

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV 2025-004-1836
[2025] NZDC 25074**

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 Puketāpapa Local Board of the Auckland Council
BETWEEN	RAPHAELA ROSE Applicant
AND	DALE OFSOSKE, Electoral Officer Respondent
AND	BRENDAN JOSEPH LARMER Interested Party

Hearing:	On the Papers
Appearances:	A McDonald & M Thomas for Applicant Respondent in person A Glenie for Interested Party
Judgment:	3 November 2025

JUDGMENT OF JUDGE K D KELLY
**[on application for a recount of votes cast for the Puketāpapa Local Board of
the Auckland Council at the 2025 Local Government Election]**

Introduction

[1] On 22 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Ms Raphaela Rose applied for a recount of the votes cast at the 2025 elections for the Puketāpapa Local Board of the Auckland Council for which she was a candidate. The Puketāpapa Local Board is electing six members from 15 candidates.

[2] Mr Brendan Larmer is the candidate who is most likely to be unseated on a recount. On 24 October 2025, I granted leave for Mr Larmer to be joined as an interested party. There was no opposition to this.

[3] 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 Rose's application

[4] Ms Rose says there are reasonable grounds to believe that the declaration is incorrect and that on a recount she might be elected. Mr Thomas, counsel for Ms Rose, says that Ms Rose has reasonable grounds to believe that on a recount she might be elected because:

- (a) there was an unprecedented number of special votes cast at this year's election which seems to have put a lot of pressure on the vote counting system for the Auckland Council;
- (b) there were a large number of special votes deemed to be invalid;
- (c) verifying special votes requires officials to exercise a wide discretion due to the likelihood of variations or minor errors in voters' statutory declarations; and
- (d) it is common for people to write out their name or address slightly differently depending on the form they are filling in, how much room is on the form, and whether or not they are in a hurry (e.g. a name may be varied from how it is entered on the electoral roll, or from their photo identification), and that these matters may have led to votes being deemed invalid;
- (e) pressure to rush the verification and vote counting processes is likely to have come from the Council's previous announcement that final results would be released on 17 October 2025 against a backdrop of

public announcements of the Government's intention to change the rules for counting votes in relation to general elections; and

- (f) human error in these circumstances is unavoidable (as evident from an error in a Council press release as to how many votes Ms Rose received).

[5] Mr Thomas says that Ms Rose is certain that there were errors made in the verification of special votes and in vote counting and that on a recount she might be elected because:

- (a) there were only seven votes between her and Mr Larmer (who was elected) and that in the context of thousands of votes, this margin is minute;
- (b) Ms Rose received twice as many special votes as Mr Larmer, so of the probable hundreds of special votes deemed invalid, less than 20 need to be valid to change the result of the election; and
- (c) uncovering errors in the actual count may change the final vote.

Electoral Officer's report

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

[7] Mr Ofsoske's report dated 28 October 2025 confirms that when progress results were released on 11 October 2025, there were 89 votes between Ms Rose and the then lowest provisionally elected candidate (who was not Mr Larmer). Mr Larmer was the fifth of six provisionally elected candidates.

[8] When the preliminary votes were released on 13 October 2025 (reflecting all votes except special votes), there were 58 votes between Ms Rose and Mr Larmer who dropped in ranking to become the lowest provisionally elected candidate.

[9] Subsequently, when the final results were released on 18 October 2025 only seven votes separated Ms Rose and Mr Larmer who remained the lowest elected candidate. The final results included all special votes that were not included in the preliminary results.

[10] Contrary to the suggestion that there were hundreds of special votes deemed invalid, when voting closed Ms Ofoske reports that 342 special votes were received for the Puketāpapa Local Board. Of these, 193 special votes (56.5 per cent) were allowed. Of the 149 special votes (43.5 per cent) that were disallowed:

- (a) six people voted twice (using both original and special voting documents);
- (b) 77 people were not on the roll (i.e. they were disallowed by the Electoral Commission as unqualified);
- (c) 56 declarations required to accompany special votes were incomplete; and
- (d) 10 had either no declaration or no special vote document.

[11] Mr Ofoske 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. Mr Ofoske’s report also sets out details about how votes are processed.

