

# Regulatory Impact Statement: Binding Polls on the Establishment of Māori Wards

## Coversheet

Purpose of document	
Decision sought:	This analysis and advice has been produced for the purpose of informing key policy decisions to be made by Cabinet.
Advising agencies:	Department of Internal Affairs
Proposing minister:	Minister of Local Government
Date finalised:	14 March 2024
Problem definition	
<p>The policy problem is how to ensure that local communities have appropriate input into decisions about their local government representation arrangements, while maintaining a balance of Māori representation and participation in local government decision-making.</p> <p>Elected members currently have the ability to make decisions about Māori representation on local authorities (“councils”), on behalf of their communities. Under previous legislation, this decision was subject to being overturned by a majority vote of electors. The Government’s policy is that the community should be able to make the final decision on whether Māori wards and constituencies (“Māori wards”) are established or not, rather than the decision sitting with elected representatives.</p> <p>Forty-six councils resolved to establish Māori wards since March 2021, without the decision being subject to the requirement to hold a binding poll.</p> <p>Between 2002 and 2019 only two councils established Māori wards using the previous process under the Local Electoral Act 2001 (the Act). Fourteen councils attempted to establish Māori wards, some more than once. Sixteen polls were held, and only one of these was in favour (narrowly) of establishing Māori wards. One council established Māori wards without a poll being demanded by electors.</p> <p>Government policy is that poll provisions should afford communities a choice in the establishment of a Māori ward.</p>	
Executive summary	
<p>In 2021, the requirement that council decisions to establish Māori wards be subject to opportunities for binding polls was removed through an amendment to the Act.</p> <p>Prior to these amendments, a council resolution to establish a Māori ward was subject to a binding poll initiated by a petition signed by at least 5% of council electors. Under both the previous and current methods for establishment, the decision to create or not create a Māori ward is binding on the council for two electoral terms (six years).</p> <p>The previous Government made this policy decision with a view that there was an imbalance between community input on representation arrangements and Māori representation in local government. The policy rationale for these changes was that council decisions to create general wards were not similarly subject to challenge through a binding</p>	

poll, and that the poll provisions were acting as a barrier to Māori representation rather than facilitating it.

Following these changes, 46 councils resolved to establish Māori wards for the first time following council resolutions, and 31 councils implemented these changes at the 2022 local elections.

The 2023 coalition agreements between the New Zealand National Party, ACT New Zealand, and New Zealand First (“the coalition agreements”), outlined the Government’s priority to:

“restore the right to local referendums on the establishment or ongoing use of Māori wards, including requiring a referendum on any wards established without referendum at the next local body elections”.

### **Restoring previous Māori wards legislation**

The Government proposes to reintroduce the previous option to allow 5% of electors to petition a council to hold a binding poll if a council decides to establish a Māori ward (or decides not to).

The scope of options to achieve this proposal in restoring the previous legislation is narrow. The only options considered to achieve this part of the coalition agreements are the status quo and the restoration of previous legislation. Other options have not been explored.

### **Councils that have established Māori wards since 2021**

For 45 of the 46 councils that have resolved to establish Māori wards since 2021, while the option of a binding poll was not available, the Minister of Local Government proposes a mechanism for the councils to revisit their decisions. Four options were considered for the mechanism that are a combination of decisions about two key issues:

1. whether the outcome of any poll takes effect at the 2025 or 2028 local elections; and
2. whether binding polls should be mandatory or only occur if an affected council receives a valid petition from its community.

The Minister’s preferred approach to achieve this objective is for affected councils to hold binding polls in 2024 and for the outcome of the polls to be reflected at the 2025 local elections.

Under this approach, and every option considered, all councils who created or resolved to create a Māori ward without a poll would have the opportunity to rescind their decision on creating Māori wards or resolve to disestablish their existing Māori wards.

There is a risk that this approach may reduce Māori representation in local government. The option that best minimises this risk is the status quo, which would maintain the 2021 legislative amendment, enabling greater public input through additional consultation requirements that will come into effect in October 2025 as part of previous legislative changes. This option is not the Minister’s preferred approach.

Engagement on the policy issues has been minimal due to timing and confidentiality requirements, and the general public has not yet been consulted on this work. Public engagement is expected to be limited, with a truncated select committee process.

## Limitations and Constraints on Analysis

### Limitations affecting analysis of the long-term changes to the process for establishing Māori wards

Reinstating the requirement for a binding poll will need to be assessed for consistency with the right to freedom from discrimination that is affirmed in the New Zealand Bill of Rights Act 1990. When the binding poll provisions for Māori wards were added to the Local Electoral Act, the legislation was not determined to be a breach of this Act by the Attorney-General.<sup>1</sup> The focus of the Attorney-General's comments in this report was on Māori wards generally rather than their specific implementation. However, statistics since then show that binding polls have acted as a barrier to the establishment of Māori wards. There is no such barrier to establishment in place for new general wards. <sup>9(2)(h)</sup>

The Minister's preferred option is that the poll provisions prior to the 2021 changes should be restored, and electors should have the option to petition councils to hold a binding poll on future Māori ward decisions by councils.

### Limitations affecting the analysis of transitional arrangements for holding binding polls on Māori wards established since 2021

The Minister of Local Government has decided to consider the following four options relating to councils that have established a Māori ward without a poll since the 2021 legislative amendments, and have not chosen to rescind their decision or disestablish their Māori wards:

All councils that established or resolved to establish Māori wards since 2020 without a poll must either:

- hold a poll in early 2024, with the results of the poll to apply from the 2025 elections (with variation in how resulting representation reviews are undertaken);
- hold a poll in early 2025 if a valid petition is received from electors in late 2024 with the results of any polls taking effect at the 2025 local elections (with variation in how resulting representation decisions are undertaken);
- hold a poll at the 2025 local elections, with the results of the poll to apply from the 2028 local elections; or
- hold a poll at the 2025 local elections, if a valid petition is received from electors in early 2025. The results of the poll will apply from the 2028 elections.

Options outside of the four outlined above have not been considered.

The Minister's preferred option is for affected councils to hold a binding poll in late 2024 with the results of the poll to apply from the 2025 local elections. For the outcomes of the mandatory polls to apply from the term commencing October 2025, the legislative changes would need to be enacted by the end of July 2024. This is to enable affected councils to have time to conduct the polls (which takes approximately three months) and develop and

<sup>1</sup> page 16, Compliance with the New Zealand Bill of Rights Act 1990: Local Government Bill 2001 ([20011205-NZ-BORA-Advice-Local-Government-Bill-final-1.pdf](#) (justice.govt.nz)).

implement new representation arrangements (if required), before pre-election processes start in April 2025.

This option is likely to be challenging for councils in the lead-up to the 2025 local elections, as it may be necessary for affected councils to draft more than one set of representation review arrangements prior to poll results being confirmed to meet the strict timeframe. There is a risk that some affected councils may not have capacity to complete polls in 2024 and then hold truncated representation reviews before pre-election processes begin in April 2025, which carries some risk relating to the 2025 local elections. Because of timing limitations, we have not completed in-depth analysis of the probability that councils will miss the deadline.

Although we have not consulted (other than with relevant government departments) on the proposal to reinstate the binding poll mechanism for future local government terms due to timing and confidentiality constraints, we have been able to draw on submissions and information gathered through a number of select committee processes, consultation processes, and research reports from recent years on this topic.

### **Limitations affecting the analysis of both issues**

The Minister's preference is for all legislative changes required to fulfil the coalition commitment to be enacted in a single Bill, along with other priority local electoral amendments. To meet this objective and allow time for councils to complete polls to take effect before the 2025 elections, a Bill would have to be passed by the end of July 2024.

These timing and scope constraints have placed the following limits on this analysis:

- options to modify the pre-2021 poll mechanism have not been considered (such as changes to the 5% threshold for a petition, eligibility to vote in polls, or whether the polls could be non-binding);
- there has been limited opportunity to investigate the specific impacts on Māori, iwi, and hapū, and any impacts on Treaty of Waitangi settlement agreements;
- information on cost implications is limited and only indicative; and
- no consultation has been undertaken on these proposals, other than with relevant government departments and the Electoral Commission.

The Cabinet paper was amended following the Cabinet Economic Policy Committee meeting on 6 March 2024, to modify the original options to add the ability for councils that have resolved to create Māori wards but not yet implemented them to rescind these decisions, and for councils that have existing Māori wards to resolve to disestablish them. Two additional options (Options Three and Four in section 2B, dealing with transitional arrangements) were also added. Time constraints have meant that these options have not been fully analysed and minimal consultation was possible.



