

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CIV 2025-090-1793
[2025] NZDC 24978**

UNDER	the Local Electoral Act 2001
IN THE MATTER	of an Application for a Recount of the Votes in the Local Government Election of 2025 for the Henderson-Massey Local Board
BETWEEN	LINDA ANN COOPER Applicant
AND	DALE OFSOSKE, Electoral Officer Respondent
AND	INGRID PAPAU Interested Party

Appearances: Applicant in person
 Respondent in person
 Interested party in person

Judgment: 30 October 2025
(On the Papers)

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

Introduction

[1] On 22 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Ms Linda Cooper applied without notice for a recount of the votes cast at the 2025 elections for the Henderson-Massey Local Board of the Auckland Council in which she was a candidate.

[2] The Henderson-Massey Local Board elected eight members from 29 candidates.

[3] Mrs Ingrid Papau is the candidate who is most likely to be unseated on a recount. On 23 October 2025, I granted Mrs Papau's oral application to be joined as an interested party. There was no opposition to this.

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

Ms Cooper's application

[5] Ms Cooper submits that there are reasonable grounds to believe that the declaration at the election for the Henderson-Massey Local Board is incorrect and that on a recount she might be elected. In her affidavit in support, Ms Cooper says that:

- (a) there were over 4,100 invalid votes;
- (b) there was a delay in the declaration of the final result due to difficulties with the count as stated on the Vote Auckland website;
- (c) she had been sent accounts of interference in the special voting process in the Te Atatu Peninsula Library by a candidate, from a member of the public (although Ms Cooper acknowledges this may be outside the scope of consideration on an application for a recount); and
- (d) on the final count she received 6,484 votes, 30 fewer votes than the next candidate, Mrs Papau.

[6] Ms Cooper says that she does not have confidence in the count and seeks a recount because of the closeness of the result, what she says is uncertainty with special votes, and what she says is an unprecedented delay in declaring the final results.

Submissions

[7] Ms Cooper submits that the unprecedented number of special votes (with 10,000 votes cast in Auckland and 4,126 votes being deemed to be invalid), brings into question how prepared the electoral team was for this large number of “irregularities and number of votes to count”. Ms Cooper also submits that the delay in the declaration of the official result was due to the unprecedented volume of special votes received.

[8] Ms Cooper submits that she has specific concerns about three matters which she says go to the integrity of the voting process, namely:

- (a) the Electoral Officer filed a complaint with the New Zealand Police over alleged electoral fraud in Papatoetoe, which Ms Cooper says, was reported on Radio New Zealand on 16 October 2025;
- (b) the New Zealand Police has confirmed that an election complaint was lodged against a Henderson-Massey Local Board Member who has been accused of interfering with, or influencing voters; and
- (c) the Electoral Officer himself expressed concerns around the number of special votes cast in this election and the number of invalid votes among them, which concern Ms Cooper says, was raised with the Department of Internal Affairs (DIA).

[9] Ms Cooper has filed a further affidavit dated 29 October 2025 in relation to these matters. Annexed to Ms Cooper’s affidavit are copies of correspondence around the delay in the publication of results, and Radio New Zealand articles about the number of special votes determined to be invalid in Auckland, and about the complaints made to the Police.

[10] Ms Papau has filed no submission in this matter despite having been given the opportunity to do so. Ms Papau has advised the Registrar that she is happy for this matter to proceed without her making a submission.

Electoral Officer's report

[11] On 23 October 2025 I directed the Electoral Officer, Mr Dale Ofsoske, to file a report on the conduct of the election.

[12] Mr Ofsoske's report dated 28 October 2025 confirms that when progress results were released on 11 October 2025, Ms Cooper was the lowest provisionally elected candidate with 302 more votes than Ms Papau, the highest provisionally unsuccessful candidate.

[13] When the preliminary votes were released two days later on 13 October 2025 (reflecting all votes except special votes), this margin was reduced to 20 votes.

