

**IN THE DISTRICT COURT
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE
KI WHANGĀREI-TERENGA-PARĀOA**

**CIV 2025-088-678
[2025] NZDC 25074**

UNDER	the Local Electoral Act 2001
IN THE MATTER	of an Application for a Recount of the Votes in the Local Government Election of 2025 for the Otamatea Ward of the Kaipara District Council
BETWEEN	MARK GREGORY VINCENT Applicant
AND	DALE OFSOSKE, Electoral Officer Respondent
AND	DENISE ANNE ROGERS Interested Party

Hearing:	On the Papers
Appearances:	Applicant in person Respondent in person S Mitchell KC & A Drumm for the Interested Party
Judgment:	5 November 2025

JUDGMENT OF JUDGE K D KELLY
[on application for a recount of votes cast at the 2025 local body election]

Introduction

[1] On 22 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Mr Mark Vincent applied for a recount of the votes cast at the recent 2025 elections for the Otamatea Ward of the Kaipara District Council.

[2] At the time of making his application Mr Vincent was legally represented by Mr Easton of WRMK Lawyers but on 4 November 2025 I granted leave for Mr Easton to withdraw as solicitor on the record. While Mr Easton filed initial submissions for Mr Vincent relating to a preliminary issue about the payment of the prescribed deposit (which I discuss next), Mr Vincent has filed his own submissions in support of his substantive application.

Preliminary issue: prescribed deposit

[3] Section 90 of the Act provides:

90 Application by candidate for recount

(1) If any candidate has reason to believe that the public declaration by the electoral officer of the number of votes received by any candidate is incorrect, and that on a recount of those votes the first-mentioned candidate might be elected, he or she may, within 3 working days after the public declaration, apply to a District Court Judge for a recount of the votes.

(2) Every application for a recount must be accompanied by the prescribed deposit.

(3) If the District Court Judge is satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, the District Court Judge must, as soon as practicable after receiving the application, and the deposit required by subsection (2),—

(a) cause a recount of the votes to be made; and

(b) give notice in writing to the electoral officer and to each of the candidates and to each scrutineer appointed under section 66 or section 91 of the time and place at which the recount will be made.

[4] Clause 139 of the Local Electoral Regulations 2001 provides, in turn, that: “The amount of the deposit that must accompany an application for a recount under section 90 of the Act is [\$766.67] inclusive of GST.”¹

[5] The final results for the Kaipara District Council Elections, including for the Otamatea Ward, were declared on 17 October 2025. The period of three working days after 17 October 2025 expired on 22 October 2025.

¹ The stated fee of \$750.00 in the Regulations is increased by operation of s 78 of the Goods and Services Tax Act 1985

[6] Mr Vincent filed his application and affidavit in support on 22 October 2025 but did not pay the prescribed deposit referred to in s 90(2) until 23 October 2025.

[7] As I noted in my minute dated 24 October 2025, Mr Vincent's lawyer was contacted by the Registry on 23 October 2025 and asked to confirm that the application was made within three working days, and that the deposit was paid. Proof of payment was sought by the Registry. Mr Vincent's lawyer replied that the deposit was being arranged. Subsequent confirmation from the ANZ Bank shows that the prescribed fee was paid on 23 October 2025 for same-day-clearance, and that this was received by the Ministry of Justice (into its Westpac account) on the same day.

[8] In light of this, I issued my minute advising that the wording of s 90(2) is mandatory and that contrary to the memorandum of counsel dated 22 October 2025, the prescribed fee did not 'accompany' the application. As a consequence, I advised that as three working days following the public declaration of results had expired, the application was incomplete and was out of time.

[9] Before directing the Registry that the application was not to be accepted, however, I invited submissions on the matter by 28 October 2025. Upon receipt of those submissions, and following a teleconference with the parties on 29 October 2025, I made further directions that, in the interest of time, submissions on the substantive application were to be filed along with a report from the Electoral Officer on the conduct of the election. That report, and those submissions would be considered at the same time as the issue of the prescribed deposit.

