LGNZ”) and Te Maruata,<sup>9</sup> as well as individual councils and private companies that work in the local government sector (for example, election services companies who advise councils on electoral and representation matters). This includes current local government elected members and local authority staff.
- *Iwi, hapū and marae:* They play an important role in local government providing tangata whenua and Māori perspectives to elected members and council staff and are local advocates for tangata whenua and Māori interests. Iwi have been influential in supporting councils’ decision-making processes on Māori wards, both historically and in the 2021 transition period. However, not all iwi support Māori wards at local government and prefer to maintain or seek other relationships with local government rather than a Māori ward.<sup>10</sup> The Department’s analysis of submissions on the first stage of reforms notes that at least 35 submissions were identified as being from iwi organisations and that they predominantly supported the intent of the Bill.<sup>11</sup>

In addition:

- *National interest groups* take a variety of views. These include Māori organisations, including the New Zealand Māori Council, which typically supported the first stage of legislative changes in February 2021 and other organisations, such as Hobson’s Pledge, which do not support guaranteed Māori electoral representation.

<sup>9</sup> Te Maruata is the Māori Committee of LGNZ’s national council. Its roles include promoting increased representation of Māori as elected members of local government, enhancing Māori participation in local government processes, and providing Māori input on development of future policies or legislation relating to local government.

<sup>10</sup> For example, Ngāi Tahu advised councils within its rohe, such as Christchurch City Council and Invercargill City Council, to pursue alternative avenues for Māori participation in decision-making. See: “No Māori ward for Christchurch City Council,” *The Press*, 2 February 2021, <https://www.stuff.co.nz/pou-tiaki/124127600/no-mori-ward-for-christchurch-city-council>; “Creation of Māori ward discouraged,” *Otago Daily Times*, 11 May 2021, <https://www.odt.co.nz/regions/southland/creation-maori-ward-discouraged>.

<sup>11</sup> Department of Internal Affairs. 2021. *Departmental report: Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill*. [https://www.parliament.nz/resource/en-NZ/53SCMA\\_ADV\\_105854\\_MA4325/7b21844a633035f8b6f590f0ba69344b1ac3c269](https://www.parliament.nz/resource/en-NZ/53SCMA_ADV_105854_MA4325/7b21844a633035f8b6f590f0ba69344b1ac3c269).

- *Individuals of Māori descent, including those on the Māori electoral roll, will have a view as the establishment of Māori wards directly affects the way they vote in local government elections.*

The six issues above were identified by the Department and confirmed with Taituarā's Local Elections Committee and Te Maruata. Public consultation will yield a better understanding of all views on the problem, including whether there are any other issues to be addressed, and inform the Department's preferred options. During the public consultation, the Department will contact key stakeholders to raise awareness of the consultation and offer to discuss the issues in detail.

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

The objectives are to:

- Provide local government with a permanent mechanism for making decisions about Māori wards and constituencies that aligns, as much as practicable and sequences where appropriate, the processes for making decisions about Māori wards and general wards;
- Ensure that the mechanisms for making decisions about Māori wards and constituencies, including any opportunities for public input, can be clearly communicated and understood, and provides the appropriate flexibility for and certainty to local government and communities;
- Minimise costs on local authorities; and
- Be consistent with the principles of the Local Electoral Act 2001.

## Section 3: Option identification

### 3.1 What options are available to address the problem?

The consultation will be on a package of issues, following which a preferred option will be determined. These issues are interrelated. The selection of an option for one issue may influence the selection of an option for another issue.

Options under consideration for each issue include:

#### Issue 1 – Requirement to consider

- *Status quo – No requirement to consider:* In this option, councils would not be required to regularly consider Māori wards and would continue to do so as they choose. This would mean that decisions about elected Māori representation are only made when those who are already elected choose to make them, which would be inconsistent with the general wards process.
- *All councils must consider Māori wards regularly:* In this option, councils would be required to consider Māori wards every six years (or on another frequency – subject to consultation). The six-year regular review option would be the same as for general wards. This option would provide all councils with regular opportunities to make decisions about elected Māori representation in local government. However, it would impose compliance costs on councils that are unable or unwilling to change their positions (for example, councils with low Māori Electoral Population that do not qualify for a Māori ward under the formula in Schedule 1A of the Act and councils that have or do not have Māori wards and do not wish to change this status).

