IN THE DISTRICT COURT
AT WHANGAREI

I TE KŌTI-Ā-ROHE
KI WHANGĀREI-TERENGA-PARĀOA

CIV 2025-088-674
[2025] NZDC 24747

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 mayoralty of the Kaipara District Council
BETWEEN	TAOHO TANE (aka Snow Tane) Applicant
AND	DALE OFSOSKE, Electoral Officer Respondent
AND	JONATHAN LARSEN Interested Party

Hearing:	On the Papers
Appearances:	Applicant in person Respondent in person SR Mitchell KC for the Interested Party
Judgment:	24 October 2025

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

Introduction

[1] On 20 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Mr Taoho (Snow) Tane applied for a recount of the votes cast at the 2025 elections for the Kaipara District Council in which he was a candidate for the position of Mayor.

[2] Mr Jonathan Larsen is the Mayor-elect. I granted Mr Larsen leave to be joined as an interested party given that he is the party most likely to be affected should a recount be granted, and the results significantly change.

[3] Mr Dale Ofsoske is the Electoral Officer for the election. Mr Ofsoske takes a neutral position in relation to whether there ought to be a recount, and the outcome of any recount.

Mr Tane's application

[4] The grounds for the Ms Tane's application are that:

(a) the margin between Mr Larsen and himself is only 21 votes which Mr Tane says is sufficiently narrow so that a recount could materially affect the result;

(b) the number of special votes and disallowed papers has not been publicly specified and may have an impact on the outcome; and

(c) ensuring accuracy and public confidence in the electoral process for the Kaipara District is in the public interest.

[5] Mr Tane's application is accompanied by an affidavit in support.

Electoral Officer's report

[6] On 21 October 2025 I directed the Electoral Officer, Mr Dale Ofsoske, to file a report on the conduct of the election canvassing, amongst other things:

(a) the general conduct of the election;

(b) the treatment of special votes, including:

(i) how many were received;

(ii) how many were counted and how many were deemed informal or discounted (for example due to lateness); and

(c) systems for ensuring the accuracy of counting (e.g. any audits undertaken).

[7] Mr Ofsoske's report dated 22 October 2025 confirms that when progress results were released on 11 October 2025, Mr Larsen received 52 more votes than Mr Tane. When the preliminary votes were released on 12 October 2025 (reflecting all votes except special votes), Mr Larsen had received 5 more votes than Mr Tane. Subsequently, when the final results were released on 17 October 2025 Mr Larsen's majority over Mr Tane had increased to 21 votes. The final results included all special votes that were not included in the preliminary results.

[8] When voting closed, Ms Ofsoske reports that 468 special votes were received. Of these, 198 special votes were allowed, which includes 11 ordinary votes found within special voting envelopes. Of the 288 special votes that were disallowed:

(a) 9 people voted twice (using both original and special voting documents);

(b) 197 people were not on the roll (i.e. they were disallowed by the Electoral Commission as unqualified); and

(c) 82 declarations required to accompany special votes were incomplete.

[9] 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.

[10] Further, Mr Ofsoske 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 Kaipara District Council.

Legal Framework

[11] 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),—
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> (a) cause a recount of the votes to be made; and
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> (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.

[12] 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.

[13] 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

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

[2] [2011] DCR 399

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]

[14] As Judge Tuohy did, I too agree with the approach of Judge Kellar in respect of the judge's task in deciding whether the test in s 90(3) has been satisfied.

[15] Otherwise, again like Judge Tuohy, there is no apparent reason to depart from the principles recognised in the previous decisions which Judge Tuohy identified above.

[16] 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.

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[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]
[9] Above n 1, at [35]

Discussion

[17] The issue for determination is whether the evidence satisfies me that Mr Tane has reasonable grounds to believe both that the declaration of final result is incorrect and that on a recount he might be elected.

[18] When Mr Tane filed his application, he also filed 'supplementary' submissions dated 20 October 2025. At the time these were not 'supplementary' but were the only submissions filed by Mr Tane up to that point. In any event, Mr Tane has since filed further submissions in support of his application. Importantly, Mr Tane has done so after having the benefit of the Electoral Officer's report.

[19] In his first set of submissions (filed prior to receipt of the Electoral Officer's report) Mr Tane submits that a large number of special votes have been invalidated and that he had yet to receive a response to his request for the number of special votes received and for a summary of why any special votes were considered invalid. Mr Ofsoske's report now speaks to this.

[20] I note for completeness that late on 23 October 2025 Mr Tane sought an extension to file further evidence and submissions. Despite this, Mr Tane filed his submissions on 24 October 2025 in accordance with my earlier directions.

[21] In his application for an extension, Mr Tane noted that he had received additional information from members of the public which he believed was relevant to his application. He noted, however, that he did not have time to obtain affidavits from these persons.

[22] In his submissions of 24 October 2025, Mr Tane again refers to having received several emails from members of the public who had cast special votes at mobile voting units. These emails were attached to his submissions in which Mr Tane again notes that due to time constraints he has been unable to confirm these 'via affidavit'.

