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Procedures for Altering Boundaries and Transferring Responsibilities

This part of the Guide explains the procedures for altering the boundaries of a local authority district or region, or transferring a responsibility from one local authority to another. A diagram showing how these procedures operate is at page 13.

INITIATION

Who can initiate a proposal (Clause 1 of Schedule 3)

A proposal to alter the boundaries of a district or region or to transfer a responsibility may be initiated by:

- an affected local authority,
- the Minister of Local Government, or
- a petition signed by at least 10% of the electors of the area concerned.

With regard to proposals initiated by way of petition, the “area concerned” in the case of a boundary alteration would be the area to be transferred from one district or region to another. For a transfer of responsibility the “area concerned” could also be part of a district or region, e.g. where a drainage function for a defined area is being transferred from one local authority to another.

How a proposal is initiated (Clause 9 of Schedule 3)

The proposer must lodge a reorganisation proposal at the principal office of every local authority that may be affected by the proposal.

Contents of reorganisation proposal (Clause 2)

A petition signed by electors must include alongside each person’s signature, their name and address in enough detail to identify them as being electors on the local authority electoral roll when their signatures are checked: clause 2(1)(a). A proposal initiated by way of petition must also include the name and address of a representative of the electors: clause 2(1)(b).

If a proposal involves a boundary change or the definition of boundaries, it must be accompanied by a plan or description identifying the area or areas concerned.

A proposal for a transfer of responsibilities should specify the functions and the local authorities they are being transferred from and to.

DUTIES OF LOCAL AUTHORITIES

Preliminary action by the local authorities (Clause 10 of Schedule 3)

Every local authority that receives a valid reorganisation proposal must notify both the Secretary for Local Government and the Local Government Commission of the proposal.

Local authority consultation (Clause 10 of Schedule 3)

The local authorities affected by the proposal are required to consult with each other to decide whether the proposal should be dealt with by:

- A joint committee of the affected local authorities
- One of the affected local authorities, appointed as the appointed local authority
- Referring the matters to the Local Government Commission for consideration.

If within 60 days of receiving the proposal the local authorities are unable to reach agreement on which option should be applied, then the proposal must be referred to the Local Government Commission for consideration.

Referral of proposal to Commission (Clause 10 of Schedule 3)

If a proposal is referred to it, the Local Government Commission is required to consider the proposal under the provisions of Subpart 4 of Schedule 3, excluding clause 40 (Commission's consideration of wider issues) and clauses 49 to 58 (various poll related provisions). The provisions of Subpart 4 of Schedule 3 are outlined in Chapter 3 of this booklet.

Declining to consider a proposal (Clause 14 of Schedule 3)

There is only one reason why an appointed local authority or joint committee may decline to consider a proposal. If an affected local authority considers that the reorganisation proposal is the same or substantially similar to one considered, declined or abandoned in the previous three years, it may request the Commission to direct the appointed local authority or joint committee to not consider the proposal. If the Commission favourably considers the request and directs the appointed local authority or joint committee to not consider the reorganisation proposal, the appointed local authority or joint committee is required to notify the Secretary for Local Government, the proposer and each affected local authority. The proposer may be advised by public notice.

Draft reorganisation scheme (Clause 12 of Schedule 3)

Unless the appointed local authority or joint committee is directed to not consider a proposal, it must prepare a draft reorganisation scheme based on the reorganisation proposal.

In preparing the draft reorganisation scheme, the appointed local authority or joint committee must include any matters it considers necessary or appropriate to give effect to the proposal. It may also make whatever consequential changes to the proposal it considers necessary or desirable.

Some of the matters that could be included are listed in clause 66 of Schedule 3 to the Local Government Act, among them the following:

- the election or appointment of members to represent the area affected by the boundary alteration;
- provisions to ensure the smooth transition from one local authority to another; and
- the administration of existing district plans.

