

**IN THE DISTRICT COURT  
AT MANUKAU**

**I TE KŌTI-Ā-ROHE  
KI MANUKAU**

**CIV-2025-092-004041  
[2025] NZDC 29372**

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| UNDER            | THE LOCAL ELECTORAL ACT 2001   |
| IN THE MATTER OF | A PETITION FOR INQUIRY INTO THE<br>CONDUCT OF CANDIDATES AT THE<br>ELECTION OF LOCAL BOARD<br>MEMBERS IN THE PAPATOETOE<br>SUBDIVISION OF THE ŌTARA-<br>PAPATOETOE LOCAL BOARD |
| BETWEEN          | LEHOPOAME VI HAUSIA<br>Petitioner  |
| AND              | DALE OFSOSKE<br>Respondent   |

Hearing: 8 and 9 December 2025

Appearances: S Mitchell KC and A Drumm for the Petitioner  
D Collins and A Dawson for the Respondent

Judgment: 16 December 2025

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**RESERVED DECISION OF JUDGE R J McILRAITH**

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[1] Mr Hausia, a candidate, filed a petition for inquiry under s 93 of the Local Electoral Act 2001 (Act) on 7 November 2025 into the conduct of candidates in the election of local board members for the Papatoetoe subdivision of the Ōtara-Papatoetoe local board. Mr Hausia was unsuccessful in the election having placed fifth in a field of thirteen candidates. The four top placed candidates secured board positions.

[2] Mr Hausia alleges that there have been irregularities in the election and that these have materially affected this result. He seeks that I declare the election void so that a new election must be held.

[3] Mr Ofoske, the Electoral Officer for Auckland Council, has opposed the petition pursuant to s 95(1)(c) of the Act after he was served with this proceeding.

[4] I want to be very clear on one matter from the outset. Mr Hausia has not alleged any impropriety by or on behalf of Mr Ofoske in relation to the election.

[5] Mr Ofoske has held his position since 1985. He is the Managing Director of Independent Election Services Limited, a private company. This company was established to support local authorities by carrying out all electoral officer duties and powers under the Act. It was responsible for managing twenty local body elections during the recent triennial election cycle.

[6] There is no suggestion at all that Mr Ofoske or others carrying out the electoral officer duties and powers under the Act in this election have not done their job well and in accordance with all requirements. Rather, the assertion is that a person or person(s) unknown have acted wrongly such that irregularities have occurred.

[7] Any petition must be publicly notified. A candidate in an election or any 10 electors may then file a notice of intention to oppose.

[8] Mr Hausia's petition was publicly notified on 13 November 2025. In a Minute dated 20 November 2025 I directed that any person seeking to oppose the petition needed to promptly file a notice with the court. None did so.

[9] I understand that all candidates in this election are aware of this petition. All unsuccessful candidates have made their support of Mr Hausia's petition known. The four successful candidates have not, however, taken the opportunity to participate. They had no obligation to do so, and I draw no adverse inference from their non-participation.

## **RESULT**

[10] Mr Hausia has established that irregularities have occurred in this election. The key issue for me to determine has been whether those irregularities have materially affected the result.

[11] I have decided that they have materially affected the result. I declare the election of local board members for the Papatoetoe subdivision of the Ōtara-Papatoetoe local board void. A new election will now have to be held.

[12] My reasons follow.

## **THE LEGAL FRAMEWORK**

### **Petitions for inquiry under the Act**

[13] Section 93 of the Act provides that any candidate or any 10 electors with a complaint about the conduct of an election or poll may file a petition in the District Court. It provides:

#### **Petition for inquiry**

(1) Any candidate or any 10 electors with a complaint about the conduct of an election or poll may file a petition in the District Court demanding –

- (a) an inquiry into the conduct of the election or poll; or
- (b) an inquiry into the conduct of a candidate or any other person at the election or poll.

(2) A petition under subsection (1) must –

- (a) be filed within 21 days after public notice is given declaring the result or, as the case may be, the amended result of the election or poll; and
- (b) be filed in the District Court to which the voting documents for the election or poll to be inquired into were forwarded; and
- (c) be accompanied by the prescribed deposit; and
- (d) specify the specific grounds on which the complaint is based; and

(e) be heard and determined by a District Court Judge.

[14] Only grounds stated in a petition may be investigated except with the leave of the District Court Judge hearing the petition. Mr Hausia's petition specified grounds as follows:

- (a) Statistical and turnout anomalies inconsistent with historic and current voting patterns in Papatoetoe;
- (b) The non-delivery, misuse, misallocation, or unauthorised possession of ballot papers;
- (c) Irregularities in the handling and verification of special and duplicate votes, and an unprecedented surge in special voting;
- (d) Discrepancies and inaccuracies in the list of persons from whom voting documents were received;
- (e) Unlawful campaign activities and interference with the voting process; and
- (f) Systemic weaknesses in the administration of the postal-voting system compromising election integrity.

