

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CIV-2020-090-001504
[2020] NZDC 23858**

UNDER THE ELECTORAL ACT 1993

AND

IN THE MATTER OF AN APPLICATION BY JOHN
HENRY TAMIHERE FOR A
RECOUNT OF ELECTORATE
VOTES IN THE TĀMAKI
MAKAURAU DISTRICT

Date of Decision: 20 November 2020

**DECISION OF JUDGE K D KELLY
[OUTCOME OF JUDICIAL RECOUNT OF
TĀMAKI MAKAURAU DISTRICT CANDIDATE VOTES]**

Introduction

[1] Mr John Henry Tamihere stood as the Māori Party Candidate in the Māori electorate of Tāmaki Makaurau in the General Election held on 17 October 2020.

[2] On 12 November 2020, pursuant to s 180(5)(a) of the Electoral Act 1993 (the Act), I directed a recount to be undertaken of the candidate votes for the Māori electorate of Tāmaki Makaurau. This was not a count of party votes.

[3] This recount took place at the Returning Officer's Headquarters at 78 Carbine Road, Mt Wellington, Auckland on 19 November 2020 in accordance with my direction.

Process

[4] The recount was undertaken in my presence in the manner provided for in the case of the original count. The only persons present at the recount other than me were:

- (a) the Returning Officer Ms Teena Hutchinson and her assistants and headquarters staff;
- (b) a scrutineer appointed by Mr Tamihere;
- (c) Ms Alicia Wright (Chief Electoral Officer) and staff from the National Office of the Electoral Commission; and
- (d) counting staff.

[5] The recount commenced with the ballots being removed from the sealed envelopes in which they were contained. Each envelope contained the votes for a polling station in the electorate. As the ballots were manually recounted and checked, the results were recorded in worksheets with any necessary adjustments being made by reference to the worksheets from the original count. These results were then captured electronically and a results sheet produced. The worksheets were reconciled and checked for accuracy.

[6] In the case of two polling stations, the votes from the original recount became separated from the official count made by the Returning Officer and were lost. In one case four voting papers were lost: two for the Green Party candidate Ms Marama Davidson, and two for Mr Tamihere. In the other case, two votes were lost: both for Ms Marama Davidson. In these cases, in accordance with s 184(2) of the Act, the official count was deemed to be correct.

[7] Otherwise, there were some minor differences in numbers between the official count and the recount but these were all able to be reconciled on further inquiry.

[8] The results sheets for each lot of ballots was signed off as correct by the Returning Officer and then by me in the presence of the scrutineer appointed by Mr Tamihere. Each lot of ballots was then resealed in an envelope with each seal being signed by the Returning Officer and by me.

[9] The Electoral Commission's *Official Count Instructions* provide counters with examples for counting staff, of the most common kinds of errors that might occur which would render a vote to be informal and not able to be counted. There was no uncertainty about informal votes which reflected these instructions. Where there was any unusual marking that might render a vote to be informal, I made a determination in front of the scrutineer. There was no dispute between us about these votes either in terms of them being informal, or whether they reflected the intent of the voter and were therefore to be counted.

[10] I was not able to ascertain any trends about the types of voting errors which rendered votes to be informal. The most common errors involved voters voting for more than one candidate, or for no candidates. In other cases, where voters crossed out an initial vote for a candidate in preference for another, the intent of the voter was clear in all but a few instances. In rare cases, voting papers had had written comments on them about one or another candidate, or about the election generally. There was nothing exceptional or unexpected about this.

[11] There were no issues raised by the scrutineer about decisions confirming ballots to be informal, or any other concerns more generally. The recount was unremarkable from that perspective.

Result

[12] The recount has resulted in minor variations to the official declaration of results made on 6 November 2020. Accordingly, pursuant to s 180(10) of the Act, I order the Electoral Commission to give an amended declaration of the result of the poll.

[13] The overall outcome is as follows:

Candidates	Party	Official Result	Recount Result
ANDERSON, Erina	New Conservative	438	427
DAVIDSON, Marama	Green Party	4,990	5,006
HENARE, Peeni	Labour Party	10,270	10,256
TAMIHERE, John	Māori Party	9,314	9,329
Candidate Informals		923	910
TOTAL		25,935	25,928

[14] I am satisfied that the difference of three in total votes is the result of simple counting errors when the original number of votes were manually counted and that subject to the missing votes already discussed, all votes have been accounted for.

[15] In making this decision I would be remiss not to record my observations of the Electoral Commission staff and counters. I found the staff and counters to be professional and diligent in exercising the important process of the recount. New Zealand should take comfort in the integrity of the process of counting votes.

[16] I also wish to record the contribution of the scrutineer appointed by Mr Tamihere. Scrutineers play an important role in bearing witness to the democratic process; which role cannot be understated.

[17] The application was justified to the extent that minor differences have been identified notwithstanding that there is no change to the successful candidate for the Tāmaki Makaurau electorate.

Orders

[18] Pursuant to s 180(10) of the Act, I order the Electoral Commission to give an amended declaration of the result of the poll.

[19] Pursuant to s 180(11), I also order that the deposit of \$1,000 which the applicant was required to file, be returned to him.

K D Kelly
District Court Judge