

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

Local Bill

## **Explanatory note**

### **General policy statement**

This Bill establishes the Montfort Trimble Foundation. It requires the Masterton District Council to distribute any net proceeds it receives from the harvest of timber from the Trimble Forest to the Foundation. It also authorises the New Zealand Guardian Trust Company Limited to make distributions to the Foundation.

In clause 5 of his Will dated 15 February 1940, Dr Montfort Trimble directed that his residuary estate be transferred to a Trustee (presently New Zealand Guardian Trust Company Limited) to be invested and for the income to be applied in perpetuity for the purpose of public afforestation in the area (as it existed at the date of his death) of the Masterton County (the **Trimble Trust**). The Trimble Trust is charitable in nature. Dr Trimble's Will also provided that the Trustee could make such arrangements as it deemed conducive for the purpose of public afforestation with any local or public authority.

In 1942, the Trustee entered into an arrangement with the Masterton County Council where the Council purchased and developed a forestry block of 127 hectares (the **Trimble Forest**) using income from the Trimble Trust.

The Trimble Forest owned by the Masterton District Council is valued at \$1.98 million. Harvesting of the Trimble Forest commenced in 2002 and will continue until 2018. The net revenue from harvesting is estimated to amount to \$2.5 million. The proceeds from the sale of the timber harvested from the Trimble Forest will be

substantially in excess of what is practically needed for the replanting of the forest.

The terms on which the Masterton District Council originally received the money from the Trustee to purchase and develop the forestry block also amount to a trust for public afforestation. The trust in respect of the Trimble Forest is separate from the Trimble Trust created by Dr Trimble's Will.

At present, the Trustee holds assets in the Trimble Trust in accordance with Dr Trimble's Will to the value of approximately \$100,000.

This Bill seeks to broaden and clarify the range of activities to which both assets of the Trimble Trust and the proceeds of afforestation may be applied while, at the same time, retaining the essential intent of the original trust.

This Bill authorises the Council (as trustee of the Trimble Forest) and the Trustee (as trustee of the Trimble Trust) to make distributions to a newly created Montfort Trimble Foundation.

The primary object of the Foundation will be to promote public afforestation. This includes the production and care of timber for economic purposes, the maintenance of forests, providing a supply of timber for public wants, assisting the Council to establish forests, and providing for the conservation of native and commercial forests. The Foundation will also be authorised to contribute to or provide for recreation, the environment, and the advancement of education.

Dr Trimble's bequest was for afforestation in the area of the Masterton County. The Masterton County no longer exists. To reflect Dr Trimble's essential intent regarding the area of primary benefit, the Foundation district has been defined as the area that constituted the Masterton County as described in the 1931 *Gazette*. This remained the same area in 1940. Distributions for purposes within the Foundation district are unlikely to exhaust the Foundation's income. Accordingly, allowance has been made for distributions outside the Foundation district, but within defined parameters from which the Foundation district could be expected to benefit.

Consequently, in any financial year the following distributions must not exceed 20% of the total distributions of income or capital or both made by the Foundation:

- (a) distributions that are solely in respect of objects that are outside that Foundation district; or

- (b) distributions that provide for recreation, the environment and the advancement of education.

A distribution made in respect of objects outside of the Foundation district must also be made in respect of objects within the Masterton District or for the benefit of the residents and ratepayers of the Masterton District.

### Clause by clause analysis

*Clause 1* relates to the title of the Bill.

*Clause 2* relates to the commencement of the Bill. The Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* contains various definitions. Defined terms include **Foundation**, **Foundation district**, **Trimble Forest**, and **Trimble Trust**.

In particular, the **Foundation district** means the area that constituted the Masterton County as set out in a notice in the *Gazette* in 1931. The same area is also shown in a diagram in *Schedule 2*. The definition of this term corresponds to the wish of Dr Montfort Trimble that the income from his residuary estate was to be applied in perpetuity for the purpose of public afforestation in the area (as it existed at the date of his death) of the Masterton County.