[15] An inquiry must be commenced within 14 days after the filing of the petition, and not less than seven days public notice must be given of the time and place at which the inquiry will be held.

[16] The petition was advertised in the required timeframe. No notice of opposition was filed by anyone other than Mr Ofsoske. In those circumstances counsel for Mr Ofsoske observed that it is not the role of Mr Ofsoske to attempt to justify or defend the allegations of fraud against third parties made by Mr Hausia. However, as the named respondent to the proceeding, it is appropriate that he ensured that the Court was aware of the applicable legal threshold for the petition and provided sufficient information regarding the context of the irregularities alleged.

[17] Section 98 of the Act requires that the District Court Judge hearing a petition must determine a result of the inquiry. It provides:

**Result of inquiry**

The District Court Judge must determine whether,—

- (a) as a result of an irregularity that in the Judge's opinion materially affected the result of the election or poll, the election or poll is void:

(b) in the case of an election, the candidate whose election is complained of, or any and which other candidate, was elected:

(c) in the case of a poll, any and which proposal was carried.

[18] Section 99 of the Act provides that an election or poll is not void by reason of particular irregularities. It provides:

**Election or poll not void by reason of certain irregularities**

(1) If subsection (2) applies, an election or poll must not be declared void on the ground of—

(a) any irregularity in any of the proceedings preliminary to the voting; or

(b) any failure to hold the election or poll at any place appointed for holding the election or poll; or

(c) a failure to comply with the directions contained in this Act or any regulations made under this Act as to the conduct of the election or poll or the counting of the votes; or

(d) by any mistake in the use of prescribed forms.

(2) This subsection applies if the District Court Judge conducting an inquiry into the conduct of an election or poll, having taken account of whether the election or poll was conducted in accordance with the principles set out in section 4, considers that the irregularity, failure, or mistake referred to in subsection (1) did not affect the result of the election or poll.

[19] At sections 3 and 4 the Act sets out its purpose and principles. It is appropriate to record them in full.

**Purpose**

The purpose of this Act is to modernise the law governing the conduct of local elections and polls and, in doing this, to—

(a) provide sufficient flexibility in the law to readily accommodate new technologies and processes as they are developed (through the use of regulations to prescribe matters of detail that will be the subject of future change); and

(b) adopt uniform rules in relation to—

(i) the timing of local elections; and

(ii) the right of individuals to vote, stand for election, and nominate candidates for election; and

- (iii) the appointment, powers, and duties of electoral officers and other electoral officials; and
  - (iv) the compilation of electoral rolls; and
  - (v) the procedures to be adopted for the conduct of elections and polls; and
  - (vi) offences against this Act and penalties for those offences; and
  - (vii) disputed elections; and
  - (viii) electoral expenses; and
  - (ix) extraordinary vacancies; and
- (c) allow diversity (through local decision-making) in relation to—
- (i) the particular electoral system to be used for local elections and polls; and
  - (ia) the regular review of representation arrangements for local authorities; and
  - (ii) the particular voting method to be used for local elections and polls; and
- (d) implement the principles set out in section 4.

## **Principles**

- (1) The principles that this Act is designed to implement are the following:
- (aa) representative and substantial electoral participation in local elections and polls:
  - (a) fair and effective representation for individuals and communities:
  - (b) all qualified persons have a reasonable and equal opportunity to—
    - (i) cast an informed vote:
    - (ii) nominate 1 or more candidates:
    - (iii) accept nomination as a candidate:
  - (c) public confidence in, and public understanding of, local electoral processes through—
    - (i) the provision of a regular election cycle:
    - (ii) the provision of elections that are managed independently from the elected body:

(iii) protection of the freedom of choice of voters and the secrecy of the vote:

(iv) the provision of transparent electoral systems and voting methods and the adoption of procedures that produce certainty in electoral outcomes:

(v) the provision of impartial mechanisms for resolving disputed elections and polls.

(2) Local authorities, electoral officers, and other electoral officials must, in making decisions under this Act or any other enactment take into account those principles specified in subsection (1) that are applicable (if any), so far as is practicable in the circumstances.

[20] There have been few decisions of the District Court addressing petitions for an inquiry under the Act. I have been referred in this hearing to what guidance exists not only in terms of New Zealand's cases but also decisions from Australia and the United Kingdom.

[21] The key question for determination in this inquiry is whether the Court is satisfied that the election should be declared void pursuant to s 98(a) of the Act. As noted, that requires the District Court Judge to determine whether:

“As a result of an irregularity that in the Judge’s opinion materially affected the result of the election or poll, the election or poll is void.”