[10] Subsequently, on 29 October 2025 Mr Drumm as counsel for Ms Denise Rogers, sought leave for Ms Rogers to be joined as an interested party given that Ms Rogers is the candidate most likely to be affected following a recount (should the declaration be amended in Mr Vincent's favour). Ms Rogers is the lowest polling candidate for the two vacancies in the Otamatea Ward, having received two votes more than Mr Vincent. There was no opposition to Ms Rogers being joined

Submissions on prescribed deposit

[11] Mr Easton, then Counsel for Mr Vincent, submitted the only condition on the filing of a document under rule 5.1B of the District Court Rules 2014 ('DCR's or the 'Rules'), is that the requisite filing fee is paid.² It is submitted that a deposit is distinct from a filing fee and does not form part of this condition. The fee is not included in Schedule 1 to the District Court Fees Regulations 2009 and is termed a 'deposit' and not a 'fee' in s 90 of the Act. It is also submitted that the deposit is only forfeit in certain circumstances when an application has been validly filed, whereas a filing fee cannot be refunded except when there has been a procedural error resulting in a filing being rejected.

[12] Mr Easton also submitted that DCR 5.1A(6) provides, subject to DCR 5.1B, that: "in the event of any inconsistency between any provision of [DCR 5.1A] and any other provision of these rules or any other enactment, this rule prevails".

[13] It is also submitted that DCR 20.14 provides that originating applications are commenced when filed in the proper registry under DCR 5.1.

[14] In relation to the prescribed fee, Mr Easton submitted that subs 90(2) and (3) distinguish between an application and the prescribed deposit and the latter does not form part of the former. The natural corollary of this, it is submitted, is that the application cannot be treated as being incomplete for non-payment of the deposit.

[15] It is further submitted that the term 'accompany', on its face, is ambiguous and reasonably means either that the deposit is to be paid at the exact same time as the filing fee was made (which it is submitted would be impracticable), or just that the deposit is paid with the appropriate reference to the application.

[16] It is submitted that if the term is interpreted to have a 'simultaneous' quality, it would preclude situations where the deposit is received only slightly after but on the same day as the application is filed.

² DCR 5.1B(2)

[17] It is also submitted that it would stretch the natural meaning of the term if s 90 was read to mean that the deposit must be paid within a reasonable time of the application, or on the same working day. It is submitted that Parliament chose not to include a provision to this effect.

[18] In addition, it is submitted that if Parliament had intended the deposit to be paid within the same three working day period within which the application is filed, it could have easily made this explicit as it has elsewhere in the Act (e.g. s 55(2) relating to the acceptance of nominations of candidates).

[19] Mr Easton further submitted that Parliament had good reason to separate out the receipt of the application from receipt of the deposit. By untethering the validity of the application from the payment of the deposit, it is submitted that Parliament saw fit to accommodate situations where, as here, administrative difficulties or other practical reasons meant that a deposit was not able to be paid prior to the expiry of the three working days referred to in s 90(1).

[20] In this regard, Mr Easton also brought to the Court's attention that he was not given details of the bank account into which the deposit was to be paid, until 23 October 2025, and was asked to use a 'CIV' number as reference for the deposit but that this number was not allocated until 23 October 2025. Mr Easton also says that he was given a number to call the Court on before 5.00pm on 22 October 2025 but this number was not answered until 9.00 the following day despite the Registry hours being 9.00am to 5.00pm as set out in DCR 2.4.

[21] Ms Delwyn Houlihan, legal assistant for WRMK Lawyers filed an affidavit dated 28 October 2025 in which she provides a transcript of a phone message left by the Registry with WRMK Lawyers which reads:

Hello George this is [name] from the District Court I'm just ringing in regards to your application for electoral recount and I've noticed that you've paid the fee but as per s 90(2) every application for recount must be accompanied by the prescribed deposit and the deposit for this application is \$766.67 which needs to be paid into the local law trust account so if you want to give me a call back about this umm you can call anytime after 9.00am tomorrow at [phone number] thank you.

[22] Ms Houlihan also annexed to her affidavit a copy of an email from the Registry sent at 10.38 am on 23 October 2025 advising the CIV number for the application and asking whether the prescribed deposit has been paid, and for proof of payment. The email continues by saying: “If not, kindly arrange the payment to the below account...Once paid, please ensure to forward us a copy of the payment confirmation.”

