

## 3

### **Procedures for Constituting New Local Authorities**

This part of the Guide deals with procedures applying to reorganisation proposals for:

- the union of districts or regions;
- the constitution of a new district or region (including the constitution of a new local authority for that district or region);
- the abolition of any district or region (including the dissolution or abolition of the local authority for the district or region); and
- a territorial authority becoming a unitary authority (i.e. a territorial authority that has the responsibilities, duties and powers of a regional council conferred on it).

#### **INITIATION**

##### **Population criteria** (Clause 6 of Schedule 3)

Proposals must meet the following minimum population criteria:

- 10,000 people for a new district;
- 50,000 people for a new region with a separately elected regional council.

If the proposal does not meet these criteria, it cannot proceed.

##### **Who may initiate a proposal** (Clause 1 of Schedule 3)

A reorganisation proposal to constitute a new district or region may be initiated by:

- one or more affected local authorities with the consent of the other local authorities affected by the proposal; or
- the Minister of Local Government; or
- in the case of a proposed new district, a petition signed by at least ten percent of the electors of each of the affected districts; or
- in the case of a proposed new region with a separately elected regional council, a petition signed by at least ten percent of the electors of each of the affected regions.

A reorganisation proposal to abolish a district or region, and include it in one or more adjoining districts or regions, may be initiated by:

- one or more affected local authorities with the consent of the other local authorities affected by the proposal; or
- the Minister of Local Government; or
- a petition signed by at least ten percent of the electors of the district or region

proposed to be abolished.

A reorganisation proposal for the union of districts or regions may be initiated by:

- one or more affected local authorities with the consent of the other local authorities affected by the proposal; or
- the Minister of Local Government; or
- a petition signed by at least ten percent of the electors of each of the affected districts or regions proposed to be united.

A reorganisation proposal for a territorial authority to become a unitary authority may be initiated by:

- one or more affected local authorities with the consent of the other affected local authorities; or
- the Minister of Local Government; or
- a petition signed by at least ten percent of the electors of each of the affected districts or regions.

### **How to initiate a proposal** (Clause 34 of Schedule 3)

A proposal is initiated by lodging it with the Chief Executive Officer of the Local Government Commission.

### **Contents of reorganisation proposal** (Clause 2 of Schedule 3)

A petition signed by electors must include alongside each person's signature, their name and address in enough detail to identify them as 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 proposers: clause 2(1)(b).

### **Duties of Chief Executive Officer of the Local Government Commission and of electoral officers of affected local authorities** (Clause 34 of Schedule 3)

On receipt of a reorganisation proposal, the Chief Executive Officer of the Commission is required to notify the local authorities affected by the proposal.

The Chief Executive Officer would consider whether the proposal meets the minimum population requirements as specified in clause 6 of Schedule 3. If not met, the Chief Executive Officer would notify the proposer and the affected local authorities, and the proposal would proceed no further.

If the population requirements of clause 6 of Schedule 3 are met, the Chief Executive Officer will forward a proposal initiated by electors to the electoral officers of the affected local authorities. The electoral officers have one month to check whether the required number of electors signed the petition and to provide a certificate to the

Commission to that effect.

## **INITIAL CONSIDERATION BY THE LOCAL GOVERNMENT COMMISSION**

### **Declining to consider a proposal** (Clause 35 of Schedule 3)

The Commission may decide not to consider a proposal on the grounds that it is the same or substantially similar to a proposal that has been considered, declined, or abandoned within the previous three years.

It may make its decision on the basis of the proposal alone and is not obliged to hear any affected local authority or other person.

If the Commission decides to decline a proposal, it must notify the proposer, and each local authority it considers to be affected by the proposal. Notification to the proposer may be given by public notice.

### **The representative of the electors** (Clause 36 of Schedule 3)

After receiving a valid proposal initiated by a petition of electors and consulting with as many electors as it considers appropriate, the Commission must choose a person or organisation to represent the electors. The representative has the same status as a proposer. (Any reference to “the proposer” in this chapter applies also to the representative of the electors.)