### **Burden and standard of proof**

[22] The burden of proof is on a petitioner to establish that an irregularity materially affected the result of the election.<sup>1</sup>

[23] The standard of proof is normally on the balance of probabilities, however in this case it was accepted that a higher level of probability is required because the primary allegations in this inquiry are of electoral fraud on a widespread scale.

[24] In *Bright v Mulholland*<sup>2</sup> the Judge noted:

Finally I note that the *Mitiaro* decision recognises that “the more serious the allegation the higher the degree of probability that is required”. Thus where fraud is alleged the Judge is entitled to require a high standard of proof,

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<sup>1</sup> *Bright v Mulholland* [2002] DCR 196.

<sup>2</sup> At 36 and 37.

although not reaching the standard of proof beyond reasonable doubt. In this way the integrity of the electoral process can be protected while recognising that a different result could (at least, in theory) ensue in the event of a criminal prosecution of any individual.

In this case, I accordingly apply the civil standard of proof on the balance of probabilities but conclude that a higher level of probability is required for the allegations against the first respondents (where fraud is alleged) than for the allegations against the second respondent (failure to investigate or act on complaints).

[25] The onus is on Mr Hausia to present evidence of an irregularity that has materially affected the result of this election. The evidential threshold must be set above a simple balance of probabilities but below beyond reasonable doubt. Mr Mitchell took no issue with this albeit that he emphasised the importance of keeping in mind the principles of the Act in making that assessment. In particular, he referred to what he submitted was a key principle the Act is designed to implement, being public confidence in the electoral process through the provision of a transparent electoral system and voting method.

### **What is an irregularity?**

[26] An irregularity must involve breaches of an accepted rule, law or practice governing the formal conduct of elections, and not simply be non-conformity with a moral principle.<sup>3</sup>

[27] As noted above, I have been referred to the case law that exists in relation to these sort of petitions. None of the irregularities in those cases are on “all fours” with those alleged in this case. There is, however, no doubt that if as Mr Hausia alleges voting papers have been taken and completed by person(s) other than those for whom they were intended, that this would be an irregularity if it occurred to any significant extent.

### **What is a material irregularity affecting the election result?**

[28] There is a high threshold for an irregularity to materially affect the result of an election. Voiding an election is clearly a serious step that must be reserved for cases

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<sup>3</sup> *Aukuso and others v Hutt City Council* [2004] DCR 322 at [72].



where there is clear evidence that meets the standard of proof required. It requires proof of an irregularity of sufficient magnitude to materially affect the election result.

[29] An expression used in previous decisions is apt. It is that an irregularity is of sufficient seriousness to “permeate and infect the poll”.<sup>4</sup>

[30] In *Aukuso* the Court noted that for a Judge to form an opinion that an irregularity materially affected a result did not require what might be described as “hard-core and absolute evidence” that a different result would necessarily have occurred. The Judge in that case highlighted that it is important for the Court to assess the nature and quality of the available evidence, its strength and weaknesses, before determining whether the materiality threshold is met.

[31] It is clear from case law that the margin of victory will be an important consideration in determining if there has been a material effect on the result of an election. Where a margin is large, an irregularity impacting a small number of votes will simply not be enough.<sup>5</sup>

[32] While it was a decision more arithmetical in nature than this one, the decision from the Australian state of Victoria, *Scarcella v Morgan*<sup>6</sup> is instructive. In that case, an inadequate number of ballot-papers had been provided to polling booths. The papers ran out and the officials at the locations failed to properly adjourn voting. The Judge described these as irregularities however found that an additional 457 votes would have been required to change the outcome of that election and that the irregularity would have impacted a maximum of only 135 votes. As a result the Judge concluded that this irregularity had not affected the result of the election and declined to infer that others had not voted due to hearing that ballot-papers had run out.

## THE EVIDENCE

[33] Mr Hausia filed an affidavit dated 7 November 2025 in support of his petition for an inquiry.

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<sup>4</sup> *Aukuso* at [99].

<sup>5</sup> For example, *Morgan v Simpson* [1974] 1QB 151 and *Gunn v Sharpe* [1974] QB808.

<sup>6</sup> *Scarcella v Morgan* [1962] VR201.

[34] Mr Hausia was Deputy Chair of the Ōtara-Papatoetoe local board from 2022 to 2025. He stood for re-election in the 2025 Auckland local elections for the Papatoetoe subdivision. He did not secure re-election, finishing one place below the final elected board position.

[35] The top four positions in the election were won by candidates from a newly formed Papatoetoe-Ōtara Action Team (POAT) with each candidate securing victory by margins exceeding 1200 votes. Mr Hausia said that this was a level of separation not previously seen in Papatoetoe local government election results. He received 3,254 votes on the official results. He was 1,239 votes behind the fourth placed candidate.

[36] Attached as an appendix to this decision are the local election 2025 official results published by Auckland Council on 18 October 2025 with respect to the Ōtara-Papatoetoe local board including both the Ōtara subdivision and the Papatoetoe subdivision. It is, of course, the Papatoetoe subdivision that is the focus.