## Responsible Manager

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Department of Internal Affairs (DIA)



14 March 2024

## Quality assurance

Reviewing agency: Department of Internal Affairs

Panel assessment and comment:

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

The RIA was developed within a very tight, ministerially set, timeframe to deal with the implementation of Government a coalition commitment to undo legislative changes made by the previous government. These factors limited the analysis and consultation that could be undertaken and the evidence available. They also required the policy problem and objectives that underlie the commitment to be “backfilled”.

While these limitations are acknowledged in the RIA, their consequences could be stated more clearly and explicitly addressed.

While the panel found the identification of policy objectives related to the stated policy problem, and the development and use of criteria based on those objectives to be useful, there was insufficient analysis of the relative value of Māori wards as a mechanism for meeting effective representation objectives. As a result, the panel did not feel the application of the criteria provided a compelling assessment of the policy commitment against the status quo.

In relation to the transitional application of the poll provisions to existing Māori ward decisions, the panel did not believe the use of similar criteria was appropriate to assessing process and timing options to achieve the Government’s objective. The panel did not find the Department’s preference for the status quo to be useful in this context and felt more explicit exploration of the relative cost, timing, and process implications of the options considered (for instance, the impact on the integrity of representation reviews) would have enabled a more useful comparison of the relative merits of the other options.

On this basis, the panel felt that the RIA failed to fully meet the “complete’ and “convincing” criteria prescribed by Cabinet. The

context within which the proposals were developed also precluded any meaningful consultation with affected parties. This is acknowledged in the RIA which does include some evidence of stakeholder views from previous consideration of the underlying issues.

Proactively released by the Minister of Local Government

## Section 1: Diagnosing the policy problem

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

#### What are Māori wards and what is their function?

1. Legislation to allow councils to introduce Māori wards was first passed in 2002. The process for establishing Māori wards is set out in the Local Electoral Act 2001 (the Act). Māori wards were originally introduced as an option for enhancing the representation of Māori in local government, where Māori had been historically underrepresented.<sup>2</sup>
2. Māori wards are representative seats intended to represent a Māori population for a district council, whereas Māori constituencies represent the Māori population for a regional council. Māori wards and constituencies (“Māori wards”) are electoral representative seats created within a local authority (“council”) that electors on the Māori electoral roll in that area may then vote for. The number of Māori wards is set through an equation based on the Māori electoral population within the district or region. This approach is similar to that for Māori electorate seats in parliamentary elections, except the decision of whether to establish Māori wards is optional for each council.
3. Māori wards are intended to:
  - provide the option of dedicated, elected local representation for New Zealanders on the Māori electoral roll;
  - increase the diversity of representation at the council table; and
  - increase opportunities for Māori to participate in local authority governance and decision-making.
4. In practice, Māori wards perform a similar function to general wards. Councillors who are elected to represent a ward are responsible for communicating the interests of the community they represent, while acting in the interest of the whole district or region.
5. Council decisions about creating general wards could not be challenged by a poll of electors in the same way that Māori wards were, although the public could appeal these decisions to the Local Government Commission. Councils can also resolve to create general wards to represent particular communities of interest within a district, region, or city. If the representation ratios for these wards vary greatly from the other wards the Local Government Commission must review these decisions. The Local Government Commission’s scope for review is narrow and set within statutory criteria.
6. Section 4 of the Local Government Act 2002 acknowledges the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes. Parts 2 and 6 of the Local Government Act provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

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<sup>2</sup> Page 39 of the Select Committee’s response to Local Government Bill 2001 (2002 No 191-2)  
[f5add59703a11f3dd6c56c539837cdb02365baef \(www.parliament.nz\)](https://www.parliament.nz/f5add59703a11f3dd6c56c539837cdb02365baef)

## What are the poll provisions?

7. Originally, the Act provided options for Māori wards to be established by:
  - council resolution; or
  - majority vote in a binding poll, initiated either by the council itself, or by a petition of electors.
8. A petition of electors could also be used to demand a poll on a council resolution to establish Māori wards. A valid petition needed to have signatures from at least 5% of electors who were on the electoral roll for that council area at the last triennial election. If the petition was valid, the council was required to hold the poll, and the result was binding for two local government terms.
9. There is a similar binding poll mechanism in the Act that applies to council decisions about which electoral system will be used (STV or FPP). There is no binding poll mechanism for decisions on other parts of representation arrangements, such as decisions to establish new general wards.
10. The inclusion of the poll provisions was intended as a mechanism to allow Māori electors to seek Māori wards if the council did not consider it or decided against. However, in practice, the poll provisions were used to challenge council resolutions to establish Māori wards and proved to be an almost insurmountable barrier to their establishment. Between 2002 and 2019 only two councils established Māori wards using the previous process under the Act. Fourteen councils attempted to establish Māori wards, some more than once. Sixteen polls were held, and only one of these was in favour of establishing Māori wards (Wairoa District Council in 2016). One council (Waikato Regional Council) established Māori wards without a poll being demanded by electors. A summary of the outcomes of the processes under the Act is attached as **Appendix A**.
11. In 2001 an estimated 4% of elected representatives on councils were of Māori descent, compared to a Māori population estimate of 14.7%. Over the period from 2002 to 2020 overall Māori representation on councils had improved, but there was still underrepresentation. For example, following the 2019 local elections an estimated 13.5% of elected members on councils were of Māori descent<sup>3</sup>, compared to a Māori population estimate of 16.7%. These figures do not reflect substantial variations in the Māori population by region.

## Māori wards and 2021 legislative changes

12. The previous Government amended the Act in 2021 to remove the ability for Māori ward decisions to be subject to polls. This meant that councils had the final decision on whether Māori wards were established. That decision would continue to apply for the next two electoral terms (six years) before a council could revisit the decision.
13. The policy rationale for the 2021 legislative changes was to remove the effective elector 'veto' on Māori wards. Under these changes, final responsibility for balancing the various public interests, including minority interests, would sit with the council's elected representatives.
14. Another rationale was that Māori and general wards followed different processes for establishment. A petition followed by a binding poll allowed the public to challenge wards created to represent the Māori population of a district or region. There was no

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<sup>3</sup> LGNZ, [Elected member's profile 2019-2022](#)



option for the public to challenge a council's decision establishing general wards representative of other populations through a binding poll.<sup>4</sup>

15. Since the legislative change, 46 councils (city, district, and regional) have voted to establish Māori wards without being subject to the poll requirements. Of these:
  - 32 councils resolved to establish Māori wards before the 2022 local elections, and:
    - i. 31 of these now have Māori wards in place; and
    - ii. one (Tauranga City Council) is due to hold its first Māori ward election as part of its 2024 general election (postponed from 2022); and
  - 14 councils have resolved to establish Māori wards, with effect from the 2025 local elections (this includes Ōpōtiki District Council, which held a non-binding poll with a result in favour of establishing Māori wards, followed by a council resolution to establish).
16. Following the 2022 local elections an estimated 21.6% of elected members on councils were of Māori descent.<sup>5</sup> However, this is not distributed equally across all regions in New Zealand.

### The representation review process

17. In general, councils have the ability to determine their own representation arrangements, in consultation with their communities. Councils must undertake a representation review at least every six years. Through that process, they must consider matters such as the number of councillors, the number and boundaries of wards and constituencies, and whether to have community boards. A council must complete a representation review following a decision to establish or disestablish a Māori ward.
18. The representation review process has a number of mandated steps including:
  - publishing an initial proposal;
  - considering submissions;
  - issuing a final proposal;
  - an appeals and objections process, with determinations made by the Local Government Commission; and
  - the option to appeal a Local Government Commission determination to the High Court.
19. The Act sets out specific requirements for the representation arrangements to provide fair and effective representation of communities. Councils can make special arrangements to recognise a particular community of interest, but these arrangements must be reviewed and determined by the Local Government Commission.

### How is the status quo expected to develop if no action is taken?

20. If there are no changes to the status quo, additional consultation requirements on councils will come into effect in October 2025.<sup>6</sup> Councils are required to consult with the public as a part of the six-yearly representation review process but are not currently required to consult on the decision to establish Māori wards. Many of the councils that

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<sup>4</sup> [Impact Summary: Changes to the process for establishing Māori wards and constituencies](#)

<sup>5</sup> LGNZ, [Elected members' census 2022](#)

<sup>6</sup> Amendments to the Local Electoral Act made through the the Local Government Electoral Legislation Act 2023 (the LGEL Act).

have resolved to establish Māori wards have chosen to engage with the community on this topic before making the decision.