### *Montfort Trimble Foundation*

*Clause 4* establishes the Montfort Trimble Foundation and provides that it is a body corporate.

*Clause 5* sets out the objects of the Foundation. The objects of the Foundation are to promote public afforestation by—

- the production and care of timber for economic purposes:
- the maintenance of forests:
- providing a supply of timber for public wants:
- assisting the Council to establish forests:
- providing for the conservation of native and commercial forests.

The objects of the Foundation also include contributing to or providing for recreation, the environment and the advancement of education. *Clause 5* is subject to *clause 8* which limits the power of the Foundation to make distributions.

*Clause 6* sets out the powers of the Foundation. In order to further its objects, the Foundation has full capacity to carry out or undertake any business or activity, do any act, or enter into any transaction.

*Clause 7* provides that the Foundation is to be treated as having been established exclusively for charitable purposes within New Zealand.

*Clause 8* contains the limitations on the power of the Foundation to make distributions. No more than 20% of the total distributions of income or capital or both of any financial year may consist of distributions that are—

- solely in respect of objects outside of the Foundation district; or
- in respect of the objects set out in *clause 5(b)* (being contributions to and provision for recreation, the environment, and the advancement of education).

A further limitation is that a distribution made in respect of objects outside of the Foundation district must be made in respect of objects in the Masterton District or for the benefit of residents and ratepayers of the Masterton District.

#### *Board of Foundation*

*Clauses 9 to 22* relate to the Board of the Foundation. *Clause 9* establishes a Board which consists of 7 members who are elected or appointed in accordance with *clauses 11 to 14*.

*Clause 10* provides for an interim Board. The interim Board will act until the members have been elected and appointed under *clauses 12 and 14*. The interim Board has the same functions and powers as the Board.

*Clause 11* provides that there must be 4 elected members. The election of the members must be conducted in accordance with the Local Electoral Act 2001 subject to any specific requirements contained in the Bill. The electoral officer of the Council is to conduct the elections. The members must be elected by the residential electors and ratepayer electors of the Foundation district. However, any person who is qualified to be a candidate under section 25 of the Local Electoral Act 2001 may stand for election as a member.

Generally, the election of members is to be staggered and the elected members will hold office for a period of 6 years. However, there are specific arrangements for the first two elections. Under *clause 12*,

the first election must be conducted in conjunction with the triennial general elections in October 2004 and 4 members must be elected. Two members will hold office for a period of 3 years and the other 2 members will hold office for a period of 6 years. Which 2 members hold office for a period of 3 years will be decided by the electoral officer in accordance with *clause 12(5)*. After the 2004 elections, the subsequent election of members must be conducted in conjunction with successive triennial general elections and 2 members must be elected at each election (*clause 13*).

*Clause 14* relates to appointed members. The Council must appoint 2 members and the New Zealand Guardian Trust Company Limited must appoint 1 member. The first appointments are to be made as soon as practicable after the first elected members come into office under *clause 12*. An appointed member holds office for a period of 3 years.

*Clause 15* provides for the resignation of members. A member may resign office by notice in writing addressed and delivered to the Chairperson of the Board.

*Clause 16* sets out what is to happen if there is an extraordinary vacancy. An extraordinary vacancy occurs if a member dies, resigns under *clause 15*, or is absent without leave of the Board from 4 consecutive meetings of the Board. An extraordinary vacancy in the office of an elected member is to be filled by the Board appointing a person who is qualified to be an elected member. An extraordinary vacancy in the office of an appointed member is to be filled in the same manner as that of the person whose office became vacant.

*Clause 17* provides that Board has and may exercise all the functions, powers, and duties of the Foundation.

*Clause 18* provides that the powers of the Board are not affected by a vacancy in the membership of the Board.

*Clause 19* provides that 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.

*Clause 20* provides that the business of the Board is to be conducted in the manner set out in *Schedule 1*.

