

## Registration Decision: Better Public Media Trust

### Board Decision

1. The role of the independent Charities Registration Board (“the Board”) is to maintain the integrity of the Charities Register through ensuring that entities on the Charities Register qualify for registration. The Board makes its decisions based on the facts before it and applies the law including relevant case law. The Board must decline to register an organisation when it does not advance a charitable purpose for the public benefit.<sup>1</sup>
2. The Board’s decision is to decline to register the Better Public Media Trust (“the Trust”) because it does not advance exclusively charitable purposes.
3. The Board considers that the Trust has a primary purpose to promote its points of view on public service media (“PSM”) that does not advance a public benefit in a way previously accepted as charitable.
4. The Board considers the Trust may have a charitable purpose to advance education but this does not qualify the Trust for registration as it is not the Trust’s focus. The Board has also considered whether the Trust has a charitable purpose to promote good citizenship and concludes that it does not.
5. Following the three-step process of Ellis J in *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“FARR AND FRSSH”)<sup>2</sup> the Board has considered:
  - whether the Trust’s stated purposes are capable of being charitable;
  - whether the Trust’s activities are consistent with or supportive of a charitable purpose;
  - if the Trust’s activities are found not to be charitable, whether they can be said to be merely ancillary to an identified charitable purpose.
6. The Board has carefully considered all of the Trust’s submissions received before and after the Trust was given notice that the application might be declined. The Board has also considered the information on activities collected by Charities Services<sup>3</sup> from Trust’s website and external websites. The Trust was notified of all the website information that Charities Services collected and was given the opportunity to respond. The Board has based its conclusions on the application of the law to the facts before it.

---

<sup>1</sup> Section 19(4) of the Charities Act 2005 (“the Act”)

<sup>2</sup> *Re the Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“FAAR and FRSSH”).

<sup>3</sup> Charities Services, Ngā Rātonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Act.

7. This decision is separated into the following sections:
- Background.
  - What are the purposes of the Trust?
  - Does the Trust have a charitable purpose to promote a public amenity?
  - Does the Trust have a charitable purpose to advance education?
  - Does the Trust have a charitable purpose to promote good citizenship?

## Background

8. The Trust applied for registration as a charity under the Charities Act 2005 ("the Act") on 19 October 2015.
9. On 10 March 2016, Charities Services notified the Trust that it did not meet registration requirements, as its purposes were not exclusively charitable.<sup>4</sup> On 6 May 2016, the Trust submitted that its promotion of PSM was charitable by analogy to cases on public amenities.<sup>5</sup> On 11 November 2016, Charities Services responded to the Trust's submissions, notifying the Trust that it continued to consider the Trust did not meet registration requirements.<sup>6</sup> The Trust provided further submissions on 31 August 2017, contesting Charities Services' position.<sup>7</sup> Charities Services sent a third notice to the Trust on 16 February 2018 and invited final submissions before the application was referred to the Board.<sup>8</sup>
10. On 12 June 2018, the Trust provided an affidavit in support of its application. Charities Services notified the Trust that the affidavit discussed the benefits of PSM, but not how those benefits were analogous to previous cases.<sup>9</sup> Charities Services again invited final submissions,<sup>10</sup> and on 12 July 2018 the Trust provided submissions.<sup>11</sup>
11. Following the High Court's decision in *Family First New Zealand* ("*Family First*"),<sup>12</sup> Charities Services invited comments from the Trust on the implications of the decision on its application.<sup>13</sup> The Trust provided comments on 28 September 2018.<sup>14</sup> The Trust's application was referred to the Board on 15 February 2019 for consideration.

---

<sup>4</sup> Charities Services' notice to the Trust dated 10 March 2016.

<sup>5</sup> The Trust's submissions to Charities Services dated 6 May 2016.

<sup>6</sup> Charities Services' notice to the Trust dated 11 November 2016.

<sup>7</sup> The Trust's submissions to Charities Services dated 31 August 2017.

<sup>8</sup> Charities Services' notice to the Trust dated 16 February 2018.

<sup>9</sup> Charities Services' email to the Trust dated 2 July 2018.

<sup>10</sup> Charities Services' email to the Trust dated 2 July 2018.

<sup>11</sup> The Trust's submissions to Charities Services dated 12 July 2018.

<sup>12</sup> *Family First of New Zealand* [2018] NZHC 2273 ("*Family First*").

<sup>13</sup> Charities Services' email to the Trust dated 7 September 2018.

<sup>14</sup> The Trust's submissions to Charities Services dated 28 September 2018.

