



LOCAL GOVERNMENT COMMISSION
MANA KĀWANATANGA Ā ROHE

LOCAL GOVERNMENT REORGANISATION

**Guidelines to the procedures for
reorganisation of local authorities
under the Local Government Act 2002**

Local Government Commission
WELLINGTON

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Introduction

The procedures for reorganisation of local authorities are set out in the Local Government Act 2002. There are two main procedures for change:

- one for altering boundaries and transferring responsibilities between local authorities (under Part 1-Subpart 3 of Schedule 3 to the Act); and
- another for uniting, constituting, or abolishing districts and regions and creating unitary authorities (under Part 1-Subpart 4 of Schedule 3 to the Act).

A further set of procedures deals with constituting communities (under Schedule 6 to the Act).

This Guide explains the procedures for reorganisation of local authorities in a simpler form than that set out in the legislation. However, for definitive information, users should refer to the Local Government Act 2002.

Auckland

The Local Government (Auckland Council) Act 2009 introduced a new local government structure for Auckland. Boundaries for the new structure, including the external boundaries of Auckland and ward, local board area and subdivision boundaries, were determined by the Local Government Commission in March 2010. The new structure comes in to existence on 1 November 2010.

The Local Government (Auckland Transitional Provisions) Act 2010 places a prohibition on reorganisation proposals affecting Auckland until after the 2013 local elections.

When the prohibition has ceased to apply the reorganisation procedure will deal with the structure and boundaries of Auckland's local board areas as well as the external boundaries of Auckland.

Other aspects of the local board system, such as the number of members comprising local boards, and electoral subdivisions of local board areas, will be dealt with by the representation review process under the Local Electoral Act.

Criteria for Proposals and Schemes

The Local Government Act 2002 (“the Act”) contains separate procedures for dealing with proposals to alter boundaries and transfer responsibilities between local authorities on the one hand (Part 1-Subpart 3 of Schedule 3), and proposals to constitute, abolish and unite districts or regions or to create unitary authorities on the other (Part 1-Subpart 4 of Schedule 3).

Common to both sets of procedures are the criteria which the Local Government Commission, an appointed local authority or a joint committee of the affected local authorities (“joint committee”) must apply when considering reorganisation proposals and schemes.

The criteria are specified in clauses 3 to 7 of Schedule 3 to the Act, and broadly speaking, relate to good local government, boundaries and representation.

Promotion of good local government (Clause 3 of Schedule 3)

The Local Government Commission, appointed local authority or joint committee must satisfy itself that the proposal or scheme will:

- promote good local government of the districts or regions concerned; and
- ensure that each local authority provided for under the proposal will:
 - have the resources necessary to carry out its responsibilities, duties and powers,
 - have a district or region appropriate for the efficient and effective performance of its role as specified in section 11 of the Act,
 - contain within its district or region a sufficiently distinct community of interest or sufficiently distinct communities of interests, and
 - be able to meet the requirements of section 76 of the Act, which relate to decision-making.

Under section 11 of the Act, the role of a local authority is to give effect, in relation to its district or region, to the purpose of local government stated in section 10 of the Act, and to perform the duties, and exercise the rights, conferred on it under the Act and any other enactment. The purpose of local government, as outlined in section 10, is to enable democratic local decision-making and action, by, and on behalf of, communities, and to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future.

Broadly speaking, section 76 of the Act requires that local authority decision-making processes must –

- Seek to identify and assess all reasonably practicable options for the

- achievement of the objective of a decision;
- Give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter;
- Identify and consider the impact of inconsistency of decisions;
- Have processes in place to provide opportunities for Māori to contribute to the decision-making processes;
- Provide reasonable access to relevant information and encourage persons to present their views;
- Be undertaken with due consideration of views submitted and with an open mind;
- Inform persons who present their views of the relevant decisions and the reasons for those decisions.