*Clause 21* relates to the personal liability of the members. No member is personally liable for any default made by the Board or by any member in the course of the Foundation's operations.

*Clause 22* provides for the 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.

*Miscellaneous provisions*

*Clauses 23 to 27* contain a number of miscellaneous provisions.

*Clause 23* requires the Council to make distributions to the Foundation from any net proceeds which the Council receives from the harvest of timber from the Trimble Forest.

*Clause 24* authorises the New Zealand Guardian Trust Company Limited to make distributions to the Foundation from the capital or income of the Trimble Trust.

*Clause 25* clarifies that the Foundation is not a local authority trading enterprise within the meaning of the Local Government Act 1974.

*Clause 26* provides that the Foundation is exempt from the payment of income tax.

*Clause 27* provides that the Council may provide any administrative services to the Foundation as the Council thinks fit.

*Schedule 1* sets out further provisions relating to the conduct of business of the Board.

*Schedule 2* contains a diagram showing the Foundation district.

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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. 5

**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 5

**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 10  
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 15
- (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 20

**member** means a member of the Board

**ratepayer elector** means a person who is qualified as a rate-  
payer 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 25  
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 Mas- 30  
terton 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. 35

*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** 5
- (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: 10
      - (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:
    - (b) to contribute to or provide for recreation, the environment, and the advancement of education. 15
  - (2) This section is subject to **section 8**.
- 6 Powers of Foundation**
- (1) In order for the Foundation to further its objects, the Foundation— 20
    - (a) has full capacity to carry out or undertake any business or 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— 25
    - (a) the provisions of this Act and any other enactment; and
    - (b) the general law.
- 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 all actions carried out by the Board under this Act are to be treated as having been carried out exclusively for charitable purposes. 30
  - (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. 35

**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 5
  - (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. 10
- (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. 15

*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**. 20

**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. 25
- (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. 30
- (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. 35

**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. 5
- (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. 10
- (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. 15
- (2) The first elected members come into office immediately following the declaration of the result of the triennial general election in October 2004. 20
- (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. 25
- (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. 30

**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. 35
- (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.

<b>14</b>	<b>Appointed members</b>	5
(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 <b>section 12(2)</b> .	10
(3)	An appointed member holds office for a period of 3 years from the date of his or her appointment.	15
(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 <b>subsection (1)(a)</b> , and the New Zealand Guardian Trust Company Limited may remove its member appointed under <b>subsection (1)(b)</b> .	20
<b>15</b>	<b>Resignation of members</b>	
(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.	25
<b>16</b>	<b>Vacancy on Board</b>	
(1)	The office of a member becomes vacant, and the vacancy that is created is an extraordinary vacancy, if—	
	(a) a member dies; or	30
	(b) a member resigns under <b>section 15</b> ; 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 <b>section 14(5)</b> .	35

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- (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. 5
- (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. 10
- 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** 15  
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
- 20 Schedule 1 applies in relation to Board**  
The provisions of **Schedule 1** apply in relation to the Board.
- 21 Members not personally liable** 25  
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.
- 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. 30

*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. 5
- 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. 10
- 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. 15
- 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. 20
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**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. 5
- (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. 10

**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. 15
- (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. 20
- (4) All questions and matters arising at Board meetings must be decided by majority resolution of the members present and entitled to vote. 25
- (5) At a Board meeting, the Chairperson has a deliberative vote and, in the case of an equality of votes, also has 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. 30

**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. 35

- (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. 5
- (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— 10
- (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; 15  
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. 20
- (2) The annual report must—
- (a) contain the audited financial statements of the Foundation for that financial year including: 25
    - (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 30
  - (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 35

- (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. 5

**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. 10
- (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. 15
- (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. 20
- (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: 25  
(a) an employee of the Foundation;  
(b) a committee of the Board.
- (2) The Board must not delegate—  
(a) the power to delegate; or 30  
(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. 35

**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— 5
- (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. 10
- (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. 15
- (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. 20
- (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 25
  - (b) whether or not the law governing that obligation is the law of New Zealand.

