

**IN THE DISTRICT COURT
AT PORIRUA**

**I TE KŌTI-Ā-ROHE
KI PORIRUA**

**CIV 2025-091-544
[2025] NZDC 25095**

UNDER	the Electoral Act 2001
IN THE MATTER	of an Application for a Recount of the Votes in the Local Government Election of 2025 for the Parirua Māori Ward of the Porirua City Council
BETWEEN	JESSICA TE HUIA Applicant
AND	WARWICK LAMPP Respondent

Hearing:	On the Papers
Appearances:	P Michalik for applicant H Harwood and B Russell for respondent
Judgment:	11 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 21 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Ms Jessica Te Huia applied for a recount of the votes cast at the October 2025 local government elections for the Parirua Māori Ward of the Porirua City Council. The Porirua City Council used the Single Transferable Vote (STV) voting system.

[2] This application raised a preliminary issue about the timing of payment of the prescribed deposit. I will address this first before addressing Ms Te Huia's 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 (the Regulations) 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."

[5] The final results for the Porirua City Elections, including for the Porirua Māori Ward, were declared on 16 October 2025. The period of three working days after 16 October 2025 expired on 21 October 2025.

[6] While Ms Te Huia's application was filed on 21 October 2025, and the filing fee for an originating application was paid on that date, the application was not accompanied by the prescribed fee.

[7] In light of this, I issued a minute dated 23 October 2025 advising that the wording of s 90(2) is mandatory and that because the prescribed fee did not ‘accompany’ the application, I considered that the application was incomplete and was out of time. Before directing the Registry that the application was not to be accepted, however, I invited submissions on this issue by 28 October 2025.

[8] In this minute, I referred to the clause 139 of the Regulations which, on its face, says that the amount of the deposit is \$750.00 (GST incl). I subsequently reissued my minute amending the reference to the s 139 to read as set out in paragraph [4] above. The reason for this was that while the Regulations refer on their face to the deposit being \$750.00, cl 139 needs to be read as \$766.67 by virtue of s 78 of the Goods and Services Tax Act 1985. This different figure would not be apparent simply upon reading cl 139.

[9] Upon receipt of submissions on 28 October 2025, a teleconference with the parties was arranged for 29 October 2025. Ms Te Huia was originally self-represented but was now represented by Mr Michalik at this conference.

[10] I had received submissions from Mr Lampp on the issue of the prescribed deposit, but Ms Te Huia had not directly made submissions on the issue. Instead, Ms Te Huia filed an affidavit setting out the circumstances around its payment. Ms Te Huia deposed, in essence, that there was confusion in the Registry about the amount required to be paid, and the account into which this was to be paid which she says was not clarified until 22 October 2025.

[11] Given the urgency in which a decision on a recount needs to be made, I made further directions that 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 any submissions on the substantive application would be considered in tandem with the issue of the prescribed deposit. Mr Michalik was invited to make submissions on the question of the prescribed deposit for Ms Te Huia.

Ms Te Huia's second affidavit dated 28 October 2025

[12] In her affidavit dated 28 October 2025, Ms Te Huia says that when she filed her application on 21 October 2025, she was advised that the amount she was required to pay was \$269.00. Ms Te Huia says she queried this sum as she understood the fee to be \$750.00. Nevertheless, Ms Te Huia paid the \$269.00 as directed.

[13] \$269.00, of course, is the filing fee for the application and not the prescribed deposit specified in cl 139 of the Regulations.

[14] Ms Te Huia says that upon querying the sum, a colleague of the registrar at the counter stated that the sum on the website was \$1,022.22 and that Ms Te Huia would be contacted if any additional payment was required.

[15] Subsequently, at 9.35am on 22 October 2025, Ms Te Huia received an email from the Registry, which she has annexed to her affidavit, advising her that in addition to the filing fee which she had paid, there was a required deposit \$766.67 to be paid and that this could not be paid by way of the Court's 'File and Pay' system. Details of the account were provided to Ms Te Huia.

[16] It would appear that this email was sent in response a query Ms Te Huia made to the Registry on 21 October 2025 at 10.22pm. This query by Ms Te Huia appears to have been a follow-up to her in-person query at the registry counter. In this email, Ms Te Huia noted that she had paid the 'initial payment' when she filed her application (by which I understand her to be referring to the filing fee), and that a person who she describes as the 'Justice of the Peace', who processed the application was unsure of the exact costs and consulted a colleague who also uncertain. Ms Te Huia continues to say in her email that it was her: "clear understanding, based on the agreement made at the time of lodgement, that this would not prevent the application from being processed". In her email, Ms Te Huia also asked if any further information or a copy of the payment details was required.

[17] At 10.42am the following morning, 22 October 2025, Ms Te Huia again contacted the Registry by email saying: "Aroha Mai just checking as further

investigation the electoral office says \$750 for the deposit and we paid \$269 yesterday so is it a remaining \$481?"

[18] At 10.53am the Registry responded advising Ms Te Huia that the additional deposit of \$766.67 was required with the total being payable being "\$269 plus \$766.67 = \$1,035.67". Again, the account details were provided.

