

Hon Paul Goldsmith
Minister of Justice

Proactive release –Tauranga City Council election – Order in Council under section 266 of the Electoral Act 1993

Date of issue: 16 April 2024

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Tauranga City Council election – Order in Council under section 266 of the Electoral Act 1993 <i>Cabinet paper</i> Ministry of Justice 28 March 2024	Some information has been withheld in accordance with section 9(2)(h) of the OIA to maintain legal professional privilege.
2.	Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 <i>Cabinet minute</i> <i>LEG-24-MIN-0049</i> Cabinet Office 28 March 2024	Released in full.

Office of the Minister of Justice
Chair, Cabinet Legislation Committee

Tauranga City Council election – Order in Council under section 266 of the Electoral Act 1993

Proposal

- 1 This paper seeks authorisation to submit the Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 (the Order) to the Executive Council to validate the late and shortened information campaign, prior to the Māori Electoral Option exception period.

Relation to government priorities

- 2 This proposal reflects the Government’s recognition of local democracy and the importance of the community voice in local decision-making.

Background

Tauranga City Council is returning to local democracy on 20 July 2024

- 3 An independent review in November 2020 identified significant governance problems within the Tauranga City Council. In December 2020, the former Minister of Local Government made the decision to appoint a Commission to the Council, replacing elected officials.
- 4 In August 2023, Cabinet noted that the next Tauranga City Council election will be held on Saturday, 20 July 2024. This election is a local triennial general election under the Local Electoral Act 2001.

A local triennial general election places obligations on certain parties

- 5 Under the Local Electoral Act, local authorities are responsible for running local triennial general elections. Under the Electoral Act 1993 (Electoral Act), the Electoral Commission is responsible for maintaining the electoral rolls, promoting voter enrolment, and verifying special voter eligibility.
- 6 For local triennial general elections (as well as for parliamentary elections), the Electoral Commission is required to send Māori electors information about the exercise of the Māori Electoral Option (MEO), and the exception period three months prior to polling day where Māori voters cannot change rolls. The Electoral Act requires this information to be sent out at least three months before the start of the exception period.

It is highly unusual for an out-of-cycle election to be held

- 7 Out-of-cycle local triennial general elections happen very rarely, and only when councils are returning from a period without elected governance, or occasionally when a new council has been established or amalgamated.¹
- 8 The last time there was an out-of-cycle election was following the end of an appointed Commission at the Rodney District Council in April 2001, prior to the local triennial general election later that year. The two more recent examples of councils returning to democratic representation (Canterbury Regional Council and Kaipara District Council) had their first post-commissioner elections at the same time as the regular triennial general elections in October 2016.

An Order in Council is required to validate the later and shorter information campaign

- 9 As out-of-cycle local triennial general elections are rare, there is little precedent for councils and the Electoral Commission. This has led to some ambiguity regarding statutory obligations for such elections. I note that this will be the first local triennial general election to take place since changes to the MEO came into effect in March 2023.

10 Section 9(2)(h)


- 11 The Electoral Commission did not commence an information campaign by this date, because the Commission had understood that the MEO provisions did not apply.

12 Section 9(2)(h)


- 13 I am seeking agreement to an Order in Council, made pursuant to section 266 of the Electoral Act, to validate the later and shorter information campaign in relation to the MEO.

- 14 Section 266 of the Electoral Act provides that where anything is omitted to be done or cannot be done at the time required by or under the Electoral Act, the Governor-General may, by Order in Council published in the *Gazette*, make other provisions as the Governor-General thinks fit. While an Order in Council under section 266 does not remove an obligation or duty imposed by the Electoral Act, it can vary the timeframe in which that duty must occur.

¹ The last example of this outside of the Auckland Council amalgamation was in the 1980s.

- 15 I consider that there is insufficient clarity in the Electoral Act and the Local Electoral Act 2001 regarding the application of the MEO provisions to an out-of-cycle local triennial general election. I have asked my officials to undertake further work on whether a permanent legislative amendment is required to provide sufficient clarity in relation to any future out-of-cycle local triennial general election elections.
- 16 The proposed Order validates the missed deadline for information to be sent to Māori electors in Tauranga by 20 January 2024, and a pathway for Electoral Commission to conduct a later and shorter information campaign.

Cost-of-living Implications

- 17 The proposals in this paper aim to facilitate the effective operation of the Tauranga City Council elections on 20 July 2024. There are no associated cost-of-living implications.

Financial Implications

- 18 Funding for an information campaign will cost approximately \$0.370 million, including system changes and postal costs. The Electoral Commission was not funded for these costs and will need to meet these costs out of its baseline.
- 19 The Tauranga City Council is funding the costs of running the election.