**10 Procedure generally**

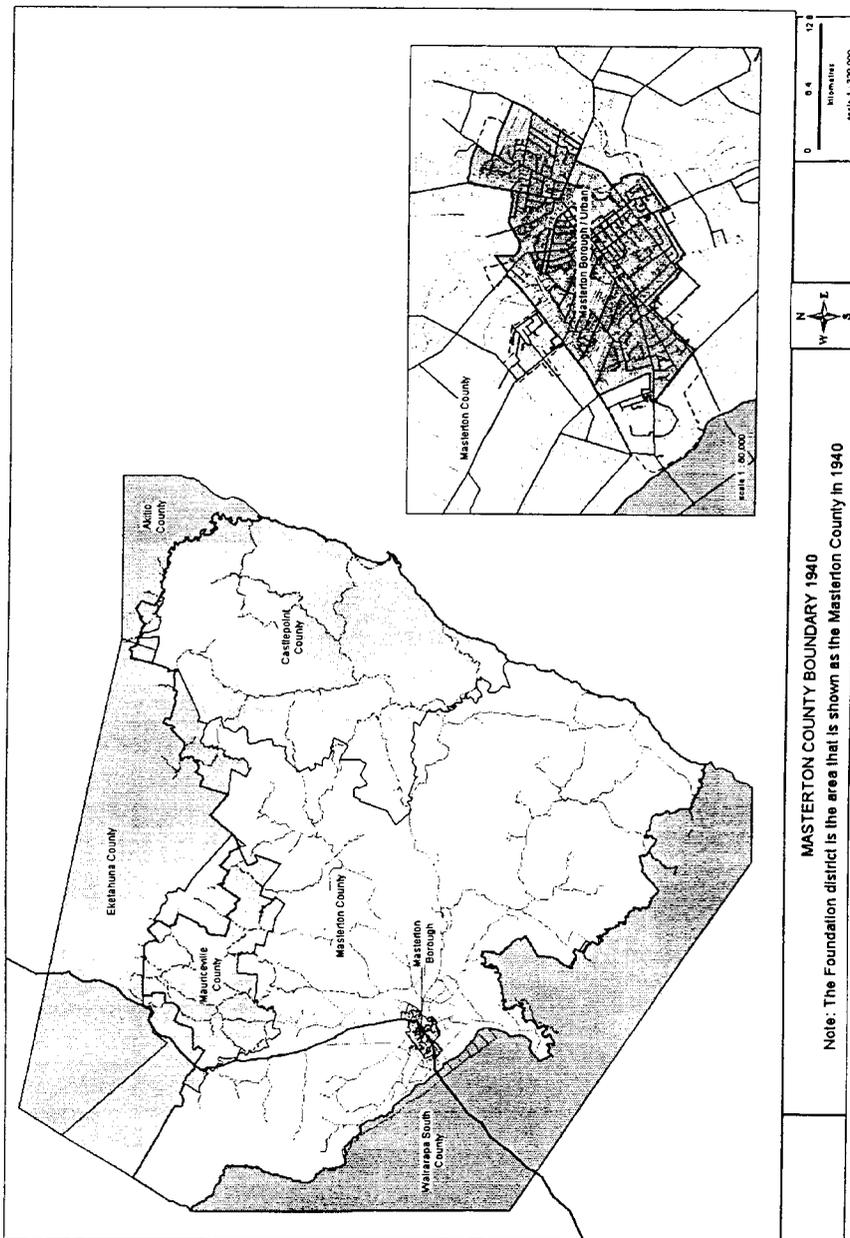
Subject to the provisions of this Act, the Board may regulate its own procedure. 30

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**Schedule 2**  
**Diagram showing the Foundation district**

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SCHEDULE 2 · DIAGRAM SHOWING THE FOUNDATION DISTRICT



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