

4.9 REVIEW OF DECISION TO ESTABLISH MĀORI WARDS

Author: Dylan Tahau, Head of Community, Culture and Heritage

Authorised by: Gareth Green, Chief Executive Officer

PURPOSE

This paper is to consider whether to confirm or not, the previous resolution to establish Māori wards in the 2022 local Government elections, since enactment of the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act recently.

EXECUTIVE SUMMARY

At an extraordinary meeting held on 23 November 2020, Taupō District Council resolved to establish Māori wards in the Taupō District for the 2022 and 2025 Local Body elections. This decision was made following conversations with the District's iwi leaders and members of the Māori community.

Since then, Minister for Local Government, Hon Nanaia Māhuta has entered into the house the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill which was passed on Wednesday 24 February 2021. As a result, Council is now able to review its current position and can confirm next steps by 21 May 2021.

The bill has implications for this Council in that the petition received by Council's returning officer is now non-binding on Council and a poll is not required.

Council can now choose to either initiate its own poll or engage with the community to canvass their view ahead of a further paper to decide on whether to establish Māori wards in the Taupō District or not.

RECOMMENDATION(S)

That Council ***either:***

Confirms resolution TDC202011/09 and establishes Māori wards for the Taupō District for the 2022 local government elections; ***or***

Revokes resolution TDC202011/09 and does not establish Māori wards for the 2022 local government elections; ***or***

Agrees to hold a non-binding poll on whether or not Māori wards should be established for the 2022 local government elections; ***or***

Agrees to canvass the view of the community on whether or not Māori wards should be established for the 2022 local government elections.

BACKGROUND

Taupō District Council has resolved to establish Maori wards for the 2022 local government elections. Recent changes to the Local Electoral Act 2001 (LEA) have allowed Council to review this decision made in November 2020 with a revised due date of 21 May 2021.

All local authorities are required to carry out a representation review at least once every six years. Council's last representation review was carried out in 2018 to establish its representation arrangements for the 2019 triennium. In each representation review, the LEA states that Council must consider whether it wishes to establish Māori wards. The statutory processes for the establishment of Māori Wards are set out in the LEA. Owing to local discussions with Iwi leaders, Council opted to review its Māori representation in November 2020. Council resolved (TDC 202011/09) to establish Māori wards for the 2022 local government elections.

Since then, Local Government Minister, Hon Nanaia Mahuta has introduced a bill to amend the Local Electoral Act. Contained within the legislation was the ability for councils to review their recent decisions on establishing Māori wards or not. This has to be done by 21 May 2021 and once notified, if Council decides to continue with their decision to establish Māori wards, the representation review will commence.

Council has statutory obligations to provide opportunities for Māori to contribute to local government decision-making processes under the:

- Local Government Act 2002
- Resource Management Act 1991,
- Local Electoral Act 2001, and
- Local Electoral (Māori Wards and Constituencies) Amendment Act 2021

These legislative provisions underpin the wider partnership principles contained in Te Tiriti o Waitangi/Treaty of Waitangi.

DISCUSSION

Council has made a resolution to establish Māori Wards on 23 November 2020 to apply for the 2022 local elections.

Points to consider

Cost of a Council Initiated Poll

The cost of holding a poll would be between \$85,000 to \$90,000. These costs could be reduced by holding the poll as part of the 2022 election. This cost has not been budgeted for.

Effect on community, iwi/ Māori and elected members

There is national interest in this topic and the consideration of Māori wards in other parts of New Zealand has resulted in polarised community views. There are likely to be strong community views in Taupō district and its unlikely there will be a unified community view on this matter. Such discussion has, in other parts of the country, affected iwi and council relationships and resulted in criticism of elected members.

Need for Community Engagement

Council has been advised by officers that there is a need to ensure that it understands the view of the community ahead of any decision to revoke or confirm its November 2020 decision. The discussions to date with Iwi and Māori have focussed primarily on the suite of options being developed to give greatest participation of Māori in local decision-making, which is in addition to Māori interest seats on some of our committees/ representative groups and does not include the Turangi Tongariro Community Board. This of course also excludes our co-governance obligations with our iwi partners, who have their own settlement legislation, having settled with the Crown.

None of this however negates the need for public engagement and it is recommended that Council seek to canvas parts of the district, that they feel they need to engage further, ahead of the 21 May 2021 due date.

Representation Review

If the decision is held to establish Māori wards then, under the LEA, the initial proposal for the representation review must be publicly notified by 31 August 2021.

OPTIONS

Council has four options for its decision on the establishment of Māori wards.

