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Agenda for an extraordinary meeting of the Waikato District Council to be held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on **THURSDAY, 20 MAY 2021** commencing at **1.00pm**.

*Information and recommendations are included in the reports to assist the Council in the decision making process and may not constitute Council's decision or policy until considered.*

**The meeting will be opened with a karakia**

**1. APOLOGIES AND LEAVE OF ABSENCE**

**2. CONFIRMATION OF STATUS OF AGENDA**

**3. DISCLOSURES OF INTEREST**

**4. REPORTS**

4.1 Maaori Wards

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GJ Ion  
**CHIEF EXECUTIVE**

## TERMS OF REFERENCE AND DELEGATION

<b>Chairperson:</b>	His Worship the Mayor
<b>Deputy Chairperson:</b>	Deputy Mayor
<b>Membership:</b>	The Mayor and all Councillors
<b>Meeting frequency:</b>	Six weekly – or as required
<b>Quorum:</b>	Half of the members (including vacancies)

### Purpose

1. To provide leadership to, and advocacy on behalf of, the people of the Waikato District.
2. To define and represent the total communities' interests, ensuring ongoing community and economic development, the effective stewardship of existing assets, sustainable management of the environment, and the prudent management of the communities' financial resources.

### Terms of Reference

The Council's terms of reference include the following powers which cannot be delegated to committees, subcommittees, officers or any other subordinate decision-making body:

1. The power to make a rate.
2. The power to make a bylaw.
3. The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long-Term Plan.
4. The power to adopt a Long-Term Plan, Annual Plan, or Annual Report.
5. The power to appoint a Chief Executive.
6. The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long-term Plan or developed for the purpose of the local governance statement, including the Council's Infrastructure Strategy.
7. The power to adopt a remuneration and employment policy.
8. The power to approve or amend the Council's Standing Orders.
9. The power to approve or amend the Code of Conduct for elected members, and consider any recommendations made in relation to a complaint lodged under the Code.
10. The power to appoint and discharge:
  - a. members (including chairpersons) of Council committees and subordinate decision-making bodies, subject to the Mayor's powers under section 41A Local Government Act 2002; and
  - b. elected member representatives on external organisations.
11. The power to establish a joint committee with another local authority or other public body, and appoint elected members as representatives on such committees or bodies.
12. The power to make the final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the Ombudsman's recommendation.
13. The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
14. The power to amend or replace the delegations in Council's Delegations Register (except where expressly permitted in the Delegations Register).

To exercise the following powers and responsibilities of Council, which the Council chooses to retain:

1. To approve a proposed policy statement or plan under the Resource Management Act 1991.
2. To approve changes to boundaries of the District under the Resource Management Act 1991 or any other legislation.
3. In respect of District Plan decisions:
  - a. To appoint independent commissioners to a panel for hearings of a Proposed District Plan;
  - b. To approve the recommendation of hearings commissioners on a proposed plan, plan change or variation (including private plan change); and
  - c. To approve a proposed plan or a change to a district plan under Clause 17, Schedule 1 of the Resource Management Act 1991.
4. To adopt governance level strategies, plans and policies which advance Council's vision and strategic goals (e.g. Hamilton to Auckland rail), other than where expressly delegated to a committee.
5. To approve Council's recommendation to the Remuneration Authority for the remuneration of elected members.
6. To approve the Triennial Agreement.
7. To approve resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
8. To approve any changes to the nature and delegations of any Council committees or subordinate-decision making bodies.
9. To approve the Local Governance Statement.
10. To approve any additional funding decisions required for the Watercare Services contract.
11. To receive six-monthly reports from each Community Board on its activities and projects.

## Open Meeting

<b>To</b>	Waikato District Council
<b>From</b>	Gavin Ion Chief Executive
<b>Date</b>	20 May 2021
<b>Prepared by</b>	Jacob Quinn Communications, Engagement and Marketing Manager
<b>Chief Executive Approved</b>	Y
<b>Reference</b>	GOV1301/ECM3083638
<b>Report Title</b>	Maaori Wards – 2022 and 2025 Elections

## I. EXECUTIVE SUMMARY

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The purpose of this report is to seek Council’s decision on whether or not to establish Maaori wards for the 2022 and 2025 local authority elections.