### **Consultation on Proposal** (Clause 37 of Schedule 3)

After receiving a proposal the Commission is required to give public notice inviting submissions on the proposal, and to seek the views of the following organisations:

- the affected local authorities
- the proposer
- 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.

The Commission is required to provide the affected local authorities, each local authority whose district or region adjoins or is coterminous with the affected local authorities, and the proposer with the opportunity to meet with and be heard by the Commission.

The Commission, at its discretion, may extend the opportunity to appear before it to other persons and organisations that have lodged written submissions on the

proposals.

The Commission may also undertake any inquiries and consultations that it considers appropriate relating to the proposal.

**Proposer to be provided with opportunity to withdraw proposal** (Clause 38 of Schedule 3)

As soon as possible after the closing date for submissions the Commission is to provide the proposer with a copy of the submissions received on the proposal together with any other views its receives, or notice that no submissions were received.

The proposer has 20 working days from being provided with the opportunity to withdraw to notify the Commission in writing of the withdrawal of their proposal.

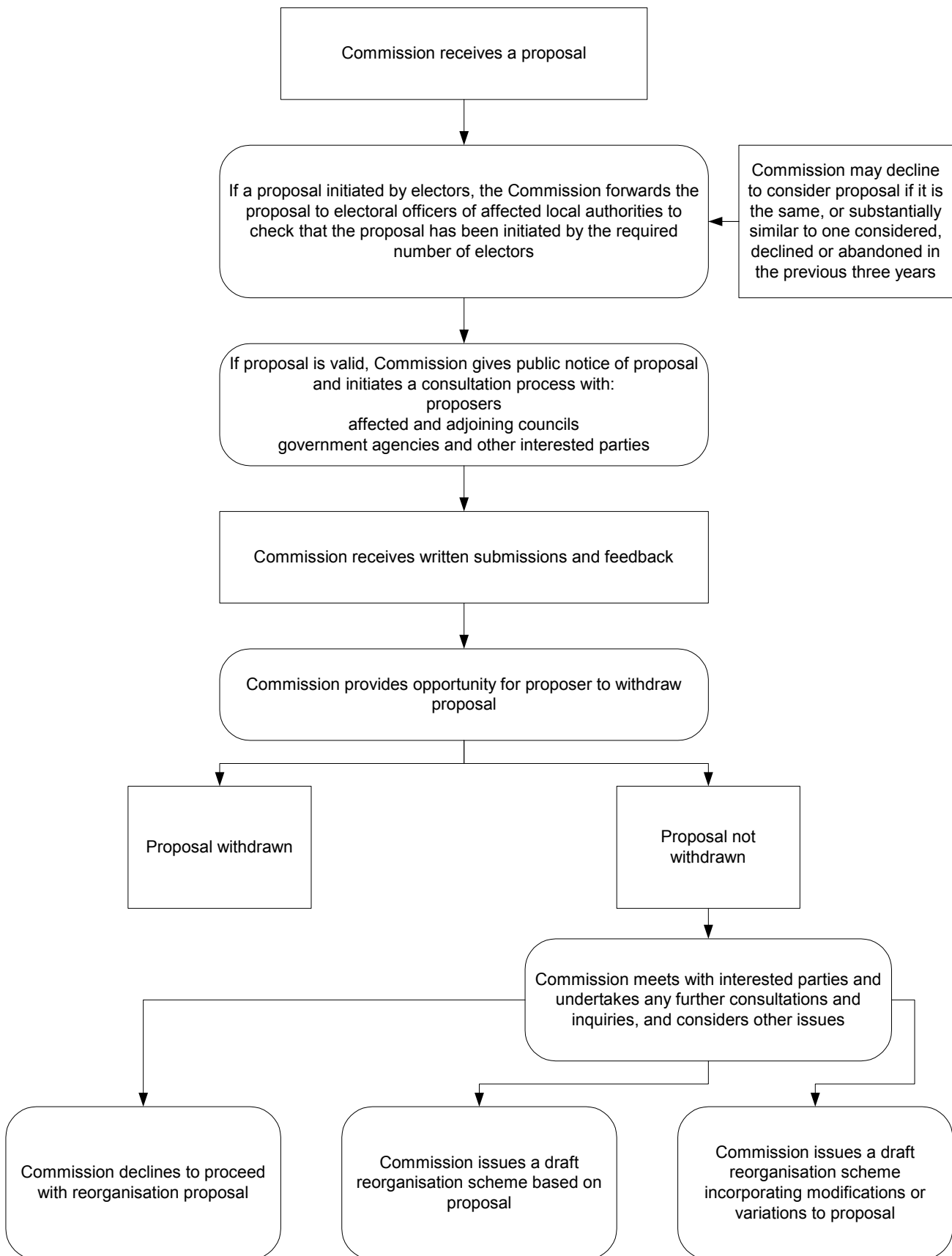
**Consideration of wider issues** (Clause 40 of Schedule 3)