It is also important to be aware of the other provisions of Part 4 of Schedule 3:

- Clause 67, the provisions of which apply to all schemes except those specifically excluded (in whole or in part), deals with the passing of property to the successor local authority, continuation of bylaws, and other matters that carry over from one local authority to another.
- Clause 68 contains provisions that apply if a local authority assumes jurisdiction over an area which was formerly part of another district or region.
- Clause 69 deals with the apportionment of assets and liabilities.
- Clause 70 deals with apportionment of local authorities' petroleum tax revenues.

When the draft reorganisation scheme is ready the appointed local authority or joint committee must publicly notify it and invite submissions.

The appointed local authority or joint committee must also send a copy of the draft reorganisation scheme to:

- the Local Government Commission
- the affected local authorities
- the Auditor-General
- the Parliamentary Commissioner for the Environment
- the Secretary for Local Government
- the Secretary for the Environment
- the Chief Executive of Te Puni Kōkiri
- any affected Māori organisations identified by Te Puni Kōkiri
- any other organisations considered appropriate.

Submissions on draft scheme (Clauses 15 and 16 of Schedule 3)

Any person or organisation interested in the draft scheme (including the Secretary for Local Government) may make submissions on it. They must do so within two months

after the first public notification of the draft scheme, or within any further period allowed by the appointed local authority or joint committee: clause 15.

If the draft scheme was issued by an appointed local authority that local authority may appoint a committee with power to consider the submissions on the draft, and make recommendations to the appointed local authority: clause 16. This committee must comprise only members of the appointed local authority.

Proposer to be provided with opportunity to withdraw proposal (Clause 13 of Schedule 3)

As soon as possible after the closing date for submissions the appointed local authority or the joint committee is to provide the proposer with a copy of the submissions received on the draft scheme, or notice that no submissions were received.

The proposer has 20 working days from being provided with the opportunity to withdraw to notify the appointed local authority or joint committee in writing of the withdrawal of their proposal.

If there are no submissions (Clause 19 of Schedule 3)

If there are no submissions, the draft reorganisation scheme becomes a final reorganisation scheme (subject to the proposer not giving notice of withdrawal of the proposal: clause 13(3)). The scheme is then referred to the Minister of Local Government for the preparation of an Order in Council to give effect to it.

Considering the submissions (Clause 17 of Schedule 3)

The appointed local authority, joint committee, or committee established by an appointed local authority under clause 16 of Schedule 3 must consider all the submissions as soon as is practicable. It may do so by:

- convening meetings with those who made submissions, the affected local authorities, and any other people or affected organisations;
- holding discussions with any persons or organisations it considers appropriate;
- hearing, at these meetings or discussions, any representations relevant to the draft reorganisation scheme; and
- making any further necessary or desirable enquiries.

Hearings (Clause 17 of Schedule 3)

The appointed local authority, joint committee, or committee is required to give persons who made submissions the opportunity to be heard in support of their submissions.

The appointed local authority, joint committee, or committee is, in effect, sitting in judgement on a scheme that it has itself prepared. For this reason it is important that the hearing body is clearly seen to be objective in its hearing and consideration of submissions, and that it strictly observes the rules of natural justice.

Decisions (Clause 18 of Schedule 3)

After considering the submissions, (or the recommendations of the committee in the case of a committee appointed by an appointed local authority), the appointed local authority or joint committee may:

- adopt the draft reorganisation scheme; or
- adopt the draft reorganisation scheme with amendments; or
- decide that the draft reorganisation scheme will not proceed.

Any decision must be based on the criteria set out in clauses 3 to 7 of Schedule 3 (see Chapter 1 of these guidelines).

The appointed local authority or joint committee must then give public notice of its decision, as well as written notice to the Local Government Commission, each affected local authority, the Secretary for Local Government, each person who made submissions, and the proposer or his or her representative. Public notice is sufficient notification to those persons who made submissions.