21. The additional consultation requirements will:
  - require councils that do not already have Māori wards to, at least every six years, consider whether to establish specific Māori representation; and
  - require councils to engage with Māori and other communities, and have regard to their views, before making the decision.
22. These changes are due to come into force from October 2025. The enhanced consultation requirements do not apply to council decisions on Māori wards between the period of the 2021 legislative amendment and these sections of the Act coming into force.<sup>7</sup>
23. Under the status quo, we would expect a small number of additional councils to resolve to establish Māori wards over the next 10 years, and those resolutions would not be subject to binding polls. Some councils may choose to conduct non-binding polls. It is also possible that some councils may choose to disestablish their Māori wards.
24. We would only expect a small number of additional councils to establish Māori wards because of the constraints of the formula in the Act for calculating the number of Māori ward councillor positions.<sup>8</sup> This makes it unlikely that councils with a very low Māori electoral population, particularly in the South Island, will establish Māori wards.

## What is the policy problem or opportunity?

### Government priorities

25. On 2 March 2021, the mechanism for councils to conduct binding polls on whether to establish Māori wards was removed through an amendment to the Local Electoral Act allowing councils discretion to resolve to establish a Māori ward. Following these changes, 46 councils resolved to establish Māori wards for the first time, with 31 of those councils implementing that change at the 2022 local elections.
26. Coalition agreements include a commitment to:

“restore the right to local referendums on the establishment or ongoing use of Māori wards, including requiring a referendum on any wards established without referendum at the next local body elections”.
27. The Government considers that there is an imbalance between the ability for electors to determine their representation arrangements and Māori representation in local government. The proposed solution is that the community should be able to make the final decision on whether Māori wards are established, based on a majority vote, rather than the elected representatives making the final decision. This comes from a commitment to ensure that the public has a greater opportunity to have their views reflected in local representation arrangements.
28. Current Māori wards legislation and the 45 councils that have previously resolved to establish Māori wards under the 2021 amendment, without holding a poll, are inconsistent with Government objectives.
29. The coalition agreement indicates Government objectives for the 46 councils to hold binding polls during the 2025 local elections. The Minister of Local Government has

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<sup>7</sup> The Regulatory Impact Statements for these amendments are available on the Department of Internal Affairs website at [https://www.dia.govt.nz/diawebsite.nsf/Files/Regulatory-Impact-2022/\\$file/Regulatory-Impact-Statement-Maori-electoral-representation.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Regulatory-Impact-2022/$file/Regulatory-Impact-Statement-Maori-electoral-representation.pdf)

<sup>8</sup> Schedule 1A, Local Electoral Act 2001

further decided to consider holding standalone binding polls in 2024 so that the outcomes can apply from the 2025 local elections. The Minister has indicated that this is his preferred option.

30. The Government also intends to offer councils options to avoid the poll process, if they choose to. For councils that have resolved to create Māori wards but not yet implemented them, they will have the option to rescind these decisions, and for councils that have existing Māori wards, they will have the option to resolve to disestablish them.

### **Removing the poll provisions has increased Māori representation on local authorities**

31. Removing the poll provisions has enabled a significant number of councils to establish specific Māori representation in their elected membership for the first time.
32. Feedback from councils indicates that the risk of triggering a poll, and the community division that the polls tended to create, acted as a deterrent to promoting the option of Māori wards. Since the poll provisions were removed, council uptake of the Māori wards option increased by more than three times the number that had previously tried to establish Māori wards.

### **There is very little time to conduct and implement polls before the 2025 local elections**

33. Councils' representation review processes for the current local government term are already under way. Some councils have already started early engagement with their communities prior to issuing their initial proposals. There would be significant work needed, after legislation is enacted, for affected councils to carry out polls. Following that, if required, councils would implement changes through a truncated representation review. These steps need to be completed by April 2025 before pre-election processes start.
34. The limited time available for polls and completing representation review processes may be challenging for councils to manage. Truncating the representation review involves effectively removing the role of the Local Government Commission in hearing appeals and objections. This could lead to poorer representation arrangements and/or ongoing community dissatisfaction with council decision-making.

### **Stakeholders**

35. There are a number of key stakeholders, including:
  - Current and future electors of Māori descent (who are currently on the Māori electoral roll or may choose to be in the future) – the Māori wards poll provisions affect the likelihood of this group having the option of specific Māori representation on their local councils, and they are likely to be affected if petitions and polls become a contentious issue within the local community.
  - Mana whenua – iwi and hapū relationships with local authorities can be affected by decisions on Māori wards, and they tend to be the groups most affected if petitions and polls become a contentious issue within the local community.
  - Current and future non-Māori electors – these electors have an interest in the general composition of the representation arrangements for their local councils, and may also be negatively affected by social division around contentious issues.
  - Local authorities – councils are responsible for delivering Māori ward polls and implementing the outcomes, including funding these processes. Councils also have responsibilities to consult with their communities on key decisions. The 45 councils which have recently resolved to establish Māori wards, without holding a poll, are most immediately affected by the options in this analysis.
  - The Local Government Commission has an appeal and determination function for all councils' representation reviews.

- A number of other agencies and entities are involved in delivering the polls and supporting implementation of representation review outcomes, including the Electoral Commission, New Zealand Post and other postal service providers, election service providers, Statistics New Zealand, and Land Information New Zealand.
36. Due to time constraints and confidentiality requirements, the Department of Internal Affairs has not consulted on options for implementing these changes outside government departments and Crown entities. The Department has had preliminary discussions with the Local Government Commission, the Electoral Commission, Statistics New Zealand, and Land Information New Zealand.

*Views on the poll provisions have been well canvassed previously*

37. Although there has been no specific public consultation on the coalition agreement commitments, there have been other opportunities for public consultation on the topic of the Māori ward polls in the past, including:
- submissions on a petition by Andrew Judd<sup>9</sup> that “the House of Representatives consider a law change to make the establishment of Māori wards on district councils follow the same legal framework as establishing other wards on district councils” (which was considered as part of the Inquiry into the 2017 General Election and the 2016 Local Elections);
  - the Tauranga Moana claim to the Waitangi Tribunal; and
  - the 2010 Human Rights Commission report, “Māori representation in local government”.
38. Many of the arguments for and against polls on Māori wards were summed up in the Departmental Report to the Māori Affairs Committee on submissions on the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill, as summarised below:

*Support for removing the poll provisions*

- [Removing the polls] provides for fairer electoral representation of Māori at local government.
- [Removing the polls] supports the Crown’s obligations under te Tiriti o Waitangi / the Treaty of Waitangi.
- Councillors are elected to make decisions, and as elected representatives they should be trusted with balancing the respective community interests involved.
- [Removing the polls] would avoid the community division that is heightened by Māori ward polls.
- [Removing the polls addresses] a discrepancy between the way that Māori wards and general wards are treated in law.

*Opposition to removing the poll provisions [and to councils having] Māori wards more generally*

- The community should have a say on whether a council adopts Māori wards.
- Māori wards are undemocratic or divisive.
- There is already sufficient representation of Māori in local government.

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<sup>9</sup> Petition 2014/0060

- If there is separate representation for Māori then there should be separate representation for other ethnicities.
- Previous Māori ward poll results have shown they are not wanted by communities.<sup>10</sup>

*We lack information on the implications of requiring polls in 2024*

39. As the Department has not had opportunity to consult with affected councils on these proposals, we have limited information about the impact of requiring councils that have resolved to establish Māori wards since 2021 to hold a binding poll to take effect for the term commencing in October 2025. There are a number of implementation challenges to achieve the coalition agreement commitments, however it is possible that unforeseen challenges to implementation can be resolved through future consultation with councils and affected parties.

## Conclusion

40. The policy problem is therefore determining the correct balance between public input in council representation decisions and facilitating Māori representation and participation in local government.

## What objectives are sought in relation to the policy problem?

41. The primary objective of the policy changes is to ensure the local community has a greater say about the shape of their representation arrangements, both on recent decisions and for decisions about Māori wards in future.

### *Objectives for section 2A: Long-term changes to the process for Māori wards*

42. The objective for changes to the Māori wards poll provisions are to ensure that local communities have a greater say in decisions about council representation arrangements, while also supporting councils to facilitate Māori representation and participation in a way that is consistent with the Local Electoral Act and Local Government Act, and is consistent with other similar council decision-making processes.
43. A secondary objective is to reflect New Zealand's unique constitutional framework by considering how to maintain local democracy in a way that reflects the partnership between the Crown and Māori that is inherent in te Tiriti/the Treaty. Māori wards are one way, but not the only way, that rights and responsibilities under te Tiriti/the Treaty can be implemented.
44. Any changes should aim to ensure consistency in council decision-making about representation arrangements as far as is practicable.

### *Objectives for section 2B: Transitional changes for 45 councils*

45. Transitional changes will inevitably have an impact on councils. The objective of policy in this area should be to implement the long-term changes around Māori wards legislation efficiently and inexpensively in a way that minimises disruption for affected councils while maintaining the integrity of local government processes.
46. The implementation should give effect to the objectives around balance between public input into representation arrangements and Māori representation in local government. Both of these should be considerations in the implementation of policy objectives.