In considering a reorganisation proposal, the Commission may consider how the proposal affects the system of local government of any district or region affected by the proposal.

The Commission's consideration of wider issues may include:

- which system of local government in the district or region best meets the criteria set out in clauses 3 to 7 of Schedule 3
- whether or not good local government would be promoted by the inclusion of any part of the district or region in the district or region of another local authority (whether by the constitution of a new district or region or by the alteration of boundaries)
- whether or not the system of representation in the district or region best meets the criteria in clause 5 of Schedule 3
- whether or not good local government of the district or region would be best promoted by-
  - the system of communities (if any) and the responsibilities, duties, and powers of the community boards in the district or region; or
  - an alternative system of communities, or
  - a change in the responsibilities, duties, and powers of the community boards in the district or region
- any other matters considered appropriate by the Commission.

## INITIAL CONSIDERATION OF PROPOSALS



## **THE LOCAL GOVERNMENT COMMISSION'S OPTIONS**

### **Decisions on proposals** (Clause 39 of Schedule 3)

When the Commission has completed its consultations, consideration of submissions, undertaken any inquiries and considered any wider issues it must either:

- issue a draft reorganisation scheme based on the proposal, or
- issue a draft reorganisation scheme incorporating modifications or variations to the proposal resulting from consideration of submissions, consultations, inquiries and consideration of wider issues, or
- decline to proceed with the reorganisation proposal.

### **Draft reorganisation scheme** (Clause 41 of Schedule 3)

A draft reorganisation scheme is a formal document that sets out the details of the proposal, and how it will be implemented. Some of the matters that could be included are listed in clauses 59 and 66 of Schedule 3:

- the name of the new district and local authority,
- the number of members of the local authority,
- ward or constituency boundaries (if any),
- the first election of the local authority,
- the responsibilities, duties and powers of the new local authority,
- rating systems,
- committees and their membership,
- the transfer of assets and liabilities.

The proposal may already specify some of these matters, and the Commission could include others.

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.

### **Explanatory statement** (Clause 42 of Schedule 3)

The Commission must prepare and notify an explanatory statement on the draft scheme.

The statement is intended to cover the advantages and disadvantages of the scheme

for both a proposed new district and the remaining area of any district affected by the proposal, and, if appropriate, the responsibilities that would belong to the affected local authorities.

### **Considering the submissions**

After the first public notification of the draft reorganisation scheme, there is a minimum period of two months in which to make submissions; but the Commission may extend this time: clause 44.

The Commission must consider each submission and may, at its discretion, hold hearings of submissions: clause 45.

### **Decision on the draft reorganisation scheme (Clause 46 of Schedule 3)**

After considering all submissions on the draft reorganisation scheme and information gained through any further inquiries or discussions the Commission may either:

- approve the draft reorganisation scheme as a final scheme; or
- approve a final scheme based on modifications to the draft scheme; or
- not proceed to issue a final scheme.