[19] Confused by this, Ms Te Huia says she went into the Court and spoke to another registrar. Ms Te Huia says that she suggested to this second registrar that she pay the \$1,035.67 immediately but that she was advised against doing so. This second registrar also queried mention of a 'trust account', stating that he was not aware of such an account. This person recommended that Ms Te Huia wait until the first mentioned registrar returned on 24 October 2025.

[20] Ms Te Huia also says that on or about this time she received my first minute referring to the prescribed deposit as being \$750.00.

[21] It would appear that Ms Te Huia then went back into the Court on 24 October 2025. At 11.25am on 24 October, Ms Te Huia emailed the Registrar advising that "we will be down today to make the correct payment".

[22] In the intervening period, at or around 11.08am on 24 October, my amended minute was issued to the parties.

[23] The registrar responded to Ms Te Huia at 12.02pm saying: "Thanks you Jess. If you could make payment into the account provided below that would be great."

[24] Ms Te Huia clearly went back into the Court. In a second email sent at 3.32pm the same day (i.e. 24 October 2025), despite my corrected minute, the registrar emailed Ms Te Huia saying:

Thank you for speaking with me at the Porirua DC Counter just a short minute ago.

If you could please make the required deposit of \$750.00 to the Law Trust Account below asap, and also email screenshots/confirmation of payment once made.

[25] At 3.41pm Ms Te Huia replied providing details of the payment and advising that Mr Michalik was now her lawyer. The Registrar replied 11 minutes later at 3.52pm thanking Ms Te Huia for sending confirmation of deposit paid.

Submissions on prescribed deposit

[26] Mr Harwood for Mr Lampp submits that the Act does not include an express power to waive the prescribed deposit or to grant an extension to the time in which the deposit is paid. It is submitted that s 90(3) reinforces the position that the deposit must be paid and that a judge cannot order a recount to be made if the deposit has not been paid. Consequently, Mr Harwood submits, if the deposit is not paid, the recount application is incomplete and cannot be accepted.

[27] It is submitted by Mr Harwood that recounts come at a considerable cost in terms of carrying out a recount, and in terms of the delay caused to elected members being sworn in and commencing their elected duties. As Mr Harwood points out, cl 21 of Schedule 7 of the Local Government Act 2002 (LGA) provides that 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.

[28] Clause 21, as it is now drafted, takes effect for the first time from this election i.e. from 1 September 2025. Mr Harwood submits that the change in law places additional importance on applications for recounts being made and processed without undue delay. While a delay of one or two days is unlikely to have a significant effect on a local authority commencing its term, longer delays may do so. It is submitted that the Council has already cancelled its previously planned first meeting, which was to occur on 30 October 2025.

[29] Mr Harwood submits further that ss 90-92B of the Act, which set out the Court's powers in relation to applications for recounts, do not contain an express ability for a candidate to apply for an extension of the three working days in s 90(1). By way of contrast, it is submitted that s 97(1) which pertains to petitions of inquiry, provides that a District Court Judge conducting an inquiry: "has and may exercise all the powers of citing parties, compelling evidence, and maintaining order that the Judge

would have in the Judge's ordinary civil jurisdiction." It is submitted that it is notable that there is no equivalent provision in relation to recounts.

[30] Any extension to the three working day period, it is submitted, would require identification of an inherent power in either the Act, the District Court Act 2016 or the District Court Rules 2014. Counsel for Mr Lampp submits that he has not identified such a power and submits further that no application for an extension has been made.

[31] Mr Michalik for Ms Te Huia, on the other hand, submits that Ms Te Huia was willing and able at all times to pay the fees required and any further moneys necessary. It is submitted that Ms Te Huia's application was accepted for processing on the basis that she could pay her initial filing fee and catch up with the prescribed deposit later. It is submitted that Ms Te Huia acted on the Registry's advice and has paid the necessary deposit, once she was made aware of how much she was required to pay and how to pay it.

[32] In these circumstances, it is submitted that it would be unjust for Ms Te Huia's application to be denied consideration on the basis that the prescribed deposit was not paid at the same time as the application was filed.

[33] Mr Michalik submits further that the words "must be accompanied by" requires an association between two things but does not require absolute contemporaneity. In the criminal context of whether a theft had been accompanied by a threat so as to amount to a robbery, Mr Michalik has referred this Court to a decision of the Court of Appeal in which it was said:¹

The longer the gap between the making of the threat and the handing over of the property the more difficult it will be to establish a nexus between the threats and the theft and to say that the one was accompanied by the other. But the question will be one of fact and degree in each case.

[34] In the present context, Mr Michalik submits that the purpose of the prescribed deposit appears to be two-fold. First, it shows that the applicant is earnest and helps to weed out frivolous or vexatious applications. Secondly, it is submitted that under s 92A, the deposit is available to be applied to any costs ordered in relation to the

¹ *R v Mitchell* [1988] 2 NZLR 208 at 216

recount. Mr Michalik submits that both these purposes can adequately be served without the deposit being paid at the same time as the application is filed. It is submitted that the application is “accompanied by” the prescribed deposit so long as it is paid by the time the matter comes to be considered, and that as the application has been accepted for filing, it should not be invalidated unless there is good cause.

Discussion

[35] I accept Ms Michalik’s submissions.

