

Mā tō tātou takiwā
For our District

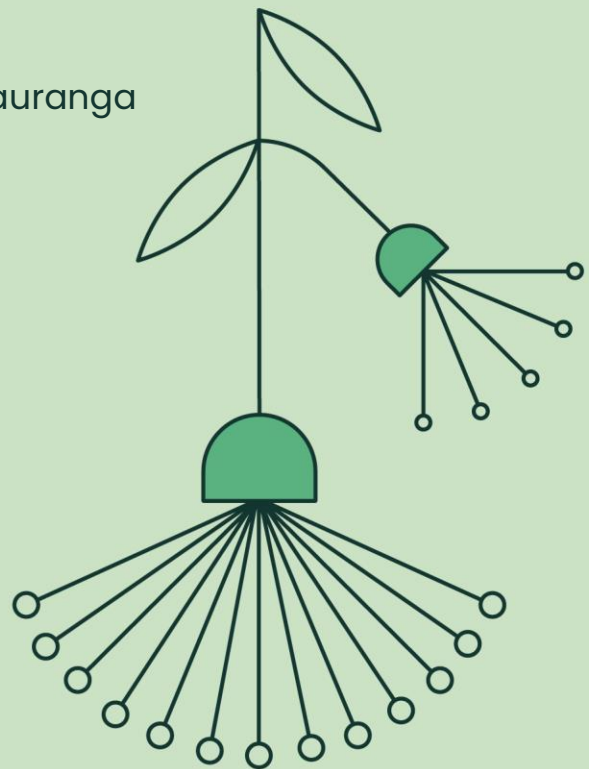
Council

Te Kaunihera

CL24-7

Monday, 2 September 2024, 9.30am

Council Chambers, 1484 Cameron Road, Tauranga



Council

Membership:

Chairperson	Mayor James Denyer
Deputy Chairperson	Deputy Mayor John Scrimgeour
Members	Cr Tracey Coxhead Cr Grant Dally Cr Murray Grainger Cr Anne Henry Cr Rodney Joyce Cr Margaret Murray-Benge Cr Laura Rae Cr Allan Sole Cr Don Thwaites Cr Andy Wichers
Quorum	Six (6)
Frequency	Six weekly

Role:

The Council is responsible for:

- Ensuring the effective and efficient governance and leadership of the District.
- Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

Power to Act:

To exercise all non-delegable functions and powers of the Council including, but not limited to:

- The power to make a rate;
- The power to make a bylaw;
- The power to borrow money, purchase, or dispose of assets, other than in accordance with the Long Term Plan;
- The power to adopt a Long Term Plan, a Long Term Plan Amendment, Annual Plan or Annual Report and to receive any related audit report;
- The power to appoint a chief executive;
- The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan or developed for the purpose of the Local Governance Statement;

- The power to adopt a remuneration and employment policy;
- The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991;
- The power to approve or amend the Council's Standing Orders;
- The power to approve or amend the Code of Conduct for Elected Members;
- The power to appoint and discharge members of committees;
- The power to establish a joint committee with another local authority or other public body;
- The power to make a final decision on a recommendation from the Parliamentary Ombudsman where it is proposed that Council not accept the recommendation.
- To exercise all functions, powers and duties of the Council that have not been delegated, including the power to compulsorily acquire land under the Public Works Act 1981.
- To make decisions which are required by legislation to be made by resolution of the local authority.
- To authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council, or included in Council's Long Term Plan or Annual Plan.
- To make appointments of members to Council Controlled Organisation Boards of Directors/ Trustees and representatives of Council to external organisations.
- To monitor the performance of and make decisions on any matters relating to Council Controlled Organisations (CCO), including recommendations for modifications to CCO or other entities' accountability documents (i.e. Letter of Expectation, Statement of Intent), including as recommended by the Strategy and Policy Committee.
- To approve joint agreements and contractual arrangements between Western Bay of Plenty District Council and Tauranga City Council and/or any other local authority including the requirement to review the terms of any such agreements or contractual arrangements.
- To approve the triennial agreement.
- To approve the local governance statement required under the Local Government Act 2002.
- To approve a proposal to the Remuneration Authority for the remuneration of Elected Members.
- To approve any changes to the nature and delegations of Committees.

