

Regulatory Impact Statement

Improving the mechanisms for Māori electoral representation at local government

Coversheet

Purpose of Document	
Decision sought:	The analysis in this Regulatory Impact Statement has been produced for the purpose of informing final Cabinet decisions.
Advising agencies:	Department of Internal Affairs
Proposing Ministers:	Minister of Local Government
Date finalised:	11 November 2021

Problem Definition
<p>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”).</p> <p>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:</p> <ul style="list-style-type: none">• Repeal all mechanisms for councils to conduct binding polls on whether to establish Māori wards; and• Provide councils with additional time to consider establishing Māori wards ahead of the 2022 local elections. <p>Even with the poll option repealed, there remain other differences between the Māori ward process and the general ward process.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, to provide more time for decision-making and/or consultation, and to establish an enduring, streamlined process that is easier for councils and the public to understand. Addressing these problems is a way to give better effect to the Crown’s commitments under te Tiriti o Waitangi/the Treaty of Waitangi, particularly its obligation to serve equitable outcomes to Māori.</p>

Executive Summary

The processes for councils to consider Māori wards and general wards are different in six substantive ways. Some of these differences have been highlighted by the removal of the Māori ward poll provisions by urgent legislation in February 2021. Failure to further amend these processes will mean they are unlikely to be fit for purpose in the long term. The current processes for councils to consider Māori wards and general wards are summarised in this regulatory impact statement at paragraph 16 and explained in more detail in our two previous regulatory impact statements:

- *Changes to the process for establishing Māori wards and constituencies* (December 2020). <https://www.treasury.govt.nz/sites/default/files/2021-02/ria-dia-cttp-feb21.pdf>
- *Improving the mechanism for establishing Māori wards and constituencies at local government* (June 2021). <https://www.treasury.govt.nz/sites/default/files/2021-07/ria-dia-ime-jun21.pdf>

The Department of Internal Affairs consulted with the public over July and August 2021 to identify whether these differences should be addressed and, if so, what changes should be made. The outcome of the consultation was clear that Māori ward processes and general ward processes should be the same, where possible. However, there are some situations where this may not be appropriate. There are instances where te Tiriti o Waitangi/the Treaty of Waitangi considerations necessitate greater protection for Māori representation processes. This is to ensure that the principles and articles of te Tiriti/the Treaty are upheld and the views of those who are impacted most (Māori) are given the appropriate weight.

We considered different options for each of the six issues that were the subject of consultation. These were as follows:

- Issue 1 – The requirement for councils to consider Māori or general wards;
- Issue 2 – The timing of decisions;
- Issue 3 – Opportunities for community input;
- Issue 4 – Decision-making rights and the role of the Local Government Commission;
- Issue 5 – Discontinuance processes and the period that wards stay in force; and
- Issue 6 – The types of polls that may be held.

Two or three options were considered independently for each issue. This made for a total of 144 possible permutations of options that could be considered. Of these, our preferred option is for a revised representation review process to incorporate decisions about “Māori electoral representation” as the first step of the process. This would be a mandatory decision for those councils which do not already have Māori electoral representation or Māori wards, and require the council to engage with its Māori community. A council that resolves in favour of providing Māori electoral representation would be required to have at least one Māori ward and at least one general ward in its initial and final representation proposals. Councils that already have Māori electoral representation can optionally reconsider their position with every new representation review if at least two elections have passed since the introduction of Māori electoral representation.

In the preferred option, decisions about the implementation and operability of Māori wards or constituencies would be made through the council’s initial and final representation proposals in the same way that the council makes decisions about general wards or

constituencies. Timing adjustments would be made to reflect the time saving of no longer requiring time for polls to be demanded and held. Appeals to the Local Government Commission would be allowed only on the implementation of Māori wards, rather than the more strategic decision of enabling Māori electoral representation. This ensures that decisions about Māori electoral representation remain local decisions. Binding polls would not be permitted on any element of the representation review process because the council is required to make those decisions through the representation review itself.

Our view is that this option is preferable to the status quo, and any other option, because it is the option that best meets the criteria and delivers the objectives discussed in this regulatory impact statement. In particular, it provides the most appropriate sequencing of and alignment between Māori electoral representation and general electoral representation matters so that councils' decisions, and opportunities for public input on these decisions, can be clearly communicated to local communities, and so that local government and their communities have the most certainty about what their representation arrangements are likely to be. The preferred option additionally delivers more flexibility for councils (and, consequently, the Local Government Commission) in terms of the timing of representation reviews, keeps new costs to a minimum and is consistent with the principles of the Act.

Limitations and 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 preferred option has been informed by consultation. The Department of Internal Affairs published a discussion document on 9 July 2021 and sought responses to the discussion document until 27 August 2021. 60 responses were received. Of those, 42 were from local government organisations (including Local Government New Zealand, Taituara—Local Government Professionals Aoteroa, territorial authorities, regional councils, and local boards), 5 were from iwi/Māori organisations and 9 were from individuals. On several matters, the feedback obtained through consultation was nearly unanimous. We have used this feedback to limit the options we have considered in four ways.

We have not looked at options that require councils to consider Māori wards outside of their existing regular representation review processes, that do not require councils to engage with their communities when making decisions about Māori wards, that require the

creation of a new body to determine the outcomes of any appeals on Māori wards, or that have a different consultation process for considering the introduction or discontinuation of Māori electoral representation.

We note that, given we considered two or three options for each issue, there were 144 possible permutations of options to consider. Each issue was considered independently. However, we identified that decisions about Issue 2 are likely to ‘force’ decisions for other issues (i.e., by making some options for other issues inconsistent with the broad policy direction under Issue 2). The process followed was therefore to identify a preferred option for Issue 2 and then treat the options for the five other issues as ‘variations’ to that option.

Responsible Manager(s) (completed by relevant manager)



Richard Ward
General Manager, Local Government Branch
Department of Internal Affairs

11 November 2021

Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Internal Affairs

Panel Assessment & Comment:

The Department’s Regulatory Impact Analysis panel (the panel) has reviewed the *Improving the mechanisms for Māori electoral representation at local government RIA* (the RIA) in accordance with the quality assurance criteria set out in the [CabGuide](#).

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

This paper deals with a technical subject and a complex set of issues and options. The writer has simplified and made sense of these issues, and has set out a practical approach for addressing them. The paper is well-structured, with a logical flow of argument from start to finish, written in plain English, and concise. The paper shows that the Department carried out a comprehensive consultation process, and that the writer has reflected on stakeholders’ views, and actively taken them into account.

Section 1: Diagnosing the policy problem

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

This is the third regulatory impact analysis about Māori representation in local government

1. In December 2020, Cabinet began a programme of work to improve the mechanisms for local government to consider the establishment of Māori wards and Māori constituencies.
2. As part of this broader programme of work, the Department of Internal Affairs (the Department) has produced two previous regulatory impact statements which can be viewed on the New Zealand Treasury website at the links below:
 - *Changes to the process for establishing Māori wards and constituencies* (December 2020). <https://www.treasury.govt.nz/sites/default/files/2021-02/ria-dia-cttp-feb21.pdf>
 - *Improving the mechanism for establishing Māori wards and constituencies at local government* (June 2021). <https://www.treasury.govt.nz/sites/default/files/2021-07/ria-dia-ime-jun21.pdf>
3. The first regulatory impact statement was prepared for the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill, which became the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021. See also: <https://www.legislation.govt.nz/act/public/2021/0003/latest/whole.html>
4. The second regulatory impact statement was prepared to support public consultation on further changes to Māori ward and Māori constituency processes. It accompanied a discussion document and response form which were published on the Department of Internal Affairs website. See also: <https://www.dia.govt.nz/maori-wards>
5. For brevity, we will not repeat the full historical context of Māori wards and Māori constituencies in this document. We refer interested readers to our two previous regulatory impact statements. However, it is necessary to provide a short summary of the issues to contextualise the policy options discussed in this regulatory impact statement.