[36] As I said in *Vincent v Ofsoske*,² the ordinary dictionary definition of ‘accompanied’ is to:³

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

[37] In that case I agreed that the key to both of these interpretations is that they require two things to be in existence ‘in the same space at the same time’. I also agreed that the language of s 90 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.

[38] Further, I agreed that the term ‘accompany’ ought not to be interpreted to mean ‘simultaneous’ but said that by using the word ‘accompany’ Parliament deliberately linked the payment of the deposit to the filing of the application, which must be made within three working days after the public declaration.

[39] There too, I noted that if 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 said that I do not think that is the intention of the scheme

² *Vincent v Ofsoske* [22025] NZDC 25074 [5 November 2025]

³ Oxford Languages Dictionary

for recounts in Part 4 of the Act. Hence, I considered that 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).

[40] In that case, however, I did not have the benefit of Mr Michalik's submissions and reference to the Court of Appeal decision in *R v Mitchell*. While that decision was made in the criminal context, I see no reason why a similar interpretation cannot apply in the present context.

[41] Having now had the benefit of Mr Michalik's submissions, I agree that the question of whether something is 'accompanied by' another thing will be one of fact and degree in each case. This interpretation can readily address my concern that failure to pay the prescribed fee could be used by an unsuccessful candidate to frustrate the first meeting of a local authority following a triennial general election. In such a case, of course, the longer the gap between the making of the application and the payment of the prescribed deposit, the more difficult it will be to establish a nexus and say that the one was accompanied by the other.

[42] In the present case, the facts are such that there was some confusion on the part of Ms Te Huia but also that the registrars were confused and unclear as to how when and how the deposit was to be paid. Ms Te Huia's initial assumption on 21 October 2025, was correct (save as to the adjustment for GST, about which Ms Te Huia can readily be forgiven for not knowing). The registrars' confusion is also perhaps not surprising given that there are three years between elections cycles.

[43] What is clear is that Ms Te Huia intended to pay the required deposit and took active steps to do so in a timely fashion. It was paid three days late, but this was in large part due to the advice of the second registrar that Ms Te Huia wait until when the first registrar returned to the office.

[44] Having regard to the purpose of the prescribed deposit as set out by Mr Michalik, with which I agree, I am satisfied that the application should not be invalidated and that in the circumstances of this case it can be said that the prescribed deposit 'accompanied' the application.

[45] I now turn to Ms Te Huia's substantive application.

Ms Te Huia's application for a recount

[46] The grounds set out in Ms Te Huia's application are that the election was "exceptionally close" with the applicant being 11 votes behind the elected candidate.

[47] I note that there were four applicants for one Parirua Māori Ward vacancy on the Council.

[48] Ms Te Huia's concern, as expressed in her application is also that:

- (a) there is a discrepancy between the published 'Returns Snapshot' (which records 555 special votes) and the Final Results (which records 797 special votes were received);
- (b) there was a shift in informal and blank vote counts between the preliminary and final Māori Ward returns without a transparent explanation;
- (c) there is a lack of published STV transfer logs, ballot exhaustion or 'NTV' data, or a reconciliation of how special votes were allocated;
- (d) the total final poll numbers for 'keep/remove/blank/informal' in the Māori Ward match the declared turnout (17,623) but does not reconcile which votes they were or how they were processed;
- (e) the margin is material and invites reasonable doubt about whether the declared result is correct.

[49] Ms Te Huia says that:

- (a) without logs and reconciliation, the counting process is not sufficiently auditable, and confidence in the result is undermined;

- (b) the existence of unallocated special votes is a matter of substance;
- (c) the integrity of local government elections and the mandate of elected officials justify a recount when credible discrepancies appear; and
- (d) s 74 of the Act requires that vote processing and counting is conducted in a manner that facilitates checking.

Evidence in support of Ms Te Huia's application

[50] Ms Huia relies on a number of affidavits in support of her application.

Ms Te Huia's affidavit dated 21 October 2025

[51] Ms Te Huia's first affidavit dated 21 October 2025 was filed in support of her originating application. Annexed to this affidavit is a copy of the Returns Snapshot dated 15 October 2025, and a copy of an article dated 16 October 2025 referring to the Final Results.

[52] Ms Te Huia says that the difference between the Snapshot which shows 555 special votes, and the final results which shows 797 special votes, is 242 special votes. Ms Te Huia says there is no publicly available ledger to reconcile how or when the additional special votes were validated or allocated. Without this, Ms Te Huia says that voters and candidates cannot have confidence that the vote count accurately reflects the votes cast.

[53] Between the preliminary returns and the final declared results, Ms Te Huia also says that the number of informal and blank votes changed from 13 informal and 27 blank votes at the preliminary results stage, to 12 informal and 28 blank votes when the final results were declared. Ms Te Huia says that this suggests that one vote may have been reclassified or altered in a way that lacks transparency.

[54] Ms Te Huia also deposes that she has sought, but not found:

- (a) a public special vote reconciliation ledger;

- (b) the full STV transfer/exhaustion logs needed to reconstruct the counting sequence and to validate the results.

[55] Ms Te Huia says further that it is not possible to reconstruct how first preference totals progressed to final totals, or to verify which ballots were still 'active' at each iteration.