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<sup>10</sup> Departmental Report to the Māori Affairs Committee on submissions on the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill, 14 February 2021, [7b21844a633035f8b6f590f0ba69344b1ac3c269](https://www.parliament.nz/bills/7b21844a633035f8b6f590f0ba69344b1ac3c269) ([www.parliament.nz](http://www.parliament.nz)), pages 1-2



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

For this section we have considered the two parts of the Government's preferred approach to the policy problem separately:

- Section 2A: Long-term changes to the process for Māori wards. This section deals with options to make enduring changes to council decision-making processes about Māori wards.
- Section 2B: Transitional changes for 45 councils. This section deals with consistency for the councils that created a Māori ward while the poll provisions were not in place.

### 2A: Long-term changes to the process for Māori wards

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

47. The criteria used to assess the options are to ask whether the policy:
- supports adequate public input into decisions about local representation;
  - supports councils to facilitate Māori representation and participation in local government;
  - enables balancing of various community interests (including minority interests);
  - supports consistency of council decision-making about representation arrangements; and
  - minimises fiscal and/or compliance costs.
48. There is some tension between these criteria and the Government's objectives. Options that support the Government's objectives of ensuring the public has access to binding polls in response to council decisions to establish Māori wards are likely to conflict with the criteria of minimising costs, and facilitating increased Māori representation in local government.

#### Supporting adequate public input into decisions about local representation

49. It is important that there is an opportunity for all members of councils' communities to contribute to discussion and debate on decisions on Māori wards. While the decision primarily affects electors on the Māori electoral roll and mana whenua, all constituents have an interest in council representation arrangements. A binding poll is one way for members of the public to have direct control over council decisions.

#### Supporting councils to facilitate Māori representation and participation

50. The Crown requires local authorities to facilitate Māori participation in local government decision-making processes, to give effect to the Crown's Tiriti/Treaty obligations. Section 4 of the Local Government Act gives explicit recognition to the Crown's obligations for local authorities in this respect. In 1993 the Waitangi Tribunal commented that, where the Crown has delegated functions to local authorities, it must still ensure that the Crown's obligations of active protection under Ko te Tuarua/Article 2 of te Tiriti/the Treaty must be fulfilled.<sup>11</sup>

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<sup>11</sup> Waitangi Tribunal. The Ngawha Geothermal Resource Report 1993. page 153  
[https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68348162/Ngawha%20Geothermal%20Resources%201993.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68348162/Ngawha%20Geothermal%20Resources%201993.pdf)

51. The Crown has obligations under te Tiriti o Waitangi/the Treaty of Waitangi to respect the right of Māori to make decisions in relation to their lands and taonga, within the context of the Crown's right to govern. Te Tiriti/the Treaty also affirms that the Crown's obligations to New Zealand citizens are owed equally to Māori.
52. In 2010 the Waitangi Tribunal heard, through its inquiry into claims brought by tangata whenua in Tauranga Moana, that "the current composition of local bodies does not adequately reflect or represent Māori interests [and] the Crown needs to intervene to ensure that Māori are represented on councils." The Tribunal's report found that the Crown must ensure that its te Tiriti/Treaty obligations are upheld even when it delegates functions to local government, and that this includes the equal rights of Māori with other citizens when participating in democratic electoral processes afforded by Ko te Tuatoru/Article 3 of te Tiriti/the Treaty.<sup>12</sup> Māori wards are one means of fulfilling council obligations to ensure Māori can participate in local government decision-making. They are not the only way for councils to achieve this. Local authorities still need to ensure that they have an understanding of Māori rights and interests and there are many ways to achieve this, including through engaging with local iwi and hapū.
53. 9(2)(h)

#### Balancing of community interests

54. Elected members are required to act in the best interests of their district and region, and that role requires some balancing of interests in decision-making, including taking into account minority interests. Polls are an instrument of majority rule, and the outcome will always depend on the majority's perception of the minority interests.

#### Consistency of council decision-making about representation arrangements

55. Currently a council can decide to establish a ward that is representative of a significant community of interest (e.g., a rural ward) and the public has no ability to overturn this decision through the use of a poll. It may, however, appeal to the Local Government Commission for a review of the decision. The ability for a poll of electors to overturn a council resolution is also unusual in the context of council decision-making. For most council decision-making processes, the public does not have this level of influence over the decision.
56. The Māori ward poll process was identical to that for council resolutions on which electoral system to use (STV or FPP). While these issues are both electoral, the impact of these decisions is not equal. Decisions about the electoral system apply equally to all voters, while decisions about Māori wards disproportionately affect Māori.
57. This criterion considers whether the option establishes additional barriers to Māori representation that do not apply to other communities.
58. Neither the status quo nor any of the proposed options involve fully aligning the process of creating Māori wards with the process for creating general wards through the representation review process.

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<sup>12</sup> Waitangi Tribunal. September 2010. Tauranga Moana, 1886–2006 (chapter 6).  
<https://waitangitribunal.govt.nz/news/tauranga-moana-18862006-released-2/> .

## **Fiscal and compliance costs**

59. Being required to hold standalone polls incurs a cost for councils which is largely fixed. Councils will be required to pay the costs associated with running the poll including postal costs, advertising, and contributing staff time. The Electoral Commission also incurs additional costs to supply the electoral roll data and support special vote checking processes.
60. Council engagement processes also incur costs to councils.

## **What scope will options be considered within?**

61. The Minister of Local Government's proposals limit the scope of options that can be considered to address the policy problem. Non-regulatory options were not considered as an option to achieve this objective, as legislative change is needed to require councils to hold binding polls on Māori wards.
62. The Department briefly considered options to reinstate a modified version of the poll provisions, to mitigate the barriers created by the pre-2021 model. Possible modifications included:
  - increasing the 5% threshold for a valid petition of electors to demand that a poll be held;
  - increasing the vote threshold for overturning a council decision from a simple majority to a higher percentage; or
  - removing the ability for polls to remove Māori wards once established.
63. Time constraints, to provide for all legislative changes to be made within a single Bill and to enable the transitional provisions to apply to the 2025 local elections (if that option is chosen) meant we did not consider these possible variations further. It is possible that if more time had been available, investigating and testing changes to these settings may have allowed us to develop an option that achieves Government priorities but minimises some of the negative impacts of the previous arrangements.

## **What options are being considered?**

64. This section deals with the decision to remain with the status quo or restore the poll requirements that were in place prior to the 2021 changes on a permanent basis.

### **Option One – Status Quo/Counterfactual**

65. Under the status quo a council can resolve to establish or disestablish a Māori ward with no ability for this decision to be overturned by a poll. Constituents are consulted on the boundaries and number of Māori wards. From October 2025, councils that do not already have Māori wards will be required to follow a process to engage with Māori and other communities when making a decision on Māori wards at each stage of the decision-making process.

### **Option Two – pre-2021 poll requirements are reinstated**

66. Under Option Two, council decisions to establish Māori wards could be overturned by a binding poll triggered by a petition signed by 5% of local electors. A petition for a poll could also be launched at any time. The poll outcome would be decided by a simple majority. Councils could also choose to initiate a binding poll themselves. Constituents will continue to be consulted on the boundaries and numbers of Māori wards.

## How do the options compare to the Status Quo/Counterfactual?

Criteria		Option One – Status Quo	Option Two – pre-2021 poll requirements are reinstated
<b>Public input</b>	Does the option support adequate public participation?	<p>0</p> <p>From October 2025 councils without Māori wards will be required to consult with Māori and other communities on Māori ward resolutions, and have regard to their views. Councils are not required to make a decision based on the level of public support or opposition.</p>	<p>+</p> <p>This option gives the most direct control over the decision to electors.</p> <p>Polls are usually accompanied by information produced by councils. Electors are encouraged to participate in the decision-making via the poll.</p>
<b>Facilitating Māori representation and participation</b>	Does the option support councils to facilitate Māori representation in local government?	<p>0</p> <p>The current process empowers elected members to establish specific Māori representation on the governing body, if they determine this is best for their district or region. The current process does not present additional barriers to Māori representation.</p> <p>From October 2025 there will be specific requirements to consult with local Māori communities to ensure iwi and hapū have input into the decision-making process. This would ensure Māori have the opportunity to participate in these decisions. The majority of councils that have created a Māori ward have undertaken some consultation regardless of current requirements.</p>	<p>--</p> <p>This option makes it much more difficult to establish Māori wards. While Māori wards are not the only way for councils to facilitate Māori representation and participation, they are an option to provide for greater access to local governance mechanisms for Māori.</p> <p>While this option restores provisions that were previously in place, in doing so it creates a new barrier to Māori engagement and participation in local government decision-making.</p>