Councils are responsible for determining their own representation arrangements

6. The proposals in this regulatory impact statement concern the local electoral regulatory system as set out in the Local Electoral Act 2001, the Local Electoral Regulations 2001 and (to a limited extent) the Electoral Act 1993. The regulatory system is part of the wider local government regulatory system, for which the Local Government Act 2002 is a principal statute.¹
7. Government regulation of local election processes is intended to result in:
 - representative and substantial electoral participation in local elections and polls;

¹ Further to these enactments, separate statutes relevant to the representation of individuals and communities at specific local authorities include the Bay of Plenty Regional Council (Māori Constituencies Empowering) Act 2001 and the Local Government (Auckland Council) Act 2010.

- 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.
8. These outcomes are recorded as the principles of the Local Electoral Act 2001 (the Act).²
 9. The local electoral 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. As discussed further at paragraph 19, an incumbent council must decide the shape of its successor: from the number of members elected, to the boundaries of any electoral districts (wards or constituencies) those members are elected to represent.
 10. The Local Government Commission (whose members are appointed by the Minister of Local Government) has the responsibility for considering and deciding appeals on local representation, in accordance with the provisions of the Act.
 11. A more fulsome explanation of the local electoral regulatory system, including the roles of and interactions between relevant actors, agencies and enactments, and the overall fitness-for-purpose of the regulatory system, begins on page 7 of the Department’s June 2021 regulatory impact statement.

Māori wards provide for guaranteed electoral representation of Māori communities

12. Māori wards (the term used at territorial authorities) and Māori constituencies (the term used at regional councils) are local government electoral districts for people on the Māori electoral roll. An easy comparison at the parliamentary level are the seven Māori parliamentary electorates.
13. The equivalent electoral districts for people on the general electoral roll are called general wards (at territorial authorities) or general constituencies (at regional councils).
14. Wards³ (for either roll of electors) can cover either the entirety of a council area or part thereof (for example, to ensure the electoral representation of a particular geographic community of interest).
15. In contrast to general wards, Māori wards are a mechanism through which:
 - Māori have guaranteed electoral representation on the council’s governing body;
 - one or more Māori viewpoints can be recognised and represented in council decision-making;
 - the visibility of Māori issues within council can be improved;
 - the diversity of representation at the council table can be increased; and
 - The Māori–Crown relationship is better recognised at a local level.

² Section 4, Local Electoral Act 2001.

³ This paper will generally use the term “wards” as a shorthand to refer both to wards and constituencies regardless of the type of council.

The processes for creating Māori wards are inconsistent with the processes for creating general wards

16. Councils can create Māori wards under the Act. These provisions were introduced in 2002. For the first 18 years these provisions were in force, if a council decided to introduce Māori wards, the electors of the council district or region could petition the council for a poll of electors on Māori wards.
17. When the poll provisions were in force, if at least 5% of the district or region's electors signed the petition:
 - the council had to hold a district- or region-wide poll on introducing Māori wards; and
 - the outcome of the poll was binding on the council (that is, it could not consider the matter any further) until two elections had passed.
18. Of 16 Māori ward polls that were held between 2002 and 2018, only one resulted in the introduction of Māori electoral representation. There was no equivalent poll provision on the introduction of new general wards.
19. General wards are considered during a six-yearly representation review. This is the statutory process in which a council decides the number of councillors to be elected at the next election and how they will be elected (there are three ways that councillors can be elected: by wards, at-large/by the district as a whole, or a mixture of the two). If councillors are to be elected through wards, the names and boundaries of wards must be decided. Decisions about community boards may optionally be made.
20. Māori wards are not initially considered through the representation review. The council may at any time consider "dividing its district into one or more Māori wards." If it agrees to do this before 23 November in the year after the previous triennial election (i.e., the year before the representation review), the names and boundaries of any Māori wards are also decided through the representation review. Councils must conduct a representation review and consider their general wards after agreeing to introduce Māori wards to make sure that representation across the entire district is fair and effective.
21. The number of Māori ward councillor positions available is determined as a proportion of the overall number of ward-based councillor positions, based on the Māori Electoral Population and General Electoral Population of the district or region, in accordance with a formula in Schedule 1A of the Act. Councils have some control over the number of Māori ward councillor positions by varying the overall number of ward-based councillors.
22. Representation reviews must be completed approximately every six years (after every two triennial elections) but may optionally be conducted every three years (after each triennial election).
23. The mechanics of the process require councils to resolve an "initial representation proposal" on the details listed in paragraphs 19 to 21 above, for public consultation by 31 August in the year before the next triennial local election. Public consultation must last for at least one month. Finally, having considered public feedback, the council must resolve a "final representation proposal" within six weeks of public consultation ending.
24. If the final representation proposal is non-compliant with the requirement of the Act that representation is "fair and effective," or if it attracts appeals or objections from the

community, the final proposal is referred to the Local Government Commission who will determine the council's representation.

The Government is partway through two stages of legislative change to improve Māori ward processes

25. In 2020, Cabinet noted that “these poll provisions have proved to be an almost insurmountable barrier to improving Māori electoral representation at local government” and that “improving the process for local authorities to establish Māori wards and constituencies by removing the ability to demand these polls will help the government and local authorities meet their responsibilities under te Tiriti o Waitangi/the Treaty of Waitangi.”⁴
26. The Government introduced the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill in February 2021. This Bill repealed the poll provisions and established a short transition period (until 21 May 2021) that gave councils more time to reconsider Māori wards ahead of the 2022 local elections.
27. The Bill was enacted under urgency and was given Royal assent on 1 March 2021. As an outcome of the changes passed into law, the number of local authorities with Māori wards or constituencies has significantly grown from only three councils at the 2019 local elections to 35 councils at the 2022 local elections.⁵

Repealing the poll provisions was the first step but there are further inconsistencies to be addressed

28. Even though the poll provisions have now been repealed, six further differences between the Māori wards process and general wards process have been identified. These are:
 - the requirement for councils to consider Māori or general wards;
 - the timing of decisions;
 - opportunities for community input;
 - decision-making rights and the role of the Local Government Commission;
 - discontinuance processes and the period that wards stay in force; and
 - the types of polls that may be held.
29. These differences were discussed in detail in the Department's June 2021 regulatory impact statement. A summary of the differences is included in Table 1, below.

⁴ CAB-20-MIN-0521.02 refers.

⁵ In addition to these, Napier City Council resolved in October 2021 to create Māori wards for its 2025 and 2028 local elections. Because this decision was made after the transition period ended on 21 May 2021, it does not apply to the 2022 local elections.

Table 1: Summary of differences between Māori wards process and general wards process

Issue	Comments
1 Requirement to consider ward systems	Councils are required to consider general wards approximately every six years but are not required to regularly consider Māori wards.
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.
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.
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 Commission. However, the Commission can adjust boundaries of Māori wards in the same way it can for general wards.
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.
6 Types of polls	Councils can initiate binding and non-binding polls on general wards, but only non-binding polls on Māori wards (since the February 2021 law change). No binding polls on general wards are known to have been held.

