

22 December 2023

Hon Tama Potaka  
Minister for Māori Development

cc: Hon Dr Shane Reti

By email: [T.Potaka@ministers.govt.nz](mailto:T.Potaka@ministers.govt.nz);  
[S.Reti@ministers.govt.nz](mailto:S.Reti@ministers.govt.nz)

Tēnā koe Minister

### Te Rūnanga o Ngāti Whātua – Board Elections

Congratulations on your appointment as Minister of Māori Development.

We understand you have been briefed on matters concerning the November 2023 Māori Trust Board Elections for Te Rūnanga o Ngāti Whātua being run almost a year before the terms of incumbent Board members expired. We wanted you to know that we did check with your officials at Te Puni Kokiri and got their confirmation on the timing of the elections before we proceeded. Please see the **attached** email correspondence between Te Puni Kokiri and Te Rūnanga o Ngāti Whātua.

Antony Thompson raised the issue of election timing with Te Puni Kokiri on 7 June 2023 asking whether the elections should be delayed to 2024 given the delay following the last elections in 2020/2021. That delay eventually resulted in the Te Rūnanga o Ngāti Whātua Order 2021 (the **Order**) made under the Maori Trust Boards Act 1955 (the **Act**). The response from Te Puni Kokiri later that same day was:

No don't delay prepare and go ahead with the elections make sure all is in order.

When the issues with the timing of the November 2023 election came to light Te Rūnanga o Ngāti Whātua got back in touch with Te Puni Kokiri. Te Puni Kokiri provided suggestions, including that “the incumbent five [board] members who were not re-elected to formally resign” and “Te Puni Kokiri will then be in a position to process the extraordinary vacancies.”

Te Rūnanga o Ngāti Whātua has now sought independent legal advice which is also **attached** for your reference.

This advice confirms that the original recommendation from Te Puni Kokiri to go ahead with the elections in 2023 was wrong and has resulted in invalid elections being held and the possible solutions Te Puni Kokiri have “suggested” are also illegal.

We are now following the advice of Te Rūnanga o Ngāti Whātua's lawyers and intend to hold new elections for the Board, which are compliant with the Act and the Order, starting in July of 2024.

However, the mana of Te Rūnanga o Ngāti Whātua requires us to bring this to your attention. We will also be seeking compensation for the costs incurred in reliance on TPK's statements.

We have also written to Te Puni Kokiri concerning an extraordinary vacancy on the Te Rūnanga o Ngāti Whātua Board, due to a resignation in May this year, requesting that it be filled by an eligible candidate appointed by the Governor-General on the Minister's request. We have had no response from Te Puni Kokiri since we wrote to them on 19 May 2023 and have recently written to them again chasing this matter up. The term of current trustees does not expire until 1 October 2024.

We look forward to meeting with you soon and please let us know if you are able to come to Whangārei to visit Te Rūnanga o Ngāti Whātua. We would welcome the opportunity to host you.

We wish you a safe and peaceful Christmas and summer.

Ngā mihi



Alan Riwaka  
**Manahautū**

## Alan Riwaka

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**To:** Antony Thompson  
**Subject:** RE: Information re the Elections Legally Privileged and confidential

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**From:** Tukukino Royal <[Tukukino.Royal@tpk.govt.nz](mailto:Tukukino.Royal@tpk.govt.nz)>  
**Sent:** Tuesday, December 5, 2023 10:49 AM  
**To:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>  
**Subject:** RE: Information re the Elections Legally Privileged and confidential

Mōrena Antony,

I hope this email finds you well. As we discussed in our hui on Friday 1 December 2023, Te Puni Kōkiri has provided you with a suggestion regarding the Board's next course of action.

1. Te Puni Kōkiri has suggested that Te Rūnanga o Ngāti Whātua allow for the incumbent **five** members who were **NOT** re-elected to formally resign from their positions as members of the Board.
2. The incumbent Board members that are to resign from their positions are:
  1. George Wiki NATHAN-PATUAWA
  2. Anahera o te Haahi Ratana MOREHU
  3. John Alexander MARSDEN
  4. Rangimarie Naida GLAVISH
  5. Teni Patrick NEPIA

Once all five resignation letters have been received, the Board will have to provide formal notification to Te Puni Kōkiri, and TPK will then be in a position to process the extraordinary vacancies.

As discussed in our hui on Friday, the information that Te Puni Kōkiri provides remains only as a suggestion, and while it may seem straightforward, I would strongly suggest that you seek independent legal advice, as we are not permitted to provide legal advice on this matter.