[14] Subsequently, when the final results were released on 18 October 2025 the position switched, and Ms Cooper was unsuccessful by 30 votes behind Ms Papau who became the lowest ranked elected candidate. The final results included all special votes that were not included in the preliminary results.

[15] When voting closed, Mr Ofsoske reports that 632 special votes were received in relation to the Henderson-Massey Local Board. Of these, 413 special votes were allowed (65.4%). Of the 219 special votes (34.6%) that were disallowed:

- (a) 7 people voted twice (using both original and special voting documents);
- (b) 101 people were not on the roll (i.e. they were disallowed by the Electoral Commission as unqualified);
- (c) 99 declarations required to accompany special votes were incomplete; and
- (d) 12 votes had no declaration or no special vote.

[16] Mr Ofsoske also reports that prior to each triennial election, the software and vote processes are certified as 'fit for purpose' by an independent auditor, and that this

happened in this case. Otherwise, Mr Ofoske's report summarises the vote counting process.

[17] Finally, Mr Ofoske reports that while candidates are able to appoint scrutineers to observe the vote counting process, including that counting process after the voting closed, no scrutineers were appointed by candidates for the Henderson-Massey Local Board.

Legal Framework

[18] 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.

[19] 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.

[20] As Judge Tuohy noted in *Smith v Lampp*, a decision pertaining to the local government elections in 2022:¹

[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*², 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.³

[29] In *Kelliher v Jordan*,⁴ 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*⁵ and *R v Leitch*⁶ 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.⁷

[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.⁸

[21] As Judge Tuohy did, I also agree with the approach taken by Judge Kellar in respect of the judge's task in deciding whether the test in s 90(3) has been satisfied. Otherwise, again like Judge Tuohy, there is no apparent reason to depart from the principles recognised in the previous decisions to which Judge Tuohy referred.

¹ *Robyn Anne Smith v Warwick Lampp for Greater Wellington Regional Council 2022 Local Government Elections* [2022] NZDC 22080 at [28] and following

² *Butler v Jordan* [2011] DCR 399

³ *Butler v Jordan* *supra*, at [8]

⁴ *Kelliher v Jordan* [2017] DCR 44

⁵ [1988] 1 NZLR 264 (CA)

⁶ [1988] 1 NZLR 42 (CA)

⁷ *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).

⁸ *Butler v Jordan* *supra* n 1 at [11] approved by KD Kelly DCJ in *Hicks v Gore District Council and Bell* [2022] NZDC 21348 at [28]

[22] In addition, in *Smith v Lampp*, Judge Tuohy noted that there is a significant difference in the language Parliament has used in formulating the two limbs of the test in s 90(3). As his Honour said: “The applicant must have reasonable grounds to believe that the declaration **is** incorrect but only that she **might** be elected on a recount. The latter refers to a possibility, the former to an actuality.”⁹ I agree with this.

Discussion

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

[24] As noted in *Butler v Jordan*, there needs to be sufficient evidence to justify such a belief.

[25] No evidence is provided in Ms Cooper’s affidavit of any *voting* irregularity against which Ms Cooper’s subjective belief can be assessed against the objective test for reasonableness.¹⁰ Instead, Ms Cooper’s evidence appears to rely primarily on the closeness of the vote, the number of invalid votes cast, and delays declaring the final result.

[26] While Ms Cooper does refer to accounts of interference in the special voting process in the Te Atatu Peninsula Library by a candidate, the nature of the alleged interference or of the accounts to which Ms Cooper refers, are only able to be partly gleaned from the Radio New Zealand article. This article cites Mr Ofsoske as having confirmed that complaints have been passed onto the Police.

[27] The article also says that the complaint, seen by the New Zealand Herald, involved papers being stolen from letter boxes and of voters being told how to vote within polling booths and in public places.

⁹ *Smith v Lampp*, above n 1, at [35]

¹⁰ *Butler v Jordan* above n 2, at [8]

[28] Another article provided by Ms Cooper cites Mr Ofsoske as having said that ‘difficulties with the special voting process have been raised with the Department of Internal Affairs’.