[56] Ms Te Huia also says that there are unaccounted for special votes. For example, Ms Te Huia says that in the Māori Ward there were 108 special votes yet only 102 are allocated to candidates leaving six votes unaccounted votes for. In other wards Ms Te Huia says there are similar discrepancies.

[57] In the absence of a full audit or reconciliation ledger for these 'unaccounted votes,' Ms Te Huia says that candidates cannot have confidence in the results of an election as close as this one was.

Affidavit of Kastarlia Hagley dated 28 October 2025

[58] Ms Hagley is Ms Te Huia's daughter.

[59] Ms Hagley's affidavit speaks to what she says was a failure by electoral officials to adequately explain the special voting process at the time that she cast her vote, resulting in her vote not being counted. Ms Hagley says that she needed to cast a special vote as she was not yet on the electoral roll. Despite her mother, Ms Te Huia, explaining to election staff that she could not vote, Ms Te Huia was asked to leave the area as she was a candidate.

[60] Ms Hagley says that her name and address, and date of birth were then entered into the system by electoral staff and that she was asked to sign a form. At this point Ms Hagley says that she believed that she had completed everything required in order to both enrol and vote. After further discussions with Ms Te Huia, however, Ms Te Huia did not think that Ms Hagley had actually been enrolled.

[61] A few days later, Ms Hagley says that she realised that she was not enrolled and that her special vote would therefore not have been counted.

Ms Te Huia's third affidavit dated 28 October 2025

[62] In her third affidavit, Ms Te Huia repeats what Ms Hagley has said but also says that she confirmed that Ms Hagley was not on the electoral roll. Accordingly, Ms Te Huia said she contacted the relevant electoral office to clarify the situation and then assisted Ms Hagley to enrol on-line so she would be correctly registered in the future.

Fourth Affidavit of Ms Te Huia dated 7 November 2025

[63] Ms Te Huia has also filed a fourth affidavit dated 7 November 2025. Ms Te Huia deposes that following the election she was contacted by several wāhine who shared that they or their rangatahi had also voted for the first time and completed special votes without being properly enrolled.

[64] As Ms Te Huia says in her third affidavit, she had to explain to these people the correct process for special voting and enrolment and that, in her view, they too had not been given clear guidance at the time.

[65] These experiences, Ms Te Huia says, have raised serious concerns for her about how many other people may have been similarly affected and says that it appears to her that some first time voters were not adequately informed that a special vote alone does not guarantee that a vote will be counted if they have not completed the enrolment process.

[66] In particular, Ms Te Huia refers to being contacted by Rachel Paul, Angelina Wallace, Calvert Leach-Rapatu, Sylvana Setefano and Florence Murray. Ms Te Huia says that she referred these women's names to Ms Kathleen Filo, an incumbent councillor-elect for the Porirua City Council who could check whether their votes were counted as Ms Filo had access to the marked electoral roll.

[67] Ms Te Huia she has also spoken to other electors who were enrolled Māori electors who had either cast special votes due to not receiving their voting papers or had posted early by postal vote. The exclusion of these other voters, Ms Te Huia says,

points to a wider administrative or systemic failure in how Māori votes were handled, verified, and counted.

[68] These persons, Ms Te Huia says, do not include the two candidates in the Wairarapa and the Far North who did not have their 'bios' included in the booklet that accompanied postal voting papers, not those taken off the Māori roll without their knowledge or permission.

[69] Taken together, Ms Te Huia says that there is a pattern of exclusion that has disproportionately affected Māori voters, particularly those casting special votes or relying on electoral staff for guidance. In each case, Ms Te Huia says that voters believed they had followed the process correctly and that their votes would count but they were not recorded as having voted on the final marked roll. This, Ms Te Huia says, suggests a systematic failure in the handling, recording, or verification of Māori Ward votes that has not followed a consistent process.

[70] Ms Te Huia also says that the Electoral Officer's report confirms that the Māori Ward had an unusually high rate of exhausted and disallowed votes compared to general wards, supporting her concern that Māori electors were disproportionately affected by procedural or administrative errors. These errors, Ms Te Huia says, had a direct and material impact on her final vote total and altered the outcome of the election which was decided by just 11 votes. Had all the valid votes been correctly recorded and counted, Ms Te Huia says it is highly probable that she would have been elected.

[71] In addition, Ms Te Huia says that she is aware that there has been inconsistent advice given to people about their electoral status. In some cases, Ms Te Huia says, some people were told they needed to be enrolled before 4.00pm on the Friday prior to polling day, while she says others were not informed of how to confirm their enrolment status, either on-line or at the Council's offices.

[72] Ms Te Huia says that the combination of missing special votes, lack of procedural clarity, and disproportionate exclusion of Māori electors demonstrates that there is a reasonable and credible basis to believe that the voting process failed to meet

the standard of fairness required by law, and that this provides a reasonable basis to conclude that something went seriously wrong with the voting process in the Porirua Māori Ward election.

Affidavits of Rachel Paul, Angelina Wallace, Calvert Leach-Rapatu, Sylvana Setefano and Florence Murray dated 7 November 2025

[73] Ms Paul, Ms Wallace, Ms Leach-Ratapu, Ms Setefano and Ms Murray all make similar claims similar to those of Ms Hagley, although some cast votes by placing their ballots in a ballot box prior to the election.