Procedural matters:

Approval of elected member training/conference attendance.

Mayor's Delegation:

Should there be insufficient time for Council to consider approval of elected member training/conference attendance, the Mayor (or Deputy Mayor in the Mayor's absence) is delegated authority to grant approval and report the decision back to the next scheduled meeting of Council.

Power to sub-delegate:

Council may delegate any of its functions, duties or powers to a subcommittee, working group or other subordinate decision-making body, subject to the restrictions on its delegations and any limitation imposed by Council.

Notice is hereby given that a Meeting of Council will be held in the Council Chambers, 1484 Cameron Road, Tauranga on:
Monday, 2 September 2024 at 9.30am

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1 KARAKIA

Whakatau mai te wairua
Whakawātea mai te hinengaro
Whakarite mai te tinana
Kia ea ai ngā mahi

Settle the spirit
Clear the mind
Prepare the body
To achieve what needs to be
achieved.

Āe

Yes

2 PRESENT

3 IN ATTENDANCE

4 APOLOGIES

5 CONSIDERATION OF LATE ITEMS

6 DECLARATIONS OF INTEREST

7 PUBLIC EXCLUDED ITEMS

8 PUBLIC FORUM

9 REPORTS

9.1 DECISION TO RESCIND OR AFFIRM THE ESTABLISHMENT OF MĀORI WARDS

File Number: A6446305

Author: Emily Watton, Strategic Policy and Planning Programme Director

Authoriser: Rachael Davie, Deputy CEO/General Manager Strategy and Community

EXECUTIVE SUMMARY

The purpose of this report is for Council to consider whether it wishes to rescind or affirm its decision to establish Māori ward(s). Council resolved on 17 August 2023 to establish Māori ward(s) for the triennial elections in 2025 and 2028, but recent legislative changes require Council to specifically resolve to affirm or rescind this decision. This decision will have consequential implications for the representation review process (already commenced).

RECOMMENDATION

1. That the Strategic Policy and Planning Programme Director's report dated 2 September 2024 titled 'Decision to rescind or affirm the establishment of Māori wards' be received.
2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
3. In relation to key decision one and pursuant to clause 29(1) of Part 3, Schedule 1 of the Local Electoral Act 2001 (as inserted by the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024), Council resolves to:
 - (a) affirm its decision dated 17 August 2023 to establish Māori ward(s) for the 2025 and 2028 triennial electionsOR
 - (b) rescind its decision dated 17 August 2023 to establish Māori ward(s) for the 2025 and 2028 triennial elections

If Council resolves option 3a, then key decision two is not required. If Council resolves option 3b, then recommendation 4 applies:

4. In relation to key decision two, Council resolves to:
- (a) continue with current representation arrangements
- OR
- (b) undertake a shortened representation review.

