

Masterton District Council (Montfort Trimble Foundation) Bill

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Masterton District Council (Montfort Trimble Foundation) Bill and recommends that it be passed with the amendments shown.

This is a local bill. We have determined that the Standing Orders have been complied with and that the rights and prerogatives of the Crown are not affected.

Introduction

The bill establishes the Montfort Trimble Foundation, a charitable trust intended to administer proceeds arising out of the Trimble Trust and the harvesting of the Trimble Forest.

Under the will of Dr Montfort Trimble, who died in 1940, a charitable trust was established for the purposes of public afforestation in the then area of the Masterton County. In 1942, the Masterton County Council used income from the Trimble Trust to purchase a 127-hectare forestry block, known as the Trimble Forest, administered under separate trust arrangements. Currently, the Masterton District Council administers the Trimble Forest trust, while the Trimble Trust itself is administered by the New Zealand Guardian Trust Company Limited.

The Trimble Forest is now being harvested, and the proceeds from the sale of harvested timber are expected to exceed the cost of replanting.

The bill provides for the trustee of the Trimble Forest to make distributions to the Foundation from the proceeds of the harvest of timber, and for the trustee of the Trimble Trust to make distributions from capital and income. The main object of the Foundation is to promote public afforestation, as defined in clause 5(1)(a), but the bill as introduced allows for the Foundation to contribute to a number of other objects.

The bill also defines the Foundation district as being the area that constituted the Masterton County as described in the 1931 *Gazette*, and is shown in Schedule 2 of the bill. This will be the area of primary benefit, and reflects the requirement in Dr Trimble's will that the bequest be used for public afforestation in the Masterton County as it was at the time of the bequest. However, the income of the Foundation is likely to exceed the potential distributions that can be made within the Foundation district. The bill therefore allows for distributions to be made outside the Foundation district, provided the distribution is made either in respect of objects within the Masterton District or for the benefit of residents and ratepayers of the Masterton District. The bill also limits the percentage of distributions that can be made outside the Foundation district.

Objects of Foundation

Clause 5, as introduced, expands the objects of the Foundation beyond the promotion of public afforestation to include contributing to or providing for recreation, the environment and the advancement of education. We are concerned that the extended objects contained in clause 5(1)(b) may override Dr Trimble's intention, as expressed in his will, to provide for public afforestation. We would not wish to see trust funds used for purposes not intended by Dr Trimble and therefore recommend that clause 5(1)(b) be omitted from the bill, along with consequential amendments to clause 8.

We also note that some beneficial activities that Dr Trimble might have considered to be public afforestation would not be included under the list of activities in clause 5(1)(a). For example, the Foundation's object would not cover riparian planting, where tree planting on a riverbank is used as a form of flood protection. We believe such planting constitutes public afforestation and would therefore be

a legitimate activity for the Foundation. Accordingly, we recommend the inclusion of a new clause 5(1)(a)(vi), inserting the phrase ‘amenity and protection plantings and their maintenance’ as part of the Foundation’s object.

Powers of Foundation

Clause 6 gives the Foundation the capacity to carry out or undertake any business or activity, do any act, or enter into any transaction in order to further its objects. We believe the Foundation’s capacity should be limited to activities related to public afforestation, and consequently we recommend inserting the word ‘related’ before the word ‘business’ and before the word ‘activity’ in clause 6(1)(a). This should ensure that the Foundation has the capacity to perform any task necessary, provided it is pursuing its object of promoting public afforestation.

Removal of Board members

Clause 14(5) gives the Council and Guardian Trust Company the power to replace their appointees on the permanent Board of the Foundation. This clause concerns us, as it potentially provides the Council and Guardian Trust with the ability to remove appointed board members without cause. We therefore recommend the inclusion of new clause 14(6) to specify that the Council or Guardian Trust may only remove a Board member because the Board member is unable to perform his or her duties adequately or for neglect of duty or misconduct.