- *Some councils must consider Māori wards regularly (variation 1):* In this option, only councils that already have Māori wards would be required to consider Māori wards. In effect, this would provide such councils with regular opportunities to disestablish Māori wards and may be seen as undermining efforts to improve Māori representation. It would impose compliance costs on councils that are unwilling to change their positions.
- *Some councils must consider Māori wards regularly (variation 2):* In this option, only councils that do not already have Māori wards would be required to consider Māori wards. In effect, this would provide such councils with regular opportunities to create Māori wards for the first time and may be seen as biased in favour of establishing Māori wards. It would impose compliance costs on councils that are unable or unwilling to change their positions.

## **Issue 2 – Timing of decisions**

- *Status quo – Maori wards decisions made in two stages on existing timelines:* In this option, there would remain a three-month gap between the first process ending on 23 November and the second process commencing on 1 March. Councils would be able to conduct background work in this period after making an initial decision about Māori wards and before making decisions through the representation review (for example, community consultation on the representation review). Alternatively, this time could be used for appeal consideration by the Local Government Commission or another appellant body (see Issue 4 below).
- *Māori wards decisions made in two stages and more time for Māori wards:* In this option, the 23 November deadline for an initial decision would be extended to a new date. This is likely to provide councils with additional opportunities to consult with their communities before making a decision about creating Māori wards. Keeping Māori ward decision-making in two stages would ensure that the initial Māori ward decisions are likely to have prominence on the council agenda and would not be subsumed into a larger process. However, there would still be some information gaps when the initial decision is made (for example, there would not be a confirmed number of Māori councillor positions because this decision is made after 1 March).
- *Māori wards decisions made in two stages and more time for general wards:* In this option, the 1 March start date for representation reviews would be brought forward to a new date. This is likely to provide councils with additional opportunities to consult with their communities about the implementation of Māori wards (once the initial decision is made) and about general ward arrangements. The two-stage process might raise the profile of the initial Māori ward decision; however, information gaps at the point of the initial decision would remain.
- *Māori wards decisions made in one stage, at the same time as general wards:* In this option, all representation decisions (Māori and general) would be made in a single process on a new timeframe (to be determined through consultation). An integrated process might be understood more easily but the certainty that a Māori ward must be part of a representation review (where previously resolved) would be lost. Councils might be able to change their mind about Māori wards at the last moment which could upset people who have strong views about Māori representation. Appeal rights might be needed to balance this (see Issue 4 below). Of these options, this would have the biggest impact on council work planning, although whether this is helpful or hindering will not be able to be assessed until after consultation.

### Issue 3 – Opportunities for public input

- *Status quo – Optional community engagement:* In this option, councils could make decisions about creating Māori wards without public input but could also devise their own public input process if they prefer. This would support the role of councils as a decision-maker on behalf of their communities and allow for local innovation to determine the best engagement approach (including no engagement). However, some councils who desire a clearer process may feel unsupported. If councils opt not to consult, people who hold strong views about Māori representation at local government and who disagree with the council's decision may feel frustrated or disenfranchised.
- *Community engagement required:* In this option, councils would be required to run a consultation process on an initial decision to establish Māori wards like the one prescribed for establishing general wards (specific types of engagement to be prescribed are subject to consultation – for example, with iwi, with Māori electors, with whole of community). Requiring community consultation is likely to help the council understand community views before making a decision on behalf of the community. Specific consultation requirements are not usually imposed on councils; rather, they have the flexibility through their Significance and Engagement Policies to choose how to consult on most issues. Prescribed consultation processes may be seen to limit local innovation; however, they can ensure that minimum requirements are met and support councils in their work planning.
- *Optional community engagement, iwi/hapū perspective required:* In this option, councils could run a consultation process on an initial decision to establish Māori wards if they choose but must take into consideration the perspective of local iwi and hapū. Iwi and hapū, as mana whenua, have relationships with local government under te Tiriti o Waitangi/Treaty of Waitangi settlement agreements. This option would ensure that their views are heard by councils, but could be criticised for excluding mataawaka and the wider community from the process.