Addressing these inconsistencies now will support councils to make decisions about Māori wards ahead of the 2025 local elections

30. Even though removing the poll provisions has supported 32 councils to create Māori wards for the 2022 local elections, other councils have signalled that they will do this in the next term of local government. Further, in the next term of local government:
- two of the three councils that had Māori wards prior to the 2021 law change are required to review their representation arrangements; and
 - the 32 councils that created Māori wards after the 2021 law change may be in a position to optionally review their representation arrangements after the 2022 local elections.⁶
31. This means if there are no further amendments to the Act by the end of 2022, these councils must make their decisions 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).
32. The Government has signalled that further legislative changes will be made to the Act to improve the mechanism for establishing Māori wards in future. This work, which is the subject of this regulatory impact statement, was agreed to have a narrow and technical focus aimed at improving the existing framework for councils' representation arrangements. The Government has agreed that these changes will:
- further align the Māori ward processes and general ward processes as much as practicable; and
 - apply to the next term of local government (i.e., after the 2022 local elections).

What is the policy problem or opportunity?

A problem of inconsistency between Māori ward processes and general ward processes

33. As noted above, we have identified six differences between the Māori wards process and general wards process. These issues have been summarised in Table 1 (above).⁷ They are often interrelated and, together they:
- create inconsistencies between the Māori wards process and the general wards process, which does not support the Crown to meet its obligations under the Treaty of Waitangi/the Treaty of Waitangi;

⁶ For example, if a council has more than one Māori ward councillor position these can be elected in several ways. A council with two positions can be arranged so that each position is elected from a separate ward, or so that both positions are elected by all electors on the Māori electoral roll. When only one position is available, this is elected by all eligible electors.

⁷ See also further discussion of these issues in the Department's June 2021 regulatory impact statement.

- result in the Māori wards process being poorly sequenced in contrast to the general wards process; and
- can contribute to confusion about how council representation processes work.

An opportunity to improve representation processes for individuals and communities

34. Our June 2021 regulatory impact statement explains that there is also an opportunity to improve council representation processes. We noted that:

- while it is now easier for councils to create Māori wards, the current Māori ward processes are inconsistent with general ward processes;
- the removal of the poll provisions highlighted these further inconsistencies;
- there is now an opportunity to improve council representation processes by considering the alignment and sequencing of Māori ward and general ward decisions; and
- it is timely to consider the differences between the two existing processes and implement any changes in advance of further consideration of Māori wards by councils following the 2022 local elections, because this is the next opportunity for most councils to make decisions about their representation.

Local government and te Tiriti o Waitangi/the Treaty of Waitangi

35. Our June 2021 regulatory impact statement also reviewed the evidence related to the interaction between the Crown's obligations under te Tiriti o Waitangi/the Treaty of Waitangi and the role of local government. In summary:

- The Crown has obligations to Māori under te Tiriti o Waitangi/the Treaty of Waitangi. Under te Tiriti/the Treaty, Māori have the right to make decisions over resources and taonga which they wish to retain and 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, has been a barrier for councils to create Māori wards and for Māori to be represented in local government.
- Reports from the Waitangi Tribunal,⁸ the Human Rights Commission,⁹ and Local Government New Zealand¹⁰ have discussed, for more than ten years, the underrepresentation of Māori in local government compared to the proportion of Māori in New Zealand and within certain local authority districts.

⁸ Waitangi Tribunal (September 2010). *Tauranga Moana, 1886–2006* (chapter 6). <https://waitangitribunal.govt.nz/news/tauranga-moana-18862006-released-2/>.

⁹ 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.

¹⁰ Local Government New Zealand (October 2020). *Elected members' profile 2019–2022*. <https://www.lgnz.co.nz/assets/Elected-member-profile-2019-2022.pdf>.

36. Addressing the alignment between Māori ward processes and general ward processes is a way to give better effect to the Crown’s commitments under te Tiriti/the Treaty, particularly its obligation to serve equitable outcomes to Māori. However, as we discuss further later, fairer outcomes for Māori may be better achieved by some distinctions between, or alternative sequencing of, Māori and general representation processes.

Public consultation showed support for aligning the Māori ward and general ward processes more closely together

37. Our June 2021 regulatory impact stated that “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.” Cabinet approved public consultation on options for further changes to Māori ward processes in June 2021.¹¹
38. We published a discussion document on the Department of Internal Affairs website at www.dia.govt.nz/maori-wards and contacted identified stakeholders and partners about the consultation.¹² We emailed approximately 350 individuals or organisations¹³ to inform them of the consultation and to invite them to either complete a response form or to discuss their views with officials.
39. The consultation was open between 9 July and 27 August 2021. Late submissions were accepted for approximately two further weeks, owing to the August 2021 COVID-19 Alert Level changes that affected the ability of some organisations to submit by the specified end date.
40. 60 responses were received. These included 56 written submissions and 9 in-person or virtual hui (some submitters attended hui and supplied a written response). 42 respondents were from local government organisations (including Local Government New Zealand, Taituara—Local Government Professionals Aoteroa, territorial authorities, regional councils, and local boards), 5 were from iwi/Māori organisations and 9 were from individuals.
41. A summary of the submissions will be made available on the Department’s website.
42. Submitters generally favoured making the processes for Māori wards and general wards the same as much as possible. For example, submitters generally shared the view that:
- councils should be required to regularly consider the status of Māori wards;
 - the best time for this consideration is alongside the council’s regular representation review (every six years);
 - that there should be a single decision-making process that incorporates decisions on Māori wards and general wards;

¹¹ DEV-21-MIN-0136 refers.

¹² A detailed explanation of identified stakeholders and partners begins on page 12 of the Department’s June 2021 regulatory impact statement.

¹³ We contacted local government mayors, chairs and chief executives; iwi and hapū representatives listed on the Te Kāhui Māngai website; organisations that had submitted on the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill in February 2021 if their contact information was publicly accessible; academics with a published research history in local government elections and/or Māori electoral representation; and peak bodies from the local government and Māori communities.

- councils should be required to engage with their communities in some way when they make decisions about Māori wards, including removing them; and
 - councils should not be able to hold binding polls on establishing general wards if they cannot hold binding polls on establishing Māori wards.
43. However, some submitters observed that there are some instances where not aligning the Māori ward and general ward processes is appropriate to give effect to considerations under te Tiriti o Waitangi/the Treaty of Waitangi. This is discussed in more detail later in this regulatory impact statement.
44. The parts of the consultation that did not elicit a clear preference from submitters included:
- whether councils that had already adopted Māori wards needed to reconsider this decision every six years;
 - whether the time gained by the removal of the poll processes should be used for decisions about Māori wards or general wards;
 - whether the minimum engagement requirement should include iwi/hapū only, Māori communities generally, or the whole community of the district or region;
 - whether people should be able to appeal the creation of new Māori wards (or a council's decision not to create Māori wards); and
 - whether Māori wards should remain in force for three years or six years.

What objectives are sought in relation to the policy problem?

45. 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;
 - ensure that the mechanisms for making decisions about Māori wards and constituencies provide 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 2001.¹⁴

¹⁴ Section 4, Local Electoral Act 2001 refers. See also paragraph 7 of this regulatory impact statement.

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

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

- 46. In our June 2021 regulatory impact statement, we identified different criteria that would apply to the consideration of each issue. Some criteria will not be used for all issues, as they would not sensibly apply. Criteria have been weighted equally for each issue. However, there are trade-offs that need to be made between two or more criteria. These are discussed at the appropriate points. In the multicriteria analysis table for each issue’s options, the overall assessment of the criteria is the average (rounded).
- 47. Table 2, below, outlines which criteria will be used for each issue.