When considering the criteria specified for a proposal, the Commission, appointed local authority or joint committee must take into account:

- the area of impact of the responsibilities, duties, and powers of the local authorities concerned;
- the area of benefit of services provided;
- the likely effects on any local authority of excluding any area from its district or region; and
- any other appropriate matters.

Boundaries (Clause 4 of Schedule 3)

In determining the boundaries under a proposal or scheme, the Commission, appointed local authority or joint committee must ensure that (where practicable):

- the boundaries of regions conform with water catchments; and
- the boundaries of territorial authority districts conform with the boundaries of regions.

Boundaries of regions and territorial authority districts must also conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

In practical terms, the Commission, appointed local authority or joint committee may negotiate with Statistics New Zealand to have meshblocks split or adjusted, if this would suit the purposes of the scheme and does not create other difficulties. The fact that proposed boundaries do not initially conform with meshblocks does not mean that they cannot be considered. But before the Commission, appointed local authority or joint committee can issue a reorganisation scheme, they must conform.

Representation (Clause 5 of Schedule 3)

When considering a proposal or a scheme, the Commission, appointed local authority or joint committee must ensure that the membership of a local authority will:

- provide fair and effective representation for individuals and communities of the local authority;
- comply with the requirements of the Local Electoral Act 2001 (see particularly

- Part 1A of that Act); and
- take into account the responsibilities, duties, and powers of the local authority.

Minimum populations of districts and regions (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.

Cities (Clause 7 of Schedule 3)

The following criteria must be met for a territorial authority constituted under a reorganisation scheme to be called a city council:

- the district of the territorial authority must have a population of not less than 50,000 people; and
- the district must be predominantly urban; and
- the district must be a distinct entity and a major centre of activity within the region.

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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).

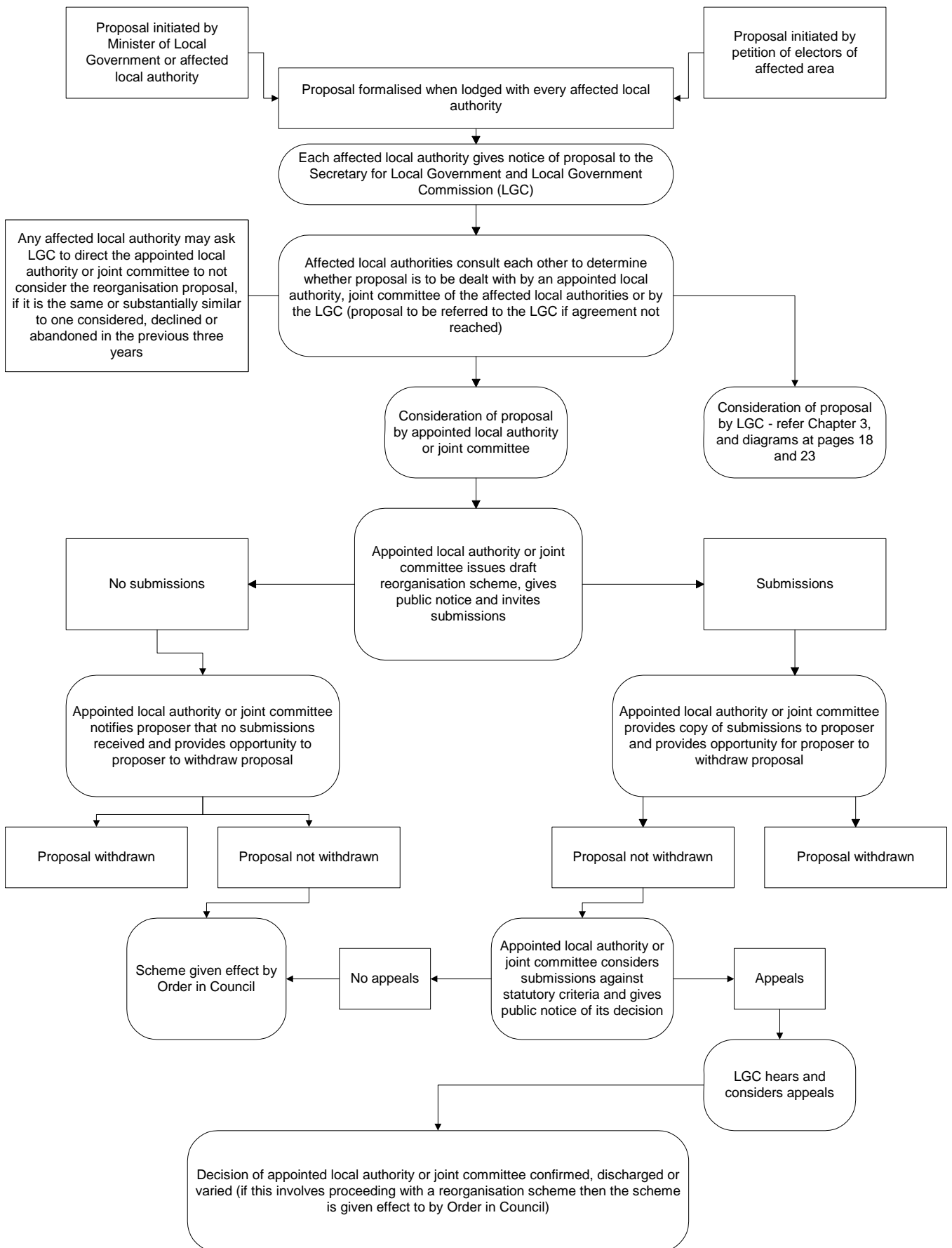
Procedure after appeal (Clause 31 of Schedule 3)