Remuneration of Board members

We recommend inserting a new clause 22 to provide that Board members are entitled to receive remuneration to be determined by the Minister of Local Government in accordance with the fees framework for members of statutory and other bodies. The provisions in the Local Government Act 1974, currently referred to in clause 22, were repealed in 2001 and we consider this amendment reflects the best mechanism for determining the appropriate level of remuneration for Board members.

In addition, we recommend specifying in clause 22 that Board members are also entitled to receive payment of reimbursing

allowances or expenses incurred in the course of undertaking their duties as a Board member.

Tax treatment

For tax purposes, clause 7 specifies that the Foundation is to be treated as having been established exclusively for charitable purposes, while clause 26 provides that the Foundation is exempt from the payment of income tax. We do not consider these provisions appropriate, and recommend they be omitted from the bill. We believe it would be better for the tax status of the trust to be determined by applying the provisions in the Income Tax Act 1994 that determine the relevant tax status of a trust, rather than including a specific exemption in the bill.

We understand that the Masterton District Council has been in discussions with the Inland Revenue Department, and has received assurances that the Foundation should receive tax status as a charitable purpose under the Income Tax Act.

Status of Foundation

We recommend the omission of clause 25, which provides that the Foundation is not a local authority trading enterprise within the meaning of the Local Government Act 1974. We understand that this term is not used in the Local Government Act 2002.

We also recommend the introduction of a new clause 25 to clarify that the Foundation is not a council-controlled organisation under the Local Government Act 2002. The Council will appoint the majority of trustees in the interim Board, meaning the Foundation will be considered a council-controlled organisation under the 2002 Act, but will cease to be a council-controlled organisation when the permanent Board is appointed. We note that council-controlled organisations are subject to a number of additional reporting requirements, which may be overly burdensome for an entity that will cease being a council-controlled organisation within a year. We therefore believe it appropriate to specify that the Foundation is not a council-controlled organisation.

Casting vote

We recommend amending clause 3(5) in Schedule 1 to omit the provision for the chairperson to have a casting vote. This will ensure

consistency with the Local Government Act 2002, which does not allow for chairpersons to have a casting vote.

Foundation auditor

We recommend amending clause 6 in Schedule 1 and including new clause 28 to provide that the Auditor-General will be the auditor of the Foundation, to require the Foundation to report in accordance with generally accepted accounting principles and to establish the Foundation as a public entity under the Public Audit Act 2001. As currently drafted, this clause 6 in Schedule 1 allows the Foundation to appoint its own auditor, which may not offer the level of accountability required under general principles of public sector accounting.

Annual plan and annual report

We recommend the introduction of a new clause 6A in Schedule 1 requiring the Foundation to make its annual plan and annual report available to the public on request.

Appendix

Committee process

The Masterton District Council (Montfort Trimble Foundation) Bill was referred to the committee on 4 December 2002. The closing date for public submissions was 30 May 2003. We received and considered seven submissions on the bill. Advice was received from the Department of Internal Affairs.

Committee membership

Jeanette Fitzsimons (Chairperson)

David Parker (Deputy Chairperson)

Shane Ardern

Larry Baldock

Dr Ashraf Choudhary

Sandra Goudie

Ann Hartley

Nanaia Mahuta

Hon Damien O'Connor

Jim Peters

Hon Ken Shirley

Hon Dr Nick Smith

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Georgina Beyer

Masterton District Council (Montfort Trimble Foundation) Bill

Local Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Masterton District Council (Montfort Trimble Foundation) Act **2002**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Interpretation**
In this Act, unless the context otherwise requires,—
Board means the Board of the Foundation

Council means the Masterton District Council

financial year means a period of 12 months ending with 30 June

Foundation means the Montfort Trimble Foundation established by **section 4**

Foundation district means the area that—

- (a) constituted the Masterton County as set out in the Second Schedule of the Notice Redefining Boundaries of the Borough of Masterton, the County of Masterton, and the Opaki Riding and Te Whiti Riding of the County of Masterton in Volume II of the *Gazette* 1931 (page 1461); and
- (b) is shown in the diagram in **Schedule 2** as the Masterton County in 1940