If there are no appeals within one month of the date of the decision, the draft scheme (with any modifications) becomes final (clause 18(3)). The appointed local authority or joint committee must then refer it to the Minister of Local Government for preparation of an Order in Council giving effect to the scheme.

APPEALS

Any party dissatisfied with any decision of the appointed local authority or joint committee may appeal to the Local Government Commission. Parties with a right to appeal are:

- the Secretary for Local Government,
- the proposer or proposers' representative,
- each person or organisation that made a submission on the draft reorganisation scheme, and
- each affected local authority.

The procedure is outlined as follows.

Notices of appeal (Clause 21 of Schedule 3)

Notice of appeal must be lodged with the Chief Executive Officer of the Commission and the Chief Executive of the appointed local authority or the chairperson of the joint committee within one month of the date of the decision.

The person making the appeal must also serve a copy of the notice of appeal on all others who have a right to appeal. If, within 10 days of receiving the notice of appeal, any of these people notify the Commission of their intention to appear and be heard, they become parties to the appeal. This entitles them to be served with every document filed or lodged with the Commission. (Clause 22)

The notice of appeal must specify the decision or part of the decision that is being appealed against and the grounds of appeal.

The Commission may extend the time prescribed for lodging any notice, application or other document: Clause 26.

Notifying the Commission (Clause 21 of Schedule 3)

After receiving a copy of the notice of appeal, the Chief Executive of the appointed local authority or the chairperson of the joint committee must supply the Chief Executive Officer of the Commission with:

- a copy of the whole of the decision appealed against;
- a copy of the draft reorganisation scheme;
- a copy of the submissions received on the draft reorganisation scheme; and
- a copy of the reorganisation scheme (if the draft reorganisation scheme was adopted with amendments as a reorganisation scheme).

The Commission, of its own motion or on the application of any party to the appeal, can require the appointed local authority or joint committee to provide further information relating to its decisions: Clause 23.

Appeal in respect of additional matters (Clause 25 of Schedule 3)

Within one month of receiving a copy of the notice of appeal, any party to the appeal may lodge a further appeal on grounds other than those already appealed against. The procedural requirements applying to appeals also apply to any further appeal:

The appeal is ready for hearing once any party to the appeal has notified the Chief Executive Officer of the Commission:

- that the notice of appeal has been served on all parties to the proceedings; and
- that no application has been lodged for further documentation; and
- that no order has been made or that such an application has been lodged and any order complied with: clause 27.

Determination of appeals (Clause 28 of Schedule 3)

The Commission must hear and consider all the evidence provided and representations made by or on behalf of the appellant and any other party to the proceedings.

The Commission considers that, in determining appeals, it is required to apply the criteria specified in Clauses 3 to 5 for proposals or schemes.

The Commission may confirm, discharge, or vary the decision of the appointed local authority or joint committee and generally decide what it considers just and equitable in the circumstances: Clause 28(2).

Before determining an appeal or instead of determining an appeal, the Commission may direct the appointed local authority or joint committee to reconsider the whole or any specified part of the appeal. The appointed local authority or joint committee must take note of the Commission's reasons for its direction to reconsider, and of any directions the Commission gives concerning the rehearing or reconsideration: Clause 29.

A direction by the Commission to reconsider has the effect of suspending the appeal proceedings until the appointed local authority or joint committee has completed its reconsideration: Clause 29 (4).

Procedure after appeal (Clause 31 of Schedule 3)

If, after hearing an appeal, the Commission determines that a draft reorganisation scheme is to become a reorganisation scheme, the scheme must be referred to the Minister of Local Government for preparation of an Order in Council to give effect to it.

The Commission must advise the appellant and all other parties to the appeal of its decision and also give public notice of the decision.

The Minister or any party to the proceedings can appeal against the decision to the High Court on a point of law: Schedule 5 – clause 2.

Summary of Procedures for Considering Reorganisation Proposals dealing with Boundary Alterations and Transfers of Responsibility