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



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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.

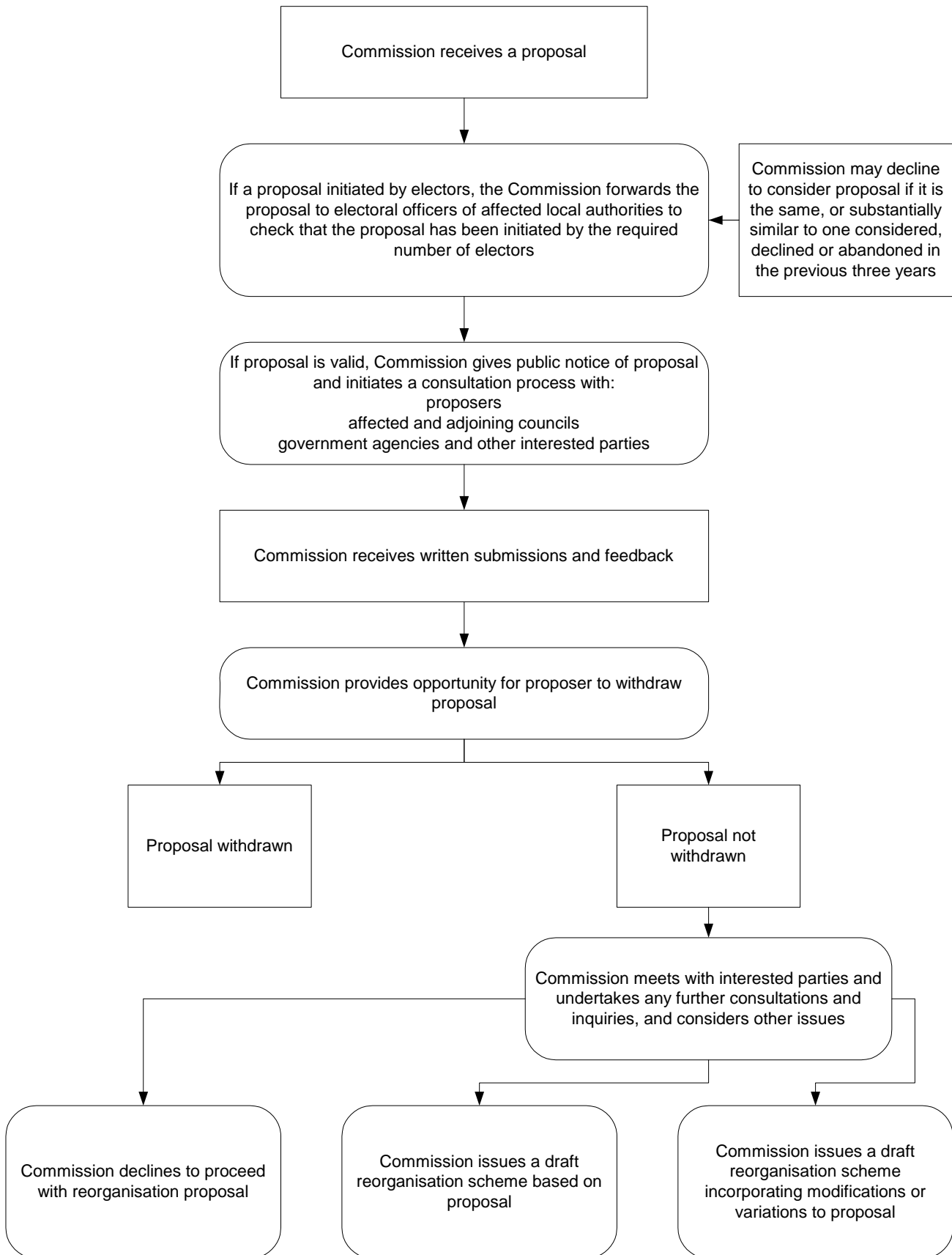
Consideration of wider issues (Clause 40 of Schedule 3)