Masterton District means the Masterton District as it was constituted on 1 November 1989 by clause 139 of the Local Government (Wellington Region) Reorganisation Order 1989

member means a member of the Board

ratepayer elector means a person who is qualified as a ratepayer elector under section 24 of the Local Electoral Act 2001

residential elector means a person who is qualified as a residential elector under section 23 of the Local Electoral Act 2001

triennial general election means a general election referred to in section 10(2) of the Local Electoral Act 2001

Trimble Forest means the forestry block of approximately 127 hectares which was purchased and developed by the Masterton County Council, for the purpose of public afforestation using income of the Trimble Trust, as increased or decreased or substituted from time to time

Trimble Trust means the afforestation trust established by the Will of Dr Montfort Trimble dated 15 February 1940.

Montfort Trimble Foundation

4 Montfort Trimble Foundation established

- (1) This section establishes the Montfort Trimble Foundation.
- (2) The Foundation is a body corporate with perpetual succession.

5 Objects of Foundation

- (1) The objects of the Foundation are—
- (a) to promote public afforestation by—
 - (i) the production and care of timber for economic purposes;
 - (ii) the maintenance of forests;
 - (iii) providing a supply of timber for public wants;
 - (iv) assisting the Council to establish forests;
 - (v) providing for the conservation of native and commercial forests;

New (unanimous)

- (vi) amenity and protection planting and their maintenance:

Struck out (unanimous)

- (b) to contribute to or provide for recreation, the environment, and the advancement of education.

- (2) This section is subject to **section 8**.

6 Powers of Foundation

- (1) In order for the Foundation to further its objects, the Foundation—
- (a) has full capacity to carry out or undertake any related business or related activity, do any act, or enter into any transaction; and
 - (b) for the purposes of **paragraph (a)**, has full rights, powers, and privileges.
- (2) **Subsection (1)** applies subject to—
- (a) the provisions of this Act and any other enactment; and
 - (b) the general law.

Struck out (unanimous)

7 Foundation established for charitable purposes

- (1) The Foundation is to be treated as having been established exclusively for charitable purposes within New Zealand, and

Struck out (unanimous)

all actions carried out by the Board under this Act are to be treated as having been carried out exclusively for charitable purposes.

- (2) Any business carried on by the Board is to be treated as being carried on exclusively for charitable purposes within New Zealand and not for the pecuniary gain of any person.

8 Distributions

- (1) This section applies if the Foundation makes distributions of income or capital or both that are—
- (a) solely in respect of objects that are outside of the Foundation district(, *or*)

Struck out (unanimous)

(b) in respect of the objects set out in **section 5(1)(b)**.

- (2) In any financial year, the amount of distributions made under **subsection (1)(a)** together with the amount of distributions made under **subsection (1)(b)** must not exceed 20% of the total distributions of income or capital or both made by the Foundation.
- (3) A distribution made in respect of objects outside the Foundation district must be made—
- (a) in respect of objects within the Masterton District; or
- (b) for the benefit of residents and ratepayers of the Masterton District.

*Board of Foundation***9 Board of Foundation**

- (1) This section establishes the Board of the Foundation.
- (2) The Board consists of 7 members elected or appointed in accordance with **sections 11 to 14**.

10 Interim Board

- (1) As soon as practicable after this Act comes into force, the Council must appoint 6 members, and the New Zealand

Guardian Trust Company Limited must appoint 1 member, to act as the interim Board.

- (2) At any time, the Council may remove any of the members which it has appointed under **subsection (1)**, and the New Zealand Guardian Trust Company Limited may remove the member which it appointed under **subsection (1)**, and appoint a replacement member or members as the case may be.
- (3) Unless sooner removed from office, the members appointed under this section hold office until the first elected members come into office as set out in **section 12(2)**.
- (4) The interim Board has the same functions and powers as the Board.