Happy to kōrero further if needs be.

Aku mihi,

---

### Tukukino Royal

*Te Whānau-a-Apanui, Ngāti Raukawa,  
Ngāti Porou, Ngai-te-Rangi.*  
Poutoko Ture | Solicitor  
Legal Services, Te Tari Matua



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**Te Puni Kōkiri**, Te Puni Kōkiri House, 143 Lambton Quay, Wellington 6011  
PO Box 3943, Wellington 6140, New Zealand



Te Puni Kōkiri Website



Kōkiri Magazine



Facebook

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**From:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>  
**Sent:** Tuesday, November 28, 2023 8:30 AM  
**To:** Tukukino Royal <[Tukukino.Royal@tpk.govt.nz](mailto:Tukukino.Royal@tpk.govt.nz)>  
**Subject:** RE: Information re the Elections Legally Privileged and confidential

Kei te pai  
Can we korero Wednesday avo then.

My concern now is that we have undertaken the election and are currently going through the transition between boards with governance training, portfolio allocations and preparation of account signatories for 2024.

My timeline before end of year is also tight as we have an AGM, final board hui and transition of trustees to contend with.

Also 2024 commitments to deal with

Im currently looking at the following in support of the new board:

**December 2023**

- Friday 1<sup>st</sup> December BNZ bank signatory allocations 2024
- Wednesday 6<sup>th</sup> Dec New Board prep for AGM presentations
- Saturday 9<sup>th</sup> Dec Runanga AGM for year 2022-2023
- Monday 11<sup>th</sup> Dec Online Governance session for new board
- Thursday 14<sup>th</sup> Dec Day prelim strat hui
- Friday 15<sup>th</sup> Dec Last Board hui of existing board
- Wednesday 20<sup>th</sup> Dec Close for xmas

**January 2024**

- Two day governance/strategy day
- Ratana Pa Ministers attendance

**February 2024**

- Te Kahu o Taonui attendance Waitangi
- National Iwi Chairs attendance Waitangi
- Waitangi Ministers hui
- First Board hui (TBC Feb 16<sup>th</sup>)

So as you can see all this in waiting for confirmation

Nga Mihi  
Antony



**ANTONY THOMPSON**

Te Rūnanga o Ngāti Whātua



Chief of Operations

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ADDRESS : WHANGĀREI: 193 Lower Dent St, PO Box 1784, Whangarei 0140  
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From: Tukukino Royal <[Tukukino.Royal@tpk.govt.nz](mailto:Tukukino.Royal@tpk.govt.nz)>

Sent: Monday, November 27, 2023 12:25 PM

**To:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Subject:** RE: Information re the Elections Legally Privileged and confidential

Kia Ora anō Antony,

If you could allow me an additional day or so, I would greatly appreciate the opportunity to gather further information and gain a more comprehensive understanding of our current situation. This will enable me to provide you with more accurate advice regarding our next steps.

As of now, it seems there may be some conflicting statutory requirements that I will need to thoroughly assess before our meeting. Given sufficient time, I anticipate being able to complete this analysis within a day or so.

I will keep you updated on a possible meeting date 😊

Aku mihi,

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**Tukukino Royal**

*Te Whānau-a-Apanui, Ngāti Raukawa,*

*Ngāti Porou, Ngai-te-Rangi.*

**Poutoko Ture | Solicitor**

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**From:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Sent:** Monday, November 27, 2023 10:10 AM

**To:** Tukukino Royal <[Tukukino.Royal@tpk.govt.nz](mailto:Tukukino.Royal@tpk.govt.nz)>

**Cc:** Beverly Penjueli Tukua <[Bev.PenjueliTukua@tpk.govt.nz](mailto:Bev.PenjueliTukua@tpk.govt.nz)>

**Subject:** FW: Information re the Elections Legally Privileged and confidential

Kia Ora

We had an election issue in the 2020 elections (under 18 year olds were sent voting packs) so we had another election that ran into 2021- see below chain

This year after we had a resignation (Allan Pivac) I confirmed with Frank if we stick to the timeline from 2020 or to 2021 timeline

Were instructed to continue with the election this year- email below

Hope this suffices but still keen to korero today

Nga mihi

Antony



**ANTONY THOMPSON**

Te Rūnanga o Ngāti Whātua



Chief of Operations

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**From:** Frank Hippolite <[hippf@tpk.govt.nz](mailto:hippf@tpk.govt.nz)>