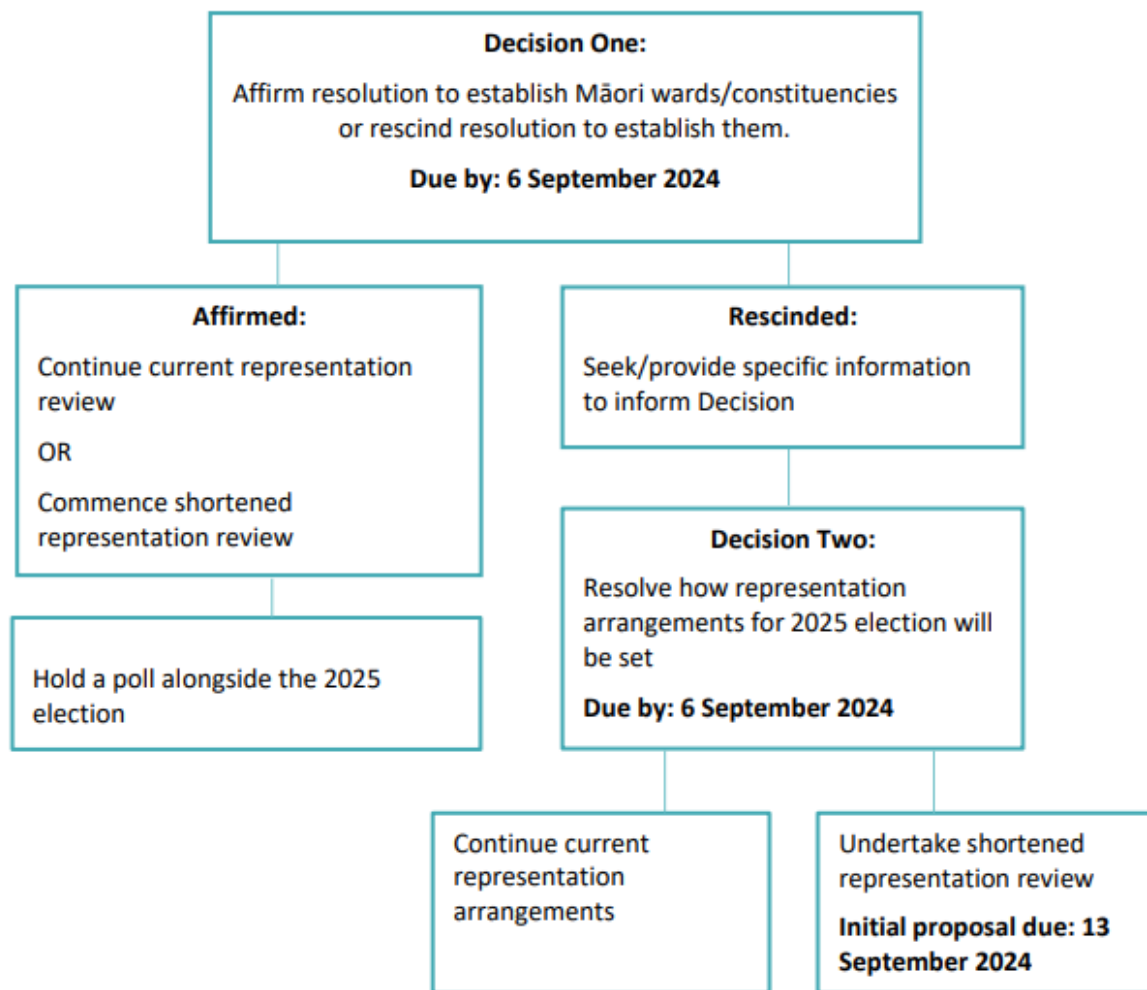
BACKGROUND

1. The Local Electoral Act 2001 (LEA) sets out the processes for reviewing local electoral systems, representation arrangements and voting methods. Council must take into account any applicable principles of the LEA. The most relevant principle to this issue is s4(1)(aa) regarding fair and effective representation for individuals and communities. Council must consider whether its decision to affirm or rescind the establishment of Māori ward(s) will enable fair and effective representation for Māori.
2. The Local Government Act 2002 also recognises the Crown's responsibility under section 4 to take appropriate account of the principles of the Treaty of Waitangi through facilitating participation by Māori in local authority decision-making processes and, under section 81, a local authority is required to maintain and foster opportunities for Māori to contribute to local government decision-making processes.
3. Since 2011, Council has considered the establishment of Māori wards on several occasions. In 2011, Council resolved not to establish a Māori ward. Six years later in 2017, Council resolved to establish a Māori ward. On both occasions Council's Tangata Whenua partnership forums had strongly advocated in favour of establishing a Māori ward. The 2017 decision however, was subject to a poll under Section 19ZB, with 40.38% of eligible voters participating in it. Of those who voted in the poll, 78.09% were against Council's decision and it was therefore overturned.
4. In 2021, the Government passed the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021. The Act removed the ability for a valid demand (elector petition) to force the holding of a binding poll on the decision of whether a Māori Ward should be established. Former Mayor Webber submitted in support of the intent of the Bill.
5. On 17 August 2023, Council resolved to establish Māori ward(s) for the triennial elections in 2025 and 2028. Council considered a substantive [report](#) at this meeting to support its decision-making, which set out the relevant history, legislative context and rationale for the establishment of Māori ward(s). At the time of this decision, changes to the Local Electoral Act were signalled. Council was required by the legislation in effect at the time to make its resolution on whether to establish Māori ward(s) by no later than 31 August 2023.