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)

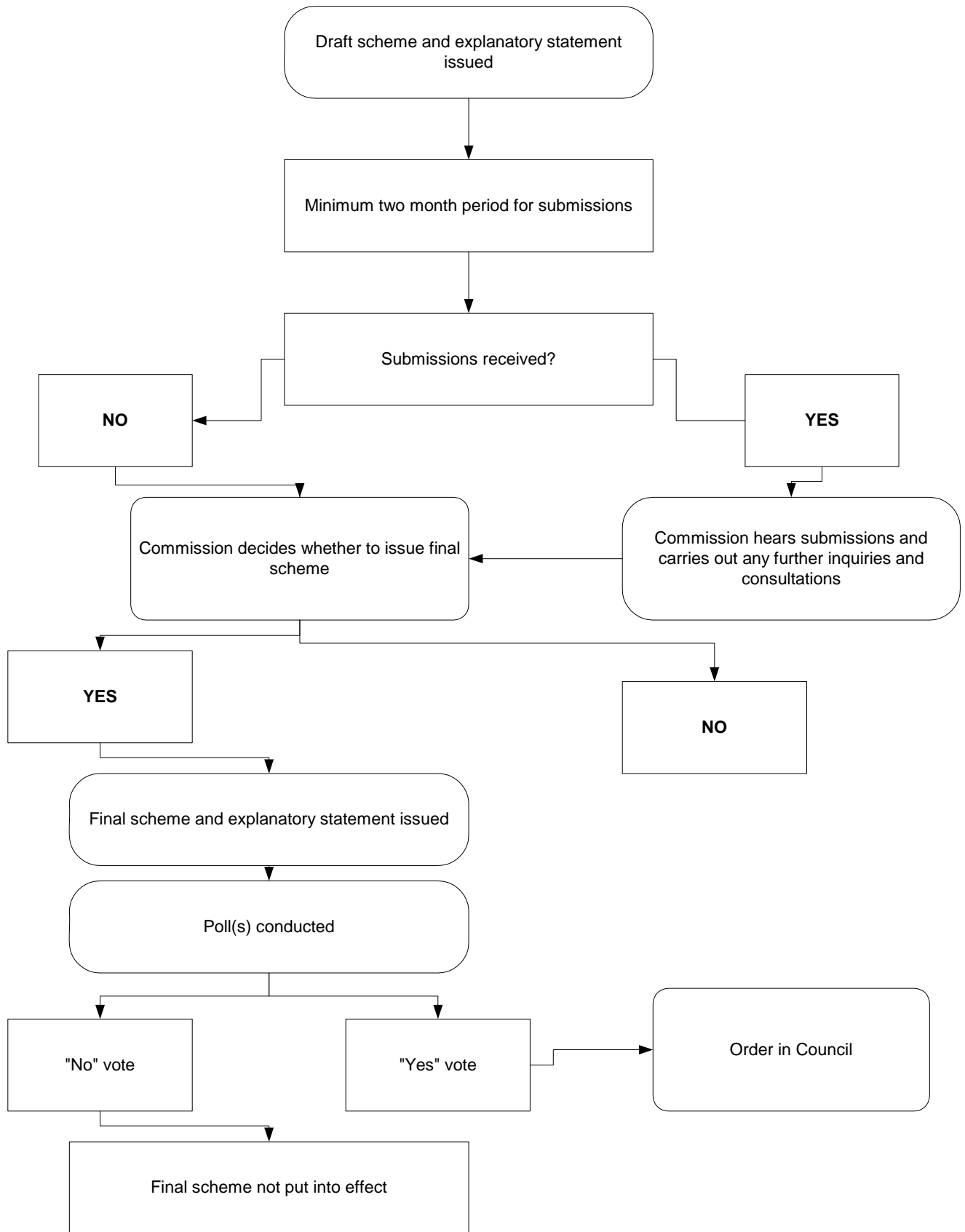
Within one month after the date of a poll, the local authority's Chief Executive must forward a return to the Auditor-General specifying all advertising in the poll period that promoted or opposed implementation of the reorganisation scheme, or any provision of the reorganisation scheme, and the costs 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