**Sent:** Wednesday, June 7, 2023 4:26 PM

**To:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Subject:** RE: Information re the Elections Legally Privileged and confidential

No don't delay prepare and go ahead with the elections make sure all is in order.  
Contact me if you aren't sure of anything

**Frank Hippolite**

Senior Solicitor Legal Services

Te Puni Kōkiri, National Office

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PO Box 3943, Wellington 6140, New Zealand

**From:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Sent:** Wednesday, June 7, 2023 3:31 PM

**To:** Frank Hippolite <[hippf@tpk.govt.nz](mailto:hippf@tpk.govt.nz)>

**Subject:** RE: Information re the Elections Legally Privileged and confidential

Kia ora

Yes that's correct, appointment of Jamie Toko

**Can I ask another question;**

The Runanga had a delay in confirming the trustees in the last elections and officially it took 10 months to officiate. This year is when we would normally hold the elections again, however due to the delay in 2020 should we delay the elections?

**Timeline:**

August 2020	Board elections commenced
November 2020	Elections delayed due to incorrect voting forms
February 2021	Elections held and votes counted
August 2021	Confirmation and sign off by Minister

Either way we have improved our processes and just need to confirm if we continue with 2023 elections or delay to 2024

Nga Mihi  
Antony



## ANTONY THOMPSON

Te Rūnanga o Ngāti Whātua



Chief of Operations

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**From:** Frank Hippolite <[hippf@tpk.govt.nz](mailto:hippf@tpk.govt.nz)>

**Sent:** Wednesday, June 7, 2023 3:09 PM

**To:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Subject:** RE: Information re the Elections Legally Privileged and confidential

Kia Ora Anthony, just confirming your letter to the Minister regarding the resignation of Alan Pivac is to ask him to appoint Mr Jamie toko to the extraordinary vacancy is that correct?

Ngā Mihi

**Frank Hippolite**

Senior Solicitor Legal Services

Te Puni Kōkiri, National Office

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PO Box 3943, Wellington 6140, New Zealand

**From:** Antony Thompson <[Antony.thompson@ngatiwhatua.iwi.nz](mailto:Antony.thompson@ngatiwhatua.iwi.nz)>

**Sent:** Tuesday, June 6, 2023 8:01 AM

**To:** Frank Hippolite <[hippf@tpk.govt.nz](mailto:hippf@tpk.govt.nz)>

**Cc:** : Ben Kingi <[Ben.Kingi@parliament.govt.nz](mailto:Ben.Kingi@parliament.govt.nz)>; Beverly Penjueli Tukua <[penjb@tpk.govt.nz](mailto:penjb@tpk.govt.nz)>; W Jackson (MIN <[w.jackson@ministers.govt.nz](mailto:w.jackson@ministers.govt.nz)>; TRONW Trustees <[Trustees@ngatiwhatua.iwi.nz](mailto:Trustees@ngatiwhatua.iwi.nz)>; Rangimarie Naida Glavish <[nglavish@ngatiwhatua.iwi.nz](mailto:nglavish@ngatiwhatua.iwi.nz)>

**Subject:** FW: Information re the Elections Legally Privileged and confidential

Kia Ora

Following up receipt of our email on the 19<sup>th</sup> May

We have made contact with Jamie Toko and preparing a brief for her

Nga Mihi  
Antony



## ANTONY THOMPSON

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**From:** Antony Thompson

**Sent:** Tuesday, May 23, 2023 4:25 PM

**To:** Frank Hippolite <[hippf@tpk.govt.nz](mailto:hippf@tpk.govt.nz)>

**Cc:** Ben Kingi <[Ben.Kingi@parliament.govt.nz](mailto:Ben.Kingi@parliament.govt.nz)>; [penjb@tpk.govt.nz](mailto:penjb@tpk.govt.nz); W Jackson (MIN)

<[w.jackson@ministers.govt.nz](mailto:w.jackson@ministers.govt.nz)>; Rangimarie Naida Glavish <[nglavish@ngatiwhatua.iwi.nz](mailto:nglavish@ngatiwhatua.iwi.nz)>; AlanRiwaka

<[ala.riwaka@ngatiwhatua.iwi.nz](mailto:ala.riwaka@ngatiwhatua.iwi.nz)>

**Subject:** Information re the Elections Legally Privileged and confidential

Kia Ora

Please take notice that **Allan Pivac** has tendered his resignation as a trustee for Te Rūnanga o Ngāti Whātua as at 15 May, 2023.