### Issue 4 – Decision-making rights and role for Local Government Commission

- *Status quo – No appeals process for Māori ward creation and limited role for Local Government Commission:* In this option, a council's decision to move between having and not having dedicated Māori representation could not be appealed. The role of the Local Government Commission would continue to be only to determine the outcomes of appeals on how that decision is implemented. This would provide more certainty for councils and communities but would limit the way that members of the public are able to participate in the process. If people are dissatisfied with the council's decision-making process, judicial review would be the only way for councils' Māori wards decisions to be reviewed.
- *Appeals process for Māori ward creation and broader role for Local Government Commission as the appellant body:* In this option, a council's decision to move between having and not having dedicated Māori representation (i.e., creating or discontinuing Māori wards) could be appealed and the Local Government Commission would determine the outcome of appeal. Providing an appeals process ensures that people who feel their voices were not considered in the council's community consultation process have another opportunity to be heard (see also Issue 3). However, it may create uncertainty for the council and its communities and, subject to the timing of the appeal, impact on the council's general representation arrangements. For example, if a decision to create or not create a Māori ward was overturned in the usual Local Government Commission appeal period (January–April in the year of a triennial election) there likely would be insufficient time to consider and

implement new representation arrangements. If an appeals process is to be created, the timing will need to be carefully considered (see also Issue 2). The Local Government Commission is most likely the best-placed entity to be the appellant body as it has specialised expertise in local government representation arrangements.

- *Appeals process for Māori ward creation and another entity is the appellant body:* In this option, another entity would be selected or created to be the appellant body when council decisions to create Māori wards are appealed or objected to. Specific options will be determined through consultation.

#### **Issue 5A – Discontinuance process**

- *Status quo – the current process for discontinuing Māori wards:* In this option, no changes would be made. It is implied in section 19Z of the Act that a council can resolve not “to divide the district into 1 or more Māori wards” just as it can resolve to do so. However, local government sector representatives have advised their concerns that the current process may open councils up to legal risk as the ability for councils to reconsider Māori wards is not sufficiently clear.
- *A new, clearer process for discontinuing Māori wards:* In this option, a clear process would be provided in legislation for councils to consider discontinuing Māori wards where these have previously been established. Community consultation would be required on the same basis as establishing Māori wards (see Issue 2). This would be the same as for general wards. Providing a clearer process would support council decision-making and public understanding.

#### **Issue 5B – Period in force**

- *Status quo – Permanent establishment & optional discontinuation after 2 elections:* In this option, Māori wards would remain in force until the council decides otherwise. The council would be able to discontinue Māori wards after 2 elections. If the council reviews its representation arrangements after one election, Māori wards must be retained but can be reconfigured. This option gives the council the least flexibility but gives the community the most certainty about when decisions will be made and supports the “bedding in” of changed representation arrangements.
- *Permanent establishment & optional discontinuation after 1 election:* In this option, newly-created Māori wards would remain in force until the council decides otherwise. The council would be able to review representation arrangements after one election and either discontinue or reconfigure Māori wards. This would be the same as for general wards. This would ensure that the council has the flexibility to respond to changes of community views more frequently but would have less ability to “bed in” the changes and help people get used to the new representation arrangements.
- *Time-limited establishment:* In this option, Māori wards would remain in force only for a specified number of elections (1 or 2, subject to consultation) and a future council would need to reconfirm Māori ward creation at the next opportunity if Māori wards are to be retained. This option might require decisions about Māori wards to be made every local government electoral cycle. This gives councils and communities the most flexibility and the least certainty. As a result, a council could move between having and not having dedicated Māori representation very frequently. This could be frustrating, confusing and disenfranchising for some electors.

#### **Issue 6 – Types of polls**

- *Status quo – optional binding polls on general wards:* In this option, councils could initiate binding and non-binding polls on general wards, and non-binding polls on Māori wards. This would maintain a discrepancy with the Māori wards process, as



binding Māori ward polls are prohibited. Non-binding polls would continue to be available as a formal mechanism for councils to gauge community sentiment for a proposal.