6. On 20 May 2024 the Government (elected in October 2023) introduced the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Bill to the House. The stated aim of the Bill was to “enable local electors to take part in their local elections and decisions about their council’s representation.” The Bill:
 - a) Reinstated poll provisions on the matter of establishing Māori wards;
 - b) Removed the requirement for councils that had not established Māori wards to consider them every 6 years during the representation review process; and
 - c) Required councils that had established or resolved to establish Māori wards since 2020 without a poll to hold a binding poll at the 2025 local elections.
7. The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 (Amendment Act) received royal assent on 30 July 2024. Council is required compelled by the Amendment Act Bill to specifically resolve to rescind or affirm its August 2023 decision to establish Māori ward(s). The Amendment Act Bill categorises local authorities into two groups with different requirements, based on the timing of their decision to establish Māori ward(s). Western Bay of Plenty District Council is part of Group 2.
8. Council commenced its representation review in 2023, taking its preliminary decision on the electoral system (First Past the Post) on 20 July 2023 and establishment of Māori ward(s) on 17 August 2023. These decisions were both made within the legislative timeframes in effect at that time. Pre-engagement was undertaken with the community from 15 March to 15 April 2024. Focus groups were also held in each ward with key community stakeholders in June 2024. The next intended step in the process was the adoption of the initial proposal for community consultation.

PROCESS AND TIMING CONSIDERATIONS

9. The below flowchart sets out the required decisions and timeframes for Group 2 local authorities.



10. The recommendations of this report facilitate Council’s decisions on the matters required under the Amendment Act by 6 September 2024. Council is required to consider first whether to affirm or rescind its August 2023 resolution to establish Māori ward(s) (Decision One). Depending on that decision, Council may be required to proceed to make the second decision (Decision Two) at the same meeting.
11. Recent legislative amendments have had an impact on the timing of the representation review process, in that the legislative deadline to adopt the initial proposal by 31 July 2024 has passed prior to the Amendment Act coming into effect. Therefore, if Council chooses to affirm its decision to establish Māori ward(s), it will proceed with the shortened representation review process enabled by the Amendment Act.

ISSUES AND OPTIONS ASSESSMENT

12. There are three substantive options for Council to consider through the recommendations of this report, as set out below.
13. Option 1 (recommendation 3A) would affirm the decision to establish Māori ward(s) for the 2025 and 2028 triennial elections, and trigger the requirement for a binding poll to be held alongside the 2025 local election. If this option is resolved, a

shortened representation review process would proceed and an initial proposal would be prepared to be considered at the Council meeting on 12 September. Council would be requested to adopt the initial proposal for community consultation at that meeting.

14. Option 2 (recommendation 3B / 4A) would rescind the decision to establish Māori ward(s) and continue with current representation arrangements, and no poll would be held. Council is required to provide an explanation of how the requirements for fair and effective representation of communities of interest (in accordance with sections 19T to 19W of the LEA) will be met if Council continues with its current representation arrangements. Clear and detailed reasons should be given if Council chooses to depart from its August 2023 position that the introduction of Māori ward(s) constituted fair and effective representation.
15. Option 3 (recommendation 3B / 4B) would rescind the decision to establish Māori ward(s) and undertake a shortened representation review. There would be no further consideration of Māori ward(s) for this process, and no requirement to hold a binding poll alongside the 2025 local election. Council would articulate the reasons why the proposed representation arrangements set out in its initial proposal would constitute fair and effective representation. The initial proposal for a shortened representation review would be considered at the Council meeting on 12 September 2024.