1. Resolve to retain the 'status quo' and establish Māori wards for the 2022 and 2025 local government elections.
2. Revoke TDC202011/09, and not establish Māori wards for the 2022 and 2025 local government elections.
3. Resolve to hold a non-binding poll on whether or not Māori wards should be established for the 2022 and 2025 local government elections, or
4. Resolve to canvas the view of the community on whether or not Māori wards should be established for the 2022 and 2025 local government elections.

Analysis of Options

Option 1. Resolve to retain the ‘status quo’ and establish Māori wards.

Advantages	Disadvantages
<p>Provides for:</p> <ul style="list-style-type: none"> • greater Māori representation on Council and allows for a Māori perspective to be heard at the decision-making table. • the opportunity to enhance understanding and decision making directly at the full Council table • goes some way towards the principles of partnership, participation, protection and practice. • gives greater recognition to Māori as major landowners and proportion of the electorate. 	<ul style="list-style-type: none"> • No consultation undertaken with the community so misinformation within the community is possible. • the cost (staff and community time) of undertaking a representation review in 2021, prior to legislative requirement of 2024.

Option 2. Revoke TDC 202011/09 and not establish Māori wards for the 2022 and 2025 local government elections.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ability to reconsider establishment of Māori wards with no ability for electors to demand a poll once the legislation has been amended (for the 2025 election). • No representation review required in 2021 (staff time) • No financial cost as no poll will be undertaken 	<ul style="list-style-type: none"> • Potential to affect Iwi/Council relationship as Council not demonstrating its commitment to partnership until it has consulted with the community

Option 3. Resolve to hold a non-binding poll on whether or not Māori wards should be established for the 2022 and 2025 local government elections.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Allows time for community consultation so less likelihood of misinformation and robust community discussion and debate. • Enables Council to be aware of community views as well as Iwi/Māori views. • Allows Council more time to consider its course of action. 	<ul style="list-style-type: none"> • Cost of between \$85,000-\$90,000 for holding of the poll. • Potential to affect Iwi/Council relationship as Council not demonstrating its commitment to partnership until it has consulted with the community • The result of a poll may not represent the opinion of the community as historically a low percentage of electors vote in polls.

Option 4. Resolve to canvass the view of the community on whether Māori wards should be established for the 2022 and 2025 local government elections.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Allows for community consultation so less likelihood of misinformation and enables community discussion and debate. • Enables Council to be aware of community views as well as Iwi/Māori views. • Ensures that Council’s decision-making processes are robust and defensible. • Minimal cost associated with canvassing the community 	<ul style="list-style-type: none"> • Potential to affect Iwi/Council relationship as Council not demonstrating its commitment to partnership until it has consulted with the community

Analysis Conclusion:

The preferred pathway is option 4, to canvass the view of the community on whether or not Māori wards should be established for the 2022 and 2025 local government elections thereby reviewing Council’s November 2020 decision before the 21 May 2021 deadline.

CONSIDERATIONS

Alignment with Council’s Vision

Council’s vision is ‘to be the most prosperous and liveable district in the North Island by 2022’. This vision includes the Council working closely and collaboratively with its partners to ensure the best possible outcomes are achieved for our community, including iwi, and to maximise any opportunities. This vision is accompanied by a core set of values to underpin decision-making, the following of which are relevant to this particular proposal: World Class; Authentic; Vibrant; Quality and Value.

Financial Considerations

If the Council decides to hold a non-binding poll the cost would be between \$85,000 and \$95,000. There is currently no provision for these costs in the budgets. If Māori wards are established a representation review is required in 2021. This will require additional staff resources and associated costs of approximately \$10,000 which have not been budgeted for.

Long-term Plan/Annual Plan

The expenditure outlined is currently unbudgeted. As the LEA provides for a poll, it would need to be held by 21 May 2021 and so the expenditure will be required in the current financial year. The additional staff resourcing would be required in the current and next financial years.

Legal Considerations

Local Government Act 2002

The matter comes within scope of the Council’s lawful powers, including satisfying the purpose statement of [Section 10](#) of the Local Government Act 2002 (LGA). That section of the Act states that the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

Under the LGA Council is required to

- facilitate participation by Māori in local authority decision making (Sec 4)
- act in accordance with the following principles:...(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes (sec 14(1))
- establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and provide relevant information to Māori for the purposes of these (sec 81)

The RMA also contains specific provisions that enable Māori to participate in decision-making such as:

- provide for iwi authorities' input in processing resource consents and formulating plans
- work with iwi authorities to ensure Māori participation in resource management decisions and processes of managing the use, development, and protection of natural and physical resources.