Table 2: Criteria for each issue

✓ = Criterion is relevant for issue

Criteria		Issues					
		1	2	3	4	5	6
		Requirement to consider	Timing	Public input	Decision-making rights & role of LGC	Discontinuance & period in force	Types of polls
Titiri/Treaty commitments	Does the option support the Crown to meet its Te Tiriti o Waitangi/the Treaty of Waitangi commitments?	✓	✓	✓	✓	✓	✓
Equity	Does the option support equity of process for Māori and general wards?	✓	✓	✓	✓	✓	✓
Stability	Does the option support stability of representation arrangements for individuals and communities?	✓				✓	
Flexibility	Does the option support flexibility for the council to adjust representation arrangements as required?	✓				✓	
Cost	Does the option minimise fiscal and/or compliance costs?	✓	✓	✓	✓	✓	
Decision-making	Does the option support informed decision-making by local authorities?	✓	✓	✓	✓		
Public input	Does the option support adequate public participation?		✓	✓	✓		
Easy to understand	Does the option promote easy-to-understand processes?		✓	✓		✓	✓

48. We also identified some trade-offs that will need to be made. These are reflected in the weighting of the criteria. These are summarised in Table 3.

Table 3: Trade-offs

First criteria	Second criteria	Comment
Stability of representation arrangements	Flexibility for councils to adjust representation arrangements	For example, in Issue 5, enabling councils to reverse decisions to create Māori wards would increase flexibility but decrease the stability of representation arrangements.
Minimising costs	Supporting public participation	For example, in Issue 3, new public input requirements over and above the status quo would add new costs.
Minimising compliance costs	Supporting equitable processes	For example, in Issue 3, requiring councils to undertake public consultation on decisions to create Māori wards would add new compliance costs.
Meeting the Crown's Tiriti/Treaty commitments	Supporting equitable processes	Among the six issues, there are instances where te Tiriti o Waitangi/the Treaty of Waitangi considerations require greater protection for Māori representation processes than would be available if Māori ward processes and general ward processes were simply aligned.

What scope will options be considered within?

49. The scope of feasible options has been limited in several ways.

Minister's commissioning and previous policy decisions

50. The Minister of Local Government directed this work to be targeted at making technical improvements to the existing Māori wards legislative framework. There are some options that we have not considered, including:

- *Reinstating a binding poll process on Māori wards:* The Minister of Local Government has directed, and Cabinet has agreed, that binding polls on Māori wards will no longer be held. Reinstating a binding poll process would not align with this directive. We have not considered any options that include binding polls on any aspect of Māori representation.
- *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 in our June 2021 regulatory impact statement, the representation review process is a part of the existing legislation that is generally working well and is not in need of significant or urgent reform. Changes will generally be made within the existing framework. The exceptions are 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 and to consider changes to the timing of the overall representation review process now that timing limitations related to binding Māori ward polls no longer apply.

Stakeholder engagement

51. As noted above, consultation was undertaken between 9 July and 27 August 2021.
52. On several matters, the feedback obtained through consultation was nearly unanimous. We agreed with submitters' views and have used their feedback to limit the options we have considered in five ways:
 - On Issue 1, the timing of any requirement for councils to regularly consider Māori wards will be aligned to council representation reviews (approximately every six years). 95% of responses that commented on this issue supported this timing configuration. We agree with submitters adopting a different timing arrangement would not support efficient administration of representation arrangements. Therefore, in considering whether councils should be required to regularly consider Māori wards, we have not looked at options that require councils to do this outside of their representation reviews.
 - The consultation also provided an option under Issue 1 which would only require councils with Māori wards to regularly consider this position. This option received very little public support and we have not considered it further.
 - On Issue 3, councils will be required to engage with at least some of their communities when making decisions about Māori wards. 100% of responses that commented on this issue supported an engagement requirement. Some submitters considered that there is arguably already an engagement requirement due to the requirement in the Local Government Act 2002 for councils to make itself aware of and have regard to the views of its communities when making decisions. We agree that there should be opportunities for public input on these decisions. Our analysis of options beyond the status quo, therefore, looks only at what the engagement requirement might be.
 - On Issue 4, respondents supported the Local Government Commission over any other body as a potential body to determine appeals about the creation of new Māori wards. The Local Government Commission already has a role in considering appeals on council representation. We agree with the majority of submitters that creating a new body would be costly and potentially confusing. We have therefore not looked at options that require the creation of a new appellate body.

- On Issue 5, 93% of respondents that commented on this issue supported an engagement requirement for councils to consider moving away from having Māori wards. We have therefore not considered options without such a requirement. We have considered options for what this engagement requirement should be alongside consideration of the engagement requirement for councils to establish Māori wards.

Non-regulatory options have not been considered

53. Because the problem is that legislation does not provide for equal and parallel treatment of Māori wards and general wards, it is not possible to consider non-regulatory options.

Related changes are being progressed concurrently

54. Two changes that will support the broader objectives of this project are being progressed concurrently.

Changes to the frequency of the Māori Electoral Option

55. The Electoral Act 1993 provides that electors of Māori descent may change between the Māori electoral roll and the general electoral roll during a four-month period after each New Zealand Census. The period in which eligible electors may exercise this choice is known as the Māori Electoral Option (MEO).
56. In select committee submissions on the first Māori wards Bill in February 2021, some submitters commented that they would prefer to exercise their MEO, and change rolls, more frequently. This also arose as a theme during the Department's consultation on the stage 2 Māori ward changes in July–August 2021.
57. The MEO is a responsibility of the Ministry of Justice, which consulted separately on changes to the MEO in July 2021. Changes arising from this consultation will support the ability of Māori electors to change rolls more frequently and are expected to be progressed through a separate Bill.

Changes to the membership of Auckland Council

58. The Local Government (Auckland Council) Act 2010 (the Auckland Act) limits the Auckland Council governing body to 20 councillors and 1 mayor.
59. Auckland Council has identified that this limit is a barrier to Auckland Council establishing a Māori ward. For Auckland Council to do this under the current law, it would need replace one general ward councillor position with the Māori ward councillor position and dramatically reconfigure its general representation arrangements. The new general wards would not be aligned to Auckland Council local boards, which is generally desirable.
60. An amendment to the Auckland Act is intended to be progressed in the same Bill as changes to Māori ward processes. The Department has completed a separate regulatory impact analysis on this proposal.

What options are being considered?

The key issue underpinning the options is how decisions are timed

61. We considered the six issues independently. However, when taking into account the different options that were consulted for each issue, the total number of permutations of options available becomes 144, even after taking out options that were limited as a result of stakeholder engagement.
62. Through our analysis of the submissions and consideration of the possible options, it became clear that Issue 2 (Timing of decisions) is a useful first issue to resolve in developing a new process for councils to consider Māori wards. Choices made by determining the preferred option for Issue 2 dictate some of the choices for other issues, as we demonstrate below. Once a preferred option for Issue 2 is selected, it can be varied to address the other policy issues. This limits the number of options that need to be considered in full.
63. We consulted on two options for how decisions are timed: in a single stage of decision-making, or in two stages of decision-making (like the status quo). 78% of responses to this issue preferred a single stage of decision-making.
64. However, within a single stage of decision-making it is possible for there to be multiple decision points. For example, the current representation review process has two decision points within the single process: the council's initial proposal (where it makes one suggestion, for public consultation, of how its communities can be represented) and the council's final proposal (where it responds to matters raised in the public consultation).
65. We have therefore considered three options, upon which there can be variations in one way or another for the remaining five issues. Two of these options incorporate a single stage of decision-making by bringing all Māori ward decisions inside the framework of the representation review. The options are summarised in Table 4 and are expanded upon below.