The Te Rūnanga o Ngāti Whātua board met on 19 May, 2023 and accepted his resignation.

### Chair/Deputy Chair

- Te Rūnanga o Ngāti Whātua board motioned for the Deputy Chair- Kahurangi Dame Naida Glavish to fill the position of chairperson.
- The Deputy Chair role is yet to be decided till the June Board Meeting

### Attached information

1. Copy of resignation letter
2. Copy of previous election results
3. Confirmation of Jamie Toko as the next highest non elected vote

### Trustee Replacement

Te Rūnanga o Ngāti Whātua board through the 2021 election results attached acknowledge that Jamie Toko is the next candidate from the last election results to fill the vacated seat from Allan Pivac in the Northern Wairoa Takiwa. Jamie has been contacted and has accepted the role.

Please let me know the process you want followed from this point forward



Mauri Ora

Antony



## ANTONY THOMPSON

Te Rūnanga o Ngāti Whātua



Chief of Operations

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## **MEMORANDUM**

TO: Te Rūnanga o Ngāti Whātua Board  
FROM: Mai Chen  
DATE: 20 December 2023  
SUBJECT: Advice on Board Elections held in November 2023

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### **Instructions**

- 1 You have instructed me to advise the Te Rūnanga o Ngāti Whātua Board on the recent November 2023 elections that were held for the Board. I have not previously advised on this matter but I have reviewed material provided to me by Antony Thompson including his briefing below by email of 19 December 2023:

### **Briefing from Anthony Thompson History**

#### **(a) 2020 Elections**

- *The 2020 elections were faulted due to voting packs being sent to under 18 year olds*
- *A second election occurred in February 2021 and was approved by TPK to be held*
- *However the Warrant was delayed and not signed till October 2021*

#### **(b) 2023**

- *June 2023 instructions given to hold elections from TPK*
- *November 2023 elections completed with TPK scrutineer and results sent to TPK*
- *Reply from TPK that new management has taken over and assessing situation*

#### **(c) December 2023**

- *Informed by TPK election should have been held in October 2024*
- *TPK Team still working on solutions (reply due 18.12.2023)*
  - a. Option 1: Minister makes a full and final decision*
  - b. Option 2; Alternate solution given for unsuccessful candidates to resign from their posts allowing newly elected trustee to take over*
  - c. Option 3: Hold till October 2024 and natural course takes over, results are officiated*

d. Option 4: Combination of Options 2 + 3

**(d) What this means**

- We are in limbo
- Current trustees who were unsuccessful have the right to continue till October 2024 (Signed Warrant)
- Unsure still if the current election allows for new trustees to commence
- Waiting for ministers reply (Tama Potaka)

2 Anthony Thompson also sent me Te Puni Kōkiri's (TPK's) email of 5 December at 10.49am "suggesting" the following but also "strongly suggesting that you [Te Runanga] seek independent legal advice, as we are not permitted to provide legal advice on this matter."

1. that Te Rūnanga o Ngāti Whātua allow for the incumbent **five** members who were **NOT** re-elected to formally resign from their positions as members of the Board.
2. The incumbent Board members that are to resign from their positions are:
  1. George Wiki NATHAN-PATUAWA
  2. Anahera o te Haahi Ratana MOREHU
  3. John Alexander MARSDEN
  4. Rangimarie Naida GLAVISH
  5. Teni Patrick NEPIA

*Once all five resignation letters have been received, the Board will have to provide formal notification to Te Puni Kōkiri, and TPK will then be in a position to process the extraordinary vacancies.*

3 I have reviewed the relevant law and set out my advice below.

**Advice**

4 The starting point is the Te Rūnanga o Ngāti Whātua Order 2021 (the **Order**). The Order was approved by Cabinet's Legislation Committee, signed by the Governor-General in Executive Council and came into effect the day after its notification in the Gazette, on 1 October 2021.<sup>1</sup> The Order was made under section 55 of the Maori Trust Boards Act 1955

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<sup>1</sup> See Clause 2 of the Order and notification in the Gazette was on 30 September 2021.