11 Elected members

- (1) There must be 4 elected members.
- (2) The elected members must be elected by the residential electors and ratepayer electors of the Foundation district.
- (3) A person may stand for election as a member if he or she is qualified to be a candidate under section 25 of the Local Electoral Act 2001.
- (4) Subject to this Act, the electoral officer of the Council must conduct the election of members in accordance with the Local Electoral Act 2001.
- (5) The Foundation must pay the reasonable costs and expenses (except expenses of scrutineers and other expenses incurred by or on behalf of candidates) which the Council incurs in conducting any elections under this Act.

12 First election of members

- (1) The first election of members is to be conducted in conjunction with the triennial general election in October 2004.
- (2) The first elected members come into office immediately following the declaration of the result of the triennial general election in October 2004.
- (3) Two of the first elected members hold office until the declaration of the result of the next triennial general election in October 2007.

- (4) Two of the first elected members hold office until the declaration of the result of the triennial general election in October 2010.
- (5) The electoral officer must determine which of the first elected members will hold office under **subsection (4)** by the drawing of lots immediately after the declaration of the result of the triennial general election in October 2004.

13 Subsequent elections of members

- (1) After the first election of members in October 2004, the subsequent election of members must be conducted in conjunction with successive triennial general elections and 2 members must be elected at each election.
- (2) The members elected under this section—
 - (a) come into office immediately following the declaration of the result of the election; and
 - (b) hold office until the declaration of the result of the triennial general election 6 years after their election.

14 Appointed members

- (1) Three members must be appointed as follows:
 - (a) the Council must appoint 2 members; and
 - (b) the New Zealand Guardian Trust Company Limited must appoint 1 member.
- (2) The Council and the New Zealand Guardian Trust Company Limited must make their first appointments under this section as soon as practicable after the first elected members come into office as set out in **section 12(2)**.
- (3) An appointed member holds office for a period of 3 years from the date of his or her appointment.
- (4) An appointed member may serve more than 1 term as a member.
- (5) At any time, the Council may remove any of its members appointed under **subsection (1)(a)**, and the New Zealand Guardian Trust Company Limited may remove its member appointed under **subsection (1)(b)**.

New (unanimous)

- (6) However, the Council and the New Zealand Guardian Trust Company Limited may remove a member only—
- (a) because the member is unable to perform his or her duties adequately; or
 - (b) for neglect of duty or misconduct.

15 Resignation of members

- (1) A member may resign office by notice in writing addressed and delivered to the Chairperson of the Board.
- (2) The notice takes effect on the day on which it is delivered to the Chairperson of the Board.

16 Vacancy on Board

- (1) The office of a member becomes vacant, and the vacancy that is created is an extraordinary vacancy, if—
 - (a) a member dies; or
 - (b) a member resigns under **section 15**; or
 - (c) a member is absent without leave of the Board from 4 consecutive meetings of the Board; or
 - (d) in the case of an appointed member, the Council or the New Zealand Guardian Trust Company Limited has removed the member under **section 14(5)**.
- (2) In the event of an extraordinary vacancy of an elected member, the extraordinary vacancy must be filled by the Board appointing a person who is qualified to be an elected member.
- (3) In the event of an extraordinary vacancy of an appointed member, the extraordinary vacancy must be filled in the same manner as that of the person whose office became vacant.
- (4) Appointments under **subsections (2) and (3)** are to be made as soon as practicable after the extraordinary vacancy arises.
- (5) A person who is appointed to fill an extraordinary vacancy holds office for the remainder of the term for which his or her predecessor was to hold office.

17 Function of Board

The Board has and may exercise all the functions, powers, and duties of the Foundation.