<p>Option 1 Affirm decision to establish Māori(s) wards for the 2025 and 2028 triennial elections</p>	
<p>Assessment of advantages and disadvantages including impact on each of the four well-beings</p> <ul style="list-style-type: none"> • Economic • Social • Cultural • Environmental 	<p><u>Advantages</u></p> <ul style="list-style-type: none"> • Consistent with Council’s previous decision to enable Māori representation through Māori ward(s) and further strengthens the positive relationships that Council has built with tangata whenua. • Consistent with Council’s previous submissions on electoral matters. • A method to recognise Council’s obligation under the LGA to establish and maintain opportunities for Māori to participate in decision-making and to recognise the diversity of its communities • Contributes towards delivery of Council’s strategic priority of

	<p>building authentic Te Tiriti relationships.</p> <ul style="list-style-type: none"> • Enables improved Māori representation which is a key objective for both of our tangata whenua forums, as set out in their work programmes. • Community consultation on the decision to establish Māori wards would occur as part of the wider initial proposal for representation arrangements. There is a further decision-making step when Council considers its final proposal. • Community views will be further tested through the binding poll that is required to be held alongside the 2025 local election. The Poll result is binding and applies to the 2025 and 2028 local elections. <p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Māori ward candidates will be standing for election at the same time as the poll is being conducted in October 2025. If the poll overturns the decision to establish Māori ward(s) then this will take effect for the 2028 and 2031 local elections.
<p>Costs (including present and future costs, direct, indirect and contingent costs).</p>	<p>Cost of running representation review process is included in operational budgets for 2024/25. Estimated cost to run a binding poll is \$45,000 and is currently unbudgeted, however can be considered through the Annual Plan 2025/26 budget process.</p>
<p>Other implications and any assumptions that relate to this option</p>	<p>A shortened representation review process will proceed, followed by a binding poll in October 2025. The outcome of the poll will apply to the elections held in 2028 and 2031.</p>

<p>Option 2 Rescind decision to establish Māori ward(s) and continue with current representation arrangements</p>	
<p>Assessment of advantages and disadvantages including impact on each of the four well-beings</p> <ul style="list-style-type: none"> • Economic • Social • Cultural • Environmental 	<p><u>Advantages</u></p> <ul style="list-style-type: none"> • Current representation arrangements are known and understood by the community. • Current arrangements meet the required +/- 10% rule set out in LEA. • Responds to the preferences of some community members who are opposed to Māori ward(s). <p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Lost opportunity to reflect community feedback received through pre-engagement on wider representation matters. • Removes the opportunity for Māori ward(s) to be established in 2025. • Inconsistent with Council’s previous decision to enable Māori representation through Māori ward(s). • Likely to compromise Council’s relationship with tangata whenua and some members of the wider community that support Māori ward(s). • May be perceived as inconsistent with the Council’s obligation under the LGA to establish and maintain opportunities for participation of Māori in decision-making and to recognise the diversity of its communities. • Compromises Council’s delivery against its strategic priority of building authentic Te Tiriti relationships.

	<ul style="list-style-type: none"> • Council will need to clearly and robustly articulate how rescinding its decision to establish Māori ward(s) enables fair and effective representation for the District, giving consideration to sections 19T to 19W of the LEA. This must be prior to passing its resolution on Decision Two to continue with current arrangements.
<p>Costs (including present and future costs, direct, indirect and contingent costs).</p>	<p>The cost of running the representation review process is included in operational budgets for 2024/25. No additional cost to run a poll will be incurred.</p>
<p>Other implications and any assumptions that relate to this option</p>	<p>If Council proceeds with this option, there are several process steps to be satisfied to ensure compliance clause 35 of Part 3, Schedule 1 of the LEA (as inserted by the Amendment Act), which need to be undertaken prior to passing the resolution on Decision Two. If the clause 35 requirements are not met, Council must resolve to undertake a shortened review process.</p> <p>Council would be required to undertake its next representation review in 2027/28 and consider again whether to establish Māori ward(s).</p>
<p>Option 3 Rescind decision to establish Māori ward(s) and run a shortened representation review</p>	
<p>Assessment of advantages and disadvantages including impact on each of the four well-beings</p> <ul style="list-style-type: none"> • Economic • Social • Cultural • Environmental 	<p><u>Advantages</u></p> <ul style="list-style-type: none"> • Enables other representation matters to be considered and further community views sought on these matters. • Enables community feedback received through pre-engagement on wider representation matters to