[23] Finally, Mr Easton submits that there is at least sufficient ambiguity in s 90 that the Court is able to exercise its inherent discretion to accept the application for filing. It is submitted that there is no prejudice to the Court, or the public, in accepting the application as the late payment of the deposit only realistically delayed the application by one working day. It is submitted that it is in the public interest that elections are seen to have been conducted in a robust and transparent manner, which would not be the case if the application is rejected.

Discussion

[24] While I agree that the application is to be distinguished from the prescribed deposit and that DCR 5.1B governs when the application is filed, the issue is about whether the prescribed fee must be paid within the three working days referred to in s 90(1).

[25] As Mr Drumm for Ms Rogers rightly submits, the meaning of s 90(2) is to be ascertained from its text and in the light of its purpose and its context.³ Section 90(2) is explicit and expressed in mandatory terms, requiring that every application “must be accompanied by the prescribed deposit”.

[26] I agree that the ordinary dictionary definition of ‘accompanied’ is to:⁴

- (a) go somewhere with (someone) as a companion or escort; or
- (b) be present or occur at the same time as (something else).

³ Legislation Act 2019, s 10(1)

⁴ Oxford Languages Dictionary

[27] As Mr Drumm submits, however, the key to both of these interpretations is that they requires two things to be in existence ‘in the same space at the same time’. The submission for Mr Vincent is contrary to the plain and ordinary meaning of the words and that it could not be the case that Parliament intended an interpretation that permitted flexibility with the payment of the deposit.

[28] I agree with Mr Drumm that the language of the section is likely to have been intended so that recounts occur quickly, and that payment of the deposit is necessary so as to avoid interference with the swearing in of candidates. As set out in cl 21 of Schedule 7 of the Local Government Act 2002 (LGA), the first meeting of a local authority following a triennial general election cannot be called, where an application for a recount is filed, until any recount has been completed and the candidates to be declared elected are known. I agree with Mr Drumm that the language of the section is deliberate and is likely to have been intended so that recounts occur quickly so as to enable the timely swearing in of candidates.

[29] This provision, along with the amendment to DCR 20.13⁵ (which takes effect for the first time from this election i.e. from 1 September 2025⁶), reinforces the point that applications for recounts are to be made and processed without undue delay.

[30] The submission that ‘filing’ the application under the Rules does not require the filing and the payment to be made at the same time, as Mr Drumm submits, neglects to consider that secondary legislation such as the Rules, cannot override primary legislation, in this case, s 90 of the Act.

[31] In any event, DCR 5.1A relates to the application and not the payment of the prescribed fee such that there is no inconsistency between DCR 5.1A and s 90.

[32] I agree with Mr Easton that the term ‘accompany’ ought not to be interpreted to mean ‘simultaneous’, but I disagree that it would stretch the natural meaning of the term if s 90 was read to mean that the deposit must be paid within a reasonable time of the application. In my view, by using the word ‘accompany’ Parliament deliberately

⁵ i.e. that applications under s 90 are to be by way of originating application

⁶ DCR 20.13(1)(r) was replaced, on 1 September 2025, by rule 4 of the District Court Amendment Rules 2025 (SL 2025/147).

linked the payment of the deposit to the filing of the application, which must be made within three working days after the public declaration.

[33] In addition, it is submitted that if Parliament had intended the deposit to be paid within the same three working days within which the application is filed, it could have easily made this explicit as it has elsewhere in the Act (e.g. s 55(2) relating to the acceptance of nominations of candidates).

[34] It is clear from s 90 too, that a recount cannot be directed until after a judge is satisfied not only that the applicant has reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, but also that the deposit required by ss (2) is paid. If Mr Vincent's submissions are to be accepted, and the payment of the prescribed deposit is able to be divorced from the time constraints on the making of an application, then it would be possible for an unsuccessful candidate to frustrate the first meeting of a local authority following a triennial general election of members by failing to pay the prescribed deposit in a timely fashion. I do not think that is the intention of the scheme for recounts in Part 4 of the Act. What Parliament considered to be a 'reasonable time' for payment of the prescribed deposit is clearly linked to the 'three working days in s 90(1).