[37] As can be seen from the official results, the four elected candidates affiliated to the POAT were Mr Paramjeet Singh, Mr Sandeep Saini, Mr Kushma Nair and Mr Kunal Bhalla. The official results confirm Mr Hausia's evidence that he placed fifth of the candidates in the election for the Papatoetoe subdivision with votes of 3,254 and with the margin between himself and Mr Bhalla being 1,239.

[38] Mr Hausia's concerns over the conduct of the POAT candidates during the course of the election were expressed in the context of what he said was voter turnout in the Papatoetoe subdivision increasing by 7.5 per cent reaching 31.6 per cent, and equating to 3,239 additional votes compared to the 2022 local body election. He described this as an unusual voter turnout increase and suggested that there were irregular voting patterns in the election.

[39] Mr Hausia observed that this increase diverged significantly from the downward trend in voter turnout across other Auckland local boards including neighbouring boards with historically similar turnout patterns.

[40] He noted that all incumbent members on the Otara-Papatoetoe local board lost their seats. The POAT candidates won all four available positions by significant margins which he described as an unprecedented outcome.

[41] His evidence was that there were multiple reports of voters not receiving their voting papers. He said these reports became widespread supported by a growing number of complaints. He raised a concern of possible impersonation or misuse of voting papers. He described there being evidence of widespread irregularities in the issue and return of voting papers, referring to signed declarations from electors who did not receive their voting documents.

[42] Mr Hausia claimed that there were multiple instances of the POAT candidates potentially breaching campaign rules including employing unlawful signage, participating in “treating” breaches with food and refreshments offered adjacent to campaign signage and being involved in voter interference near a voting area at the Papatoetoe Sikh Temple. Mr Hausia attached to his affidavit in an annexure what he described as evidence of breaches, complaints and concerns.

[43] Mr Ofsoske, the Electoral Officer, filed an affidavit in support of his opposition to the petition dated 19 November 2025.

[44] In this affidavit Mr Ofsoske set out by way of background his role as the Electoral Officer for Auckland Council. He explained that in order to assist the Court he wanted to provide information regarding the data presented by Mr Hausia where that was available and appropriate to do so without disclosing personal information of voters, and provide additional data relevant to the petition to put the allegations in some context.

[45] Mr Ofsoske confirmed that his core function as an Electoral Officer is to ensure that the Act is followed in relation to each local authority election for which he has responsibility. He referred to his duties under the Act which include:

- (a) The compilation and certification of the electoral roll;

- (b) The publication of any public notice relating to elections and polls and the calling of nominations, required to be given;
- (c) Receiving nominations, candidate profile statements and deposits required to be paid;
- (d) Issuing and receiving ordinary and special votes and other official documents;
- (e) The processing and counting of votes;
- (f) The declaration of results;
- (g) Receiving returns of electoral donations and expenses; and
- (h) Investigating possible offences and reporting alleged offences to the police.

[46] Mr Osofske stated that prior to each local body election Auckland Council's Governing Body must determine the method of voting, the order of candidate names and the electoral system to be used. He noted that the method of voting can include booth, postal or a combination of these two methods. If there is no decision made by the Governing Body as to the method of voting, the default option is postal voting.

[47] Prior to the 2025 election cycle, he advised that the Council's Governing Body decided that the voting method would be postal voting with an increased number of special voting centres.

[48] The postal voting system is very much the focus of this petition. Mr Osofske explained that it is a method of remote voting. The Auckland electoral roll for postal voting is compiled using a preliminary electoral roll which once compiled is publicly notified and distributed to libraries across Auckland and is available for public inspection over a 28 day period. Once the preliminary roll closes, a final electoral roll is then produced for the posting of voting documents. Mr Osofske advised that in relation to the 2025 Auckland local body elections, the preliminary roll opened on 4

July 2025 and closed on 1 August 2025. The electors therefore had a four week period to view the roll and make any changes.

[49] Postal voting is used by every local authority in New Zealand and is widely supported by electoral officers across the local government sector as it is a cost-effective, reliable and efficient method of voting. Mr Ofsoske noted that like all local voting methods, it has limitations. The efficacy of postal voting is dependent on the accuracy of the data that the Electoral Commission maintains. The onus is on the elector to ensure that the data contained on this roll is correct and up-to-date.

[50] With respect to the local body elections for Auckland in 2025, Mr Ofsoske noted that there have been complaints passed onto the Police for investigation but that overall he is satisfied that the 2025 elections have been managed appropriately in accordance with the Act and regulations. He observed that there have been six applications for judicial recounts (three for Auckland Council and three for Kaipara District Council). All were dismissed.