[74] In each case, these wāhine say that they cast ordinary or special votes for Ms Te Huia (or in Ms Paul's case, her son did), and that subsequently they have checked or have been informed that their votes do not appear on the register of votes received and counted despite them being confident that they properly followed all voting instructions.

[75] In Ms Murray's case, Ms Murray say that when she attended a voting station, she was initially handed voting papers for the general roll even though she has always been enrolled on the Māori roll. Ms Murray had previously lived in Auckland and since the last election has moved to Porirua. Ms Murray says that she was advised that she could vote in the Parirua Māori ward, but she was not advised that she had to re-enrol or update her details with the Electoral Commission to ensure her vote would be validly counted. Despite relying on the information and assurances that she says she was provided by Council staff, Ms Murray says that she has been informed that she was not on the final electoral roll and her vote was not counted, and nor was her neighbour's vote.

Affidavit of Kathleen Filo dated 7 November 2025

[76] As already noted, Ms Kathleen Filo is an incumbent councillor-elect for the Porirua City Council. As such, Ms Filo says that on 21 October 2025 she received the final marked electoral roll for the elections which lists the names of those who voted in the election. Ms Filo says she received this on the condition that the roll only be used for the purpose of election scrutiny, and that her disclosure of what is on it is for

the purpose of assisting the Court to determine whether all votes submitted were correctly recorded and counted, and in support of Ms Te Huia's application.

[77] Ms Filo says that on review of the marked roll, specifically for the Parirua Māori Ward, she checked several names that had been brought to her attention, namely those of Ms Paul (on behalf of her son), Ms Wallace, Ms Leach-Ratapu, Ms Setefano and Ms Murray. In each case, Ms Filo confirms that none of these people are marked as having voted in the Māori Ward election.

[78] Ms Filo says that she was also contacted by Ms Te Huia about several other people and upon checking the roll, 17 other people (who Ms Filo names in her affidavit) were not recorded as having voted.

Report of Electoral Officer

[79] Mr Warwick Lampp is the Electoral Officer for the election. Mr Lampp is also the Chief Executive Officer at Electionz.com Limited which has been contracted to carry out vote processing since 2001 for councils using the First Past the Post (FPP) system, and since 2004 for councils using the Single Transferable Vote (STV) system.

[80] On 29 October 2025 I directed Mr Lampp to file a report on the conduct of the election. Mr Lampp's position is neutral, consistent with his role in the elections. Mr Lampp's submissions are filed to assist the Court.

[81] Mr Lampp's report dated 3 November 2025 confirms that when progress results were released on 11 October 2025, Ms Wihapi was elected on the third iteration of counting, with Ms Te Huia excluded at the third iteration, by a margin of 59 votes.

[82] When the preliminary votes were released on 13 October 2025, the margin between Ms Wihapi and Ms Te Huia reduced from 59 votes to 27 votes, and Ms Wihapi remained ahead with a narrower margin of 11 votes when the final results were released.

[83] Mr Lampp says that there was a 14% difference in the number of votes between the progress and preliminary results which he says is a significant volume of votes.

This, Mr Lampp says, was the result of the use of ‘orange ballot bins’ at community locations to counter the continuing trend of lower postal returns. This resulted in a higher hand-delivered voting return particularly in the last three days of the voting period and specifically on the last day. Mr Lampp reports that adding 14% of the votes in any election might well have an impact on the outcome but here the outcome of the results did not change with Ms Wihapi ranking ahead of Ms Te Huia at the progress, preliminary and final result stages.

[84] Mr Lampp says that there was a mistake in the Porirua City Council media release referred to by Ms Te Huia. The release referred to 797 special votes having been *tallied* but in truth there were 797 special votes *issued* by the Council, of which 704 were returned. Of these, 149 were disallowed and 555 special votes were counted.

[85] Of the 797 special votes issued in total, Mr Lampp says that 147 were for the Parirua Māori Ward. Mr Lampp says that 136 special votes were returned with 28 being disallowed, leaving 108 special votes counted.

[86] Mr Lampp sets out in his report the progress, preliminary and final reports as generated by the STV calculator.

[87] In the progress results, in the 1st iteration Ms Wihapi was first with 630 1st preferences and Ms Te Huia was second with 575 1st preferences, being 55 votes behind Ms Wihapi. Ms Rawina Rimene was excluded as a consequence.

[88] At the second iteration Mr Lampp explains that Ms Wihapi had 681 votes, 48 more than Ms Te Huia. Mr Raniera Albert was excluded on this iteration. 63 votes were exhausted and could not be transferred to other candidates.

[89] At the 3rd iteration the indication was that Ms Wihapi would be elected, having received 109 votes from Ms Rimene and Mr Albert, while Ms Te Huia received 98 votes. This gave Ms Wihapi an overall lead (790) over Ms Te Huia (731) of 59 votes.

[90] At the preliminary results stage, the difference decreased to 27 votes. Mr Lampp’s report shows that despite the 254 valid votes received between the

progress and preliminary stages, Ms Wihapi remained elected at iteration 3, as was the case in the progress result. Mr Lampp explains that no candidate swapped places in between the results.

[91] For the 254 votes received between the progress and the preliminary results, Ms Wihapi received 82 1st preference votes (32.28%), and Ms Te Huia received 89 1st preference votes (35.04%), 7 more than Ms Wihapi. 75 votes were exhausted and could not be transferred.