This report follows, and takes account of, the:

- commencement of the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 (“**the Amendment Act**”), which repealed provisions in the Local Electoral Act 2001 (“**LEA**”) for holding polls on whether to establish Maaori wards. The Amendment Act also enabled all councils to reconsider any earlier resolution this triennium on the establishment of Maaori wards, extending the deadline for any decision to establish Maaori wards until (and including) 21 May 2021.
- the Council’s resolution at its extraordinary meeting on 5 May 2021 to revoke (in part) the earlier Council resolution (WDC2011/09) to not establish Maaori wards for the 2022 local authority elections and to hold a poll at the 2022 elections on this issue.

The options for Council to consider, as canvassed in this report, are:

- to establish Maaori wards for the 2022 and 2025 local authority elections (Option 1). Maaori wards would then be included in the analysis and decisions for the wider representation review currently underway. This option accords with the views of Waikato Tainui and hapuu, and aligns with the principles of Te Tiriti o Waitangi and Council’s legislative obligations to facilitate and foster Maaori participation in Council’s decision-making processes.
- to not establish Maaori wards for the 2022 local authority elections (Option 2). The next opportunity to consider Maaori wards would then be in 2023 for the 2025 elections.
- to undertake a non-binding referendum on Maaori wards, either prior to or as part of the 2022 local authority elections. Any Council decision on Maaori wards that followed the referendum would then affect the 2025 local authority elections (at the earliest) given legislative timeframes. The costs for such a referendum are not currently budgeted.

If Council resolved to establish Maaori wards at a later date (i.e. after the 2022 local authority elections), under options 2 and/or 3, then a further representation review would be triggered under the LEA.

Iwi/Maaori were consulted on Maaori representation, including Maaori wards, in 2020. At that time, there was support for advocating for the legislative changes now given effect in the Amendment Act. Marae across the district are also generally supported the establishment of Maaori wards.

Staff consider this matter to have medium significance and that the recommendations comply with the Council's legal requirements.

## 2. RECOMMENDATION<sup>1</sup>

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**THAT the report from the Chief Executive be received;**

**AND THAT the Council resolves either:**

- a. **To establish Maaori wards for the 2022 and 2025 local authority elections in accordance with clause 2(1), Schedule 1 of the Local Electoral Act 2001 (Option 1 in the staff report); OR**
- b. **To not establish Maaori wards for the 2022 local authority elections (Option 2 in the staff report); AND/OR**
- c. **To hold a non-binding referendum on Maaori wards prior to OR in conjunction with the 2022 local authority elections in accordance with section 9 of the Local Electoral Act 2001 [Council to select preferred date if this option is selected] and that staff are directed to draft a referendum for Council's consideration (Option 3 in the staff report).**

**AND FURTHER THAT the Council requests that the Chief Executive, in consultation with His Worship the Mayor, notify iwi and marae within the District, of the Council's decision including the reasons for that decision.**

## 3. BACKGROUND

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At the Council's extraordinary meeting on [2 November 2020](#), the Council resolved (ref WDC2011/09) not to establish Maaori wards for the 2022 local authority elections:

***THAT the report from the Chief Executive be received;***

***AND THAT the Council does not establish Maaori wards for the 2022 local authority elections, and resolves to undertake a poll of electors in conjunction with the 2022 local authority elections on whether to establish Maaori wards for the 2025 and 2028 elections (Option 3b in the staff report);***

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<sup>1</sup> Note: For clarity, Options 2 and 3 can be combined at the Council's discretion. Option 1 cannot be combined with either Options 2 or 3.