(the **Act**) to validate the election of new members of the Te Rūnanga o Ngāti Whātua Board (the **Board**) in January 2021. That election “was irregular because the Board failed to comply with some of the procedural requirements for conducting an election under the Act.”<sup>2</sup> Clause 4(4) of the Act further provided that:

*Following the date fixed by the Act for the election of the Board, the elected candidate for the Ōrākei takiwā died. Because the Act and the Maori Trust Boards Regulations 1985 do not make sufficient provision for the replacement of a candidate who dies in the period following election but before appointment, this order provides for the appointment under section 55 of the Act.*

- 5 The Order then sets out in clause 5 who is validly appointed, and states at sub clause (3) that (emphasis added):

*The members of the Board appointed in subclause (1)(b) and Anahera o te Haahi Ratana Morehu, appointed in subclause (2), **hold office for a term of 3 years starting on the date on which this order commences.***

- 6 This is consistent with the Act under which the Order is made, s 15 of which provides (emphasis added):

*15 Term of office of members*

*(1) The members of each Board in office at the commencement of this Act shall, subject to the provisions of this Act, continue in office for the residue of the term for which they were appointed.*

*(2) Except as otherwise provided by this or any other Act, every member of a Board **shall be appointed for a term of 3 years**, and any member may from time to time be reappointed.*

*(3) Notwithstanding anything to the contrary in this Act, every member of a Board, unless he sooner vacates his office, shall continue to hold office until his successor comes into office.*

- 7 The Te Rūnanga o Ngāti Whātua Charter dated October 1995 states on page 4 that it “complies in all respects with *The Maori Trust Boards Act 1955*” and that “where there is conflict between the contents of the Charter and the *Maori Trust Boards Act* the act prevails.”
- 8 It also confirms on page 17 that “Every member of the board shall be appointed for a term of 3 years”.

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<sup>2</sup> Clause 4(3)

- 9 Since the Order commenced on **1 October 2021**, this was the start date of the appointment of the current Board. Their term of three years runs until **1 October 2024**. Thus, the November 2023 elections were held almost a year too early.
- 10 This means that the November 2023 elections were invalid as they breached both the Act and the Order.

### **Legal issue**

- 11 The issue is whether this breach of clause 5(3) of the Order and of the requirements of the Act regarding elections can be the subject of another validation order to remove the irregularity.
- 12 Sections 54 to 55A of the Act relevantly provide (emphasis added):

#### ***Minor irregularities at elections***

##### *54 Election not invalid by reason of certain irregularities*

*An election under **this Part** shall not be invalid by reason of any irregularity in any of the proceedings preliminary to the voting, or by reason of any failure to hold an election at any place appointed for holding an election, or to comply with the directions contained in this Act or in regulations under this Act as to the conduct of elections or the counting of the votes, or by reason of any mistake in the use of the forms used at any such elections, **if it appears that the election was conducted in accordance with the principles laid down in this Part, and that the irregularity, failure, or mistake did not affect the result of the election.***

##### *55 Validation of certain irregularities*

*Where anything is omitted to be done or cannot be done **at the time required** by or under **this Part**, or is done before or after that time, or is otherwise irregularly done in matter of form, **or sufficient provision is not made by or under this Part**, the Governor-General may, by Order in Council published in the Gazette, at any time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form, or make other provision for the case as he thinks fit.*

##### *55 A Invalid elections*

*(1) Where in the **opinion** of the Governor-General irregularities have occurred in respect of any election under this Act which it would **not be proper or desirable to validate under section 55**, he may, by Order in Council, declare any such election to be invalid and make such provisions as he thinks fit for the holding of a fresh election.*

*(2) An order under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements)."*

- 13 Applying these sections, the holding of the November 2023 elections almost a year earlier than the end of the three year term is not a "minor irregularity". The word "minor" is in the

heading above sections 54-55A and s10 of the Legislation Act 2019 provides (emphasis added):

*10 How to ascertain meaning of legislation*

*(1) The meaning of legislation must be ascertained from **its text** and in the light of its purpose and **its context**.*

*(2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.*

*(3) The text of legislation includes the **indications** provided in the legislation.*

*(4) Examples of those indications are preambles, a table of contents, **headings**, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.*

- 14 The three year term for Board members is mandated and expressly specified in s 15 of the Act, and in clause 5(3) of the Order. There has been a clear breach of both.