[92] Mr Lampp explains that this meant that after the 3rd iteration of the preliminary results, the indication was that Ms Wihapi would be elected. Ms Wihapi received 183 votes from Ms Rimene and Mr Albert after their exclusion, while Ms Te Huia received 204 votes, giving Ms Wihapi an overall lead over Ms Te Huia of 27 votes (895 votes for Ms Wihapi compared to 868 votes for Ms Te Huia).

[93] In the final results, Mr Lampp reports that the difference reduced again to 11 votes. The iteration report produced by Mr Lampp in his report shows that despite the 108 valid special votes counted between the preliminary and final results, Ms Wihapi remained elected at iteration 3 of the final result, as was the case in both the progress and preliminary results. Again, Mr Lampp says that no candidate swapped places in between the results.

[94] For the 108 special votes counted between the preliminary and final results, Mr Lampp says that Ms Wihapi received 34 1st preference votes (31.48%), and Ms Te Huia received 46 1st preference votes (42.59%), being 12 more than Ms Wihapi. 79 votes were exhausted and could not be transferred.

[95] Mr Lampp explains that this means that after the 3rd iteration of the final results, Ms Wihapi was elected having received 190 votes from Ms Rimene and Mr Albert, while Ms Te Huia received 215 votes, giving Ms Wihapi an overall lead over Ms Te Huia of 11 votes (i.e. 936 compared to 925).

[96] In relation to Ms Hagley's affidavit, Mr Lampp says that he understands from the Council electoral staff that the requirement to be enrolled is explained to all special

voters who are not on the electoral roll at the time. Where required, Mr Lampp understands that assistance is given for enrolling on-line, or an enrolment form is provided. In this case, Mr Lampp says that once Ms Hagley completed the special vote, she was provided with the Māori roll enrolment form by the issuing officer, which she completed at the time. This form, along with others, was couriered to the Electoral Commission the next working day. Mr Lampp says that as a result Ms Hagley's enrolment was confirmed and validated by the Electoral Commission and her special vote was counted accordingly.

[97] In relation to Ms Te Huia's special votes reconciliation in her affidavit of 21 October 2025, Mr Lampp says that in this election there were 10 disallowed ordinary votes identified where a special vote was returned.

[98] As part of the reconciliation process Mr Lampp explains how each special vote is checked to see if an ordinary vote has been returned for the same elector. Mr Lampp says that this is a common occurrence and there is always a small number of such 'dual votes' (my term). The ordinary votes are disallowed, Mr Lampp says, as they are considered to have been 'trumped' by the special votes given the voter has also completed a declaration form. Mr Lampp explains that the disallowance of the 10 ordinary votes occurred as part of the final result reconciliation process, between the preliminary and final results. Mr Lampp says these 10 ordinary votes were already included in the preliminary result, and therefore they were excluded from the final result. Of these votes, five were in the Onepoto General Ward and five were in the Parirua Māori Ward.

[99] Of the five disallowed votes in the Parirua Māori Ward, Mr Lampp reports that four had a first preference for Ms Te Huia, and one was an informal vote. This, Mr Lampp says, explains why the number of informal votes reduced from 13 in the preliminary result to 12 in the final result, as identified by Ms Te Huia.

[100] Mr Lampp's report sets out the number of 1st preference votes, blank votes, and informal votes in the preliminary result, which was then adjusted by the excluded five ordinary votes, and the number of 1st preference special votes for the final result. Included in this is reference to one void vote where a special voter said they were on

the Māori roll but was in fact on the general roll as confirmed by the Electoral Commission. As a result, they were not eligible to vote in the Parirua Māori Ward.

[101] Mr Lampp reports that the final voting returns for the Porirua City Council are as follows:

Preliminary Result Returns	17,078
Less cancelled ordinary votes due to specials returned	(10)
Plus Allowed Specials	555
Final Result Returns	17,623

[102] In his report Mr Lampp concludes:

Given the above details regarding special votes that are all accounted for, and the relative simplicity of the TV transfer of votes set out in the iteration reports, my view is that a recount is not likely to result in a different outcome.

For there to be a possibility of a change in result, there would need to be at least 12 errors in the scanning and processing of votes, all of which were in Ms Te Huia's favour. In my experience of carrying out recounts, it is very rare to find more than one error, and in most instances we do not find any errors.

[103] Also included in Mr Lampp's report are details of the *Code of Good Practice for the Management of Local Authority Elections and Polls 2022* (the Code) produced by the Taitura Electoral Reference Group. Mr Lampp says that it is his understanding that all local authority elections are carried out in accordance with this Code.

[104] Mr Lampp also explains how Electionz.com's vote processing system is regularly performance tested by Deloitte in accordance with the recommendations in the Code to ensure that the vote processing system is 'fit for purpose' as that expression is defined in the Code.