Table 4: Summary of options

Option	Summary of option
A Status quo	<p>Decisions are timed in two stages: an initial decision on Māori wards and the representation review (which considers the implementation of Māori and general wards).</p> <p>There is a gap of approximately three months between the initial decision on Māori wards and the first date on which a council may resolve its initial representation proposal.</p>
B Māori ward decisions made within representation review, alongside initial representation proposal	<p>All decisions are made inside the representation review process.</p> <p>Decisions about introducing Māori wards for the first time (or removing them once they have been established) when the council resolves its initial representation proposal.</p>

<p>C Māori electoral representation decisions made within representation review, ahead of initial representation proposal (<i>recommended option for this issue</i>)</p>	<p>All decisions are made inside the representation review process.</p> <p>Decisions about introducing Māori electoral representation for the first time (or revoking a prior decision) are made as the first part of the representation review, before proceeding to the initial representation proposal.</p>
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Option A – Status quo

66. If no timing adjustments are made to the Māori wards process, councils will be able to make an initial decision on Māori wards by 23 November in the year after the previous triennial election (for example, 2023). If a council votes in favour of “dividing the district into 1 or more Māori wards” it will need to undertake a representation review. The earliest day a council can resolve its initial proposal is 1 March in the following year (for example, 2024).
67. Continuing this option means that there is a gap in the decision-making process for at least three months. This disrupts the flow of decision-making, particularly when a council makes its initial decision on Māori wards well before the 23 November deadline.
68. As an example, New Plymouth District Council made its Māori ward resolution in July 2020. This enabled several more months for electors to demand a poll on the council’s decision. However, with the poll provisions now removed, if another council operated on the same timeframes in the future, it would be unable to meaningfully progress its representation review for more than seven months.
69. We consider that this constraint on decision-making is unnecessary and inefficient.

Option B – Māori ward decisions made within representation review, alongside initial representation proposal

70. This option has one decision point before consultation on the initial representation proposal. The council would make its decision on “dividing the district into 1 or more Māori wards” at the same point as its resolution on its initial representation proposal.
71. Our assessment is that this option would make the representation review process more complex. This is because:
 - Councils would most likely need to develop and consider an increased number of draft representation arrangements for that single decision (some with Māori wards and some without); and
 - While there would only be a single community engagement period, the representation review might turn into a *de facto* consultation on Māori wards only, detracting from discussion about other changes (such as to general ward boundaries or community boards).
72. We also consider that this option would reduce certainty for communities. For example:
 - Under this option there is no guarantee (as there is in the status quo) that a representation review that has begun with Māori wards in the initial proposal will end with Māori wards in the final proposal. Under the status quo and Option C, these are “locked in” prior to the initial proposal being resolved. Providing a guarantee in this way impacts Issue 3 by either requiring another round of

consultation before the initial proposal is resolved (and accordingly another decision point), or limiting prior consultation leading up to this decision.

- Because all decisions are taken together, they would all likely need to be appealable to the Local Government Commission (Issue 4). As we discuss further below when looking at variations to the options, giving a broader role to the Local Government Commission in relation to whether districts have or do not have Māori wards takes the decisions out of the hands of the local community and the outcome may not be known until three months before the election period begins.

73. Under this option, the timing of the first date an initial proposal can be resolved could be moved earlier. Currently, this date is 1 March in the year before the local elections. We consider that within this option there is scope for this resolution to be brought forward to the fourth quarter of the previous year, which will allow for more time for community consultation and Local Government Commission stages of the process.

Option C – Māori electoral representation decisions made within representation review, ahead of initial representation proposal (*recommended option for this issue*)

74. This option reframes how decisions are made and adjusts the representation review process's timing accordingly. All decisions are made inside the representation review process but there are two decision points. Decisions about introducing Māori electoral representation for the first time (or revoking a prior decision) are made as the first part of the representation review, before proceeding to the initial representation proposal.

75. As we discussed above, having two decisions about "Māori wards" can be confusing. In our June 2021 regulatory impact statement, we identified that some communities expect to know, at the first decision point, how many Māori wards will be introduced and what the corresponding impact will be on general wards. This information is not available at this decision point in either the status quo or this option.

76. However, we consider that reframing the first decision so that it is about "Māori electoral representation" instead of "Māori wards" could reduce this confusion. We also consider that the focus of the decision would shift to be more strategic and focused on what the benefits of Māori electoral representation in council governance might be, rather than trading off Māori wards against other potential arrangements.

77. Under this option, the operational decisions (about how Māori electoral representation is implemented) would be considered as part of the council's initial and final representation proposals. A council that resolves in favour of Māori electoral representation would be required to have at least one Māori ward and at least one general ward. All operational decisions about Māori wards and general wards (for example, the number of wards, their boundaries and their names) will be treated in exactly the same way. The timing of the whole process is improved so that councils do not need to wait three months between making their decision about Māori electoral representation and resolving their initial proposal. In this way, the decision on Māori electoral representation is a "gateway" into the remainder of the representation review process.

78. We discussed above that a single decision point presents some disadvantages. This option addresses these disadvantages. Considering Māori electoral representation before moving to the operational decisions reduces the complexity of the council's initial representation proposal and increases the level of certainty communities will have (subject to decisions made about Issue 4). It also allows for a dedicated public engagement period on Māori electoral representation.

79. In sum, the representation review process would become:

- The council must make a decision about Māori electoral representation before it can resolve its initial proposal.
- If a council resolves in favour of Māori electoral representation, then it will must include at least one Māori ward and at least one general ward in its initial proposal.
- The 1 March date for the first day a council can resolve its initial proposal is moved to the earlier of the two following dates:
 - 21 December in the year two years before the next triennial election; or
 - the day after the day that the council makes its decision about Māori electoral representation.

80. The consultation document asked whether the process should allow for more time for Māori wards, or general wards, or both. There was no overwhelming consensus from respondents: about half of submitters wanted more time for “Māori wards” only; the remaining submitters were divided between “general wards only” and “both”. Option C enables more time for both.

Assessment of these options

81. We have assessed the three options for Issue 2 in Table 5, below.

Table 5: Multicriteria analysis of options for Issue 2: Timing

Criteria		Option A	Option B	Option C
Titiri/Treaty commitments	Does the option support the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi commitments?	0	0	+
Equity	Does the option support equity of process for Māori and general wards?	0	+	+
Cost	Does the option minimise fiscal and/or compliance costs?	0	-	0
Decision-making	Does the option support informed decision-making by local authorities?	0	+	++
Public input	Does the option support adequate public participation?	0	-	+
Easy to understand	Does the option promote easy-to-understand processes?	0	-	+
Overall assessment		0	-	+

Key for qualitative judgements:

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

82. Our assessment is that, compared to the status quo, Option B makes the Māori wards process more equitable and may improve the overall decision-making process. However, we anticipate this option:
- would lead to greater costs for councils (by needing to produce a greater number of initial representation proposals for consideration);
 - does not support adequate public participation (by limiting choices that can be made to address Issue 3); and
 - makes the representation review process more difficult to understand by prolonging uncertainty about whether Māori wards will be adopted until the final representation proposal is agreed or a Local Government Commission determination is made (subject to decisions on Issue 4).
83. Like Option B, Option C also improves the equity of the process. However, in contrast to Option B, Option C enables a dedicated opportunity for councils to engage on Māori electoral representation (subject to decisions made on Issue 3).
84. The reframing of the first stage of decision-making to focus on “Māori electoral representation” rather than “dividing the district into 1 or more Māori wards” is considered likely to support stronger understanding of the process and to support the Crown to meet its commitments under te Tiriti/the Treaty.
85. Option C ensures that, once decisions about Māori electoral representation are made, all decisions about how Māori wards and general wards are operationalised are made in the same way. Our assessment is that prioritising strategic decisions about Māori electoral representation before operational decisions is the most appropriate way to sequence local government electoral representation decisions.
86. We do not consider that the status quo (Option A) meets the objectives sought. This option does not address the problem of inconsistency between Māori ward processes and general ward processes. The current sequencing of decisions, with a three-month gap between the initial decision on Māori wards and operational decisions through the initial representation proposal does not support good decision-making or promote equity of process for Māori and general wards.
87. On the basis of this analysis, the preferred option for this issue is Option C. The balance of our advice focuses on this option.