**AND FURTHER THAT the Council, working with Waikato Tainui and other Waikato local authorities, supports advocating for a change to the Local Electoral Act 2001 to remove the ability to demand or hold a poll on Maaori wards;**

**AND FURTHER THAT the Council requests that the Chief Executive, in consultation with is Worship the Mayor, notify iwi and marae within the District, of the Council’s decision including the reasons for that decision.**

The [Amendment Act](#) commenced on 1 March 2021, changing the process for councils to establish Maaori wards. In particular, the Amendment Act:

- removed provisions in the LEA which enabled binding polls to determine the establishment of Maaori wards. A council can still undertake a non-binding referendum on this issue (section 9(7) LEA); and
- provided a transitional period – to 21 May 2021 - for councils to reconsider any earlier decision made in relation to Maaori wards.

The Government indicated that further legislative changes would be introduced at a later date to change the way Maaori wards work more broadly, and that this initial amendment was primarily to allow councils to make decisions ahead of the 2022 local elections. At this stage, there are no details of what the further legislative changes might entail.

Under the Amendment Act, the Council may resolve to establish Maaori wards for the 2022 local elections at any time before 21 May 2021. Any resolution to establish Maaori wards applies for at least the next two general triennial elections. After that, Council would continue to have Maaori wards unless the Council resolved to disestablish them.

Waikato-Tainui have advocated for the creation of Maaori wards in various fora such as through Joint Management Agreement co-governance hui, through public statements and through direct communication to Council leadership at political and officer level. Waikato Marae representatives have also advocated for the creation of Maaori wards through WDC officer engagement with Ngaa Marae Toopuu. To take account of the Amendment Act and discussions with mana whenua and iwi representatives on Maaori representation, the Council revoked its 2 November 2020 resolution, in part, at an extraordinary meeting on [5 May 2021](#) as follows (ref WDC2105/02):

**THAT the Waikato District Council resolves, to revoke Part B of Motion WDC2011/09 passed at its meeting held on 2 November 2020, which read:**

**“AND THAT the Council does not establish Maaori wards for the 2022 local authority elections, and resolves to undertake a poll of electors in conjunction with the 2022 local authority elections on whether to establish Maaori wards for the 2025 and 2028 elections (Option 3b in the staff report);”**

**AND THAT staff provide a report to the extraordinary meeting scheduled for Thursday, 20 May 2021, presenting options on whether or not to establish Maaori Wards for the Waikato District at the 2022 Local Body Elections.**

The Council now has a fresh opportunity to consider whether to establish Maaori wards for the 2022 and 2025 local authority elections.

## 4. DISCUSSION AND ANALYSIS OF OPTIONS

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### 4.1 DISCUSSION

#### *Legislative Framework*

The option for councils to establish Maaori wards was introduced in 2002 to improve the representation of Maaori in local government. This aligns with:

- other legislation which requires councils to provide opportunities to foster and include Maaori in their decision-making processes (for example, sections 14(1)(d) and 81 of the Local Government Act 2002); and
- the principles of Te Tiriti of Waitangi (partnership, participation and protection), which Council is required to take into account when making decisions.

Between 2002 and 2019, more than 20 councils have endeavoured to create Maaori wards under the LEA; however, only 2 have been successful.<sup>2</sup> This low rate was mainly due to provisions in the LEA which enabled 5% of electors to demand a poll to overturn a council's decision to establish Maaori wards, the outcome of which would be binding for the next two elections. Only one council (Wairoa District Council) established Maaori wards as a result of such a poll.

As a result of ongoing requests to change the LEA to remove the poll provisions pertaining to Maaori wards, the Amendment Act was passed earlier this year. The rationale for these changes were canvassed in the [2 November 2020 Council report](#). The poll mechanism was described by the Hon Nanaia Mahuta, and submitters in support of the Amendment Act, as an insurmountable barrier to councils trying to improve the democratic representation of Maaori interests.

#### *How Maaori wards work*

The November 2020 Council report detailed how Maaori wards work. In summary:

- Voters on the Maaori electoral roll would vote for a candidate contesting a Maaori ward rather than candidates contesting a general ward.
- Voters on the general electoral roll would continue to vote for candidates contesting general wards.
- All voters vote for the mayor, at-large councillors (if any – currently there are no at-large councillors) and community board members (if applicable).
- Maaori ward candidates do not need to be on the Maaori electoral roll, but do need to be on the parliamentary electoral roll as with any candidate.
- Like every other Councillor, a Maaori ward councillor would have just one vote around the Council table and be required to act in the best interests of the district.