## What are the purposes of the Trust?

12. The Trust's stated purposes at clause 3 of the Trust Deed are:<sup>15</sup>
- A. To advance public media in New Zealand.
  - B. To promote the role of public media in educating, informing and entertaining all New Zealanders.
  - C. To educate New Zealanders and promote informed debate about public media issues.
  - D. To support improved access to funding, operating conditions and platforms of distribution for use by public media providers.
  - E. To represent and advance the interests of media audiences.
  - F. To undertake other activities that are likely to further the charitable purpose of the Trust.
13. Clause 2.4 of the Trust Deed defines Public Media as:<sup>16</sup>
- public interest, non-profit, publicly-owned, independent or non-commercial media (including television channels, television programmes, radio stations, radio programmes, news media, social media, websites, applications, games, software, and other online or communications media).
14. The Trust describes PSM as a "particular model of producing and distributing media content. That model is based on public funding, where the production and distribution of content is guided by social values."<sup>17</sup> The Trust submits that PSM leads to "...more diverse range of media content...", and supports "active citizenship."<sup>18</sup>
15. The Trust submits these purposes are analogous to purposes previously accepted as charitable by the courts:
- a. the promotion of public amenities;<sup>19</sup> and
  - b. the advancement of education.<sup>20</sup>

---

<sup>15</sup> Trust Deed dated 2 February 2018, clause 3. This Deed amended the Trust's purpose clauses and name; previously it was called The Coalition for Better Broadcasting Trust. The Trust also proposed amendments to its stated purposes in its submissions to Charities Services dated 6 May 2016 at [37]. In Charities Services' notice to the Trust dated 11 November 2016 at [69]-[70] Charities Services considered that providing comments on the proposed amendments would not assist the Trust at that time, because after reviewing the Trust's purposes and activities it did not consider Trust had exclusively charitable purposes.

<sup>16</sup> Trust Deed, dated 2 February 2018, clause 2.4. The Board notes that the terms "public media" and "public service media" have been used interchangeably by the Trust.

<sup>17</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [9].

<sup>18</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [11]. The Trust also submits, at [11], that PSM "assists the public to seek, receive and impart information, which is a fundamental human right, and vital to the function of a liberal democracy."

<sup>19</sup> The Trust's submissions to Charities Services dated 6 May 2016 at [4] and 31 August 2017 at [8].

<sup>20</sup> The Trust's submissions to Charities Services dated 6 May 2016 at [4] and 31 August 2017 at [30].

16. Applying the first step of Ellis J's three step process in *FAAR and FRSSH* process, the Board considers that A, B, D and E of clause 3 are not capable of being charitable. They demonstrate a purpose to promote PSM.<sup>21</sup> After reviewing the relevant case law, the Board does not consider that purposes to promote PSM are charitable by analogy to the provision of public amenities or any other charitable purpose.
17. The Board considers that C of clause 3 is capable of being charitable under the advancement of education.<sup>22</sup>

### **Does the Trust have a charitable purpose to promote a public amenity?**

#### ***Advocacy for PSM***

18. The Board considers the Trust has an advocacy purpose to promote PSM. Specifically, the Board considers the Trust's focus is in on promoting its views relating to the importance and benefits of PSM, and advocating for increased funding and support for PSM.
19. Although the Supreme Court in *Greenpeace* has made it clear that an organisation that advocates for the advancement of a charitable purpose is capable of being registered,<sup>23</sup> the Court also cautioned that the "[a]dvancement of causes will often, perhaps most often, be non-charitable,<sup>24</sup>" because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.<sup>25</sup> The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation*<sup>26</sup> that "**reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views.**"<sup>27</sup> [emphasis added]
20. The Supreme Court in *Greenpeace* confirmed that when an entity is advocating for a point of view, it must advocate for an *end* previously accepted as charitable by the courts. The *means* promoted to achieve that end and the *manner* in which the cause is promoted must also be considered in relation to previous cases.<sup>28</sup>
21. The High Court in *Family First* confirmed the Supreme Court's approach in *Greenpeace*, commenting that:<sup>29</sup>

*Greenpeace* opens the door to charitable status to the extent that the purposes of any organisation seeking charitable status must be examined, whether or not those purposes are to advocate for something. Whether, however, *Greenpeace* will lead to different outcomes is doubtful.
22. The High Court in *Family First* noted "the reality that establishing a public benefit has always been a hurdle for those whose primary purpose is solely to promote a cause, and still is."<sup>30</sup> The Court also noted that "the advocacy cases where charitable status has been

<sup>21</sup> Trust Deed, clauses 3.1, 3.2, 3.4 and 3.5.

<sup>22</sup> Trust Deed, clause 3.3.