**Section 54**

- 15 The breach in your November 2023 election does not appear to fall within the scope of s 54 of the Act. Section 54 states "*an election under this Part shall not be invalid by reason of ...*" and then lists certain irregularities. The irregularities covered by s 54 are:

*any irregularity in any of the proceedings preliminary to the voting, or*

*by reason of any failure to hold an election at any place appointed for holding an election, or*

*to comply with the directions contained in this Act or in regulations under this Act as to the conduct of elections or the counting of the votes, or*

*by reason of any mistake in the use of the forms used at any such elections.*

- 16 The reference to "this Part" refers to Part 3 of the Act concerning elections and the sections under this Part concern rolls, nomination of members and election by postal ballot or electronic voting. But the term of office mandated in s 15 of the Act is in Part 2 under the heading "*General provisions relating to Maori Trust Boards.*"
- 17 The fact that running an election almost a year before the three year term is up is not caught by s 54 is confirmed by the second precondition of s 54 which states it only applies "*if it appears that the election was conducted in accordance with the principles laid down in this Part...*" Once again, this is a reference to Part 3.
- 18 The final precondition for coverage under s 54 is "*that the irregularity, failure, or mistake did not affect the result of the election.*" No-one can predict the future and it is uncertain whether you would get the same result if you run the elections in July – September 2024 in advance of terms of members of the Board expiring on 1 October 2024, as required by the Act and the terms of the Order. We cannot even be certain that the same candidates

would put themselves forward for nomination depending on health status and capacity. Thus this final precondition also cannot be met for the November 2023 elections, and they are therefore “invalid” under the Act.

- 19 The November 2023 elections are also invalid given the specific requirements for the latest dates required for certain steps in the election – s 47(3) of the Act regarding nominations and s 52 of the Act regarding receiving ballot papers – these were two of the irregularities validated by the Order in 2021. These are Part 3 irregularities but validating these errors will not make the 2023 elections lawful due to the one year too early problem, which is a Part 2 error.

### **Section 55**

- 20 The next question is - can a new validation order be made under s 55 of the Act to remedy a breach of the 2021 Order to validate the previous election?
- 21 The focus in s 55 is on validating “*certain irregularities*” concerning timing but only as “*required by or under this Part*” being Part 3. It also validates irregularities where “*sufficient provision is not made by or under this Part*” being Part 3. Thus the irregularity in your November 2023 election breaches a section in Part 2 of the Act (concerning the term for members of the Board) and once again **falls outside** the coverage of section 55 which refers to Part 3 irregularities.

### **Section 55A**

- 22 Under s 55A, the Governor-General can still “*declare any election to be invalid and make such provision as he thinks fit for the holding of the fresh election,*” but only if in his opinion “*irregularities have occurred to respect of any election under this Act which would not be proper or desirable to validate under section 55.*” Te Rūnanga’s invalid November 2023 election does meet this precondition as it is not proper to validate under s 55 as the irregularities fall outside the scope of that provision as outlined above.
- 23 However, such a declaration and intervention by the Governor-General is not needed. There has been a clear breach of section 15 of the Act and clause 5(3) of the Order. The November 2023 elections are invalid. There will need to be fresh elections in July - September 2024 before the three year term of the members of the Board expires on 1 October 2024, consistent with the Act and the Order.
- 24 Te Rūnanga o Ngāti Whātua could approach the Minister (Hon Tama Potaka) to propose to Cabinet’s Legislation Committee that it recommends to the Governor-General that she intervene under s 55A. However, this will have to be supported by advice from the Minister’s officials at TPK as well as Crown Law and be approved by the Cabinet Legislation Committee. This may not succeed for the reasons I set out above.
- 25 Given the full agenda of the new Coalition Government as reflected in the coalition agreements between National/ACT/NZ First and the Speech from the Throne, the Minister

and his cabinet colleagues are unlikely to want to spend scarce time on this matter when government intervention is not necessary.

- 26 Te Rūnanga cannot hold the results of the flawed November 2023 election over until the three year term has expired under the Order on 1 October 2024. The reason is that the November 2023 election was invalid and its results are therefore unlawful. As previously stated, even if it could be argued that the elections were not invalid, you cannot guarantee the election results would be the same if the new elections are held in September 2024, as compared to the election in November 2023.
- 27 I therefore advise that:
- (a) The November 2023 election is invalid as it did not comply with the Act or the Order.
  - (b) The current trustees on the Board should continue until their warrants expire on 1 October 2024 under the terms of the Order.
  - (c) Fresh elections must be held in July – September 2024 which are compliant with the Act and the Order and The Maori Trust Boards Regulations 1985. A new Board could be appointed following those elections for the period after 1 October 2024 when the three year terms of extant members of the Board have expired;
  - (d) If any of the current members of the Board **voluntarily** wish to resign, then they should do that consistently with sections 15 and 16 of the Act on the terms of office of members and filling extraordinary vacancies.
- 28 Let me know if it would assist for me to Zoom with the Board or yourself.



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