[12] Finally, Mr Ofoske reports that while candidates were able to appoint scrutineers to observe the vote counting process, including the counting process after the voting closed, only one scrutineer was appointed by a candidate for the Puketāpapa Local Board. This scrutineer was not appointed by Ms Rose (or Mr Larmer for that matter).

Legal Framework

[13] 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.

[14] 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.

[15] 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

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

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

[16] Judge Tuohy agreed with the approach taken by Judge Kellar as to the judge’s task in deciding whether the test in s 90(3) has been satisfied. I do too. Judge Tuohy also said that there is no apparent reason to depart from the principles recognised in the previous decisions to which he referred. Again, I too agree with this.

[17] 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 Once more, I agree with this.

Submissions

Disallowed special votes

[18] Ms Rose also says that it is important that local body elections are seen to be accurate and that she is convinced that the public declaration of the number of votes

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* above n 2 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]

received by Mr Larmer and herself is incorrect, and that on a recount she might be elected.

[19] Mr Thomas for Ms Rose notes that the election ended at 12.00 noon on Saturday 11 October 2025 but that voters casting special votes at selected libraries were allowed to vote after that time if they were in the queue to vote before noon.

[20] In respect of Ms Rose's first and second grounds for a recount, Mr Thomas submits that 10,000 special votes were cast in the election across Auckland, which was 3,000 more than in 2022. This increase, it is submitted, was said to have been unprecedented and extraordinary by the Auckland Council and was also unexpected as is evident from the delay taken to release the final results.

[21] It is also submitted that the margin between Mr Larmer and Ms Rose is less than 0.2 per cent and that if just 16 of disallowed special votes were found to be valid, that would likely change the outcome of the election.

[22] Mr Glenie for Mr Larmer, on the other hand, submits that Mr Ofoske's report describes the vote processing and counting systems used for receiving, scanning, validating, and checking the votes, and for reporting the results. These systems, it is submitted, were audited and overseen by two Justices of the Peace as set out in Mr Ofoske's report. These systems are more sophisticated than the manual vote-counting systems used in the past which led to recounts, Mr Glenie submits, and Ms Rose has not identified with any flaws in the systems used.

[23] Mr Glenie for Mr Larmer also submits that the delay in the release of the results increased rather than decreased the reliability of the results as more time was available to ensure that all votes were properly counted. In any event, it is submitted that Ms Rose assumes that on a recount special votes will be added to the tally. Mr Glenie submits that there is no reasonable basis to believe that any 'mistakes' or 'errors' might only have included special votes being wrongly disallowed, and not wrongly allowed. A recount, therefore, could just as easily increase the margin between the parties.

[24] Mr Glenie also submits that of the breakdown of 149 disallowed special votes about which Mr Ofoske has reported:

- (a) double counting of the six votes would have been easy to identify without the use of discretion by vote counters;
- (b) unqualified voters (those not on the roll) were identified by the Electoral Commission and not by vote counters and hence did not involve the use of vote counters' discretion;
- (c) the 10 votes which did not have a declaration or voting document would also have been easy to identify without the use of discretion; and
- (d) the 56 incomplete declarations would also not involve the use of discretion and that Ms Rose has provided no evidence of any systemic mistakes in identifying votes falling within this class of votes.

[25] In reply, Mr Thomas submits that no explanation for the lower validation ratio as between the election in 2022 and this election is provided by Mr Ofoske or Mr Glenie and that it is therefore reasonable to believe the lower ratio of special votes compared to previous years was caused by the significant increase in special votes. The lower validation ratio, Mr Thomas submits, means that in all likelihood a recount will bring that ratio closer to that in previous elections which will mean an increase in the validated votes. This, given that Mr Rose received twice as many special votes than Mr Larmer, will cause an increase in votes in Ms Rose's favour compared to Mr Larmer.

[26] Mr Thomas also submits in reply that it is difficult to assess the claim that the current counting system is more sophisticated than in the past, given that Mr Glenie does not state which manual systems he is comparing the present system to, or when those system were used, or how they were different.