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<sup>2</sup> Bay of Plenty Regional Council also have Maaori constituencies, established under separate legislation.

### *Representation Review*

If the Council does resolve to establish Maaori wards, then this would be considered as part of the wider representation review currently underway. In particular, the number of Maaori wards and councillors representing those wards would be analysed alongside the number of general wards and total number of councillors, as part of Council's initial proposal for the representation review. The number of Councillors elected by a Maaori ward or wards is set by a formula in the LEA, based on population estimates provided by Stats NZ – this calculation was detailed in the November 2020 report.

Council's decision on an initial proposal for consultation on the representation review is currently scheduled for June 2021. **For clarity, the Council is not required to determine the number and nature of Maaori wards, if any, as part of this report.**

Notably, the wider representation review is not an opportunity to revisit the question of Maaori wards. If Council resolves to establish Maaori wards, Council's later proposals for the representation review would be on the basis that Maaori wards have been established. For clarity, this means that, should Council establish Maaori wards, the matters that would need to be considered as part of the Council's proposals and consultation include:

- a. whether any councillors are to be elected 'at large'. However, there would need to be at least one Maaori ward and one general ward;
- b. the proposed number of councillors to be elected in each Maaori ward and general ward (in accordance with the LEA calculation noted above and the '+/- 10%' rule to ensure fair and effective representation); and
- c. the proposed name and boundaries of each Maaori ward and general ward.

### *The Council's current Maaori representation arrangements*

There are a number of arrangements currently in place to support Maaori representation and participation in Council decision-making – these were outlined in the November 2020 Council report and include the appointment of Maangai Maaori to Council committees. It is important to note that Maaori wards and alternative representation models such as Maangai Maaori can operate together – they are not mutually exclusive. The difference is that Maaori wards enable representatives elected by Maaori to vote on the most significant decisions affecting Maaori (i.e. at Council level), and those representatives (as with all councillors) are required by law to act in the best interests of the district.

## **4.2 OPTIONS**

This report sets out the reasonable and viable options available to Council, within the report's scope. The options take account of the Amendment Act and other arrangements the Council currently has in place to improve Maaori participation in Council's decision-making processes (e.g. appointment of Maangai Maaori).

### **Option I: Establish Maaori Wards**

The Council would resolve to establish Maaori wards in accordance with clause 2(1), Schedule 1, LEA (as amended by the Amendment Act). This decision would be binding for the 2022 and 2025 local authority elections. Maaori wards would be included in the current representation review as outlined above.



### Option 2: Not Establish Maaori Wards

If Council does not resolve to establish Maaori wards, then the representation review would continue on the basis that there would be no Maaori wards for the 2022 local authority elections. An express resolution to this effect is not required under the LEA, though for clarity and transparency it is recommended. The next opportunity to consider Maaori wards would then be in 2023 for the 2025 elections..

### Option 3: Non-binding Referendum

As discussed, the Amendment Act removed all provisions in the LEA in relation to binding polls on the issue of Maaori wards. The Council could still hold a non-binding referendum on the issue (section 9(7) LEA), the sole purpose of which would be to gauge the views of voters in the district.

Given timeframes, such a referendum would need to take place after 21 May 2021 and any Council decision that followed the referendum would only take effect from the 2025 local authority elections. As such, the Council could choose both Options 2 and 3 (i.e. not establish Maaori wards for the 2022 elections, and hold a non-binding referendum at a later specified date). This option would effectively revert to Council's earlier resolution recently revoked to hold a district-wide poll (albeit the referendum is non-binding).