<p><b>Balancing interests</b></p>	<p>Does the option enable balancing of various community interests (including minority interests)?</p>	<p><b>0</b></p> <p>Balancing of interests is done by elected representatives who have the final say. This allows councils to hear a range of views and determine what they consider the best path forward.</p> <p>Enabling councils to develop their own community and engagement process allows for more nuanced balancing of minority interests than the poll mechanism.</p>	<p><b>--</b></p> <p>Elected representatives' decisions may be overturned by a simple majority of electors. This option is subject to the risk that the wishes of the majority override minority interests.</p>
<p><b>Consistency</b></p>	<p>Does the option support consistency of decision-making processes about representation arrangements?</p>	<p><b>0</b></p> <p>There is no poll provision attached to the process for creating any types of wards under the status quo. The decision is made in a way that is in line with the majority of other council decision-making processes.</p>	<p><b>--</b></p> <p>Māori ward decisions will be able to be overridden by a majority of electors, whereas councils' decisions on establishing new general wards cannot.</p>
<p><b>Cost</b></p>	<p>Does the option minimise fiscal and/or compliance costs?</p>	<p><b>0</b></p> <p>Councils without Māori wards will incur costs at least every six years for public engagement on whether to establish Māori wards. The extent of the engagement will depend on individual council policies. Councils with Māori wards are not required to continue to consider whether to disestablish existing Māori wards.</p>	<p><b>-</b></p> <p>Any council that proposes establishing Māori wards is likely to incur the cost of conducting a poll, including costs relating to community engagement. If a council chooses to hold a poll with the triennial local elections they can reduce their costs, vs holding a standalone poll.</p> <p>Under this option councils would not be required to consider Māori representation at least every six years, which would reduce the cost of consultation on proposals.</p>
<p><b>Overall assessment</b></p>		<p><b>0</b></p>	<p><b>-</b></p>



**Example key for qualitative judgements:**

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

Proactively released by the Minister of Local Government

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

67. The status quo is the Department's preferred option as it increases the level of public involvement in council decisions about Māori wards from October 2025, while also supporting councils to facilitate Māori representation and participation in local decision-making. However, it does not meet the Government's objectives under the coalition agreements.
68. The status quo includes additional requirements on councils to canvass views across their communities when considering whether Māori wards are right for their district or region. These enhanced consultation requirements will come into force in October 2025. The range of views can then be balanced by representatives elected to carry out this function, taking into account minority interests, and giving due weight to the views of those most affected by the decisions. This is a separate decision-making process, but consistent with the approach currently taken to establishing new general wards, such as a rural ward, to ensure adequate representation for a community of interest. The status quo would ensure greater consistency between decision-making processes for establishing new wards of different types.
69. Evidence from the period of 2002 to 2019 suggests that Option Two could prevent many other councils from establishing Māori wards, even if the council considered that this would strengthen its decision-making processes and relationships with mana whenua. It may also result in the disestablishment of Māori wards for a number of councils, although evidence for this is limited. The Department does not hold any information on the results of polls held to disestablish an existing Māori ward as none have been held before.
70. By empowering councils to make Māori ward decisions this is likely to maintain recent progress in addressing historic underrepresentation of Māori in local authorities.
71. Although it is not the most important factor, the status quo option avoids the risk of councils having to fund the cost of polls initiated by electors.
72. The Government's preferred option is Option Two. The cost/benefit analysis below, and Section 3 of this analysis, will consider that option.

## What are the marginal costs and benefits of the option?

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence <b>Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	<p>Local authorities – additional binding polls.</p> <p>Local authorities may be less likely to consider Māori representation due to the potential for a poll to be triggered, resulting in less opportunity for Māori participation and representation</p>	<p>Medium. Costs vary depending on the size of the council but are estimated to be around \$175,000 for a council with an electoral population of 50,000.</p> <p>High</p>	<p>High</p> <p>High</p>
Regulators	N/A		
Māori	<p>Likely less representation of Māori and Māori interests in local government as fewer polls held or result in 'yes' results.</p> <p>Reports from councils who attempted to create a Māori ward before the poll provisions were removed indicates polls result in increased community and social division.</p> <p>Lack of understanding about Māori wards results in inaccurate perception Māori have more rights or get more representation.</p>	<p>Medium</p> <p>Medium</p> <p>Medium</p>	<p>High</p> <p>High</p> <p>Medium</p>

Others (eg, wider govt, consumers, etc.)	Less Māori representation is also a loss to local communities as a whole.	Low	Low
<b>Total monetised costs</b>		N/A	N/A
<b>Non-monetised costs</b>		Medium	High
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Local authorities – can defer decision to a binding poll, saving a varying amount of money on community engagement depending on council size.	Low	Low
Regulators	N/A		
Others (eg, wider govt, consumers, etc.)	Public has final say in council decisions on Māori wards.	Low	Medium
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>		Low	Low

## 2B: Transitional changes for 45 councils

73. This section deals with requirements for the 45 councils that resolved to establish Māori wards without a poll following the 2021 changes, to hold a poll as soon as reasonably practicable.

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

74. The criteria used to assess the options are to ask whether the policy:
- supports adequate public input into decisions about local representation;
  - facilitates Māori representation in local government;
  - consistency of the poll processes with long-term changes;
  - supports stability of representation arrangements;
  - minimises fiscal and/or compliance costs; or
  - preserves the integrity of the representation review process.
75. There is some tension between these criteria and the Government's objectives. Options that support the Government's objectives of ensuring binding polls are a public option for the establishment of any Māori wards are not necessarily consistent with the criteria of representation stability, facilitating increased Māori representation in local government, and minimising fiscal costs. This is not to say that mitigation cannot take place to minimise the impact of options considered against these criteria.
76. Conversely, there is congruence between the Government's objective and how an option allows for public input. The Government's objective is to increase public input on Māori wards decisions and therefore any option that meets the Government's objectives should increase public input.

### Supporting adequate public input into decisions about local representation

77. The council representation review process considers a much wider range of issues than just Māori wards. It also looks at the number of councillors, wards, and boundaries, whether some councillors should be elected "at-large" (by all electors) and whether there should be community boards. It is very important that there is a robust process for community input and proper consideration of community views as part of the representation review process.
78. The options we have analysed allow electors to have direct influence on resolutions to establish Māori wards made since 2021 through a binding poll. We have not considered options to allow electors from councils who resolved not to establish Māori wards to have direct influence. Councils that resolved not to establish Māori wards since 2021 will not be subject to binding polls.

### Facilitating Māori representation in local government

79. Transitional changes for the councils that have established Māori wards since 2021 will likely have a significant impact on Māori representation arrangements across local government. Statistics from the period of 2002 to 2019 suggest it is likely that the majority of transitional polls will result in the disestablishment of Māori wards established since 2021.
80. Lower Māori representation in the short term impacts councils by removing a voice of minority representation in council discussions and removes a mechanism to support councils in providing opportunities for Māori to contribute to local government decision-making. There are structures that can replace these opportunities but Māori wards are a useful mechanism for the 45 councils that resolved to establish them since 2021.



### **Consistency of the poll processes with long-term changes**

81. It is important that any changes to Māori wards legislation are applied as evenly as possible in both the short and long term. The poll processes for councils that are subject to transitional arrangements should be as similar as possible to poll processes for councils that seek to establish a Māori ward under the restored legislation.

### **Stability of representation arrangements**

82. Under current legislation decisions to establish Māori wards are required to be in place for a minimum of two terms before they can be changed again. This is to give time for the changes to bed in, and it lines up with the requirement for councils to review their representation arrangements at least once every six years.
83. For councils that established Māori wards in the term beginning October 2022, if a poll is held in the intervening term, and the outcome is for a change, that will require the council to complete a representation review to implement the poll result. This would result in the Māori ward for the council being in place for only three years and therefore having no chance to “bed in”. This may also result in councils having to complete a representation review after three years instead of six years.

### **Fiscal and compliance costs**

84. Holding polls incurs a cost for councils (the costs associated with running the poll including postal costs, advertising and council staff time). The costs are significantly reduced if the poll is held at the same time as a district- or region-wide election. If the council is required to complete a representation review as a result of the poll, in a year where their representation review was not already due (i.e. an “out-of-cycle” review), then this will incur additional costs for the council.
85. Other agencies also contribute staff time and resources to either the polls process and/or the representation review process including the Local Government Commission, the Electoral Commission, Statistics New Zealand, and Land Information New Zealand.