[35] In terms of the difficulties with the payment of the fee, I do not consider this provides a lawful excuse. The obligation in s 90 is on the candidate namely to:

- (a) apply for any recount within three working days after the public declaration;
- (b) to ensure the prescribed deposit 'accompanies' that application (i.e. within the three working days); and
- (c) then, to satisfy a judge that he or she has reasonable grounds to believe that the declaration is incorrect and that on a recount he or she might be elected.

[36] Moreover, in the present case, difficulties with payment cannot be sheeted home to the registry when on 23 October 2025, when contacted by the Registry, arrangements were still being made for the payment of the prescribed deposit. By 3.12pm on 23 October too, the registry had not yet heard back from Mr Vincent or his counsel to the registry's message or email.

[37] While proof of payment confirms that payment was made on 23 October 2025, that was one working day late.

[38] Finally, while Mr Easton asks that the Court exercise its 'inherent discretion' to accept the application for filing, I agree with Mr Drumm that it is not apparent there is any such power to extend the time for filing or that the Court has any jurisdiction to excuse the failure and to provide more time. Mr Vincent has not persuaded me that there is.

[39] By way of conclusion, I am not satisfied that Mr Vincent is correct, for the reasons stated, that the failure to pay the prescribed deposit within the **three working day period** is able to be overlooked.

[40] In the event that I am wrong on this point, however, I go on to consider the substantive grounds for the application.

Mr Vincent's application for a recount

[41] Through his then counsel, in a memorandum accompanying his originating application, Mr Vincent says that his primary issue is with the volume of special votes that were disallowed. Mr Vincent believes that the volume of special votes disallowed indicates that the released count of votes is incorrect.

[42] Mr Vincent also has concerns that the public sentiment surrounding the Kaipara District Council elections is particularly negative and distrustful. Mr Vincent says that elections should be seen to be transparent and that a recount will go a long way to assuage the concerns of voters that the elections was run fairly and robustly.

[43] In his affidavit filed in support of his application, Mr Vincent deposes that during the week of 17 October 2025 he heard from several sources, including the Chief Executive of the Kaipara District Council, that around 500 special votes had been cast.

[44] Attached to Mr Vincent's affidavit is an email from Mr Ofsoske dated 22 October 2025 in which Mr Ofsoske confirms that 486 special votes were received, of which 198 (40.7 per cent) were allowed and 288 (59.3%) were disallowed.

[45] Mr Vincent also deposes that voting boxes were placed at main supermarkets and a list of places were notified as to where mobile voting units would be operated. Given complaints about the operation of the mobile voting boxes and the number of special votes disallowed, Mr Vincent says that it is important that the public are assured that the elections were conducted robustly and that the public can have confidence in the results.

[46] Mr Vincent acknowledges his 'self-interest' saying that 46 special votes were cast in the Otamatea Ward. While Mr Vincent says he does not know how many were allowed or disallowed, given the above percentages, proportionately there may have been 66 votes disallowed for the Otamatea Ward. As Mr Vincent was unsuccessful by two votes, he says that any errors in the counting may influence the outcome.

Electoral Officer's report

[47] Mr Ofsoske is the Electoral Officer for the election. Mr Ofsoske takes a neutral position in relation to whether there ought to be a recount, and the outcome of any recount (if ordered).

[48] On 29 October 2025 I directed Mr Ofsoske to file a report on the conduct of the election.

[49] Mr Ofsoske's report dated the same day confirms that when progress results were released on 11 October 2025, Mr Vincent was the lowest provisionally elected candidate with 52 votes (at 657 votes) more than Ms Rogers (at 605 votes).

[50] When the preliminary votes were released on 12 October 2025, Mr Vincent was the lowest provisionally elected candidate with three votes (at 737 votes) more than another candidate, Ms Kemp who received 734 votes. Ms Rogers was a further 10 votes behind Mr Vincent with 727 votes.

[51] Subsequently, when the final results were released on 17 October 2025 however, the rankings switched with Ms Rogers (at 742 votes) receiving two votes more than Mr Vincent (at 740 votes). Ms Rogers was the lowest elected candidate as a consequence. The final results included all special votes that were not included in the preliminary results.