[51] With respect to complaints in the Papatoetoe subdivision, Mr Ofsoske said that he has received 16 complaints relating specifically to this subdivision between 8 October 2025 (just prior to the close of voting) and 5 November 2025. The complaints received were:

- (a) Seven complaints regarding the non-receipt of voting documents where the complainant was recorded as having already voted, and the complainant also cast a special vote;
- (b) Four complaints regarding the non-receipt of voting documents where the complainant was reported as having already voted and the complainant did not cast a special vote;
- (c) Three complaints regarding non-receipt of voting documents where the complainant was recorded as having already voted and the complainant made a declaration as to non-receipt;

- (d) One complaint regarding non-receipt of voting documents;
- (e) One complaint regarding voter interference at the Sikh Temple in Papatoetoe and organised theft of voting documents by young persons in Papatoetoe.

[52] Mr Ofsoske said that he referred all the complaints relating to the Papatoetoe subdivision to the Police to investigate within one to ten days of their receipt. I was advised in the course of this inquiry that the Police are understood to be investigating the complaints. That may, of course, take some time.

[53] The Act provides for offences. It is, of course, possible that at the conclusion of their investigation police lay charges - it is an offence for a person to obtain or possess voting papers other than those issued to that person for the purpose of voting. That is not, of course, a matter before me and I make no comment on the merit of any charges the Police may consider. However, the alleged conduct is relevant to my analysis to the extent it is part of alleged irregular voting.

[54] Mr Ofsoske confirmed that the Papatoetoe subdivision had a 7.5 per cent increase in voter turnout in 2025 compared to the 2022 election when voter turnout declined or remained flat in most other local body areas. He noted that voter turnout in Auckland as a whole reduced from 35.5 per cent in the 2022 election to 29.3 per cent in the 2025 election. He confirmed that there was an increase in voter turnout in the Papatoetoe subdivision despite that overall reduction across Auckland.

[55] Mr Ofsoske commented on the five groups of asserted irregularities identified by Mr Hausia explaining the process that he had gone through comparing these people to the final “already voted” list. This led to Mr Ofsoske’s conclusion that there were a number of votes from the Papatoetoe subdivision that may have been cast by a person other than the elector. He observed that ordinary votes with respect to these electors will not have been counted due to the elector having also cast a special vote.

[56] With respect to other alleged voting irregularities, Mr Ofsoske briefly addressed the issue of signage, food and refreshments being provided near campaign signage and voting interference and malpractice at the Papatoetoe Sikh Temple.

### **Scrutiny of votes**

[57] Following receipt of Mr Ofsoske's affidavit, Mr Hausia sought that I direct a scrutiny of a specific class of the votes made at the election pursuant to s 97(1)(b) of the Act. Specifically, he noted that it appeared there were 61 voters who had made special votes, having already lodged an ordinary vote. In those circumstances, the special vote was counted rather than the ordinary vote. The scrutiny was sought to assist in understanding whether there was any pattern in the 61 votes that were initially made.

[58] Mr Ofsoske agreed with this proposal. Accordingly, a date and time was organised for the scrutiny to occur at the Manukau District Court. As is the practice, the voting papers for local body elections had been provided to the closest District Court at the completion of the election. The voting papers were transported to Manukau District Court from the Auckland District Court for the purpose of this scrutiny.

### **Further evidence**

[59] Following the scrutiny of these votes, Mr Hausia filed a supplementary affidavit dated 1 December 2025.

[60] In this affidavit he provided additional information including further declarations received from people who did not vote in the election due to non-receipt of voting papers.

[61] In addition, Mr Hausia provided supporting statements from other candidates in the election. These statements record their concerns regarding the conduct of the election. While the candidate supporting statements Mr Hausia has provided are uniform in nature, I do note that they have been provided from all of the other

candidates in the election, other than the four who were elected. It is fair to describe them as being from across the political spectrum, comprising candidates affiliated with the NZ Labour Party, Community and Residents (C & R) and independents.

[62] These candidates all record their concerns regarding reports of non-receipt of voting papers, complaints from electors regarding being marked as “already voted” despite not receiving or casting an ordinary vote, irregularities in the handling, issue and verification of special votes, statistical or turnout anomalies inconsistent with historical Papatoetoe voting patterns, concerns relating to the security, distribution or misuse of voting documents and general concerns regarding the postal voting system.

[63] Also attached to this second affidavit was what Mr Hausia described as his assessment of irregularities. Mr Collins took some issue with this part of Mr Hausia's affidavit insofar as it contains what could be considered inadmissible evidence. I appreciate the point raised by Mr Collins but in the circumstances considered the evidence admissible and have read it. I do, however, record that I have placed little weight upon what are clearly Mr Hausia's personal views and opinions and not independent expert evidence.

[64] Mr Ofsoske filed a second affidavit dated 3 December 2025. In this affidavit he outlined further information regarding the special voting process and further information with respect to the complaints that he received in relation to the Papatoetoe subdivision and which he had referred to the Police.