[27] Mr Thomas also says in reply that the stages in the voting counting system still use human confirmation which requires a degree of discretion and because of the

circumstances of this year's election, the chance of error is significantly increased. These circumstances, Mr Thomas says, include:

- (a) an unprecedented and extraordinary increase in special votes;
- (b) an increasing prevalence of media to complain about delays in vote counting at the general election; and
- (c) recent government moves to change the law to speed up vote counting at the general election.

[28] Mr Thomas also submits that an error in a Council press release, which stated that the margin was 46 votes between Mr Larmer and Ms Rose when it was only seven, supports Ms Rose's view that errors can still occur despite increased automation.

[29] In terms of whether there is a subjective, reasonable belief on Ms Rose's part, Mr Thomas submits that this can arise for many reasons and need not include a systemic flaw. The unexplained decrease in the validation ratio of special votes, or interference in special voting by a candidate, it is submitted, can form the basis for such a belief.

Events at Onehunga Library

[30] In relation to Ms Rose's third ground, Mr Thomas submits that it is well known that on 11 October 2025, a local board member disrupted people casting special votes at the Onehunga Library. It is submitted that some of these voters were likely to be voters for the Puketāpapa Local Board.

[31] Mr Thomas submits that the pressure on voters caused by the candidate telling voters that they could not vote, and by creating a scene, would have caused voters to rush when filling out their declarations and voting papers so as to make small mistakes that caused their special votes to be deemed invalid.

[32] Mr Thomas submits that in *Allsop v Daly*,¹⁰ a recount was directed where there was a smaller margin than here, and Ms Allsop had concerns about the special voting process at the Beckenham Service Centre.

[33] Mr Glenie for Mr Larmer, challenges this and submits that:

- (a) Ms Rose was not present in the library and has no evidence of her own about the events there, and does not even mention it in her first affidavit in support of her application, and nor has Ms Rose provided any evidence from an eyewitness as to the events in the library;
- (b) the Onehunga library is not in the Puketāpapa Local Board area but is in the Maungakiekie Subdivision, and even assuming the event happened as claimed, there is no reason to assume that it affected any votes cast for the Puketāpapa Local Board; and
- (c) there is no reason to believe that voters would have been made nervous by the event so as to make mistakes in their statutory declarations or on their voting papers.

[34] In relation to the latter point, Mr Glenie submits that there is not even any evidence of how many people were in the queue at the time of the events in the library. In short, Mr Glenie submits that: “Ms Rose’s account of the event is nothing more than unproven hearsay about an irregular event in a different area which cannot provide a reasonable ground required under s 90(3).”

[35] It is further submitted that the circumstances here are not like those in *Allsop v Daly*, referred to by Mr Thomas, where a flaw was identified in the way in which guidance was given to voters.

[36] By way of reply, Mr Thomas submits that given that Ms Rose’s belief is subjective, it is not correct to characterise her evidence about events at the Onehunga Library as hearsay given that she relies on a news report from a reputable source as to

¹⁰ *Allsop v Daly* [2022] NZDC 21346

the events at the library. It is submitted that it was reasonable for Ms Rose to do so, especially when the candidate involved is reported as having admitted to being present and causing the disturbance. Mr Thomas submits that the evidence simply shows that Ms Rose had good reason to believe that the incident happened.

[37] Mr Thomas also submits that the Onehunga Library was the nearest special voting location for some parts of the Puketāpapa Local Board area.

Discussion

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

[39] In essence, Mr Thomas submits that the unprecedented number of special votes and the events at the Onehunga Library constitute ‘something more’ than a concern about the closeness in voting, which is acknowledged as not being sufficient in itself to provide reasonable grounds to believe that the declaration is incorrect. Mr Thomas submits that the disruption at the library is similar to the situation in *Allsop v Daly* involving circumstances at a voting centre.

[40] I am not persuaded that there is ‘something more’ in this case beyond the closeness in voting so as to found a reasonable belief on Ms Rose’s part that the declaration might be incorrect.

[41] Considering the events at the Onehunga Library first, and without in any way wishing to downplay Ms Rose’s concerns about the events at the library, the difficulty Ms Rose faces is that any irregularities about voters somehow being influenced or intimidated as to how they might vote, or whether or not they were allowed to do so, is about the conduct of the election or more particularly, the conduct of the candidate in question.