[52] When voting closed Ms Ofoske reports that 119 special votes were received for the Otamatea Ward. Of these, 59 special votes (49.6 per cent) were allowed. Of the 60 special votes (50.4 per cent) that were disallowed:

- (a) 42 people were not on the roll (i.e. they were disallowed by the Electoral Commission as unqualified); and
- (b) 18 declarations required to accompany special votes were incomplete.

[53] Mr Ofoske also reports that prior to each triennial election, the software and vote processes are certified as ‘fit for purpose’ by an independent auditor, and that this happened in this case. Mr Ofoske’s report also sets out details about how votes are processed.

[54] Finally, Mr Ofoske reports that while candidates were able to appoint scrutineers to observe certain functions at the election, including the counting process after the voting closed, no scrutineers were appointed by candidates for the Otamatea Ward, including Mr Vincent.

Legal Framework

[55] Section 90 of the Act provides:

90 Application for recount

- (1) If any candidate has reason to believe that the public declaration by the electoral officer of the number of votes received by any candidate is incorrect, and that on a recount of those votes the first-mentioned candidate might be elected, he or she may, within 3 days after the public declaration, apply to a District Court Judge for a recount of the votes.

...

- (3) If the District Court Judge is satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, the District Court Judge must, as soon as practicable after receiving the application, and the deposit required by subsection (2),—
 - (a) cause a recount of the votes to be made; and
 - (b) give notice in writing to the electoral officer and to each of the candidates and to each scrutineer appointed under section 66 or section 91 of the time and place at which the recount will be made.

[56] The test in s 90(3) of the Act is not whether a judge believes that the declaration by the electoral officer may be incorrect and that on a recount the applicant might be elected. Rather, a judge must be satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that he or she might be elected on a recount.

[57] As Judge Tuohy noted in *Smith v Lampp*, a decision pertaining to the local government elections in 2022:⁷

[28] There have been several decisions of District Court judges over the last decade or so in which the application of this test has been discussed. In *Butler v Jordan*⁸, Coyle DCJ said that the Judge needs to be satisfied on the balance of probabilities that there is sufficient evidence to justify a conclusion that the applicant has reasonable grounds to believe that the declaration is incorrect. This necessitates the applicant adducing evidence to enable the Judge to be satisfied that the grounds have been established. The reasonableness of the applicant's subjective belief must be assessed in the light of that evidence. 'Reasonableness' is to be construed in accordance with the usual objective test.⁹

[29] In *Kelliher v Jordan*,¹⁰ Kellar DCJ departed from *Butler v Jordan* on the issue of the onus and standard of proof under s 90. Relying upon the Court of Appeal's

⁷ *Robyn Anne Smith v Warwick Lampp for Greater Wellington Regional Council 2022 Local Government Elections* [2022] NZDC 22080 at [28] and following

⁸ *Butler v Jordan* [2011] DCR 399

⁹ *Butler v Jordan* supra, at [8]

¹⁰ *Kelliher v Jordan* [2017] DCR 44

approach in *R v White*¹¹ and *R v Leitch*¹² to the application of the term ‘*the Court is satisfied*’, Kellar DCJ considered that the expression does not carry any implication of proof to any particular standard. Rather, a District Court Judge is merely required to make up his or her mind on reasonable grounds or in other words to come to a judicial decision on the matter at issue, that is, whether the applicant has reasonable grounds for her belief that the declaration is incorrect **and** that the applicant might be elected on a recount.

[30] Kellar DCJ also held that closeness of the voting by itself does not provide reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, a conclusion with which other judges have agreed in subsequent decisions.¹³

[31] As to the second limb of the test in s 90, that is, whether there are reasonable grounds to believe that on a recount the applicant might be elected, in *Butler v Jordan*, Coyle DCJ considered that the threshold is low if there are prima facie reasonable grounds for the applicant to believe that the declaration is incorrect.¹⁴

[58] Judge Tuohy agreed with the approach taken by Judge Kellar as to the judge’s task in deciding whether the test in s 90(3) has been satisfied. I also agree with this. In addition, Judge Tuohy said that there is no apparent reason to depart from the principles recognised in the previous decisions to which he referred. Again, I too agree with this.