[65] Summarising the situation with respect to voting, Mr Ofsoske noted that based on the classes of electors who had signed a declaration or confirmed they did not receive voting papers, it appeared that there were up to 68 ordinary votes in the subdivision that may have been cast by a person other than the elector. Within that group of 68 ordinary votes, 23 ordinary votes would not have been counted due to the elector also casting a special vote.

[66] Mr Ofsoske noted that if electors identified as “confirmed” were included in the total alongside those who provided declarations, the vote count in the subdivision would have been impacted as follows:



- (a) 41 ordinary votes would have been counted in the Papatoetoe subdivision that were not cast by the elector;
- (b) 23 ordinary votes were cast by persons in the Papatoetoe subdivision other than the elector in circumstances where the elector was able to cast a special vote or the ordinary vote would not have counted toward the vote total; and
- (c) 72 electors did not receive their voting papers in circumstances where the elector is not recorded as having casting an ordinary vote.

### **Spatial map**

[67] At the hearing Mr Mitchell referred to an analysis undertaken by Mr Hausia of the increase in votes in the Papatoetoe subdivision on a street-by-street basis. We discussed whether there was any correlation between those streets with the greatest increase in voter turnout and those instances of people who lodged special votes to cure their original vote.

[68] At the conclusion of the hearing counsel provided a spatial map which overlayed an existing map showing the instances of special votes and those people who did not vote yet were recorded as having voted with the streets highlighted reflecting increases in voter turnout of more than 100%.

[69] Mr Mitchell submitted that this showed a strong correlation between the two providing further evidence of widespread fraudulent voting.

### **DISCUSSION**

[70] The key question for determination is whether I am satisfied that the election should be declared void pursuant to s 98(a) of the Act. The legal threshold is clear. I must determine whether as a result of an irregularity that in my opinion materially affected the result of the election, the election is void.

[71] The focus of the evidence and hearing in this inquiry has been on alleged voting paper irregularities. While noted, and the subject of some complaints to Police, the alleged irregularities of unlawful signage, “treating” and general concerns about process have not been relied upon by Mr Hausia to any extent. I have, accordingly, focussed in this decision on the alleged voting paper irregularities.

[72] Mr Ofsoske has referred to five different categories of voting paper irregularities. These are:

- (a) Declared non-recipients who did not vote;
- (b) Declared non-recipients who cast a special vote;
- (c) “Confirmed” non-recipients of voting papers who did not vote;
- (d) “Confirmed” non-recipients of voting papers who cast a special vote;  
and
- (e) “Potential” non-recipients of voting documents.

[73] What is required for an “irregularity” is an assessment of circumstances on its particular facts. A significant irregularity must be demonstrated, mere technical breaches will not be considered to qualify and there must be something that has “infected or permeated the poll itself”.<sup>7</sup>

[74] On behalf of Mr Ofsoske, Mr Collins accepted in his submissions that I may consider that the categories of declared non-recipients who did not vote, and declared non-recipients who cast a special vote, met the requisite standard of proof to establish that ordinary votes were cast by someone other than the elector.

[75] Mr Collins noted in his submissions that at the scrutiny of votes, 61 ordinary votes were disallowed due to subsequent votes being cast by that person. As a result of that inspection:

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<sup>7</sup> *Aukuso* at [83].

- (a) 8 of the voting papers were set aside as they did not fit in the category;
- (b) 49 of the remaining voting papers had votes cast for the four successful candidates;
- (c) 1 voting paper had votes cast for three of the four successful candidates;  
and
- (d) 3 voting papers had votes cast for other candidates.

[76] Accordingly, within the 53 disallowed ordinary votes, there was an identifiable trend in favour of the POAT candidates (50/53). Mr Ofsoske accepted that this class of vote overlaps with the number of declared non-recipients who cast a special vote and as such I may substitute 50 ordinary votes in that category rather than the lower number.

[77] Mr Collins said that Mr Ofsoske did not consider that the categories (c), (d) and (e) in paragraph 75 above necessarily meant that any irregularity in the voting process had occurred, only that some people may not have received voting documents. I agree with that conclusion.

[78] The long and the short of this is that once he has refined his calculations, the Electoral Officer accepts that it would be a reasonable conclusion for me to reach that Mr Hausia has established irregularity in the election to the requisite standard of proof in relation to 79 votes. These 79 votes comprise:

- (a) 29 ordinary votes which were cast by someone other than the elector;  
and
- (b) 50 ordinary votes which were cast by someone other than the elector in circumstances where the irregularity was cured by a special vote.

[79] Mr Collins therefore acknowledged in his submissions that the Electoral Officer in this election accepts that Mr Hausia has established to the requisite standard

of proof that an irregularity occurred and that 79 ordinary votes were cast by someone other than the elector.