[29] The article continues, saying that despite 10,000 Aucklanders casting special votes at this election, almost half had to be “thrown out” due to incorrect or missing declaration details, or outdated enrolment details. Mr Ofsoske is quoted as having said:

I think it would be worthwhile to have further discussions with lawmakers to see how we can streamline this process. Do we need to be so rigorous with our declaration, for example, simply because the law tells us we must do? That’s been raised with the Department of Internal Affairs because of this election.

[30] While not wishing to minimise Ms Cooper’s concerns in any way, the difficulty is that complaints of fraud, or interference in the special voting process, or about whether the process can be streamlined, is about the conduct of the election, or the conduct of a candidate or other person at the election. These concerns do not establish that Ms Cooper has reasonable grounds to believe that the *declaration* itself is incorrect and that on a recount she might be elected. Ms Cooper has not explained how, should the allegations be established, the votes on a recount might be any different from when they were cast or how they might now be counted differently as a consequence of these matters.

[31] That is to say, when viewed in this way, the concerns raised by Ms Cooper are matters outside the scope of what a recount decision is about, or what it might achieve.

[32] Section 93 of the Act provides a mechanism where a candidate (including Ms Cooper) or any 10 electors with a complaint about the conduct of an election or about the conduct of a candidate or any other person, may file a petition in the Court. That is a different process to a recount. The test for a judicial recount is whether I consider that Ms Cooper has reasonable grounds to believe that the declaration is incorrect, and that she might be elected on a recount.

[33] Ms Cooper’s concerns go to wider concerns about the conduct of the election beyond consideration of the way in which the votes received were counted. Furthermore, a recount does not provide an opportunity to review the operation of the

Act or how the processes can be streamlined. Those are matters for the Government. Nor, for example, will a recount shed any real light on how voters might have been told to vote inside polling booths or in public spaces. Equally, it is not apparent how such matters speak to how the votes, such as they were cast, might now be treated differently.

[34] In short, without evidence of how these issues might have impacted the declaration of votes cast, Ms Cooper's evidence on this matter does not assist me in my assessment as to whether Ms Cooper has reasonable grounds to believe that the declaration itself is incorrect.

[35] Given that, at best, Ms Cooper's evidence is that the margin between Ms Papau and her, was 30 votes. I am not satisfied that this amounts to anything more than saying that closeness of the voting of itself ought to provide reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected. As already noted, there have been several decisions of District Court judges over the last decade or more in which such a ground has been dismissed as being insufficient to prompt a recount.

[36] As to the special and invalid votes, Ms Cooper has provided no evidence to ground a belief on her part that the way these were treated was incorrect in some respect, other than the closeness of the vote and the sheer number of invalid votes.

[37] As Judge Tuohy said in *Smith v Lampp*:¹¹

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

[38] As in *Smith*, I am not persuaded that the basis for such a reasonable belief is available on the evidence before the Court.

¹¹ *Smith v Lampp*, above n 1, at [60]

[39] Nor does the report of Mr Ofoske point to any such irregularity. While the progress and preliminary results showed Ms Cooper ahead of Ms Papau, the final results put Ms Papau ahead. I see nothing in this that suggests an irregularity in the counting process.

[40] While the number of special votes for Auckland may be a record number, what is of importance in relation to this application is the number of special votes cast for the Henderson-Massey Local Board. Mr Ofoske's report explains how each of the 632 special votes received, particularly the ones that were disallowed, were treated. I am satisfied that each of the reasons provided are all grounds for disallowing votes. Section 20 of the Act governs eligibility to vote, and r 38 of the Local Electoral Regulations 2001 provides the mandatory requirement for any declaration. Ms Cooper's evidence does not provide any basis for a reasonable belief that these requirements were not observed by the Electoral Officer in considering the votes.

Result

[41] For the reasons stated, the application is dismissed. I decline to order a judicial recount of the votes for the Henderson-Massey Local Board.



K D Kelly
District Court Judge