The Commission may only approve a final scheme if it is satisfied that the final scheme meets the criteria of clauses 3 to 7 of Schedule 3.

### **Explanatory statement for reorganisation scheme (Clause 47 of Schedule 3)**

Once a draft reorganisation scheme becomes final, the explanatory statement issued with the draft scheme is confirmed, or a new explanatory statement is prepared and published outlining the advantages and disadvantages of the final reorganisation scheme.

## **POLL**

After the Commission has approved a final reorganisation scheme, clause 49 of Schedule 3 requires that a poll on the proposal must be held in each district directly affected (as defined by clause 49(4)) by the scheme. However, no poll can be held on a scheme that deals solely with one or more of the matters listed in clauses 40(2)(b), (c) or (d) of Schedule 3.

For the purposes of a poll a district or region is taken to be directly affected by the scheme if the scheme provides for:

- the abolition of that district or region; or
- the union of the whole of that district or region with all or part of another or other districts or regions; or
- the constitution of a new local authority whose district or region will include the whole of that district or region; or
- the constitution of a new local authority whose district or region will include part of that district or region; or
- the exclusion of any area from that district or region: clause 49(4).

### **Timing of the poll** (Clause 50 of Schedule 3)

Before setting the date of the poll, the Commission must consult with the electoral officer of each local authority required to conduct a poll. Once the poll date is set the Commission must notify the Secretary for Local Government of the date of the poll, as well as the Chief Executive and the electoral officer of each local authority required to conduct a poll. It must give the written notification within one month of the reorganisation scheme being publicly notified (or, if the public notification falls between 25 November and 9 February (inclusive)) before 11 March in the following year).

Within seven days of being notified of the date of the poll, each electoral officer must give public notice of the poll and of the places where a copy of the reorganisation scheme and explanatory statement may be inspected.

### **Outcome of the poll** (Clause 52 of Schedule 3)

The fate of the reorganisation scheme depends on whether more than 50 percent of the valid votes in each poll are cast for the proposal. If more than 50 percent are in favour, the scheme must be given effect to by Order in Council. Otherwise the proposal fails.

Whether or not the reorganisation scheme is to be given effect to, the Commission must notify the local authorities concerned and the public of the result of the poll.

### **Advertising on polls relating to a final reorganisation scheme** (Clause 55 of Schedule 3)

Local authorities' spending on advertising relating to a final reorganisation scheme is limited in proportion to population. Within those limits, it is up to local authorities to decide whether to spend any money on advertising, and if so, how much they are to spend.

### **Provision of funding to proposer** (Clause 56 of Schedule 3)

For a final reorganisation scheme based on a proposal initiated by a petition of electors, a local authority that resolves to spend money on advertising relating to the reorganisation scheme is required to meet the advertising costs of the proposer relating to the final reorganisation scheme. The maximum costs of the proposer that will be met is the amount that the local authority resolves to spend under clause 55(2) of Schedule 3.

### **Returns of expenditure** (Clause 57 of Schedule 3)

Within one month after the date of a poll, the local authority's Chief Executive must forward a return to the Auditor-General specifying all advertising in the poll period that promoted or opposed implementation of the reorganisation scheme, or any provision of the reorganisation scheme, and the costs of that advertising. If the advertising cost is more than the amount specified in the Council's resolution, it is taken to be a loss and the provisions of sections 44 to 46 of the Local Government Act 2002 apply.

## **IMPLEMENTATION**

When a reorganisation scheme is supported by a poll, or if a poll is not necessary, the scheme is forwarded to the Minister of Local Government so that an Order in Council can be drafted to give it effect. The Order in Council is sent to the Governor-General for signature and comes into effect on the date specified in the Order.

A possible date for the Order in Council to come into effect would be 1 July. This is the start of the local government financial year and annual planning year. Another possible date is that of the triennial local authority elections. Whatever date is chosen, some parts of the scheme could come into effect earlier. This would allow elections to be carried out and an annual plan to be prepared if necessary.

# Reorganisation Schemes