- 18 Powers of Board not affected by vacancies**
The powers of the Board are not affected by a vacancy in the membership of the Board.
- 19 Right of member to apply to High Court for directions**
A member may apply to the High Court for directions under section 66 of the Trustee Act 1956 as if the member were a trustee.
- 20 Schedule 1 applies in relation to Board**
The provisions of **Schedule 1** apply in relation to the Board.
- 21 Members not personally liable**
No member acting in good faith is personally liable for any default made by the Board or by another member in the course of the Foundation's operations.

Struck out (unanimous)

- 22 Remuneration of members**
The Board may pay remuneration to its members in accordance with the Local Government Act 1974 as if they were members of a local authority.

New (unanimous)

- 22 Remuneration and allowances**
- (1) A member of the Board is entitled to receive—
- (a) remuneration and other benefits at a rate and of a kind determined by the Minister of Local Government in accordance with the fees framework for members of statutory and other bodies; and
 - (b) payment of reimbursing allowances or actual and reasonable expenses incurred in undertaking his or her duties as a member of the Board.

Miscellaneous provisions

- 23 Council to make distributions to Foundation**
Without limiting its powers under law, the Council must make distributions to the Foundation from any net proceeds which the Council receives from the harvest of timber from the Trimble Forest.
- 24 New Zealand Guardian Trust may make distributions to Foundation**
Without limiting its powers under law, the New Zealand Guardian Trust Company Limited may make distributions to the Foundation from the capital or income of the Trimble Trust.

Struck out (unanimous)

- 25 Foundation not a local authority trading enterprise**
To avoid doubt, the Foundation is not a local authority trading enterprise within the meaning of the Local Government Act 1974.

New (unanimous)

- 25 Foundation not council-controlled organisation because Council appoints members of Board**
The appointment of members of the Board by the Council under **section 10** does not make the Foundation a council-controlled organisation under the Local Government Act 2002.

Struck out (unanimous)

- 26 Exemption from income tax**
The Foundation is exempt from the payment of income tax.

- 27 Council may provide administrative services to Foundation**
The Council may provide any administrative services to the Foundation as the Council thinks fit.

New (unanimous)

28 Public Audit Act 2001 amended

The Public Audit Act 2001 is amended by inserting in Schedule 2, in its appropriate alphabetical order, the item “Montfort Trimble Foundation”.

Schedule 1 Conduct of business

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1 Chairperson of Board

- (1) The members may appoint 1 of the members to be the Chairperson of the Board.
- (2) On making the appointment, the members must decide on the period for which the Chairperson will hold office.
- (3) The Chairperson may be removed from office on the unanimous resolution of the other members.

2 Quorum

The quorum for a meeting of the Board is 4 members.

3 Meetings

- (1) The Chairperson must decide on the time and place of any meetings of the Board.
- (2) At least 7 days before a Board meeting, written notice must be given to all members of the date, time, and place of the meeting.
- (3) The Chairperson must preside at all Board meetings if he or she is present. If the Chairperson is absent, the members present must appoint 1 of them to preside at the meeting. The member presiding has the powers of the Chairperson for the purposes of the meeting.
- (4) All questions and matters arising at Board meetings must be decided by majority resolution of the members present and entitled to vote.
- (5) At a Board meeting, the Chairperson has a deliberative vote (*and*) but, in the case of an equality of votes, (*also has*) does not have a casting vote.
- (6) A resolution in writing signed by all of the members is as effective as if it had been passed at a meeting. The resolution may consist of several like documents each signed by 1 or more of the members and may be sent by fax.

4 Committees

- (1) The Board may appoint and dissolve committees of the Board.

- (2) A committee may include among its membership, persons who are not members of the Board.
- (3) Subject to the provisions of this Act and to the terms of its appointment, a committee may regulate its own procedure.