Impact Analysis

Regulatory Impact Statement

- 20 The Treasury has confirmed that Cabinet's impact analysis requirements do not apply to this proposal. The Order under section 266 of the Electoral Act is not classified as secondary legislation, and therefore Cabinet's impact analysis requirements do not apply to this proposal.

Climate Implications of Policy Assessment

- 21 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it not expected to result in any significant, direct emissions impacts.

Population Implications

- 22 I recognise that Māori voters may be impacted by the later and shorter information campaign relating to the MEO. In order to mitigate this impact, the Commission will be supporting the MEO mailout with a public awareness campaign and community engagement activity in the Tauranga Council area up to the start of the exception period on 20 April.
- 23 I also note that the Tauranga City Council states on its website that the last date for Māori voters to change rolls is 20 April 2024.

Use of external Resources

24 No external resources were used in developing this paper.

Consultation

25 The Treasury, the Department of Internal Affairs, Crown Law and the Electoral Commission were consulted on this paper. The Department of the Prime Minister and Cabinet was informed.

Communications

26 On 22 August 2023, the Minister of Local Government announced that the local triennial general election for Tauranga City Council election will be held on 20 July 2024.

27 The Tauranga City Council have been advising that the exception period starts on 20 April 2024 on its website.

28 The information packs have already been delivered to the 18,000 electors of Māori descent living in the Tauranga City Council area.

Proactive Release

29 This Cabinet paper will be proactively released in accordance with the Cabinet Office circular Proactive Release of Cabinet Material: Updated Requirements [CO (23) 4], subject to redaction as appropriate under the Official Information Act 1982.

Timing and the 28-day rule

30 The Order needs to come into effect as soon as possible, and therefore, I am seeking a waiver of the 28-day period as early commencement is necessary for compliance with statutory obligations.

31 The Order will be published in the *Gazette* on 4 April 2024 following approval by the Governor-General.

Compliance

32 This Order complies with each of the following:

- 32.1 the principles of the Treaty of Waitangi;
- 32.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 32.3 the principles and guidelines set out in the Privacy Act 2020;
- 32.4 relevant international standards and obligations;
- 32.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 33 There are no grounds for the Regulations Review Committee to draw the Order to the attention of the House.

Certification by Parliamentary Counsel

- 34 The Order in Council was certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Recommendations

The Minister of Justice recommends that Cabinet:

1. **note** that there was some uncertainty around the status of the Tauranga City Council elections to be held on 20 July 2024, which led to the timeframe for the Electoral Commission to start the information campaign relating to the Māori Electoral Option (MEO) to have passed;
2. **note** that the Electoral Commission is conducting a later and shorter information campaign relating to the MEO;
3. **note** that the information campaign will cost \$0.370 million and will need to be met from the Electoral Commission's baseline funding;
4. **authorise** the submission of the Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 to the Executive Council;
5. **note** that the Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 will be published in the *Gazette* on 4 April 2024, following approval by the Governor-General; and
6. **agree** to waive the 28-day rule because the Order is necessary for compliance with statutory obligations.

Authorised for Lodgement

Hon Paul Goldsmith

Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Electoral (Māori Option Information for Tauranga City Council Election) Order 2024

Portfolio Justice

On 28 March 2024, the Cabinet Legislation Committee:

- 1 **noted** that there has been some uncertainty around the status of the Tauranga City Council elections to be held on 20 July 2024, which led to the timeframe for the Electoral Commission to start the information campaign relating to the Māori Electoral Option (MEO) to have passed;
- 2 **noted** that the Electoral Commission is conducting a later and shorter information campaign relating to the MEO;
- 3 **noted** that the information campaign will cost \$0.370 million and will need to be met from the Electoral Commission's baseline funding;
- 4 **authorised** the submission to the Executive Council of the Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 [PCO 26292/5.0];
- 5 **noted** that the Electoral (Māori Option Information for Tauranga City Council Election) Order 2024 (the Order) will be published in the Gazette on 4 April 2024;
- 6 **noted** that a waiver of the 28-day rule is sought:
 - 6.1 so that the Order can come into force on 5 April 2024
 - 6.2 because the Order is necessary for compliance with statutory obligations;
- 7 **agreed** to waive the 28-day rule.

Rebecca Davies
Committee Secretary

Attendance: see attached

Present:

Rt Hon Winston Peters
Hon Brooke van Velden
Hon Shane Jones
Hon Chris Bishop (Chair)
Hon Dr Shane Reti
Hon Simeon Brown
Hon Erica Stanford
Hon Paul Goldsmith
Hon Nicole Mckee
Hon Casey Costello
Hon Penny Simmonds
Hon Simon Watts
Hon Chris Penk
Hon Scott Simpson, MP
Todd Stevenson, MP
Jamie Arbuckle, MP

Officials present from:

Office of the Leader of the House
Officials Committee for LEG