<sup>23</sup> *Greenpeace* at [72].

<sup>24</sup> *Greenpeace* at [73].

<sup>25</sup> *Greenpeace* at [73].

<sup>26</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 ("*Aid/Watch*") at [68]-[69].

<sup>27</sup> *Greenpeace* at [73].

<sup>28</sup> *Greenpeace* at [76].

<sup>29</sup> *Family First* at [49].

<sup>30</sup> *Family First* at [51].

acknowledged are scarce, and seem increasingly limited to purposes of almost universal acceptance.”<sup>31</sup>

23. The Board considers that the Trust’s advocacy is for the end goal of the provision of PSM. The Board has considered whether the provision of PSM is a charitable end goal.

***Nature of the Trust’s advocacy***

24. The Board considers that the Trust’s activities focus primarily on promoting its views on the importance and benefits of PSM, and advocating for increased funding and support for PSM.<sup>32</sup>
25. The Trust’s advocacy for increased funding and support for PSM includes:<sup>33</sup>
- a. Improving the funding and expansion of Radio NZ.
  - b. Promoting NZ on Air Funding for PSM programmes rather than commercial media.
  - c. Promoting government funding for serious journalism.
  - d. Reserving television frequencies for future public service use.
  - e. Creating a non-commercial television channel.
26. The Board considers the majority of the material on the Trust’s website promotes its views on PSM, and provides arguments in support its views. The Board considers the Trust expresses its point of view on the benefits of PSM in order to support its advocacy for increased funding and support of PSM. For example, the Trust uses its website to advocate for increasing RNZ funding,<sup>34</sup> the need for a public media platform,<sup>35</sup> and sustainable funding for PSM.<sup>36</sup>
27. The Trust has carried out other advocacy in support of its views, including a submission opposing the Fairfax/NZME merger; a submission to NZ on Air on their new funding strategy; creating an online petition for increased RNZ funding; supporting a private member’s Bill for free-to-air sports; and organising a voting guide for members and the public based on the parties’ media policies.<sup>37</sup>

---

<sup>31</sup> *Family First* at [65].

<sup>32</sup> Charities Services’ notice to the Trust dated 16 February 2018 at [37]. See also the Trust’s submissions to Charities Services dated 6 May 2016 at [4] (a) where the Trust stated that “its principal purpose is to support the provision of a public amenity, being “public service media.”

<sup>33</sup> The Trust’s cover letter to Charities Services accompanying its application dated 12 October 2015. The Trust notes its specific targets are subject to change, but remain guided by the single aim to promote PSM (see the Trust’s cover letter at 5-6).

<sup>34</sup> <https://betterpublicmedia.org.nz/our-aims/rnz/> [notified 16 February 2018, last accessed 25 January 2019].

<sup>35</sup> <https://betterpublicmedia.org.nz/our-aims/public-media-platform/> [notified 16 February 2018, last accessed 25 January 2019].

<sup>36</sup> <https://betterpublicmedia.org.nz/our-aims/sustainable-funding/> [notified 16 February 2018, last accessed 25 January 2019].

<sup>37</sup> Summary of Activities for the CRB/BPM in 2016 and 2017 (“Activities Summary 2016/2017”), attached to the Trust’s submissions to Charities Services dated 31 August 2017. Notified 16 February 2018.

***Is the provision of PSM a charitable end?***

28. The Board does not consider that the provision of PSM is a charitable end by analogy to previous cases on the provision of public amenities, or any other charitable purpose.
29. The Board recognises that purposes to provide public amenities are capable of being charitable under the fourth head of charity (other purposes beneficial to the community).<sup>38</sup> The courts have previously recognised a library,<sup>39</sup> a public hall,<sup>40</sup> a public highway,<sup>41</sup> and the internet<sup>42</sup> as public amenities.
30. The Trust submits that its main purpose is promoting PSM as a public amenity.<sup>43</sup> It submits that PSM is a public amenity consistent with previous cases, in particular, the Canadian Federal Court of Appeal decision in *Vancouver Regional FreeNet Association v Minister for National Revenue* ("*FreeNet*").<sup>44</sup>
31. The court in *FreeNet* held that the provision of free internet access was a charitable public amenity. Writing for the majority, Hugessen J stated that "the free exchange of information amongst members of society has long been recognised as a public good." and that "bridges, ports, causeways and highways" were previously "essential means of communication."<sup>45</sup> Hugessen J then summarised the charitable public benefit as follows:<sup>46</sup>
- ...the provision of free access to information **and** to a means by which citizens can communicate with one another on whatever subject they may please is a type of purpose similar to those which have been held to be charitable...[emphasis added]
32. In reliance on *FreeNet*, the Trust submits that providing free access to information is a charitable purpose.<sup>47</sup>
33. The Board acknowledges that the Trust promotes media that provide free access to information. The Board considers, however, that to be a public amenity, the Trust's must also promote (or provide) media that provide a means for citizens to communicate with one another.<sup>48</sup>
34. The Board considers that the internet, along with bridges, ports, causeways and highways,<sup>49</sup> are all examples of amenities that provide free access to information and can be used by citizens to "communicate with one another on whatever subject they may please."<sup>50</sup> Put differently, those amenities allow for the "free exchange of information amongst members

