

Office of the Minister for Māori Development  
Chair, Cabinet Legislation Committee

## TE RŪNANGA O NGĀTI WHĀTUA ORDER 2024

### Proposal

- 1 This paper seeks the approval of Cabinet for the submission to the Executive Council of the Te Rūnanga o Ngāti Whātua Order 2024 ( **the Order**) to be made under section 55 of the Maori Trust Boards Act 1955.
- 2 The purpose of the Order is to validate the 2024 elections of members of Te Rūnanga o Ngāti Whātua Trust Board (**the Board**) and appoint the newly elected or deemed elected Board members.

### Background

- 3 The Order is routine and does not require any policy decisions.
- 4 Section 4 of Te Runanga o Ngati Whatua Act 1988 constituted the Board as a Māori Trust Board within the meaning and for the purposes of the Maori Trust Boards Act 1955 (**the Act**).
- 5 The process for Māori Trust Board elections is set out in the Act and the Maori Trust Board Regulations 1985. Boards are required to call for nominations at a prescribed time and in a prescribed manner. If the number of nominations for a section or division of the Board does not exceed the number of positions, the nominees are deemed elected. If the number of nominations exceeds the number of positions, then postal ballot elections are required.
- 6 Duly elected or deemed elected Board members are appointed by the Governor-General under section 14 of the Act.
- 7 The Board's term of office expired on 1 October 2024. Prior to the Board's current term expiring, the Board called for nominations of new members and conducted an election for the three-year term due to begin in October 2024.
- 8 The Board did not meet the following procedural requirements for conducting an election under the Act:
  - 8.1 the requirement under section 46(2)(a) of the Act to give public notice calling for nominations on 2 consecutive days (nominations were called for on 1 day only);

- 8.2 the requirement under section 46(2)(b) of the Act to give notice in writing calling for nominations to all Maori Committees, Maori Executive Committees, and District Maori Councils in the districts where the majority of beneficiaries reside;
- 8.3 the requirement under section 52(1) of the Act for the Returning Officer to be appointed by the Minister (the Returning Officer was instead appointed directly by the Board).
- 9 The election was also irregular because, prior to the election, the Board permitted some beneficiaries to change the section or division in which they were initially enrolled to another section or division, which is inconsistent with section 42(5) and (6) of the Act.
- 10 Section 55 of the Act provides that the Governor-General may, by Order in Council published in the *Gazette*, validate an irregularity in process, time, or form of the conduct of an election.
- 11 s9(2)(h)  
[REDACTED]
- 12 Based on the advice I have received from my officials, I have determined it is proper and desirable to validate the Board's elections through an Order in Council made under section 55 of the Act. I am also of the view that it is appropriate that the Order appoint the newly elected or deemed members of the Board.
- 13 The Parliamentary Counsel Office (**PCO**) has drafted an Order that validates the Board's 2024 elections and appoints the elected or deemed elected Board members for a term of three years.
- 14 In the meantime, by virtue of section 15(3) of the Act, the Board has been able to continue functioning as the outgoing members continue in office until their successors are appointed. This ensures that the business of the Board will be able to continue without major disruption.

### Timing and 28-day rule

- 15 It is a Cabinet Manual requirement that secondary legislation made by Order in Council must not come into force until at least 28 days after it has been notified in the *New Zealand Gazette* (**the 28-day rule**).
- 16 Under Paragraph 7.101 of the Cabinet Manual, Cabinet may grant a waiver of the 28-day rule "where secondary legislation does not require compliance by the public, or where it is otherwise appropriate to seek a waiver of the 28-day rule." Two examples of where waiver is appropriate are:

- 16.1 where the secondary legislation has little or no effect on the public or confers only benefits on the public – paragraph 7.101(a);
- 16.2 where irregularities need to be validated – paragraph 7.101(e).
- 17 The Order is required to validate irregularities and has little or no effect on the public. Waiving the 28-day rule will allow the new Board members to take office as soon as possible.
- 18 Accordingly, I propose that the 28-day rule be waived, and the Order should come into force on the day after the date it is notified in the *Gazette*. This will allow the newly elected members to take office as soon as possible.

### **Compliance**

- 19 The Order will comply with each of the following:
- 19.1 the principles of the Treaty of Waitangi;
- 19.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions;
- 19.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 19.4 the principles and guidelines set out in the Privacy Act 2020;
- 19.5 relevant international standards and obligations; and
- 19.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

- 20 There are no grounds for drawing the Order to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 21 The PCO have certified the Order as being in order for submission to Cabinet, except that the Order will come into force earlier than the 28th day after its notification in the *Gazette*.

### **Impact Analysis**

- 22 A Regulatory Impact Statement is not required because the making of the Order has not involved a policy proposal.

## Publicity

- 23 The Order will be notified in the *Gazette*. The Board will notify their beneficiaries of the appointments when the new members take office.

## Proactive release

- 24 I propose to proactively release this paper within 30 business days of the Order coming into force. Redactions may be made as appropriate in line with the Official Information Act 1982.

## Consultation

- 25 The Board was consulted on the draft Order and have confirmed that the Order meets their requirements.

## Recommendations

- 26 I recommend that the Cabinet Legislation Committee:
1. **authorise** the submission to the Executive Council of the Te Rūnanga o Ngāti Whātua Order 2024;
  2. **note** that a waiver of the 28-day rule is sought:
    - 2.1 so that the Te Rūnanga o Ngāti Whātua Order 2024 can come into force on the day after the date of its notification in the *New Zealand Gazette*;
    - 2.2 on the grounds that the Order is required to validate irregularities and has little or no effect on the public and it is beneficial for the newly elected Board members to take office as soon as possible;
  3. **agree** to waive the 28-day rule so that the Te Rūnanga o Ngāti Whātua Order 2024 can come into force on the day after its notification in the *New Zealand Gazette* on the grounds that the Order is required to validate irregularities and has little or no effect on the public.

Authorised for lodgement

Hon Tama Potaka  
**Minister for Māori Development**