- *No binding polls on general wards:* In this option, councils could not initiate binding polls on general wards. Councils could continue to initiate non-binding polls on both Māori wards and general wards. This would be the same as for Māori wards. While polls are a helpful way of measuring community support to inform council decisions, the binary nature of polls can prevent minority or nuanced voices from being heard. Councils have never held binding polls on general wards because the representation review process already establishes an avenue to gauge community feedback on general representation arrangements. Removing the binding poll option is unlikely to have any significant impact for local government and would ensure that Māori wards and general wards are treated the same. If this option is agreed, then the creation of any ward would be the only matter local government could not initiate a binding poll on.

### 3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

Different criteria will be used to assess the options within each issue. Some criteria will not be used for all issues, as they would not sensibly apply. The table below (continued over page) outlines which criteria will be used for each issue.

		1	2	3	4	5	6
		Requirement to consider	Timing	Public input	Decision-making rights / LGC	Discontinuance & period in force	Types of polls
<b>Titiri/Treaty commitments</b>	Does the option support the Crown to meet its Te Tiriti o Waitangi/the Treaty of Waitangi commitments?	✓	✓	✓	✓	✓	✓
<b>Equity</b>	Does the option support equity of process for Māori and general wards?	✓	✓	✓	✓	✓	✓
<b>Stability</b>	Does the option support stability of representation arrangements for individuals and communities?	✓				✓	
<b>Flexibility</b>	Does the option support flexibility for the council to adjust representation arrangements as required?	✓				✓	
<b>Cost</b>	Does the option minimise fiscal and/or compliance costs?	✓	✓	✓	✓	✓	

<b>Decision-making</b>	Does the option support informed decision-making by local authorities?	✓	✓	✓	✓	*	
<b>Public input</b>	Does the option support adequate public participation?		✓	✓	✓	*	
<b>Easy to understand</b>	Does the option promote easy-to-understand processes?		✓	✓		✓	✓

**Key:**

✓ Criteria will apply to issue.

\* Detailed options on some matters for Issue 5, which would relate to opportunities for public input and decision-making on discontinuance processes, will be informed by decisions made on the preferred option for Issue 3.

Following consultation, criteria will be weighted to reflect public and stakeholder concerns. It is therefore impossible to evaluate the options until after consultation is completed.

However, at this early stage we note that there will need to be trade-offs, for the appropriate issues:

- *Between stability of representation arrangements and flexibility for councils to adjust representation arrangements:* For example, enabling councils to reverse decisions to create Māori wards would increase flexibility but decrease the stability of representation arrangements.
- *Between minimising costs and supporting public participation:* For example, new public input requirements over and above the status quo would add new costs.
- *Between minimising compliance costs and supporting equity:* For example, requiring councils to undertake public consultation on decisions to create Māori wards would add new compliance costs.

### 3.3 What other options have been ruled out of scope, or not considered, and why?

Options not considered are:

- *Reinstating a binding poll process on Māori wards:* The Minister of Local Government has directed that binding polls on Māori wards will no longer be held. This was achieved through the passage of the Amendment Act. Reinstating a binding poll process would not align with this directive.
- *Direct appointment of iwi representatives to local authorities:* The Minister of Local Government has directed that the second stage of work on Māori wards will establish a new process for decisions on whether to establish Māori wards. Establishing new processes for Māori participation in local government is outside the scope of this work.
- *Changes to the proportional representation mechanisms in the Act:* The Act requires that the number of Māori ward councillor positions is proportional to the number of general ward councillor positions, based on the proportionality of the Māori electoral roll to the general electoral roll of the council area. Changing the way that the number of Māori ward councillor positions is calculated is outside the scope of this work as it would not align to the principle in the Act of fair representation.

- *Significant changes to the representation review process for general wards:* As described above, the representation review process is a part of the existing legislation that is otherwise working reasonably well and is not in need of significant or urgent reform. The exception is to consider removing councils' never-used ability to initiate a binding poll on general ward establishment in order to achieve alignment with the current Māori wards process.
- *Changes to the frequency of the Māori Electoral Option (MEO):* The Electoral Act 1993 provides that electors of Māori descent may change between the Māori electoral roll and the general electoral roll after each New Zealand Census. In select committee submissions on the first Māori wards Bill in February 2021, some submitters commented that they would prefer to change rolls more frequently. The MEO is a responsibility of the Ministry of Justice and, as such, changes to the MEO are not in scope of the proposed consultation.