[59] Further, in *Smith v Lampp*, Judge Tuohy noted that there is a significant difference in the language Parliament has used in formulating the two limbs of the test in s 90(3). As his Honour said: “The applicant must have reasonable grounds to believe that the declaration **is** incorrect but only that she **might** be elected on a recount. The latter refers to a possibility, the former to an actuality.”¹⁵ Once more, I agree with this.

Mr Vincent’s submissions

Special votes

[60] Mr Vincent submits that the high number of special votes for the district (486) and for the Otamatea Ward (119) with just over 50% for Otamatea Ward being

¹¹ [1988] 1 NZLR 264 (CA)

¹² [1988] 1 NZLR 42 (CA)

¹³ *Lewers v Queenstown Lakes District Council* [2019] NZDC 20986 at [12] (M Callaghan DCJ); *Lester v Lampp and Foster* [2019] NZDC 22157 at [52] (KD Kelly DCJ)

¹⁴ *Butler v Jordan* above n 8 at [11] approved by KD Kelly DCJ in *Hicks v Gore District Council and Bell* [2022] NZDC 21348 at [28]

¹⁵ *Smith v Lampp*, above n 7, at [35]

disallowed, warrants further assessment which he considers would be provided by a recount.

[61] In addition, Mr Vincent says that the distribution of votes between the seven candidates suggests an irregularity as Ms Rogers received five times more special votes than the three special votes for Mr Vincent, with the result that Ms Roger now ranks ahead of Mr Vincent by two votes. This, Mr Vincent says, leads him to conclude that there is a reasonable likelihood that some special votes for Ms Rogers have been incorrectly allowed, or that some special votes for Mr Vincent have been disallowed.

[62] Mr Vincent also submits that the differences between the votes received by the seven candidates between the preliminary results and the final results is made up of special votes. When tallied, the difference across all candidates is 46 while Mr Ofsoke reports that 59 special votes were allowed. The discrepancy between the number of special votes at the preliminary results stage and the final results stage, Mr Vincent says, would be clarified by a recount. Mr Vincent also submits that mechanical data entry at speed also carries a risk of error.

Closeness of the vote

[63] Mr Vincent acknowledges that the closeness of the result is not determinative but submits, citing Judge Coyle in *Butler v Jordan*, as cited in *Lewers v Queenstown Lakes District Council*, that that it may lend weight in support of a decision to order a recount.

[64] Mr Vincent says that in relation to the second limb of the test in s 90(3) there is, in effect:

an inverse relationship between the closeness of the vote and the rigour to be applied in forensic analysis of the vote count. A reasonable conclusion in my cases is that even a small change will have significant consequences in this respect.

[65] Further, Mr Vincent says he is just two votes shy of the requirement for an automatic recount in the case of a tie (per s 90A).

[66] Mr Vincent concludes by submitting that:

Granting the option of a recount in this case will demonstrate to our citizens that we live in an open democratic society supported by the Rule of Law with a legal framework which enables robust review of processes involved with local government elections. It will give some reassurance and foster trust in our institutions of democratic government in these uncertain times.

It will also show respect for the people who took their citizenship responsibilities seriously enough to vote.

Discussion

[67] The issue for determination is whether the evidence satisfies me that Mr Vincent has reasonable grounds to believe both that the declaration of final result is incorrect and that on a recount he might be elected.

[68] I have no difficulty in agreeing with Mr Vincent that if the first limb of the test is met, the lower threshold that he **might** be elected on a recount would apply given there are only two votes between Ms Rogers and himself.

[69] The question then, is whether I am satisfied that the evidence supports reasonable grounds for Mr Vincent to believe that the declaration is incorrect.

[70] In short, I do not.

[71] Mr Vincent implies, citing *Allsop v Daly*,¹⁶ that the high number of special votes and the use of mobile voting units constitutes ‘something more’ than a concern about the closeness in voting. While Mr Vincent says in his affidavit in support of his application that there were multiple complaints about the mobile voting units used in the Kaipara District, I agree with Mr Drumm that it is not apparent what these issues are, or how they may have impacted on the counting of special votes.