[105] Mr Lampp says that assurance and performance tests were undertaken, and a final report provided, by Deloitte on 15 September 2025, which tests were carried out

in accordance with the New Zealand Institute of Chartered Accountants Standards and Guidelines for “Agreed Upon Procedures”. These tests, Mr Lampp says, were to ensure that the election processing software meets the requirements of the Code, the Act, and the Local Electoral Regulations 2001. These tests included:

- (a) 34 test scripts (test plans) for individual software functions;
- (b) a test script for a performance volume and stress test of the full suite of programs; and
- (c) 18 Control Objectives and control activities applicable to the vote processing system.
- (d) Attached to Mr Lampp’s report is the Final Deloitte report.

[106] In addition, Mr Lampp explains that the Department of Internal Affairs carries out audits of its STV calculator, the most recent audit being carried out by KPMG in 2016. This audit report is annexed to Mr Lampp’s report.

Legal Framework

[107] 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.

[108] 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.

[109] As Judge Tuohy noted in *Smith v Lampp*, a decision pertaining to the local government elections in 2022:⁴

[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*⁵, 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.⁶

[29] In *Kelliher v Jordan*,⁷ 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 approach in *R v White*⁸ and *R v Leitch*⁹ 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.¹⁰

⁴ *Robyn Anne Smith v Warwick Lampp for Greater Wellington Regional Council 2022 Local Government Elections* [2022] NZDC 22080 at [28] and following

⁵ *Butler v Jordan* [2011] DCR 399

⁶ *Butler v Jordan* *supra*, at [8]

⁷ *Kelliher v Jordan* [2017] DCR 44

⁸ [1988] 1 NZLR 264 (CA)

⁹ [1988] 1 NZLR 42 (CA)

¹⁰ *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).

[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.¹¹

[110] 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. As I have said in relation to other recount applications in this election, 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.

[111] 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:¹²

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.

[112] Once more, I agree with this.

Submissions for Ms Te Huia

[113] Mr Michalik for Ms Te Huia submits that Mr Lampp's report does not fully address the concerns Ms Te Huia has which led her to make her application.

[114] In particular, Mr Michalik submits that Ms Te Huia holds concerns arising from the discrepancies in the voting figures reported as election results namely that there had been unaccounted special votes, i.e.:

- (a) 797 special votes were reported but only 704 accounted for. 555 valid special votes were included in the counting and another 149 were recorded as disallowed, leaving 93 reported special votes neither disallowed nor included; and

¹¹ *Butler v Jordan* above n 5 at [11] approved by KD Kelly DCJ in *Hicks v Gore District Council and Bell* [2022] NZDC 21348 at [28]

¹² Above n 4, at [35]

- (b) not all of the counted special votes had been allocated to candidates (10 of the 555 valid special votes did not appear to have been allocated).

[115] Based on Ms Te Huia's own experience, and her daughter's experience of the process of casting special votes, it is submitted that Ms Te Huia is also concerned that the processing of special votes has been mishandled, and that this might have accounted for the apparently missing and invalid special votes.

[116] In addition to the appearance of there being 93 missing special votes and 10 accepted but unallocated votes, it is submitted that some unknown number of special votes seem likely to have been invalidated by mishandling of special votes by officials.

[117] Mr Michalik submits that whether or not the evidence is correct or not, the inconsistencies in the published results, in which it appears that 93 votes were not counted, and 10 special votes do not appear to have been allocated to candidates, indicates that an error was made. This, it is submitted, is supported by Ms Te Huia's personal knowledge of mistakes having been made in the way that voters were processed, that could well have led to increases in the number of special votes having been disregarded as informal or invalid.

[118] It is submitted that Mr Lampp seeks to explain that the 797 special votes was an overstatement, as it relates to the number of voting forms issued rather than received. Further, it is submitted that Mr Lampp reports that the appearance that 10 special votes were not allocated to candidates is incorrect. Despite these explanations, however, Mr Michalik submits that the voting details contained in the Report are inconsistent.

[119] Notably, it is submitted that Mr Lampp says that at the progress stage the margin of votes between Ms Te Huia and the successful applicant meant that Ms Te Huia was excluded at the 3rd iteration by 59 votes.¹³ Despite this, elsewhere it is submitted that Mr Lampp reports that the margin of "69 votes" at the progress stage being reduced to 27 votes at the preliminary stage, and 11 votes at the final stage.¹⁴

¹³ Electoral Officer's Report at para [36]

¹⁴ Electoral Officer's Report at para [72]

[120] By way of reply, Mr Lampp submits that the vote margin was 59 votes and that the reference to '69' is a typographical error.

[121] Further, Mr Michalik submits that Mr Lampp's report describes Mr Lampp's experience of a general trend towards more votes coming in at the final stages of elections, particularly in the last three days, and saying that the progress results contained 1,616 votes. The preliminary results stage, Mr Lampp says included 1,878 votes, being 262 more votes being received and processed between the progress and preliminary stages.¹⁵

[122] Elsewhere, however, Mr Lampp reports that 254 votes were received between the progress and preliminary result stages.¹⁶

[123] Mr Lampp submits in reply that the difference of 8 votes is the number of blank and informal votes received between the progress and preliminary results and that these 8 votes were included in the total votes received while the figure of 254 only includes valid votes (i.e. those that count toward the final totals). That the figure of 262 included these 8 votes, Mr Lampp submits in reply, could have been better explained.