Under the LEA Council is required to:

- consider whether it wishes to propose Māori Wards as part of its representation arrangement through its representation review (sec 19Z) prior to carrying out a representation review at least once every six years (sec 19H (2))
- carry out a representation review if the district is required to be divided into 1 or more Māori wards at the next election (Clause 1 (1) of Schedule 1A).

The statutory processes for the establishment of Māori wards are set out in the LEA.

Policy Implications

If Council establishes Māori wards, a representation review will need to be undertaken in 2021.

Māori Engagement

Council has met with iwi leaders and individuals from iwi and Māori entities and identified that there are a number of options for Māori representation in Council decision making. This package of options will provide better representation for Māori than just Māori wards alone. The overall feedback from the meetings was that if Council wanted to establish Māori wards iwi would support the Council's decision. All parties recognised that for Māori and Council to work in partnership and for Māori to have representation, a mix of mechanisms needed to be implemented. Māori wards is only one part of this package of mechanisms.

Risks

As the consideration of and process for, the establishment of Māori wards, including timeframes, is set out in the LEA there are risks if Council does not adhere to the requirements of the legislation. There are likely to be polarised community views on the establishment of Māori wards which are expected to result in robust discussion in the community and local media.

If Council decides to hold a non-binding poll then unbudgeted expenditure of between \$85,000 and \$95,000 will need to be found in this financial year. Also, if Council resolves to continue to establish Māori wards, a representation review will need to be undertaken in 2021. The next scheduled representation review was planned for 2024.

SIGNIFICANCE OF THE DECISION OR PROPOSAL

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- a. The level of financial consequences of the proposal or decision;
- b. Whether the proposal or decision will affect a large portion of the community or community of interest;
- c. The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- d. Whether the proposal affects the level of service of an activity identified in the Long Term Plan;
- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016) and are of the opinion that the proposal under consideration is significant.

This is because the establishment of Māori Wards will affect a large proportion of the community and the community interest will be high. Therefore, the proposal has a high level of importance under the policy and the decision is considered significant. Under the policy a decision that is significant will need to be assessed against the requirements of section 76 to 82 of the LGA, that describe the decision-making process that Council must go through and the principles of consultation. The policy states that as part of that assessment Council will consider whether it is appropriate to engage and how best to do it in the circumstances.

ENGAGEMENT

Staff have been working with iwi leaders and individuals from iwi and Māori entities to discuss how Māori could be involved in Taupō District Council's decision making. The feedback from this process and the package of specific mechanisms Council could implement has been provided to Council. Council is aware of the views and preferences of iwi leaders and individuals of iwi and Māori entities, on behalf of Māori in the community.

However, when it comes to engagement, it is recommended that the Council err on the side of caution where a proposed decision may potentially be a significant one in terms of the Local Government Act, including when considering any need for consultation with the community.

The Government's decision to remove the binding-poll option has now provided an opportunity for the Council to canvass the community for its views and preferences on the establishment of Māori wards prior to 21 May 2021. The consideration of Māori wards in New Zealand has historically resulted in opposed views and it is unlikely there will be a unified public view on this matter in Taupō. Note however that while the decision-making provisions of the Act require the Council to give due consideration to the preferences expressed, should the Council decide further community consultation is warranted, the majority's preference will be just one factor among many when the Council comes to make its final decision regarding the establishment of Māori wards on or before 21 May.

If a non-binding poll or survey is the preferred option, a communication plan will be developed.

COMMUNICATION/MEDIA

An appropriate communication plan will be developed following the meeting.

CONCLUSION

Legislation requires Council to provide for Māori to contribute to Council decision-making. Taupō District Council resolved to establish Māori wards in the Taupō District for the 2022 and 2025 Local Body elections. The establishment of Māori wards are one mechanism (amongst a wider package of actions to be further refined by the working group) to provide Māori some further opportunity for input into Council decision making.

However, the decision to establish Māori wards has caused division in communities, contributed to by the previous binding-poll provisions. The Government's recent move to remove the binding-poll requirement (along with the division that can create) has now provided an opportunity for the Council to canvass the community for its views and preferences on the establishment of Māori wards prior to 21 May 2021 without its decision being overturned by the outcome of a binding poll. Should the Council decide further community consultation is warranted, the majority's preference will be but one factor among many (including conversations with the District's iwi leaders and members of the Māori community) when the Council comes to make its final decision regarding the establishment of Māori wards on or before 21 May 2021.

ATTACHMENTS

Nil