¹⁶ *Allsop v Daly* [2022] NZDC 21346

[72] I am not persuaded that there is ‘something more’ in this case beyond the closeness in voting so as to form the basis for a reasonable belief on Mr Vincent’s part that the declaration might be incorrect. Mr Vincent’s evidence does not identify why it is that he considers that the counting process, including the special votes, lacked transparency. Nor did Mr Vincent have a scrutineer present at the vote counting, as he was entitled to do, which might have highlighted an irregularity if indeed there was one.

[73] In essence, Mr Vincent submits that the high number of special votes warrants further assessment, that is to say a recount *might* reveal some irregularity (my words). As I recently said in *Cooper v Ofsoske*,¹⁷ however, in relation to the Henderson-Massey Local Board, while the number of special votes for Auckland may be a record number, what is of importance in relation to this application is the number of special votes cast for the Otamatea Ward.

[74] As Mr Drumm rightly submits, Mr Ofsoske’s report explains how each of the 119 special votes received for the Otamatea Ward, particularly the ones that were disallowed, were treated. I am satisfied that the reasons provided are grounds for disallowing votes. Section 20 of the Act governs eligibility to vote, and r 38 of the Local Electoral Regulations 2001 provides the mandatory requirement for any declaration. Mr Vincent’s evidence does not speak to these requirements not being observed by the Electoral Officer.

[75] At best, Mr Vincent submits that there is something unusual about the spread of votes across candidates once special votes were counted. While Mr Vincent had more votes than Ms Rogers at the preliminary count, this was reversed on the final count. What this shows is simply that the number of votes in favour of Ms Rogers increased by 15 votes, and the number of votes for Mr Vincent only increased by three votes.

[76] While the difference referred to by Mr Vincent appears to not account for 13 votes across candidates as between the preliminary results and the final results, Mr Vincent does not include in his consideration that there were two informal votes

¹⁷ *Cooper v Ofsoske* [2025] NZDC 24978 [30 October 2025]

and 14 blank votes at the preliminary results stage and two informal votes and 45 blank votes at the final results stage.

[77] Rather than providing evidence of an irregularity in counting, Mr Vincent speculates from reference to part of the Electoral Officers' report that there is an irregularity, the implication being that perhaps some votes were not counted. I agree with Mr Drumm that this suggestion is speculative as between candidates and between the preliminary results and the final results.

[78] Distilled down, Mr Vincent's evidence is simply that the margin was close. I am not persuaded that this provides Mr Vincent a basis for a reasonable belief as to the declaration being incorrect. As Judge Tuohy said in *Smith v Lampp*:¹⁸

... suspicion is not enough. That is not the test as explained above. The test is whether Ms Smith has an objective and credible basis for believing that the declaration is incorrect. The possibility or even the likelihood of error does not meet that test. There must be a basis for an objective belief that it is highly likely that the declaration is incorrect.

[79] Nor, in my view, does the report of Mr Ofsoske suggest any irregularity in the treatment of special votes.

[80] I also agree with Mr Drumm that there is no reason to consider that the vote processing systems are anything other than robust. The confirmation of the accuracy of the counting systems is provided by an independent audit of the software and processes, as Mr Ofsoske reports. Mr Vincent's evidence does not point to any reason as to why this audit may not be reliable in any respect.

[81] Finally, while not directly the subject of a submission by Mr Vincent, I am not persuaded that *Allsop v Daly* assists. In that case, Ms Allsop provided evidence of an irregularity in the way special votes were processed, namely that special votes were deemed informal because accompanying special voting declarations were not witnessed as a result of Ms Daly's acknowledged inconsistent instructions. The acknowledged different directions as to how to count votes is not an issue that arises here and there is no evidence of an irregularity akin to that one is apparent in this case.

¹⁸ *Smith v Lampp*, above n 7, at [60]

Result

[82] For the reasons stated, the application is dismissed.

[83] I am not satisfied that Mr Vincent has reasonable grounds to believe that the declaration is incorrect.

[84] I decline to order a judicial recount of the votes for the Otamatea Ward of the Kaipara District Council.

A handwritten signature in black ink, appearing to read 'K D Kelly', written in a cursive style.

K D Kelly
District Court Judge