Variations to Option C to address other issues

88. Option C can be varied in several ways in order to address concerns with the five other policy issues. These are summarised in Table 6 and expanded upon below.

Table 6: Variations to Option C to address other issues

Issue	Summary of variation
1 Requirement to consider	1a Status quo – no requirement for councils to consider Māori wards or Māori electoral representation, but a requirement for councils to consider general wards in every representation review 1b Every council must consider Māori electoral representation in every representation review 1c Every council must consider Māori electoral representation in every representation review, except for those that already have Māori electoral representation
3 Opportunities for public input	3a Councils are required to engage with their mana whenua partners on Māori electoral representation decisions 3b Councils are required to engage with their Māori communities on Māori electoral representation decisions 3c Councils are required to engage with their entire community on Māori electoral representation decisions
4 Role for Local Government Commission	4a Status quo – a council’s decision to adopt Māori electoral representation cannot be appealed to the Local Government Commission for a determination 4b A council’s decision to adopt Māori electoral representation can be appealed to the Local Government Commission for a determination
5 Period in force	5a Status quo – councils’ decisions on Māori electoral representation stand for at least two elections, and then until a contrary resolution is made 5b Council’s decisions on Māori electoral representation stand for at least one election, and then until a contrary resolution is made
6 Types of polls	6a Status quo – councils may initiate binding polls on general wards but not Māori wards 6b Councils may not initiate binding polls on any aspect of their representation arrangements

Variations to address Issue 1: Requirement to consider ward systems

Variations excluded – review period

89. As noted above, consideration of this issue has been limited by the outcome of public consultation. 95% of respondents agreed that the best time to consider Māori wards is every six years, when a council is required to do its representation review. We are therefore not considering any other review period.

Variations considered

90. **Variation 1a** would maintain the status quo so that councils are under no obligation to consider Māori electoral representation. Adopting this variation is inconsistent with the general view from public consultation, which saw 84% of respondents agree that councils should regularly consider the status of Māori wards.
91. **Variation 1b** would require every council to consider Māori electoral representation at least every six years. Under Option C, this variation would mean that considering Māori electoral representation is the mandatory first step of the representation review for every council, and that once a council had come to a decision on this matter it could proceed to the initial representation proposal.
92. This variation provides equality for all councils and all viewpoints. A council that does not already have Māori electoral representation will be required to consider it, and a council that has it will effectively be required to review it.
93. **Variation 1c** would require every council to consider Māori electoral representation at least every six years, unless Māori electoral representation is already in effect at the council. In other words, if a council already has Māori wards it does not need to reconsider this strategic decision (but may do so if it chooses). Because there is not currently any requirement for councils to make decisions about Māori wards, this option preserves the status quo only for councils where Māori electoral representation already exists.
94. We also looked at a possible fourth variation of whether councils which are likely not to have sufficient Māori Electoral Population (MEP) to fairly sustain Māori electoral representation should be excluded from regularly considering this matter. Currently there are twelve councils in Te Wai Pounamu/the South Island that, under the prescribed formula in the Act, are entitled to less than half a Māori ward councillor (rounding down to zero Māori ward councillors) based on their current estimated MEP and current number of councillors. These councils would need to acquire more MEP or increase the number of councillors to be eligible for one Māori ward.
95. On balance, we considered that a regular review period for these councils is broadly positive because it would enable councils to consider whether any changes to their MEP (including as a result of the concurrent policy proposal to change the timing and frequency of the Māori Electoral Option) as well as to trade off any benefits of Māori electoral representation against the size of the council. The Minister of Local Government subsequently ruled out any further consideration of this variation.
96. We have assessed the three options for Issue 1 in Table 7, below.

Key for qualitative judgements:

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

Table 7: Multicriteria analysis of options for Issue 1: Requirement to consider

Criteria		Variation 1a	Variation 1b	Variation 1c
Titiri/Treaty commitments	Does the option support the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi commitments?	0	+	++
Equity	Does the option support equity of process for Māori and general wards?	0	++	+
Stability	Does the option support stability of representation arrangements for individuals and communities?	0	+	++
Flexibility	Does the option support flexibility for the council to adjust representation arrangements as required?	0	+	+
Cost	Does the option minimise fiscal and/or compliance costs?	0	--	-
Decision-making	Does the option support informed decision-making by local authorities?	0	+	+
Overall assessment		0	+	++

97. Variation 1a is not a viable option. It does not address the problem that councils have inconsistent obligations for Māori wards compared to general wards. As noted above, this variation was not supported through consultation.
98. Variations 1b and 1c both support equity between Māori ward and general ward processes, provide councils with flexibility to change their representation arrangements as required, and support informed decision-making by local authorities.
99. The preferred variation for Issue 1 is Variation 1c. This option best supports the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi commitments. The Crown has an obligation to actively protect Māori electoral interests. We consider that these interests are best protected by not requiring councils with Māori electoral representation to consider repealing this representation on a regular basis. In doing so, we also consider that this variation provides more stability for communities than Variation 1b.
100. We observe that it is possible that the MEP at a council that provides Māori electoral representation could decrease over time, to the point that the council would need to increase its size to continue providing Māori electoral representation. We consider that councils in this type of situation should consider these decisions in the context of its apparent population changes as part of a full representation review.
101. While both of these variations impose more costs to councils than the status quo, Variation 1c imposes fewer costs because some councils will not need to (or opt not to) regularly reconsider Māori electoral representation.

Variations to address Issue 3: Opportunities for public input

Variations excluded – requirement for public engagement

102. As noted above, consideration of this issue has been limited by the outcome of public consultation. All respondents supported a minimum public engagement requirement. Therefore, we have looked only at what that minimum requirement might be for any time a council considers Māori electoral representation.

Variations considered – form of public engagement

103. **Variation 3a** would require councils to engage with their mana whenua partners (iwi and hapū whose rohe overlaps with the council’s district or region) and have regard for their views. This variation recognises the relationship that the council has with its mana whenua partners and the role that iwi and hapū have as signatories to te Tiriti o Waitangi/the Treaty of Waitangi.
104. **Variation 3b** would require councils to engage more broadly with Māori communities in their district or region and have regard for their views. This variation enables targeted engagement with mana whenua partners as well as Māori individuals who live within the local authority area but may not be affiliated with the local iwi and hapū. This variation recognises that decisions about Māori electoral representation affect all Māori.
105. **Variation 3c** would require councils to engage with their entire communities.
106. We have assessed the three options for Issue 3 in Table 8, below.