[80] The casting of votes on behalf of another person is, of course, an offence under the Act and therefore it is a breach of electoral law even if the identity of the person(s) involved are not yet known. He submitted that when an isolated incident of electoral fraud occurs in an election, it might not necessarily give rise to an irregularity if a special vote was cast by the elector. However, in the present case, he accepted that Mr Hausia has established that an unusually high number of ordinary votes were affected, and it is therefore open to the Court to conclude that Mr Hausia has established that an irregularity occurred in this election.

[81] I have no hesitation whatsoever in finding that an irregularity has occurred in this election.

[82] It is important, not to gloss over that finding. The irregularity that has occurred here highlights a significant fragility in the postal voting system that I infer has been a concern held by many for some time but has not previously crystallised. What we have in this election is so far as I am aware, from the case law to which I was referred, the only example where a petition of inquiry has asserted (correctly) that votes have been cast by someone other than the elector on such a scale. These votes are clearly irregular. I consider that Mr Collins describing these votes in his submissions not only as irregular but as "fraudulent" was appropriate. We have here a situation of what can only be described as what appears to be large scale taking of voting papers with those voting papers being completed by someone other than the intended recipient. And, that is what is known.

[83] The real issue in this case is whether Mr Hausia has shown to the applicable standard of proof that the irregularities in the conduct of this election have had a material effect on the result.

[84] As can be seen in the appendix to this decision, Mr Hausia placed fifth in the election and was some 1,239 votes behind the fourth successful board candidate. As

Mr Collins put it the main difficulty for Mr Hausia is that an irregularity of significant scale must be required to materially affect the election given this margin of victory.

[85] Mr Collins submitted that taken at its highest Mr Hausia has proven that it is highly probable that:

- (a) There are established cases of irregularly cast votes affecting under 100 ordinary votes, and that the majority of these were cured through the special vote process; and
- (b) A marked increase in voting occurred in Papatoetoe subdivision as a whole at the same time voting numbers dropped in all other areas of Auckland.

[86] Mr Collins submitted that considering the evidence as a whole in the context of the significant margin of victory, it is not open to the Court to conclude that the acknowledged irregularity has materially affected the election result. I do not accept that submission. It reflects what the Electoral Officer knows, not what may well have happened.

[87] Mr Mitchell observed that there is no conclusive way of knowing that any vote received in this election was in fact filled out by the intended voter due to the nature of the postal voting system. While emphasising the 79 fraudulent votes, Mr Mitchell also noted that there is anecdotal evidence of voting documents being stolen in the Papatoetoe subdivision as provided in Mr Hausia's affidavit along with social media posts and private messages which indicate similar.

[88] Mr Mitchell emphasised that an important feature of the election in this subdivision is that it stands out as different to the overall pattern of voting across Auckland city.

[89] The number of votes in the Papatoetoe subdivision increased by 7.5 per cent from 2022 to 2025. No other area in Auckland saw any increase. This is in the context

of overall voting in Auckland reducing from 35.5 per cent in the 2022 election to 29.3 per cent in the 2025 election.

[90] This was clearly an extraordinary increase and quite an anomaly. Mr Mitchell submitted that there was no obvious reason for such an increase with all areas having a marked decrease in participation. He submitted further that it is likely that the increase occurred due to a person or persons unknown choosing to take opportunities to vote on behalf of others in this election. He submitted that there was no reason to believe that the Papatoetoe subdivision saw an increase in votes other than by some type of misconduct. Further, that there is simply no alternative explanation for the statistical difference between this local board area and neighbouring local board areas.

[91] Mr Collins recognised that given the non-participation of the successful candidates in this hearing there was no evidence presented of any other explanation. He did, however, observe that it could be possible that a strong campaign engaging the community had been run by the POAT and that this had brought about the increase in voter turnout. I recognise that as a possibility but there is no evidence of it before me.

[92] The difference in the 2022 voting as compared to the 2025 voting is an additional 3,239 votes. Mr Mitchell observed that in the scrutiny process referred to above, the original votes that were disallowed as a result of subsequent special votes were overwhelmingly in favour of the POAT candidates.

[93] In that context, Mr Mitchell observed that to make a special vote, an elector would be required to:

- (a) Be aware that there was an election taking place;
  - (b) Notice that they had not received voting documents;
  - (c) Make enquiries as to how to make a special vote;
  - (d) Make the effort to attend an appointed location to make a special vote;
- and

- (e) Ensure they filled out the declaration required to do so completely and correctly.

[94] There were at least 53 individuals who did make that effort to cast a special vote. Mr Mitchell submitted that it was simply not possible to quantify the number of people who did not receive their voting documents but did not then take those steps. He submitted that a reasonable inference can be drawn in relation to other electors across the subdivision.

[95] In effect, what Mr Mitchell is inviting me to do is to infer from a number of proven facts that the result of this election would have been different had fraudulent voting not occurred.