[23] Mr Tane's submission is that the consistency of these concerns suggests that the high number of disallowed special votes may reflect systemic or procedural shortcomings.

[24] Given these emails are included with Mr Tane's submissions, the need for an extension has somewhat been overtaken by those submissions (other considerations aside).

[25] I have declined Mr Tane's application for an extension of time.

[26] At the end of the day, the emails do not assist me in making my determination. Each of the emails provided by Mr Tane are similar in substance. The authors advise Mr Tane that they voted in the election, or more particularly for Mr Tane himself, and cast a special vote because voting papers were either not sent or not received. The authors advise that they cast their votes at a mobile voting unit. The authors go on to ask Mr Tane whether their votes were allowed or disallowed, and if they were disallowed, on what basis. Some authors seek Mr Tane's help in understanding the process given that a large number of special votes were disallowed. Others ask Mr Tane to help them understand how "widespread irregularities might affect such a large volume of votes and what measures are in place to address these concerns."

[27] The emails are strikingly similar in content suggesting authors were following a template of sorts, although that is not a matter of particular concern to me, or the test I am required to apply.

[28] In a related vein, Mr Tane also says that multiple complaints were lodged with the Kaipara District Council regarding the operation of the mobile voting units, which prompted the Mayor-elect to convene an emergency meeting and to seek Council authority to refer the matter to the Department of Internal Affairs (DIA). Mr Tane says that the Electoral Officer confirmed such referral was outside the statutory processes.

[29] These events Mr Tane submits, also demonstrate procedural confusion and public concern about the conduct of the election.

[30] Mr Tane expanded on this in his second set of submissions. Mr Tane says that the Mayor-elect, Mr Larsen, along with other councillors, voted in favour of lodging the complaint with DIA. Mr Tane suggests that by voting in favour of lodging a complaint with DIA, Mr Larsen is aware of the seriousness of these issues.

[31] The emails sought to be adduced and Mr Tane's submissions are about so-called procedural confusion, and in particular that at an emergency meeting of the Council it was decided to lodge a complaint with DIA.

[32] The difficulty Mr Tane faces, however, as counsel for Mr Larsen rightly submits, is that it is unclear from the emails and Mr Tane's submissions what the issues are with the mobile voting unit or what other irregularity is alleged, other than that there was a large number of special votes disallowed.

[33] No evidence is provided in Mr Tane's evidence of any voting irregularity against which Mr Tane's subjective belief can be assessed against the objective test for reasonableness.[10]

[34] I agree with Mr Mitchell KC for Mr Larsen, that Mr Tane's evidence primarily relies on the margin between the votes for Mr Larsen and for himself.

[35] While Mr Tane says that multiple complaints were lodged with the Kaipara District Council which led to the referral of the "matter" to DIA, Mr Tane provides no detail about the nature of the issues complained of, or of the substance of the complaint made. To the extent that the Court is aware of some media reports relating to an emergency meeting being convened and an alleged referral to DIA, those media reports do not constitute evidence as to the nature of the issues referred to by Mr Tane.

[36] In any event, s 93 of the Act provides a mechanism where a candidate or any 10 electors have a complaint about the conduct of an election or about the conduct of a candidate or any other person, but that is not the basis for a recount. Rather, the test for a judicial recount is whether I consider that Mr Tane has reasonable grounds to believe that the declaration **is** incorrect, and that he **might** be elected on a recount.

[37] That there may have been procedural confusion and public concern by others about the conduct of the election is not a matter that greatly assists me in my

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[10] *Butler v Jordan* supra, at [8]

assessment as to whether Mr Tane has reasonable grounds to believe that the declaration is incorrect.

[38] While Mr Tane says he shares this public concern, his evidence does not expand on the basis for why he might have reasonable grounds to do so. At its heart, Mr Tane is concerned that the margin is slim and that the special and invalid votes are not transparent to him. I am not satisfied that this amounts to anything more than saying that closeness of the voting of itself provides 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.

[39] Mr Tane does expand on what he considers to be procedural and "serious administrative anomalies" which he says are disclosed by the Electoral Officer's report. In this regard, Mr Tane submits that the report shows that 288 special votes were disallowed which Mr Tane says is an extraordinarily high number (amounting to 59.3% of those received), given a district of Kaipara's size.

[40] Mr Tane also submits that given that this was the first election in Kaipara to use mobile voting units, such a high rate of rejection of special votes suggests: "a systemic or procedural failure in how voters were guided through the special-vote process and not necessarily a failure on the part of the voters themselves."

[41] Mr Tane submits further that where the statutory process has become so bureaucratic or complex that it causes a majority of voters to be disenfranchised, it can no longer be regarded as "fit for purpose". This concern, Mr Tane submits, is not isolated to Kaipara and refers to Mr Ofsoske allegedly saying that the special vote process is 'complex and robust' and that it would be worthwhile to have further discussions with lawmakers about how the process might be streamlined.