Table 8: Multicriteria analysis of options for Issue 3: Opportunities for public input

Criteria		Var 3a	Var 3b	Var 3c
Titiri/Treaty commitments	Does the option support the Crown to meet its Tiriti/Treaty commitments?	+	+	0
Equity	Does the option support equity of process for Māori and general wards?	-	-	+
Cost	Does the option minimise fiscal and/or compliance costs?	-	-	--
Decision-making	Does the option support informed decision-making by local authorities?	+	+	+
Public input	Does the option support adequate public participation?	+	++	+
Easy to understand	Does the option promote easy-to-understand processes?	+	+	+
Overall assessment		+	++	+

Key for qualitative judgements:

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

107. All options, by introducing a minimum consultation standard, are an improvement on the status quo (although they each add new fiscal and compliance costs). However, our assessment is that Variation 3b is the most preferable.
108. Variation 3b ensures that the council is required to have regard for the views of anyone who might be affected by its decision to adopt, or revoke, Māori electoral representation. Within this, the council would be able to have regard for the views of its mana whenua partners and weight these against any other views they had heard. Additionally, the council would not be limited in engaging with the wider community if this was its choice.

Variations to address Issue 4: Role for the Local Government Commission

Variations excluded

109. As noted above, consideration of this issue has been limited by the outcome of public consultation. Only two submitters were in favour of establishing a new entity to hear objections to councils introducing new Māori wards. Therefore, we have considered only the Local Government Commission as a potential appellate body.

Variations considered

110. **Variation 4a** would leave the status quo intact. When considered under Option C, this means that the strategic decision on Māori electoral representation would be at the discretion of the council (subject to the engagement requirement) and could not be appealed to the Local Government Commission or anyone else. However, the council's final representation proposal which contains details related to Māori wards such as any boundaries and names would remain appealable.
111. **Variation 4b** would expand the role of the Local Government Commission so that people can appeal a council's decision on Māori electoral representation to the Commission. This would include a decision to introduce Māori electoral representation for the first time, a decision to revoke a previous resolution, and a formal decision to continue the model for further elections after it had already been introduced and operationalised.
112. We have assessed the two variations for Issue 4 in Table 9, below.

Key for qualitative judgements:

++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

Table 7: Multicriteria analysis of options for Issue 4: Role for the Local Government Commission

Criteria		Variation 4a	Variation 4b
Titiri/Treaty commitments	Does the option support the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi commitments?	0	0
Equity	Does the option support equity of process for Māori and general wards?	0	-
Cost	Does the option minimise fiscal and/or compliance costs?	0	-
Decision-making	Does the option support informed decision-making by local authorities?	0	-
Public input	Does the option support adequate public participation?	0	+
Overall assessment		0	-

113. Our assessment is that expanding the role of the Local Government Commission to hear appeals on the creation of Māori wards is less beneficial than the status quo.
114. If Option C was modified with Variation 4b, time would need to be built into the process to enable the Local Government Commission to consider and determine any appeals. We estimate that this would take about three months. Taking time for this process would limit the amount of time available for councils to consult with their communities and make decisions.
115. Variation 4b provides members of communities with additional opportunities to participate in representation processes that are not present in the status quo. However, the final decision is out of the hands of those communities. The decisions will be made by a panel of government-appointed members. Our assessment is therefore that this variation does not support informed decision-making by local authorities.
116. It is our further view that this appeal process could be used as a further barrier to the promotion of Māori electoral representation following the repeal of the poll provisions.
117. In public consultation, the Local Government Commission did not support this type of amendment to its role.
118. We therefore recommend that appeals on the introduction or removal of Māori electoral representation not be allowed.

Variations to address Issue 5: Discontinuance & period in force

Variations excluded – discontinuance processes

119. When we consulted, Issue 5 looked at both discontinuance processes and the period that Māori wards remain in force. We asked whether a council should be required to consult with its community when discontinuing Māori wards. As noted above, 93% of respondents that commented on this issue supported an engagement requirement for when councils consider discontinuing Māori wards.

120. We have therefore limited this issue as a result of public consultation. The only option that has been considered for the discontinuation of Māori electoral representation is that councils must undertake the same process they would take when considering introducing Māori electoral representation.

Variations considered – period in force

121. The reminder of this section looks only at the period that Māori electoral representation remains in force.

122. **Variation 5a** is a modified status quo. Māori electoral representation would be in force permanently from a council’s decision to introduce it. After two elections, the council would be able to reconsider this decision. (As noted under Issue 1, the council would not be required to do so.)

123. **Variation 5b** reduces the minimum number of elections between decisions to one. This means that a council would be able to reconsider Māori electoral representation and Māori wards after each election.

124. We have assessed the two variations for Issue 5 in Table 10, below.

Table 10: Multicriteria analysis of options for Issue 5: Period in force

Criteria		Variation 5a	Variation 5b
Titiri/Treaty commitments	Does the option support the Crown to meet its Tiriti/Treaty commitments?	0	0
Equity	Does the option support equity of process for Māori and general wards?	0	+
Stability	Does the option support stability of representation arrangements for individuals and communities?	0	--
Flexibility	Does the option support flexibility for the council to adjust representation arrangements as required?	0	+
Cost	Does the option minimise fiscal and/or compliance costs?	0	0
Easy to understand	Does the option promote easy-to-understand processes?	0	-
Overall assessment		0	-

Key for qualitative judgements:	
++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

125. We consider that Variation 5b is not an improvement on the status quo.
126. As noted above, trade-offs need to be made between the different criteria. On this issue, we have considered that the benefits to improved flexibility for councils is outweighed by the lack of stability of representation arrangements. It would be confronting and confusing for a community to oscillate between having Māori electoral representation and not having it every three years. This is the reason that the Act currently requires councils to retain Māori wards for two elections before making any changes.
127. In public consultation, respondents were nearly evenly divided between these two variations. 21 respondents preferred a one-election stand down period and 19 respondents preferred a two-election stand down period.
128. We recommend that Māori electoral representation stays in force for at least two elections.

Variations to address Issue 6: Types of polls

129. **Variation 6a** retains the status quo. The Act would prevent councils from holding a binding poll on Māori electoral representation but not explicitly prevent councils from holding a binding poll on general ward decisions.
130. **Variation 6b** would explicitly prevent councils from holding binding referendums on any part of the representation review process.
131. We have assessed the two variations for Issue 6 in Table 11, below.

Table 11: Multicriteria analysis of options for Issue 6: Period in force

Criteria		Variation 6a	Variation 6b
Titiri/Treaty commitments	Does the option support the Crown to meet its Tiriti/Treaty commitments?	0	+
Equity	Does the option support equity of process for Māori and general wards?	0	+
Easy to understand	Does the option promote easy-to-understand processes?	0	+
Overall assessment		0	+

Key for qualitative judgements:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

132. Our assessment is that Variation 6b provides the most benefits.

133. This option promotes equity and supports the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi obligations because the same rules will apply for Māori electoral representation and general electoral representation. Further, we consider these arrangements will be easy to understand.
134. We reflected on the submissions of the Local Government Commission and a former advisor to the Local Government Commission that the ability of councils to conduct binding referendums on general wards may not exist. Their submissions said that the strict requirements of the representation review process, including the ability for proposals to be appealed to and determined by the Local Government Commission, likely mean that a council could not be bound by a poll result on any matter related to representation reviews. Our view is that codifying this position would be desirable.
135. We therefore endorse Variation 6b.

How do the options compare to the status quo/counterfactual?

136. We determine that the five following variations are the most preferable and, further, are not inconsistent with each other or with the preferred option (Option C):
- Variation 1c: Every council must consider Māori electoral representation in every representation review, except for those that already have Māori electoral representation;
 - Variation 3b: Councils are required to engage with their Māori communities on Māori electoral representation decisions;
 - Variation 4a: A council's decision to adopt Māori electoral representation cannot be appealed to the Local Government Commission for a determination;
 - Variation 5a: Councils' decisions on Māori electoral representation stand for at least two elections, and then until a contrary resolution is made; and
 - Variation 6b: Councils may not initiate binding polls on any aspect of their representation arrangements.
137. Table 12, on the next page, compares the status quo to the preferred option as it has been varied in the five ways described above (Option C*).