### **Preserving the integrity of the representation review process**

86. The representation review process and the role of the Local Government Commission would need to be truncated in order to meet timeframes for councils to hold a poll that will take effect at the 2025 elections.
87. The Local Government Commission has oversight over council representation proposals and makes final decisions if a council proposal is not compliant with the legislation, or appeals or objections have been made by the public following a council’s final proposal.
88. The Local Government Commission acts as a safeguard during the appeals and objections stage of the representation review process. Their role is to ensure councils are applying representation principles appropriately and complying with legislative requirements, as well as providing a mediation process between councils and members of the public regarding any disagreements. Removing it as part of this option could lead to poorer representation arrangements and/or ongoing community dissatisfaction with council decision-making.
89. The Local Government Commission provides an apolitical review role over the representation review process. Without it, there may be a perception that councils have incentives to choose representation arrangements that suit the current elected members. This is important in the context of the public’s trust and confidence in local elections.

### **What scope will options be considered within?**

90. The Minister of Local Government’s policy direction limits the scope of options that can be considered to address this objective. Non-regulatory options were not considered as

legislative change is needed to require the 45 councils to conduct binding polls on Māori wards, and to enable councils to make changes to their representation arrangements outside the standard representation review cycle.

91. Under all of the proposed options for changes to the Māori wards process, the 13 councils that resolved to establish Māori wards this term (without holding a poll), and have not yet implemented that decision, would be allowed to rescind that decision through a resolution. The Minister has also proposed that the 31 councils that have already implemented Māori wards be allowed to resolve to disestablish their Māori ward by resolution. Tauranga City Council would also have the opportunity to disestablish its Māori ward in the term from 2024 to 2028. Councils that do not disestablish or rescind a decision to establish Māori wards would have to conduct a binding poll.
92. We have not developed alternative options for the timing of the mandatory polls or variations on the poll process due to the time available and constraints on analysis necessary to align with coalition agreements.

### What options are being considered?

#### Option One – Status Quo / Counterfactual

93. Under the status quo:
  - 31 of the councils that established Māori wards last term would proceed with their current representation arrangements for the 2025 local elections (unless they choose to do an out-of-cycle representation review);
  - Tauranga City Council would proceed with its current representation arrangements for its 2024 general election; and
  - 14 councils that resolved to establish Māori wards this term would proceed to complete their representation reviews, starting with publishing their initial proposal by 8 August 2024.

#### Option Two – the outcome of polls take effect at the 2025 local elections after a mandatory poll in late 2024

94. Under this option, all councils who created or resolved to create a Māori ward without a poll have the opportunity to rescind their decision on creating Māori wards or resolve to disestablish their existing Māori wards.
95. All of the 44 councils that chose not to rescind or disestablish their Māori wards would be required to conduct a binding poll on Māori wards by the end of 2024. Polls take three months and would be held starting in August and would be completed by late November. If any councils have already issued an initial proposal for their representation review this would be invalidated. All 44 councils where the poll result is negative would disestablish their Māori wards and need to complete a truncated representation review by the end of March 2025.
96. The truncated representation review process removes the role of the Local Government Commission in determining councils' final representation arrangements, and considering appeals and objections from the public if there are disagreements on the final proposal. The council's decision on representation arrangements would be final and members of the public will not be able to appeal their council's representation review to the Local Government Commission.
97. This will be mitigated to some extent by providing the Local Government Commission with specific powers to provide advice and guidance to councils during the truncated representation review period. We cannot guarantee that councils will make use of this guidance. This option removes a democratic safeguard to address the risk of elected members proposing arrangements that benefit themselves, and the guarantee that a neutral third party determines representation arrangements if there is a dispute.

98. It may be possible to offer councils a legislated alternative to the truncated representation review in the case where the poll result reverses previous council resolutions to establish Māori wards, which is to allow councils to either:
- continue with their existing representation arrangements if they have not previously established Māori wards; or
  - “roll back” to their most recent representation arrangements, prior to establishing Māori wards.
99. This possible alternative is still under development. It is unlikely to suit some councils that have had large shifts in population growth but may be preferable for councils with a relatively stable population.
100. The 13 councils that have recently resolved to establish Māori wards may have already started early engagement on their representation review process. Any of the 13 councils where the poll results in a ‘yes’ result will need to follow the truncated representation process. We are assuming that the early engagement these councils have undertaken will assist in completing truncated representation reviews.
101. Councils that complete a truncated representation review will be required to complete a full representation review before the next triennial election. For some councils, this may mean reviewing their representation arrangements three terms in a row, instead of the standard once every six years.
102. Because Tauranga’s local elections are scheduled for July 2024, before this option could be implemented, Tauranga City Council would only be required to conduct a binding poll in time for the outcome to apply to the 2028 local elections.

**Option Three – the outcome of polls take effect at the 2025 local elections following a petitions process in late 2024 and polls in early 2025;**

103. As with Option Two, all councils who created or resolved to create a Māori ward without a poll have the opportunity to rescind their decision on creating Māori wards or resolve to disestablish their existing Māori wards.
104. Under this option, electors of any of the 44 councils that did not resolve to rescind or disestablish would have an opportunity to petition their councils in late 2024 to hold a binding poll on Māori wards in early 2025.
105. A valid petition under this option would need to be signed by at least 5% of council electors. Valid petitions would need to be received by councils by September 2024 and any polls completed by February 2025. After the results of any polls are received, councils would not have time to undertake a representation review. Instead, councils would make a resolution on their representation arrangements, which would remove:
- the public submissions process; and
  - the Local Government Commission appeals process.
106. This option has tight timeframes for the petitions process, polls, and representation arrangement decisions. Community input into representation decisions, except the Māori wards establishment decision, would be entirely removed. The risks of removing the Local Government Commission appeals process and the mitigations as described under Option Two apply to Option Three. However, there would be a very short window for the Commission to work with all affected councils.
107. Councils that issue their own representation arrangement will be required to complete a full representation review before the next triennial election. For some councils, this may mean reviewing their representation arrangements three terms in a row, instead of the standard once every six years.
108. Where the result of a poll reverses council resolutions to establish Māori wards, the options for councils described in paragraph 97 under Option Two would also be available.

under this option. Likewise, the implications of a poll described in paragraph 99 apply under this option.

109. Because Tauranga's local elections are scheduled for July 2024, before this option could be implemented, Tauranga City Council would be required to accept petitions in time for a binding poll to be held before the 2028 local elections.

#### **Option Four – the outcome of polls take effect at the 2028 local elections after a mandatory poll at the 2025 local elections**

110. As with Option Two, all councils who created or resolved to create a Māori ward without a poll have the opportunity to rescind their decision on creating Māori wards or resolve to disestablish their existing Māori wards.
111. Under this option, councils who did not choose the rescind or disestablish options will be required to hold a binding poll on Māori wards at the 2025 local elections.
112. If the outcome of the binding poll requires a representation review, this will be completed in time for the result of the poll to be implemented at the 2028 local elections using the standard representation review process and timeframes. For some councils, these representation reviews would be outside their six-yearly cycle.
113. Because Tauranga's local elections are scheduled for July 2024, before this option could be implemented, Tauranga City Council would be required to hold a binding poll before the 2028 local elections, the outcome of which would also take effect at the 2028 local elections.

#### **Option Five – the outcome of polls take effect at the 2028 local elections following a petitions process in early 2025 and polls at the 2025 local elections**

114. As with Option Two, all councils who created or resolved to create a Māori ward without a poll have the opportunity to rescind their decision on creating Māori wards or resolve to disestablish their existing Māori wards.
115. Under this option, electors of any of the 44 councils that did not resolve to rescind or disestablish would have an opportunity to petition their councils in early 2025 to hold a binding poll on Māori wards at the 2025 local elections.
116. A valid petition under this option would need to be signed by at least 5% of council electors and delivered to councils by early August 2025.
117. If the outcome of the binding poll requires a representation review, this will be completed in time for the result of the binding poll to be implemented at the 2028 local elections using the standard representation review process and timeframes. For some councils, these representation reviews would be outside their six-yearly cycle.
118. Because Tauranga's local elections are scheduled for July 2024 before this option could be implemented, Tauranga City Council would be required to accept petitions in time for a binding poll to be held before the 2028 local elections.

## How do the options compare to the Status Quo/Counterfactual?

Criteria		Option One – Status Quo	Option Two – The outcome of polls take effect at the 2025 local elections after a mandatory poll in late 2024	Option Three – The outcome of polls take effect at the 2025 local elections following a petitions process in late 2024 and polls in early 2025	Option Four – The outcome of polls take effect at the 2028 local elections after a mandatory poll at the 2025 local elections; and	Option Five – the outcome of polls take effect at the 2028 local elections following a petitions process in early 2025 and polls at the 2025 local elections.
Public input	Does the option support adequate public participation?	0 Only 13 councils would be required to undertake a representation review to incorporate the Māori ward into their representation arrangements for the 2025 elections. For these councils the community would have the standard opportunities to participate, including the right of appeal to the Local Government Commission.	- Electors would have direct influence on the Māori wards decision via the mandatory polls. Significant changes may be made to the representation arrangements for up to 44 councils with limited opportunity for public consultation and no right of appeal to the Local Government Commission. Public input into their changing council representation arrangements is reduced at the expense of voting on the existence of a Māori ward.	-- Electors would have the option to directly influence Māori wards decisions if a petition is submitted for a binding poll. There is no opportunity for public consultation on representation arrangements under this option, as well as no right of appeal to the Local Government Commission. Public input into changing council representation arrangements is effectively removed under this option. Council rescind or disestablish decisions	0 Electors would have direct influence on the Māori wards decision via the mandatory polls. Councils would have the time to complete a full representation review before the 2028 local elections regardless of poll outcome. Council rescind or disestablish decisions would not allow for community consultation.	0 Electors would have the option to directly influence Māori wards decisions if a petition is submitted for a binding poll. Councils would have the time to complete a full representation review before the 2028 local elections regardless of poll outcome. Council rescind or disestablish decisions would not allow for community consultation.