	<p>be further considered as part of this representation review cycle.</p> <ul style="list-style-type: none"> • Responds to the preferences of some community members who are opposed to Māori ward(s). <p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Removes the opportunity for Māori ward(s) to be established in 2025. • Inconsistent with Council’s previous decision to enable Māori representation through Māori ward(s). • Likely to compromise Council’s relationship with tangata whenua and some members of the wider community that support Māori ward(s). • May be perceived as inconsistent with the Council’s obligation under the LGA to establish and maintain opportunities for participation of Māori in decision-making and to recognise the diversity of its communities. • Compromises Council’s delivery against its strategic priority of building authentic Te Tiriti relationships. • Council will need to clearly and robustly articulate how rescinding its decision to establish Māori ward(s) enables fair and effective representation for the District.
<p>Costs (including present and future costs, direct, indirect and contingent costs).</p>	<p>The cost of running the representation review process is included in operational budgets for 2024/25. No additional cost to run a poll will be incurred.</p>

<p>Other implications and any assumptions that relate to this option</p>	<p>Council will be required to undertake its next representation review in 2030/31. Council could opt to undertake a representation earlier in 2027/28 and consider whether to establish Māori ward(s).</p>
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SIGNIFICANCE AND ENGAGEMENT

16. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.
17. The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.
18. In terms of the Significance and Engagement Policy this decision is considered to be of medium significance because:
 - Council can make a decision to affirm or rescind the establishment of Māori ward(s) under the provisions of the Amendment Act, without using the special consultative procedure. Schedule 1 is otherwise silent on how Council should engage with the community on this matter, but Council should use its Significance and Engagement Policy and Part 6 of the Local Government Act to guide its approach to decision-making and consultation.
 - The decision does not impact levels of service of any activity of Council, nor have a significant financial impact.
 - The decision relates to the Māori electoral population (7,240 of total electoral population of 60,800).
 - A decision to establish Māori ward(s) would allow those on the Māori electoral roll to vote for a representative on Council. The voting rights of other members of the community would not be affected.
 - There is high community interest in the decision, and it is anticipated (based on previous engagement and poll processes) that there will be divided community views, in that some members of the community will not support the establishment of Māori wards. This is a different position to that expressed to Council by Tangata Whenua representatives in strong support of the establishment of Māori ward(s).

- A decision to establish Māori ward(s) is reversible, in that Council can reconsider its position through adoption of its final proposal for the 2025 and 2028 triennial elections, or through a future representation review process.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

19. Council can make a decision to affirm or rescind the establishment of Māori ward(s) under the provisions of the Amendment Act, without using the special consultative procedure for this matter prior to making the decision.

Interested/Affected Parties	Completed Engagement/Consultation/Communication		
Tangata Whenua	Te Kāhui Mana Whenua o Tauranga Moana and Te Ihu o te Waka o Te Arawa have both advocated for the establishment of Māori wards and have included aspirations for greater Māori representation in their respective work programmes.		
General Public	Consideration of Māori wards in our district has historically resulted in opposed views and it is unlikely that further community engagement would provide Council with a materially different understanding of community views and preferences towards Māori wards. The poll to establish a Māori ward in 2017 saw 40.38% of eligible voters participate, with 78.09% voting against the establishment of a Māori ward. This provides some indication of likely public sentiment.		
Local Government Commission	Staff have liaised with the Local Government Commission to seek a statement relating to the consistency of 2023 population estimates with the pre-2020 representation arrangements, to confirm whether this is a practicable approach for Council to consider as part of option 2 in this report (if required).		
Statistics New Zealand	Staff have liaised with Statistics New Zealand and obtained the 2023 population estimates for Council to consider as part of option 2 in this report (if required).		

STATUTORY COMPLIANCE

20. The recommendations of this report meet the requirements of the Local Government Act 2002 and Local Electoral Act 2001, including the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024.

FUNDING/BUDGET IMPLICATIONS

Budget/Funding Information	Relevant Detail
Representation review	Cost of running representation review process is included in operational budgets for 2024/25.
Binding poll in October 2025 (if required)	Estimated cost to run a binding poll is \$45,000 and is currently unbudgeted, however can be considered through the Annual Plan 2025/26 budget process.

10 INFORMATION FOR RECEIPT