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2?**

Impact analysis will be carried out after public consultation so that the weighting of the criteria and analysis reflects the feedback received.

## Section 5: Conclusions

**5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?**

### Preferred option

A preferred option will be determined after public consultation.

### Stakeholder views

Public consultation is proposed for mid-2021. A discussion document will be made publicly available on the Department of Internal Affairs website and officials will meet with local government sector representatives and representatives of iwi, hapū and whanau to hear key stakeholders' perspectives and to allow the impacts on and interests of local government and iwi Māori to be better understood in the development of a preferred option.

We note that during select committee consideration of the Amendment Act in February 2021, 2,805 unique written submissions and 9,703 template-style written submissions were received. More than two-thirds of unique submissions supported the greater alignment of processes through the repeal of the poll provisions but approximately 89% of form submissions opposed the Bill. Many of the opposed submissions did not support dedicated electoral representation for Māori. However, opposed submissions also raised that the community should have a say on whether a council adopts Māori wards. This issue will be considered during public consultation.

The issues to be consulted on are, in some part, already known by key stakeholders. LGNZ's submission on the first stage of changes in February 2021 noted that the removal of the poll provisions created several consequential issues including the role for the Local Government Commission, process for discontinuing Māori wards and timing. Submissions

from several iwi also noted a willingness for further reform to Māori participation in local government —though some of these are out of the scope of the current consultation.

## 5.2 Summary table of costs and benefits of the preferred approach

Costs and benefits will be assessed following public consultation once a preferred approach has been determined.

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

Other impacts will be assessed following public consultation once a preferred approach has been determined.

## 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

Compatibility will be assessed once a preferred approach has been determined. It is intended that the preferred approach will be compatible with the Government's 'Expectations for the design of regulatory systems'.

# Section 6: Implementation and operation

## 6.1 How will the new arrangements work in practice?

Implementation and operation will be assessed following public consultation once a preferred approach has been determined. A preliminary approach is outlined below.

### Giving effect to and communicating the preferred option

Unless the preferred option after consultation is to continue the status quo on all issues, legislative change to the Local Electoral Act 2001 will be required to give effect to the preferred option, whichever it be.

The new process for councils to make decisions about Māori wards should be in place early in the 2022–2025 term of local government so that incoming elected members can understand their roles and responsibilities if their council is in a position to make decisions on Māori wards before the 2025 local government elections. Therefore a Bill to change Māori ward processes should be enacted by the end of 2022.

The Department does not foresee transitional arrangements being necessary.

Plans for communicating the preferred option to local authorities have not yet been developed but this is likely to be done through sector representative organisations (Taituarā and LGNZ).

### Ongoing implementation and timing

The implementation of any new arrangements will be the responsibility of local authorities. Consultation with local authorities has not yet taken place. Their feedback, including on their ability to make decisions on Māori wards through any of the proposed options, will inform the preferred option.

The intention is that a Bill is enacted by the end of 2022. Local authority Māori ward decision making typically takes place in the second half of the year in the year after local authority elections (i.e., late 2023). The proposed options do not propose giving local authorities less time to make these decisions so should not constrain their ability to make decisions in future.

Post-consultation, the Department will work with technical experts in the local government sector (for example, electoral officers) during the legislative drafting phase to support successful implementation of the legislative changes.

## **6.2 What are the implementation risks?**

Implementation risks will be assessed following consultation and the selection of a preferred option.

# **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 implementing any changes by following local authority meeting agendas and minutes, by maintaining contacts with electoral officers and local authority officials, and as part of the Department's ongoing monitoring of local government election statistics.

We note that (subject to decisions about the timing of processes) any new arrangements will likely not be used by local government until 2023 and 2024.

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

Any changes made as an outcome of this consultation will be reviewed as part of the Department's regulatory stewardship and monitoring roles with respect to the local government sector.

Local government will be able to raise concerns with any changes made directly to the Department as part of the ongoing partnership between central and local government, including any concerns on behalf of their mana whenua partners or on a national level through LGNZ, Taituarā or Te Maruata.

Parliament's Justice Committee regularly initiates inquiries into triennial local elections. These inquiries usually carry a broad scope so could be an opportunity for people to provide feedback to Parliament on Māori ward processes, as well as the recent and upcoming changes to these.