[124] Mr Michalik also submits that the allocation of 108 special votes is reported as having been counted between the preliminary and final results but then says that 34 first preferences went to Ms Wihapi and 46 to Ms Te Huia.¹⁷ The table provided in the report, however, says 34 first preference votes went to Ms Wihapi and 50 first preference votes went to Ms Te Huia.¹⁸

[125] The difference appears to be accounted for by four votes for Ms Te Huia being offset against the five disallowed votes where there were apparently 'dual votes cast. By way of reply, Mr Lampp agrees with this saying that while Ms Te Huia received 50 special votes, the 4 disallowed ordinary votes meant that Ms Te Huia also had 4 votes removed by reason of the counting of special votes. As a result, Mr Lampp

¹⁵ Electoral Officer's Report at paras [34 - [37]

¹⁶ Electoral Officer's Report at paras [84]

¹⁷ Electoral Officer's Report at paras [88] – [89]

¹⁸ Electoral Officer's Report at paras [88] – [89]

submits, Ms Te Huia only received 46 additional first preference votes after special votes were counted.

[126] Notwithstanding this, Mr Michalik says this begs the question as to whether or not the special votes were properly attributed and should have been offset in the way they were. Mr Michalik submits that no other Māori ward had offsets arising from special votes.

Discussion

[127] The issue for determination is whether the evidence satisfies me that Ms Te Huia has reasonable grounds to believe both that the declaration of final result is incorrect and that on a recount she might be elected.

[128] I have little difficulty in agreeing with Ms Te Huia that if the first limb of the test is met, the lower threshold that she **might** be elected on a recount would apply given there are only 11 votes between Ms Wihapi and herself. While Mr Lampp submits that for there to be a change in result, there would need to be at least 12 errors in the scanning and processing of votes, all of which were in Ms Te Huia's favour, the threshold in relation to the second limb is low. While I accept that it may be very rare to find more than one error, and that in most instances errors are not found, this is not impossible especially if votes may have not been properly accounted for.

[129] The question then, is whether I am satisfied that the evidence supports reasonable grounds for Ms Te Huia to believe that the declaration is incorrect.

[130] In short, I do.

[131] The incorrect declaration of results in the Council media release combined with the errors in Mr Lampp's report, even if they may not ultimately turn out to be inconsistencies, is sufficient. The evidence is of more than a concern about the closeness of the results, and I am satisfied that it is sufficient to ground a reasonable belief on Ms Te Huia's part that the declaration of final result is incorrect.

[132] While some of Ms Te Huia's other concerns, and those of Ms Paul, Ms Wallace, Ms Leach-Ratapu, Ms Setefano and Ms Murray go to the conduct of an election which is wider than the test in s 90 (i.e. a belief that the public declaration of the number of votes received by a candidate is incorrect, and that on a recount of those votes Ms Te Huia might be elected), the incorrect declaration of results and the errors in Mr Lampp's report, are not.

[133] I say no more about Ms Te Huia's other concerns as they are more properly matters for a petition under s 93 of the Act. They do not go to s 90 and for that reason I put them to one side.

Result

[134] Distilled down, Ms Te Huia's evidence and her submissions satisfy me that her concerns are more than the margin being close. I am satisfied that Ms Te Huia has an objective and credible basis for believing that the declaration is incorrect.

[135] Accordingly, I consider her application for a recount should be granted

Orders

[136] I make the following orders:

- (a) pursuant to ss 90(3) and s 92 of the Act, a recount of all of votes for the Parirua Māori Ward of the Porirua City Council in the 2025 Local Election is to be undertaken in the presence of a District Court Judge or officer appointed by that Judge;
- (b) at the recount, the Electoral Officer must produce to the District Court Judge all the voting documents used in the Parirua Māori Ward election; and
- (c) as far as is practicable, the recount is to be made in the manner provided in the case of the original count; and

- (d) the recount is to take place at 9.00am on Thursday, 13 November 2025 at the premises of the Electionz.com Limited's facility at Unit 3, 3 Pukaki Road, Yaldhurst, Christchurch.

[137] Section 74 of the Act (relating to security and secrecy) applies, with any necessary modifications, to the recount.

[138] The Registrar is to provide copies of this decision with the following Notice, to the Electoral Officer and to each of the candidates for the Parirua Māori Ward of the Porirua City Council.

Costs

[139] Costs are reserved pending the outcome of the recount.

NOTICE

[140] Pursuant to s 90(3)(b) of the Local Electoral Act 2001, notice is given to the Electoral Officer, the candidates for the Parirua Māori Ward of the Porirua City Council, and any scrutineers appointed by those candidates under s 91 of the Act, that:

- (a) there will be a judicial recount of all votes in the election for the Parirua Māori Ward of the Porirua City Council;
- (b) the recount is to take place at **9.00am on Thursday, 13 November 2025** at the premises of the Electionz.com Limited's facility at **Unit 3, 3 Pukaki Road, Yaldhurst, Christchurch;**
- (c) Scrutineers:
 - (i) each candidate may appoint one or more scrutineers for the recount;
 - (ii) only one scrutineer for each candidate may be present at any one time during the recount;

- (iii) no person may act as a scrutineer until he or she has made a declaration containing the prescribed details, and present this to the Electoral Officer on or before the recount.

A handwritten signature in black ink, appearing to read 'K D Kelly', with a stylized, flowing script.

K D Kelly
District Court Judge