Table 12: Multicriteria analysis for status quo and Option C*

Criteria		Status quo	Option C*
Titiri/Treaty commitments	Does the option support the Crown to meet its te Tiriti o Waitangi/the Treaty of Waitangi commitments?	0	+
Equity	Does the option support equity of process for Māori and general wards?	0	+
Stability	Does the option support stability of representation arrangements for individuals and communities?	0	+
Flexibility	Does the option support flexibility for the council to adjust representation arrangements as required?	0	+
Cost	Does the option minimise fiscal and/or compliance costs?	0	+
Decision-making	Does the option support informed decision-making by local authorities?	0	+
Public input	Does the option support adequate public participation?	0	+
Easy to understand	Does the option promote easy-to-understand processes?	0	+
Overall assessment		0	+

Key for qualitative judgements:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

138. We describe our justification for this analysis starting from paragraph 141.

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

139. The preferred option is Option C*: a revised representation review process that integrates decisions about Māori electoral representation. We described the base option without its variations at paragraph 79.

140. With the preferred variations to the base option, the preferred option for the new process is as follows:

Overview

- All decisions about Māori electoral representation are integrated into the representation review process and the timing of the representation review is adjusted from the status quo to provide more time for decision-making.

In the year after the previous triennial local elections

- The decision on Māori electoral representation is a mandatory decision at the beginning of the representation review process for all councils except those that had Māori electoral representation (or Māori wards or constituencies) at the previous triennial elections. These councils may optionally reconsider their positions (if at least two triennial elections have passed since the first resolution was made). The last date that these decisions can be made is 21 December.
- In making its decision, the council must engage with and have regard for the views of its Māori communities, and may have regard for other views.
- A decision on Māori electoral representation is not able to be appealed or objected to the Local Government Commission.
- If a council resolves to have Māori electoral representation then it will have at least one Māori ward and at least one general ward in its initial proposal.
- A decision to introduce new Māori electoral representation stands until a contrary decision is made. The first time a contrary decision can be made is after two elections have passed.

In the year after the previous triennial local elections or the year before the next triennial local elections

- After making this decision councils would proceed to the operational elements of the representation review. This is where councils resolve an initial representation proposal that includes the following elements: the total number of councillors; the number of councillors elected from Māori wards and general wards (if applicable); the number of councillors elected from the district as a whole (if applicable); the boundaries and names for any wards; the size and location of any community boards. The council must give public notice of this proposal.
- If the council has made a decision on Māori electoral representation, it may resolve its initial representation proposal on any day after that decision until 31 July in the year before the next triennial local elections.
- If the council was not required to make a decision on Māori electoral representation (because this is continuing), it may resolve its initial representation proposal on any day between 21 December in the year after the previous triennial elections and 31 July the following year.

In the year before the next triennial local elections

- The council must consult and receive written submissions on its initial proposal for at least one month.
- The council must consider the written and any oral submissions on its initial proposal after written submissions close.

- After considering the submissions, the council must resolve its final representation proposal and give public notice of this proposal. The last date that a final representation proposal may be publicly notified is 20 November in the year before the triennial local elections.
- Members of the public may appeal or object to the final representation proposal under the same criteria that are already in the Act.¹⁵ A final representation proposal will be automatically appealed to the Local Government Commission if it does not meet the criteria for fair and effective representation that are already in the Act.¹⁶ The last date that appeals or objections may be made is 20 December in the year before the triennial local elections.
- The Local Government Commission must determine the outcome of any appeal of objection and give public notice of the determination. The last date a determination can be made is 10 April in the year of the triennial local elections.

141. It is the Department's view that this option is preferable to the status quo, and any other option, because it is the option that best meets the criteria discussed in this regulatory impact statement and delivers the objectives outlined in paragraph 45. In particular:

- Sequencing the decision on Māori electoral representation first enables operational decisions on Māori wards and general wards to be aligned as much as possible. Where any differences may be perceived between the two types of representation, we argue that these are necessary to meet the Crown's obligation to actively protect Māori electoral rights.
- The early decision point for Māori electoral representation ensures that these decisions, and opportunities for public input, can be clearly communicated to local communities before and after decisions are made. Structuring the process in this way also gives local government and their communities more certainty about what will be required to be part of the initial representation proposal.
- The changes to the timing of the representation review process gives councils more flexibility in how they manage this process.
- While the new requirements for engagement with Māori communities (on decisions about Māori electoral representation) may impose new costs on some councils, these will not be significant. These costs are necessary to support public input into the representation review process.
- This option is consistent with the principles of the Local Electoral Act 2001 regarding the provision of fair and effective representation for individuals and communities and ensuring public confidence in, and public understanding of, local electoral processes.

¹⁵ See Local Electoral Act 2001, sections 19O and 19P.

¹⁶ See Local Electoral Act 2001, sections 19T, 19U, 19V and 19W.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	N/A	N/A	N/A
Regulators	N/A	N/A	N/A
Wider government	Councils will have new requirements about engaging with Māori communities as part of the process to consider Māori electoral representation. This is likely to incur a small cost for councils.	Low	High
Other groups	N/A	N/A	N/A
Total monetised costs		Nil	N/A
Non-monetised costs		Low	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Providing councils with a longer window to complete their representation reviews may more evenly distribute the Local Government Commission's workload throughout over the 12 months that it is likely to be involved in representation reviews.	Medium	Medium
Regulators	Providing councils with a longer window to complete their representation reviews may reduce some of the pressures to complete this process.	Medium	Medium
Wider government	Local authorities are better able to ensure effective Māori electoral representation from after 2025 local elections	High	Medium
Other groups	Communities will have certainty more certainty about when Māori electoral representation can be considered by their council and how they can be involved in the decision-making process. Likelihood that Māori members of the community will have greater representation in local authority decision-making.	High	Medium
Total monetised benefits		Nil	N/A
Non-monetised benefits		High	Medium

142. The likelihood that Māori members of the community will have greater representation in local authority decision-making depends on the decisions made by local authorities when completing their representation reviews.

Section 3: Delivering an option

How will the new arrangements be implemented?

Giving effect to and communicating the preferred option

143. Implementing the preferred option requires a change to the Local Electoral Act 2001.
144. The new process for councils to make decisions about Māori electoral representation 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.
145. The intention is that the new arrangements will apply for every territorial authority and regional council from the time they come into force, except for the Bay of Plenty Regional Council. This is because the Bay of Plenty Regional Council has guaranteed Māori electoral representation under the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001, which supersedes the provisions of the Local Electoral Act 2001 in relation to Māori constituencies.
146. The Department does not foresee transitional arrangements being necessary.
147. 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 Local Government Professionals Aotearoa and Local Government New Zealand). The Local Government Commission issues guidance around representation review procedures so will also be well placed to communicate the new processes to the sector.

Ongoing implementation and timing

148. The implementation of the new arrangements will be the responsibility of local authorities. While the preferred option was not explicitly consulted with local authorities (as a single package of changes) there was broad support for this type of changes indicated through the consultation on the six differences between Māori wards and general wards.
149. 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.
150. The Department intends to 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.

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

Monitoring

151. 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.

152. We note that any new arrangements will likely not be used by local government until 2023, that the outcomes of representation review processes will not be determined until 2025, and that elections held under representation arrangements determined through the new representation review processes will not be held until 2025.

Review

153. 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.

154. 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.

155. 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.