4

Constituting and Altering Communities

CONSTITUTING COMMUNITIES (Section 49, Local Government Act 2002)

Communities can be set up in three ways:

- by an Order in Council, giving effect to a reorganisation scheme for a particular area; or
- by resolution of the territorial authority, or by the Local Government Commission on appeal, as a result of a proposal by electors to establish a community initiated under Schedule 6 ; or
- as a result of a territorial authority's representation review under the Local Electoral Act 2001.

Schedule 6 of the Local Government Act 2002 sets out the process for constituting community boards as a result of an electoral petition.

No new community board may be elected in the 12 months before a territorial authority general election: clause 2(1)(c) of Schedule 6. A community may be set up wholly within any continuous part of a district but not where a community already exists: clause 1(2).

Setting up a community on the electors' initiative (Clause 3 of Schedule 6)

A citizens' proposal for a community requires a petition signed by at least 10% of electors in an area where the population is 1,500 or more, or, if the population would be less than 1,500, the support of not less than 100 electors, being the majority of the electors present at a public meeting called in the area.

In respect of a proposal initiated at a public meeting, the public meeting must be called by public notice. It would be advisable for those electors present at the meeting, and who are in favour of the proposal, to sign a record of their support for the proposal in the form of a petition.

Requirements for proposal (Clause 4 of Schedule 6)

The proposal must be:

- accompanied by a plan or description by which the area can be clearly identified;
- accompanied by a petition signed by those who support the proposal and giving their full name and the address which qualifies them as electors; and
- sent to the Chief Executive of the territorial authority affected by the proposal.

Within one month of receiving the proposal, the Chief Executive must:

- check the validity of the signatures; and
- forward the proposal to the territorial authority, duly certified as to the number of eligible electors who initiated the proposal.

If the elector requirement is met, the territorial authority must then consider the proposal at its next ordinary meeting or subsequent ordinary meeting.

Territorial authority's consideration of the proposal (Clause 5 of Schedule 6)

When the territorial authority has considered the proposal, it resolves either to give effect to the proposal or to reject it. In either case it must give public notice of its decision.

If a territorial authority decides to give effect to a proposal, the proposal and the plan of the proposed community area must be available for public inspection and submission for a period of 28 days.

The territorial authority must consider all submissions before it finally resolves to adopt or reject the proposal.