[42] Such a comment, Mr Tane submits, underscores that the "problem" of there being a record number of special votes and a record number of invalidated special votes, is not a problem with individual votes but may indicate that the process may no

longer be functioning as intended such that it might merit judicial and policy consideration.

[43] Mr Tane also submits that given that the election coincided with the abolition of the Kaipara Māori ward, there is uncertainty about whether the process of transferring electors between the Māori and general rolls was correctly administered, and that this may have resulted in the inadvertent removal or misclassification of some Māori voters from the roll.

[44] The problem with these submissions is that, as already noted, this is an application for a judicial recount of the votes and not an inquiry into the wider conduct of the election beyond the way the votes received were counted. Nor does it provide an opportunity to review the operation of the Act. That is a matter for government. Nor, for example, will a recount shed any light on how voters were guided through the special-vote process or matters going to the administration by the Electoral Commission of the Māori and general rolls.

[45] Mr Tane also refers to my decision in *Allsop v Day*,[11] where I granted Ms Allsop's application for a recount in relation to the Innes Ward of the Christchurch City Council at the 2022 local government elections. Mr Tane submits that in that case the margin between the relevant candidates was 16 votes and there were unresolved issues around special and informal ballots. Mr Tane submits that the present case is analogous because of:

(a) a 21 vote margin between Mr Larsen and himself; and

(b) what he says is a "lack of transparency over special/invalid votes", and

(c) documented public concern about voting procedures.

[46] These factors, Mr Tane submits, satisfy the first limb of s 90(3) and that the second limb of s 90(3) naturally follows.

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[11] *Alison Una Allsop v Jo Daly* [2022] NZDC 21346 [2 November 2022]

[47] Again, Mr Tane says that these matters have created understandable public concern, and that he is equally concerned, and these matters provide a reasonable basis for him to consider that the public declaration may have been incorrect, and that if a recount were conducted, he might be elected.

[48] As to the latter limb, Mr Tane submits that the from the Electoral Officer's report it is clear that the number of votes is more than thirteen times the margin between Mr Larsen and himself, and that this, combined with a new and untested voting process (by which I understand Mr Tane to be referring to the mobile voting units), and the high number of disallowed votes, constitutes a reasonable basis for believing that on a recount, he might be elected.

[49] I do not agree. I accept the submission of counsel for Mr Larsen that *Allsop v Daly*[12] is of limited assistance in this case. In that case, Ms Allsop provided evidence of an irregularity in the way special votes were processed, namely that special votes were deemed informal because accompanying special voting declarations were not witnessed as a result of Ms Daly's acknowledged inconsistent instructions.

[50] As noted in *Allsop v Daly*, *Re Bennett* also involved a case where Judge Adams found that a cluster of votes that had been disallowed by the Returning Officer because there was no official stamp on the documentation, was an official error such that he allowed these votes.[13] That was a possibility in *Allsop v Daly* and rendered Ms Allsop's concerns to be more than just a matter of closeness of the result.

[51] There is no evidence of a similar (or different), irregularity in this case.

[52] As to the special and invalid votes, Mr Tane has provided no evidence to ground a belief on his part that the way these were treated was incorrect in some respect, other than the closeness of the vote.

[53] I agree with counsel for Mr Larsen that what Judge Tuohy said in *Smith v Lampp* is apt:[14]

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[12] Above, n 1
[13] *Re Bennett (No2)* DC Waitakere CIV-2011-090-987654 (20 December 2011) at [25]
[14] Above n 1, at [60]

> ... 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.

[54] As in *Smith*, the basis for such an objective belief is simply not available on the evidence before the Court.

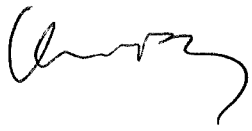
[55] Nor does the report of Mr Ofsoske point to any such irregularity. As Mr Mitchell KC notes, in each of the progress, preliminary, and final result, Mr Larsen was the highest polling candidate. While the number of special votes may be considered high, Mr Ofsoske's report explains how each of these votes were treated. I am satisfied that each of the three reasons provided, namely that there were double votes, or that there were people who voted when they were not enrolled to vote, or that declarations were wrongly made, are all grounds for disallowing votes.

[56] As Mr Mitchell says, s 20 of the Act governs eligibility to vote, and r 38 of the Local Electoral Regulations 2001 provides the mandatory requirement for any declaration. Mr Tane'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.

[57] Finally, I do not accept the general submission that there is a lack of transparency in the special vote process. Section 66 of the Act expressly provides that a candidate may appoint one or more scrutineers for the purposes of an election. In accordance with s 83 of the Act, scrutineers may also choose to be present when the Electoral Officer records, before the counting of the votes, the name of all electors who appear to have voted at the election. As Mr Ofsoske reports, Mr Tane, for reasons known only to himself, did not take up this opportunity to appoint a scrutineer for either of these purposes. In this regard, at least, Mr Tane cannot now complain of a lack of transparency as a basis for a reasonable belief that the declaration is incorrect and that on a recount he might be elected.

Result

[58] For the reasons stated, Mr Tane's application for a judicial recount is dismissed.



K D Kelly
District Court Judge