			Council rescind or disestablish decisions would not allow for community consultation.	would not allow for community consultation.		
<b>Facilitating Māori representation</b>	Does the option facilitate Māori representation in local government?	0 45 councils could proceed with their decisions, following local consultation, to establish specific Māori representation.	-- Evidence from the period of 2002 to 2019 indicates it is likely that most of the Māori wards established since the 2021 legislative amendment will be disestablished by a binding poll.  Council rescind or disestablish decisions may reduce Māori representation in order to reduce costs.	- A requirement for a petition creates a barrier to holding binding polls that may make it less likely that all affected councils would be subject to poll processes.  Evidence from the 2002-2019 period indicates it is likely that most of the Māori wards established since the 2021 legislative amendment will be disestablished by a binding poll.  Council rescind or disestablish decisions may reduce Māori representation in order to reduce costs.	-- Evidence from the 2002-2019 period indicates it is likely that most of the Māori wards established since the 2021 legislative amendment will be disestablished by a binding poll.  Council rescind or disestablish decisions may reduce Māori representation in order to reduce costs.	- A requirement for a petition creates a barrier to holding binding polls that may make it less likely that all affected councils would be subject to poll processes.  Evidence from the 2002-2019 period indicates it is likely that most of the Māori wards established since the 2021 legislative amendment will be disestablished by a binding poll.  Council rescind or disestablish decisions may reduce Māori representation in order to reduce costs.

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<p><b>Consistency of the poll processes with long-term change</b></p>	<p>Does the option support consistency of transitional poll processes with poll processes held under the restored legislation long-term?</p>	<p>0 Transitional polls would not be held. Councils would not be required to hold polls in the short or long term.</p>	<p>- Councils would be required to hold polls without a petition being required.</p>	<p>+ Council decisions to establish Māori wards since 2021 would be subject to the same petition requirements for binding polls that would apply to councils under the restored legislation.</p>	<p>- Councils would be required to hold polls without a petition being required.</p>	<p>+ Council decisions to establish Māori wards since 2021 would be subject to the same petition requirements for binding polls that would apply to councils under the restored legislation.</p>
<p><b>Stability</b></p>	<p>Does the option support stability of representation arrangements for individuals and communities?</p>	<p>0 Decisions on Māori wards are required to remain in place for a minimum of six years to allow time for the changes to 'bed in' before the decision can be reversed.</p>	<p>-- This option is disruptive to council governance arrangements. Some councils may have Māori wards established at the 2022 local elections overturned after just one term. Truncated representation review processes, lack of an appeal right, and the possible 'roll back' of representation arrangements may be very disruptive (e.g., potential to remove councillor positions or general wards that were recently established). The option to rescind decisions to create a Māori</p>	<p>-- This option is disruptive to council governance arrangements. Some councils may have Māori wards established at the 2022 local elections overturned after just one term. The lack of a representation review process that includes public submissions or an appeals process, and the possible 'roll back' of representation arrangements is likely to be very disruptive (e.g. potential to remove councillor positions or</p>	<p>- Some councils may have Māori wards established in the lead up to the 2025 local elections overturned after just one term. Councils will have the time to undertake a complete representation review. The option to rescind decisions to create a Māori ward, or disestablish a current Māori ward, without public input are also likely to be highly disruptive to representation arrangements.</p>	<p>- Some councils may have Māori wards established in the lead up to the 2025 local elections overturned after just one term. Councils will have the time to undertake a complete representation review. The option to rescind decisions to create a Māori ward, or disestablish a current Māori ward, without public input are also likely to be highly disruptive to</p>

			<p>ward, or disestablish a current Māori ward, without public input are also likely to be highly disruptive to representation arrangements.</p> <p>Councils will be required to complete another representation review in the following term to ensure compliance with legislative requirements.</p>	<p>general wards that were recently established).</p> <p>The option to rescind decisions to create a Māori ward, or disestablish a current Māori ward, without public input are also likely to be highly disruptive to representation arrangements.</p> <p>Councils will be required to complete another representation review in the following term to ensure compliance with legislative requirements.</p>		<p>representation arrangements.</p>
<p><b>Cost</b></p>	<p>Does the option minimise fiscal and/or compliance costs?</p>	<p>0</p> <p>45 councils could continue with their current representation arrangements, or planned and budgeted representation review processes, until they are due for review under the standard process.</p>	<p>--</p> <p>Creates a new obligation for up to 44 councils to fund standalone polls, and in some cases an out-of-cycle representation review process.</p> <p>The inclusion of the opportunity to rescind decisions about Māori wards or disestablish existing Māori wards would save councils the cost of holding a poll.</p>	<p>-</p> <p>Up to 44 councils that can be presented with a petition signed by at least 5 % of electors will be required to hold a binding poll during the 2025 local elections. While this represents an increased cost, combining the poll with the local elections is substantially cheaper</p>	<p>-</p> <p>Up to 44 councils will be required to hold a binding poll during the 2025 local elections. While this represents an increased cost, combining the poll with the local elections is substantially cheaper than holding a standalone poll.</p> <p>The inclusion of the opportunity to rescind decisions about Māori</p>	<p>-</p> <p>Up to 44 councils that can be presented with a petition signed by at least 5% of electors will be required to hold a binding poll during the 2025 local elections. While this represents an increased cost, combining the poll with the local elections is substantially cheaper</p>

			<p>There will also be additional costs for government agencies to support these processes. These are not yet funded but agencies have expressed concerns about their ability to meet costs from baseline.</p> <p>Councils may find it challenging to manage a poll and a representation review process before election processes begin. Councils will be required to complete another representation review in the following term, which will present additional costs.</p> <p>The inclusion of the opportunity to rescind decisions about Māori wards or disestablish existing Māori wards would save councils the cost of holding a poll, should they take the opportunity.</p>	<p>than holding a standalone poll.</p> <p>If a petition is received, up to 44 councils would be required to fund standalone polls, and in some cases an out-of-cycle representation review process.</p> <p>The inclusion of the petition process means councils will only be required to absorb the costs of a standalone poll if a petition is received. The inclusion of the opportunity to rescind decisions about Māori wards or disestablish existing Māori wards would save councils the cost of holding a poll, should they take the opportunity.</p> <p>There will also be additional costs for government agencies to support these processes. These are not yet funded but agencies have expressed concerns</p>	<p>wards or disestablish existing Māori wards would save councils the cost of holding a poll, should they take the opportunity.</p>	<p>than holding a standalone poll.</p> <p>The inclusion of the petition process means councils will only be required to absorb any costs of a poll if a petition is received.</p> <p>In some cases, councils will have to hold an out-of-cycle representation review process.</p> <p>The inclusion of the opportunity to rescind decisions about Māori wards or disestablish existing Māori wards would save councils the cost of holding a poll, should they take the opportunity.</p>
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				<p>about their ability to meet costs from baseline.</p> <p>Councils may find it challenging to manage a poll process and determine their own representation arrangements before election processes begin.</p> <p>The removal of public consultation requirements when determining representation arrangements is likely to save councils some money on consultation and engagement.</p> <p>Councils will be required to complete another representation review in the following term, which will present additional costs.</p>		
<b>Integrity of representation review process</b>	Does the option preserve the integrity of the representation	0 The 13 councils that have not yet established Māori wards would follow the standard	- The truncated representation review process removes the Local Government Commission's role in hearing appeals and	-- This option removes public consultation on councils' representation arrangements entirely, as well as removing the	- Representation reviews would proceed using the standard process before the 2028 local elections.	- Representation reviews would proceed using the standard process before the 2028 local elections.