Option	Advantages	Disadvantages
1	<ul style="list-style-type: none"> <li>• Recognises Council's obligations under legislation to increase participation of Maaori in decision making and to recognise the diversity of its communities.</li> <li>• Gives effect to the principles of Te Tiriti o Waitangi by enhancing partnership with, and participation of, Maaori in local governance.</li> <li>• Strengthens relationship with mana whenua and iwi, who support the introduction of Maaori wards.</li> <li>• Consistent with the LEA to consider principle of fair and effective representation for individuals and communities.</li> <li>• Reflects the significant Maaori communities in the district (26% of the district's population are Maaori descent (Statistics New Zealand Census 2018) and their interests in the social, economic, environmental and cultural issues that Council is required to consider.</li> </ul>	<ul style="list-style-type: none"> <li>• Has potential to bring about an adverse reaction in some sections of the community that oppose the establishment of Maaori wards. This is somewhat mitigated by the increasing number of other councils deciding to establish Maaori wards for the 2022 elections.</li> <li>• Insufficient time to undertake district-wide consultation ahead of the 21 May 2021 deadline. Maaori wards would be part of the wider representation review consultation, though the decision to establish Maaori wards itself could not be revisited as part of that consultation, as referenced above.</li> </ul>

Option	Advantages	Disadvantages
2	<ul style="list-style-type: none"> <li>• Enables Council to wait and consider any new legislation for establishing Maaori wards, which is due to be put in place for the 2025 elections.</li> <li>• Enables Council to consider whether to undertake district-wide engagement on the issue of Maaori wards at a later date.</li> <li>• No impact on the current representation review process.</li> </ul>	<ul style="list-style-type: none"> <li>• Lost opportunity to further Maaori participation in Council decision-making (in accordance with the LGA), particularly in relation to the most significant decisions reserved for Council.</li> <li>• Likely damage to the Council's relationship with mana whenua and iwi following significant work to improve this over the last few years.</li> <li>• Less aligned to the principles of Te Tiriti of Waitangi, which Council is required to take account of – partnership, participation and protection.</li> <li>• No certainty that there would be Maaori representation via general wards, which increases the likelihood that Council decision-making does not reflect the views and outcomes sought by Maaori.</li> <li>• Potential adverse national/media coverage given the increase in councils choosing Maaori wards, and that the district is the home of the Kiingitanga.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Enables Council to wait and consider any new legislation for establishing Maaori wards, which is due to be put in place for the 2025 elections.</li> <li>• Results of referendum can be used to inform any future Council decision on Maaori wards.</li> </ul>	<ul style="list-style-type: none"> <li>• Same disadvantages as Option 2.</li> <li>• Maaori wards could not be established for the 2022 elections.</li> <li>• Cost of holding a referendum would be \$100,000 (or \$10,000 if undertaken at the same time as the 2022 elections), which is not budgeted.</li> <li>• Should Council resolve to establish Maaori wards <i>after</i> such a referendum, a new representation review would be required in the 2022-25 triennium (the cost of which has not currently been budgeted in the draft Long Term Plan).</li> </ul>

## **5. CONSIDERATIONS**

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### **5.1 FINANCIAL**

There are no material financial considerations under Options 1 and 2 above – should Council establish Maaori wards, the operational costs for inclusion of Maaori wards in the wider representation review falls within the current budget for that project. The direct and indirect costs for holding a non-binding referendum (Option 3) are highlighted in the Options analysis above; such costs are currently not budgeted.

### **5.2 LEGAL**

The legal framework and considerations in relation to Maaori wards were discussed earlier in the report.

Section 19Z and Schedule 1 of the LEA (as amended by the Amendment Act) do not impose a requirement on Council to make a decision about the establishment of Maaori wards. The Council could decide not to do so or simply refrain from making a decision on the subject. However, in considering the role of local authorities under the LGA and principles of transparency and accountability, it is considered good practice for a council to expressly set out its intention in terms of Maaori wards in a clear resolution.

When determining whether or not to establish Maaori wards, the Council must also take into account the following matters in terms of the present and future needs of the community:

- The principle of fair and effective representation for individuals and communities (s4 (1)(a) LEA).
- The purpose of the LGA to provide for democratic and effective local government that recognises the diversity of New Zealand communities, specifically the promotion of accountability of local authorities to their communities. (s3 LGA)
- The Council's legislative obligation to establish and maintain opportunities for Maaori to contribute to its decision-making processes (as referred to earlier in the report).