In deciding whether to constitute a community, the territorial authority must take into account the appropriate criteria applying to any local government reorganisation proposals under the Local Government Act. The criteria to be taken into account include those relating to the promotion of good local government as set out in clause 3 of Schedule 3: clause 6.

If a proposal is rejected by the territorial authority (Clause 7 of Schedule 6)

If the territorial authority rejects the electors' proposal to set up a community, any elector who has signed the proposal can appeal to the Local Government Commission. When considering the appeal, the Commission will take into account the criteria specified in Clause 3 of Schedule 3.

The Commission has all the powers of the territorial authority to set up a community. It can also determine the functions of the community board for a period of up to three years. However, the territorial authority may allocate additional functions to the community board if it wishes: clause 7.

Requirements for resolutions and Orders in Council (Clause 2 of Schedule 6)

Every Order in Council or resolution that sets up a community must:

- fix the boundaries of the community and describe them in a manner certified by the Surveyor-General as readily capable of identification;
- assign a name to the community; and
- fix the date of the first election of members of the community board. (This date

cannot be within the 12 months before the next general election of the territorial authority – clause 2(1)(c)).

A copy of every resolution that sets up a community must be sent to the Secretary for Local Government, the Surveyor-General, the Government Statistician, the Local Government Commission and the Remuneration Authority: clause 8(4). A copy must also be kept at the principal office of the territorial authority for free inspection by interested persons.

The boundaries of every community must coincide with the boundaries of the statistical meshblock areas that are used for parliamentary electoral purposes. This enables electoral rolls for community board elections to be drawn from parliamentary rolls: clause 2(2).

A community comes into existence on the day after the Electoral Officer declares the result of the first election of members of the board: clause 2(3).

UNITING, ALTERING OR ABOLISHING COMMUNITIES

A community may be abolished or united with another community, or its boundaries may be altered only in the following ways:

- by an Order in Council giving effect to a reorganisation scheme; or
- as part of the territorial authority's representation review process (refer to the Commission's booklet – "Guidelines to Assist Local Authorities in Undertaking Representation Reviews").

Glossary

community

A division of a city or district for which a community board has responsibility.

community board

A board established in respect of a community to advise a district or city council on issues affecting the community and to carry out functions delegated to it by the council.

district

The area over which a district or city council has jurisdiction.

draft reorganisation scheme

A scheme issued by the Local Government Commission, appointed local authority or a joint committee of affected local authorities that sets out the details of a proposal for changing the structure of local government. Once the draft reorganisation scheme has been issued, submissions may be made on it.

elector

A person entitled under law to vote at an election or poll.

Local Government Commission

A three-member body appointed by the Minister of Local Government. Among its functions, it considers proposals for uniting, constituting and abolishing local authorities, and it considers appeals against the decisions of appointed local authorities and joint committees of affected local authorities on proposals to alter boundaries or transfer responsibilities.

meshblock

An area defined by Statistics New Zealand for use in collecting census data. Meshblocks are also used in preparing electoral rolls for both local and parliamentary elections.

natural justice, rules of

The general principles and minimum standards to be applied by anyone making decisions on administrative matters. They require those making such decisions to do so without bias, to give each of the parties an opportunity to be heard, and to give equal attention to their submissions.

Order in Council

An order signed by the Governor-General on the advice of the Executive Council, which, for example, gives legal effect to a reorganisation scheme. Orders in Council are published in the *New Zealand Gazette*.

region

The area over which a regional council has jurisdiction. In the case of a territorial authority which is a unitary authority, it includes the district of the territorial authority.

regional council

A local authority having jurisdiction over a region. Its main functions are related to environmental and resource management.

reorganisation scheme

A scheme issued by the Local Government Commission, appointed local authority, or joint committee of the affected local authorities after it has considered submissions on a draft reorganisation scheme and decided that the scheme should be issued in final form. It is carried into law by an Order in Council.

territorial authority

A city council or district council.

unitary authority

A territorial authority which also has the responsibilities, powers and duties of a regional council.

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