5 Annual plan

- (1) For each financial year of the Foundation, the Board must prepare and adopt an annual plan for the Foundation.
- (2) The Board must adopt the annual plan before the beginning of the financial year to which it relates.
- (3) The annual plan must outline in particular terms for the coming financial year and in general terms for each of the following 2 financial years—
 - (a) the intended significant policies of the Foundation; and
 - (b) the nature and scope of the significant activities to be undertaken by the Foundation; and
 - (c) the performance targets and other measures by which the performance of the Foundation may be measured; and
 - (d) a budget for the coming financial year.

6 Annual report

- (1) Following the end of each financial year for the Foundation, the Board must prepare an annual report for presentation at the annual general meeting of the Foundation.
- (2) The annual report must—
 - (a) contain the *(audited)* financial statements, audited by the Auditor-General, of the Foundation for that financial year including:
 - (i) a statement of financial position; and
 - (ii) a statement of financial performance; and
 - (iii) a statement of cash flows; and
 - (iv) such other statements and information as may be required by law or may be necessary to fairly reflect the financial position of the Foundation, the resources available to it, and the financial results of its operations; and
 - (b) contain a report on the activities of the Foundation for that financial year; and

- (c) assess the performance of the Foundation in that financial year against the policies, objectives, and targets adopted by the Foundation for that year in its annual plan; and
- (d) contain the auditor's report on the financial statements and performance targets and other measures by which the performance of the Foundation in that financial year has been judged in relation to its objectives as set out in the Foundation's annual plan relating to that year.

New (unanimous)

- (3) The financial statements included in the annual report must be prepared in accordance with generally accepted accounting practice within the meaning of the Financial Reporting Act 1993.

6A Annual plan and annual report available on request

The Board must make available for inspection free of charge and for purchase at a reasonable cost copies of—

- (a) the annual plan prepared and adopted under **section 5**; and
- (b) the annual report presented at the annual general meeting of the Foundation under **section 6**.

7 Annual general meeting

- (1) In each calendar year, the Board must hold an annual general meeting of the Foundation before 30 November.
- (2) The Board must fix the time and place of the annual general meeting.
- (3) At the annual general meeting, the Board must consider—
 - (a) the annual report prepared under **clause 6(1)**; and
 - (b) any other special business or general business that has been included in the notice given under **subclause (4)**.
- (4) Despite **clause 3(2)**, notice in writing of the business to be conducted at the annual general meeting must be given to all members at least 14 days before the meeting.

- (5) The Board must give public notice of the annual general meeting and the business to be conducted at the annual general meeting at least 14 days before the meeting.
- (6) The public is entitled to attend and speak at an annual general meeting but is not entitled to vote at the meeting.

8 Delegation of powers of Board

- (1) Subject to **subclause (2)**, the Board may delegate any of the functions, powers, or duties of the Foundation to any of the following:
 - (a) an employee of the Foundation;
 - (b) a committee of the Board.
- (2) The Board must not delegate—
 - (a) the power to delegate; or
 - (b) the power to make distributions of income or capital.
- (2) The delegation must be in writing and may be made subject to any restrictions or conditions as the Board thinks fit.
- (3) A delegation is revocable in writing, and no delegation affects or prevents the Board from exercising any function, power, or duty under this Act.

9 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by the Foundation as provided in this clause.
- (2) An obligation that, if entered into by an individual, is required to be by deed, may be entered into on behalf of the Foundation in writing, signed under the name of the Foundation by—
 - (a) 2 or more of the members; or
 - (b) 1 or more attorneys appointed by the Foundation under this clause.
- (3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of the Foundation in writing by a person acting under the express or implied authority of the Foundation.
- (4) An obligation that, if entered into by an individual, is not required to be in writing, may be entered into on behalf of the Foundation in writing or orally by a person acting under the express or implied authority of the Foundation.