	<p>review process?</p>	<p>representation review process, including the right of appeal to the Local Government Commission.</p> <p>Councils with established Māori wards would not require another representation review so would not need to deal with a truncated representation review process.</p>	<p>objections from the public. This removes a democratic safeguard to address the risk of elected members proposing arrangements that benefit themselves. This would also remove the guarantee that a neutral third party determines compliance with Local Electoral Act requirements for fair and effective representation.</p> <p>There is a risk that councils will not be able to complete their representation review in time or will be inconsistent with the legislation.</p> <p>The Local Government Commission would be granted specific powers to provide advice and guidance to councils as they work through the truncated representation review process.</p> <p>Allowing councils to vote to rescind a previous resolution about Māori wards or disestablish an existing Māori ward without consultation on</p>	<p>role of the Local Government Commission in hearing appeals and objections from the public.</p> <p>While the Local Government Commission would be granted specific powers to provide advice and guidance to councils, there would be an extremely short timeframe to do so for a large number of councils.</p> <p>There is a risk that councils self-determined representation arrangements will be inconsistent with legislation.</p> <p>Allowing councils to vote to rescind a previous resolution about Māori wards or disestablish an existing Māori ward without consultation on representation arrangements is inconsistent with the representation review process.</p>	<p>Allowing councils to vote to rescind a previous resolution about Māori wards or disestablish an existing Māori ward without consultation on representation arrangements is inconsistent with the representation review process.</p>	<p>Allowing councils to vote to rescind a previous resolution about Māori wards or disestablish an existing Māori ward without consultation on representation arrangements is inconsistent with the representation review process.</p>
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			representation arrangements is inconsistent with the representation review process.			
<b>Overall assessment</b>	0	--	--	-	-	

**Example key for qualitative judgements:**

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

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

119. The status quo is the Department's preferred option, but it does not align with the Government's preferred balance of public input in representation arrangements and Māori representation in local government.
120. Evidence from the period of 2002 to 2019 shows all options for change may result in Māori wards being disestablished for a number of councils where these decisions were only recently made, and where there has been limited time for electors of affected councils to assess the advantages and disadvantages.
121. There are also risks that councils and government agencies will find it challenging to deliver both polls and update representation arrangements before pre-election processes start in April 2025. This may pose risks to the delivery of the 2025 local elections. This assessment is based on limited consultation, and we are not able to quantify the likelihood of this occurring. Consultation with councils would allow evaluation of implementation risks and mitigation.
122. The status quo would allow councils to proceed with existing arrangements or to implement recent decisions to establish Māori wards. Many of the councils would be required to complete their standard representation review in the next term. Truncating the representation review process reduces the opportunity for public input and removes an important 'check and balance' on councils configuring their own representation arrangements (the Local Government Commission appeals and objections function).
123. While the Local Government Commission would be granted specific powers to provide advice and guidance to councils as they develop their proposals, this is not a substitute for their independent oversight function. Option Three, which removes both the Local Government Commission's role and the opportunity for the public to make submissions, allows councils to determine their own representation arrangements without any external input or oversight.
124. Although it is not the most important factor, the status quo option avoids up to 45 councils needing to fund the cost of standalone polls, and the potential cost of unplanned representation reviews if required.
125. Including options for councils to either rescind a previous resolution to create a Māori ward, or disestablish a current Māori ward, may help councils to reduce their costs, but it risks councils making a decision about representation based on cost rather than what they consider to be effective representation for their communities. The option to disestablish an existing Māori ward means that sitting councillors may be required to decide on disestablishing positions that some councillors are preparing to run for.
126. The Minister of Local Government has indicated that the Government's preferred option is Option Two and the cost-benefit analysis below, and Section 3 of this analysis, considers that option.

## What are the marginal costs and benefits of the option?

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence <b>Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	<p>Local authorities – additional costs for councils that may need to hold a binding poll in 2024, and if an unplanned representation review is required. Costs vary between councils based on size and are estimates only. We have provided some figures for a council with an electoral population of around 50,000.</p> <p>Councils may choose to reverse their Māori wards decisions instead of conducting a poll. We do not yet have information about whether councils would wish to take up this option.</p>	<p>Medium. Costs of a poll are estimated at around \$175,000.</p> <p>Potential costs of a representation review are estimated to range from \$170,000 to \$190,000.</p> <p>Councils may choose to reverse their Māori wards decisions instead of conducting a poll.</p>	Medium
Regulators	N/A		
Others (e.g., wider govt, consumers, etc.)	Electoral Commission, Stats NZ, Local Government Commission, Land Information New Zealand – additional staffing resource to support polls and representation reviews, and complete required pre-election processes.	Medium. While limited costing work has taken place, estimated costs for the Electoral Commission are around \$84,000. We do not yet have information on costs to other agencies.	Medium
Māori	Likely loss of representation on local government; potential loss of trust in central and local government.	Medium	Medium

Public	<p>Requiring councils to hold up to 44 polls on Māori wards at the same time is likely to cause social division and may lead to some level of racial disharmony across New Zealand.</p> <p>There is a potential threat to the 2025 local elections if councils are not able to complete these processes in time, but we have limited evidence on how likely this is.</p> <p>Removing the Local Government Commission's role in hearing appeals and objections severely limits the public's options if they disagree with local representation arrangements.</p>	Medium	Medium
		High	Low
		High	Medium
<b>Total monetised costs</b>		Medium	High
<b>Non-monetised costs</b>		Medium	High
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	N/A		
Regulators	N/A		
Others (e.g., wider govt, consumers, etc.)	Public has final say about council decisions on Māori wards	Medium	Low
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>		Medium	Low



## Section 3: Delivering an option

### How will the new arrangements be implemented?

127. Amendments will need to be made to legislation to implement the changes. Changes need to be enacted by the end of July 2024 to give councils time to hold a binding poll in 2024 and complete representation reviews before the beginning of the pre-election processes in April 2025.
128. Responsibility for holding the polls and completing the representation reviews will sit with local authorities. Plans for communicating the changes to affected councils are yet to be developed. It is likely that councils will need to start preparations for 2024 polls in the expectation that the legislation is enacted as planned. It is also likely that, due to time constraints, councils may need to prepare representation review proposals for two scenarios (both possible poll outcomes).
129. The Department has commenced discussions with the Electoral Commission, Statistics New Zealand, and Land Information New Zealand about the possible impact of proposed changes in this analysis, and proposed changes to the timeframes for the 2025 local elections (discussed in a separate Regulatory Impact Statement).
130. The Local Government Commission will have a limited role for councils that are required or choose to undergo a truncated representation review process or issue their own representation arrangements. The Local Government Commission will not hear appeals from the public during this process but will be given increased power to support councils to ensure requirements in the Local Electoral Act 2001 are met.

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

131. The Department will receive direct feedback from local authorities and electoral officers and through peak sector bodies, Taituarā – Local Government Professionals Aotearoa, and Local Government New Zealand on the effectiveness of the amendments. The Department will also monitor the outcomes of Māori ward polls, as well as continuing to monitor Māori representation statistics and the impact that the reintroduction of binding polls has on Māori representation in local governance.
132. By convention, the Justice Committee has undertaken an inquiry after each triennial local election in recent years. If this occurs again after the 2025 local elections, there will be an opportunity for submitters to comment on any impact of legislative changes on the next triennial elections.

## Appendix A: Summary of outcomes of binding polls on Māori wards from 2002 to 2019

Date	Local authority	Reason for poll	% For	% Against	Outcome
May 2003	Ōpōtiki District	Council initiated	34%	66%	Lost
October 2004	Papakura District	Council initiated	17%	83%	Lost
October 2004	Taranaki Regional	Council initiated	12%	88%	Lost
October 2007	Whakatane District	Council initiated	30%	70%	Lost
April 2012	Waikato District	Council initiated	20%	80%	Lost
May 2012	Nelson City	Elector initiated (petition on Council decision to establish)	21%	79%	Lost
May 2012	Wairoa District	Council initiated	48%	52%	Lost
May 2013	Hauraki District	Elector initiated (petition on Council decision <u>not</u> to establish)	20%	80%	Lost
May 2015	Far North District	Council initiated	32%	68%	Lost
May 2015	New Plymouth District	Elector initiated (petition on Council decision to establish)	17%	83%	Lost
<b>October 2016</b>	<b>Wairoa District</b>	<b>Council initiated</b>	<b>54%</b>	<b>46%</b>	<b>Won</b>
May 2018	Western Bay of Plenty District	Elector initiated (petition on Council decision to establish)	22%	78%	Lost
May 2018	Whakatane District	Elector initiated (petition on Council decision to establish)	45%	55%	Lost
May 2018	Kaikoura District	Elector initiated (petition on Council decision to establish)	20%	80%	Lost
May 2018	Palmerston North City	Elector initiated (petition on Council decision to establish)	31%	69%	Lost

Date	Local authority	Reason for poll	% For	% Against	Outcome
May 2018	Manawatu District	Elector initiated (petition on Council decision to establish)	23%	77%	Lost
2001	Bay of Plenty Region	Act of Parliament			
2011	Waikato Region	Council decision (no poll was demanded)			

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