[96] The facts upon which he invites me to make that inference are:

- (a) The irregularity in this election, the casting of fraudulent votes, is proven at a level of 79 votes (albeit with some cured by special votes) and this is unprecedented.
- (b) There is additional evidence of voters not receiving voting papers in circumstances where they did not take the steps to cast a special vote.
- (c) Sixteen complaints have been referred by the Electoral Officer to the Police for investigation.
- (d) All candidates other than those successful in the election have expressed the same concerns about it.
- (e) The large increase in voter turnout which has been contrary to the trend in Auckland city as a whole.
- (f) The correlation shown in the spatial map between the location of greater voter turnout in the electorate and location of those electors making special votes or not receiving voting papers and who did not vote yet were recorded as having voted.

[97] In making these submissions, Mr Mitchell accepted that it would be impractical for the Court to have asked and made enquiries of all voters to ascertain who did not receive voting papers. The number is therefore difficult to quantify. I asked in the course of this inquiry for Mr Ofsoske's view as to whether we were dealing with a confined group of fraudulent votes or, alternatively, "the tip of the iceberg". The response was understandably that Mr Ofsoske had dealt with what he was aware of but could comment no further. His evidence is, of course, confined to what he knows about, not what may have happened.

[98] I accept the facts set out by Mr Mitchell and which he relies upon are proven. I am compelled to make the inference Mr Mitchell submits is required.

[99] I am therefore satisfied that it is more likely than not that the extent of fraudulent voting in this election has materially affected the result. I have reached this conclusion due to the facts which I accept as established. I am seriously concerned that the extent of votes being cast in this election by people other than for whom the voting papers were intended is much greater than the level known by Mr Ofsoske and that it is more likely than not that they were cast for POAT candidates. This fraudulent voting has, in my view, "permeated or infected" the election to such an extent that it is more likely than not that the margin by which Mr Hausia ( and possibly others ) was unsuccessful may well have been extinguished.

[100] I declare the election of local board members for the Papatoetoe subdivision of the Otara-Papatoetoe local board resulted on 18 October 2025 void.

[101] A new election must now be held in accordance with the Act.

[102] Mr Hausia is entitled to the return of his deposit paid to file his petition. With respect to costs, my preliminary view is that no order for costs ought to be made but if counsel take a different view memoranda can be filed in the normal manner.



## APPENDIX

Local elections 2025

18 October 2025

Official results



### Ōtara-Papatoetoe Local Board (Ōtara Subdivision)

Positions: 3

| Candidate                   | Affiliation                  | Votes | Rank |
|-----------------------------|------------------------------|-------|------|
| AUTAGAVAIA, Apulu Reece     | Labour                       | 3,007 | 1    |
| KAISARA, Li'amanaia Lorenzo | Labour                       | 2,649 | 2    |
| FOLAU, Topou                | Labour                       | 2,222 | 3    |
| NELSON, Swanie              | Independent                  | 1,586 |      |
| TULUA, Zak                  |                              | 888   |      |
| TAPUMANAIA, Peresitene      | Papatoetoe-Otara Action Team | 816   |      |
| NILI, Pele                  | Independent                  | 736   |      |
| DEVOE, Henrietta            | ACT Local                    | 696   |      |
| TUSINI, Jarvis              |                              | 473   |      |
| Informal                    |                              | 20    |      |
| Blank                       |                              | 59    |      |

### Ōtara-Papatoetoe Local Board (Papatoetoe Subdivision)

Positions: 4

| Candidate              | Affiliation                     | Votes | Rank |
|------------------------|---------------------------------|-------|------|
| SINGH, Paramjeet       | Papatoetoe-Otara Action Team    | 5,104 | 1    |
| SAINI, Sandeep         | Papatoetoe-Otara Action Team    | 5,081 | 2    |
| NAIR, Kushma           | Papatoetoe-Otara Action Team    | 4,684 | 3    |
| BHALLA, Kunal          | Papatoetoe-Otara Action Team    | 4,493 | 4    |
| HAUSIA, Vi             | Labour                          | 3,254 |      |
| LATHAM, Chris          | C&R - Communities and Residents | 2,769 |      |
| CHOUDHARY, Ashraf      | Labour                          | 2,679 |      |
| DHALIWAL, Avinash Kaur | Labour                          | 2,475 |      |
| LIM, Albert            | Independently Papatoetoe        | 2,371 |      |
| SINGH, Raj Pardeep     | Labour                          | 2,127 |      |
| DONS, Peter            | Independently Papatoetoe        | 1,794 |      |
| KA, Futi               | Independent                     | 1,445 |      |
| ALI, Nazia             | Independently Papatoetoe        | 1,028 |      |
| Informal               |                                 | 30    |      |
| Blank                  |                                 | 85    |      |

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Judge RJ McIlraith

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 16/12/2025