[42] The evidence of the events at the Onehunga Library is sparse but regardless, does not go to why Mr Rose reasonably believes that the *declaration* itself is incorrect and that on a recount she might be elected. Even if errors were made by voters casting

votes, those errors do not go to how the votes would have been subsequently counted. Ms Rose does not explain how the events at the library such might lead to a belief that the votes that were cast, were improperly counted, or might be counted differently on a recount. Ms Rose's concerns in this regard are more properly concerns about matters outside the scope of a recount and are about matters which a recount will not obviously address.

[43] Whereas the ground for a recount arises from something that supports a reasonable belief that the declaration is incorrect, s 93 of the Act provides a mechanism where a candidate (such as Ms Rose) 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.

[44] In relation to the number of special votes, as I recently said in *Cooper v Ofsoske*¹¹ in relation to the Henderson-Massey Local Board, 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 Puketāpapa Local Board.

[45] Mr Ofsoske's report explains how each of the 342 special votes received for the Puketāpapa Local Board, 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 Rose's evidence does not provide any basis for a reasonable subjective belief that these requirements were not observed by the Electoral Officer in considering and counting the votes. Nor did Ms Rose have a scrutineer present who could have possibly observed any such irregularity in the counting process had there been one.

[46] Overall, I agree with Mr Glenie that no evidence is provided by Ms Rose of any voting irregularity in the way votes were counted so as to inform Ms Rose's subjective belief when assessed against the objective test for reasonableness.¹² Rather, what Ms Rose is submitting is that due to the number of special votes and the events

¹¹ *Cooper v Ofsoske* [2025] NZDC 24978 [30 October 2025]

¹² *Butler v Jordan* above n 2, at [8]

at the Onehunga library, something *might* have gone wrong in the way that the votes were counted. I am not persuaded that this provides Ms Rose a basis for a reasonable belief as to the declaration being incorrect. As Judge Tuohy said in *Smith v Lampp*:¹³

... 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.

[47] Nor, in my view, does the report of Mr Ofsoske suggest any irregularity in the treatment of special votes.

[48] Mr Thomas submits that no explanation for the lower validation ratio as between the election in 2022 and this election is provided by Mr Ofsoske or Mr Glenie such that it is therefore reasonable to believe the lower ratio of special votes compared to previous years was caused by the significant increase in special votes. While the ratio may be reflective of the number of special votes, I do not agree that it necessarily follows that in all likelihood a recount will bring that ratio closer to that in previous elections which will then lead to an increase in votes in Ms Rose's favour compared to Mr Larmer. Moreover, I am not persuaded that this *likelihood* is of there being an error in the declaration, or is such as to meet the test as already set out.

[49] I also agree with Mr Glenie that having regard to the reasons why special votes were declared invalid, the room for the exercise of discretion is limited. While human intervention is not entirely absent as Mr Thomas rightly says, the circumstances which Mr Thomas suggests might increase the chance of error in this regard are not compelling. Beyond there being a large number of unprecedented special votes across Auckland, the increasing prevalence of media to complain about the time it takes to count votes in a general election, or of changes to the law applicable to the Electoral Act 1993 have negligible, or no, bearing on whether vote counting was someone undertaken improperly. I agree with Mr Glenie that, if anything, the time taken to release the final results points towards an understanding on the part of the Electoral Officer to ensure the integrity of the results. This, in my view, does not support the reasonableness of Ms Rose's subjective belief.

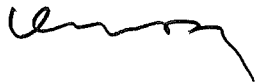
¹³ *Smith v Lampp*, above n 1, at [60]

[50] Moreover, the confirmation of the accuracy of the counting systems is provided by the election software and vote processes which are subject to an independent audit as Mr Ofsoske has reported. Ms Rose does not suggest that the audit may not be reliable in any respect.

[51] Finally, I am not persuaded that *Allsop v Daly* is analogous as Mr Thomas suggests. 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. The acknowledged different directions as to how to count votes is not an issue that arises here and there is no evidence of a similar (or different), irregularity in this case.

Result

[52] For the reasons stated, the application is dismissed. I decline to order a judicial recount of the votes for the Puketāpapa Local Board of the Auckland Council.



K D Kelly
District Court Judge