### **5.3 STRATEGY, PLANS, POLICY AND PARTNERSHIP ALIGNMENT**

The establishment of Maaori wards aligns with the partnership vision of Waikato-Tainui and mana whenua in the district. Iwi and hapuu stakeholders have made their views clear through earlier feedback and consultation on Maaori representation:

- Maaori interests are intricately intertwined with all significant social, economic, environmental and cultural issues that the Council is required to consider;
- Effective Maaori representation in governance decision-making is beneficial to Maaori, the wider community and outcomes for future generations in the district;
- Maaori wards would provide representation to a significant community of interest that is currently underrepresented at the Council table, and therefore provide fairer and more inclusive decision-making.

#### 5.4 ASSESSMENT OF SIGNIFICANCE AND ENGAGEMENT POLICY AND OF EXTERNAL STAKEHOLDERS

The Local Electoral Act 2001 does not provide any specific engagement requirements for establishing Maaori wards. Therefore the general decision-making requirements under the LGA and the Council's Significance and Engagement Policy are relevant to determining what level of engagement is required.

Staff consider that the Council's decision on whether to establish Maaori wards would be of medium significance. Given the medium level of significance proposed, any engagement on a Council decision regarding the establishment of Maaori wards is discretionary.

Targeted consultation on Maaori representation, including Maaori wards, with Waikato Tainui and hapuu across the district was undertaken in 2020. At that time, there was a strong voice for the legislative change which the Amendment Act has brought about. There was also consistent support for Maaori wards among marae.

Should Council decide to undertake further consultation on this issue, this would fall outside the transition period afforded by the Amendment Act. Any decision that followed such consultation would therefore take effect from the 2025 elections – as noted, a decision to establish Maaori wards for the 2022 elections must be made prior to 21 May 2021,

If Council resolved to establish Maaori wards but not to carry out specific engagement with the wider community on this decision, full engagement with the community would still occur as part of the wider representation review. As noted earlier, the consultation on the Council's initial proposal for the representation review does not provide an opportunity to revisit (i.e. revoke) a decision to establish Maaori wards. However, submissions, appeals and objections may be made on detailed arrangements such as:

- a. The total number of members of Council;
- b. If there are to be two or more members elected from Maaori wards (which is contingent on the total number of councillors proposed), whether there should be one Maaori ward or multiple Maaori wards; and
- c. The names and boundaries of Maaori wards.

Similarly, should Council choose not to establish Maaori wards for the 2022 elections, this decision could not be changed as part of the current representation review.

Highest levels of engagement	Inform	Consult	Involve	Collaborate	Empower
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Tick the appropriate box/boxes and specify what it involves by providing a brief explanation of the tools which will be used to engage (refer to the project engagement plan if applicable).</i>	Previous consultation undertaken with iwi and hapuu groups on Maaori representation.				

State below which external stakeholders have been or will be engaged with:

Planned	In Progress	Complete	
		✓	Internal
			Community Boards/Community Committees
		✓	Waikato-Tainui/Local iwi
			Households
			Business
			Other Please Specify

## 6. CONCLUSION

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The report seeks the Council's decision on whether to establish Maaori wards for the 2022 and 2025 local authority elections. This follows a Council resolution earlier this month to revoke an earlier Council decision not to establish Maaori wards for the 2022 local authority elections. The revocation was undertaken in light of recent legislative amendments to the LEA, removing provisions relating to binding polls determining whether Maaori wards should be established.

The Council can either:

- establish Maaori wards for the 2022 and 2025 local authority elections in accordance with the LEA; such decision would then be included in the wider representation review currently underway; or
- not establish Maaori wards for the 2022 local authority elections; and/or
- hold a non-binding referendum on the issue. Any decision on Maaori wards after that referendum would affect the 2025 local authority elections (at the earliest).

## 7. ATTACHMENTS

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None