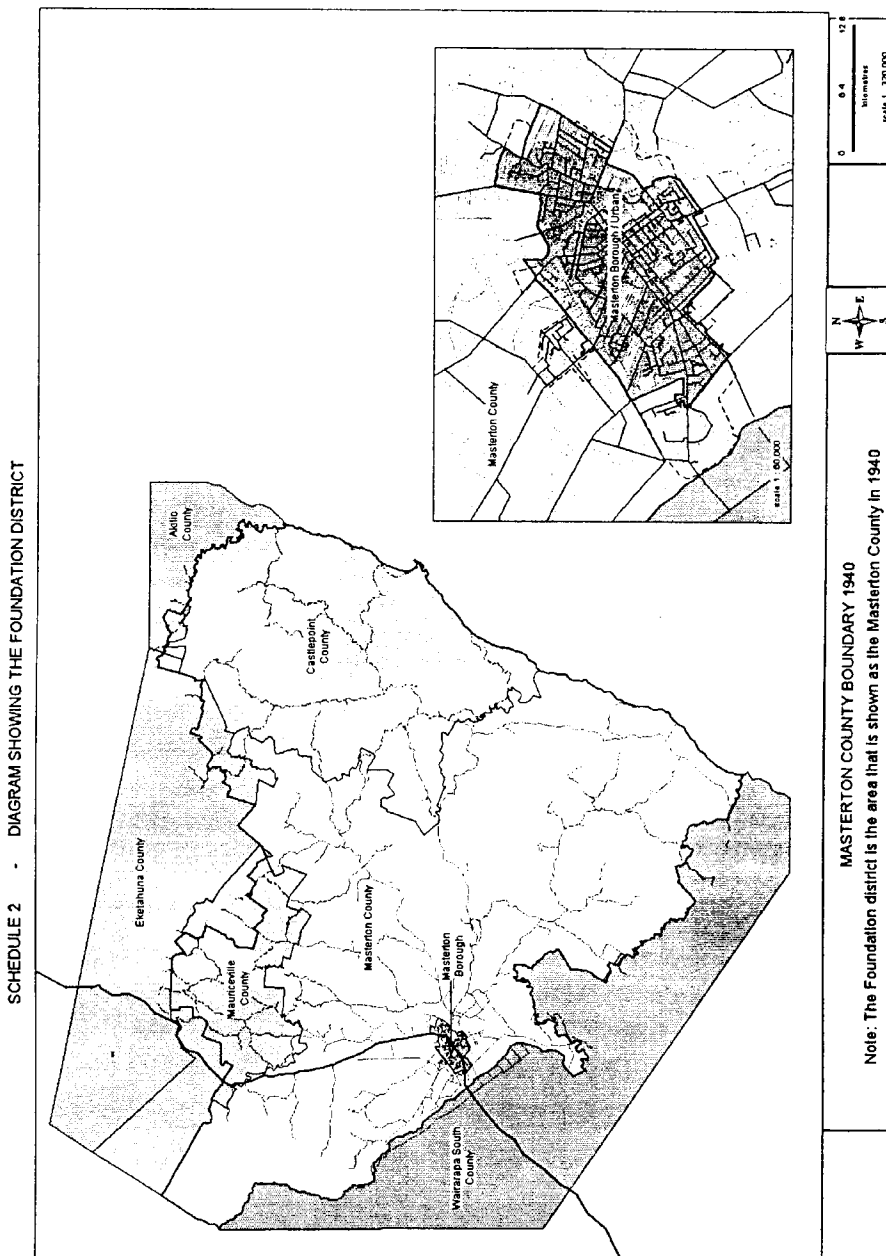
- (5) The Foundation may, by an instrument in writing executed as a deed, appoint a person as its attorney, either generally or in relation to a specified matter.
- (6) An act of the attorney in accordance with the instrument binds the Foundation.
- (7) This clause applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

10 Procedure generally

Subject to the provisions of this Act, the Board may regulate its own procedure.

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Schedule 2 Diagram showing the Foundation district



**Masterton District Council (Montfort
Trimble Foundation)**

Legislative history

15 October 2002
4 December 2002

Introduction (Bill 6-1)
First reading and referral to Local Government and
Environment Committee