---

<sup>38</sup> *Morgan v Wellington City Corporation* 1975] 1 NZLR 416; *Forbes v Forbes* (1854) 18 Beav 552; *A-G v Brown* (1818) 1 Swan 265; *Wilson v Barnes* (1886) 38 Ch D 507 (CA); *FreeNet*.

<sup>39</sup> *Kjar v Mayor of Masterton* [1930] GLR 303.

<sup>40</sup> *Re Spence* [1938] Ch 96; [1937] 3 All ER 684.

<sup>41</sup> *Morgan v Wellington City Corporation* 1975] 1 NZLR 416.

<sup>42</sup> *Vancouver Regional FreeNet Association v Minister for National Revenue* 137 DLR (4<sup>th</sup>) 206 (FCA) ("*FreeNet*").

<sup>43</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [8]. See also the Trust's submissions to Charities Services dated 6 May 2016 at [4] (a).

<sup>44</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [25] citing *FreeNet*.

<sup>45</sup> *FreeNet* at 213.

<sup>46</sup> *FreeNet* at 214.

<sup>47</sup> The Trust's submissions to Charities Services dated 12 June 2018 at [6] citing *FreeNet* at 213-214.

<sup>48</sup> *FreeNet* at 214.

<sup>49</sup> *FreeNet* at 213.

<sup>50</sup> *FreeNet* at 214.

of society.”<sup>51</sup> In contrast, the Board considers the Trust primarily promotes media that broadcasts or publishes content to citizens; rather than promoting an amenity that citizens can use to exchange information or communicate with one another as they please.

35. The majority in *FreeNet* also distinguished between organisations that provide a *medium* for conveying and accessing a message, and those that provide a *message* themselves. Hugessen J considered the organisation in *FreeNet* provided public access to the use of a medium (the internet). Organisations that provide a *message* (such as newspapers and television stations) must demonstrate that the content they deliver advances a charitable purpose.<sup>52</sup>
36. The Board considers that the cases involving media providers are consistent with the distinction between the *medium* and the *message* in *FreeNet*. Namely, media providers need to demonstrate that the content they deliver advances a charitable purpose.<sup>53</sup>
37. The Board considers the Trust itself does not provide a *medium*, as it is primarily an advocacy organisation that promotes PSM delivered by others,<sup>54</sup> rather than delivering PSM itself.
38. The Board considers, however, that the Trust promotes media that is delivered through broadcasters and publishers that provide a *message*, because the majority of broadcasters and publishers control the content they deliver. Accordingly, the Board considers the Trust would need to demonstrate that the content delivered through PSM advances charitable purposes. The Board considers that the Trust has not demonstrated this. The variety of content delivered through PSM, which includes news, entertainment, informational content and sports,<sup>55</sup> is too broad to be limited to charitable purposes.
39. For these reasons, the Board does not consider that promoting PSM is analogous to previous cases on the provision of public amenities, nor does the Board consider the content delivered across PSM platforms advances exclusively charitable purposes.
40. As the Board does not consider the Trust’s advocacy is directed towards a charitable end goal, the Board has not considered the *means* promoted to achieve that *end* or the *manner* which the Trust uses to carry out its advocacy.

---

<sup>51</sup> *FreeNet* at 213.

<sup>52</sup> *FreeNet* at 214, cited in Charities Services’ notice to the Trust dated 11 November 2016 at [26]; and the Trust’s submissions to Charities Services dated 31 August 2017 at [25]. The Board notes that in the Trusts submissions to Charities Services dated 12 July 2018 at [13], the Trust states that Hugessen J’s statements on the distinction between the medium and the message are *obiter*.

<sup>53</sup> See *News to You Canada v Minister of Inland Revenue* [2011] FCA 192; *Native Communications Society of B.C. v MN.R.*, 86 D.T.C. 6353 (FCA); *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1; *Re Draco Foundation (NZ) Charitable Trust* HC WN CIV-2010-485-1275 [3 February 2011].

<sup>54</sup> The Board notes that the Trust aspires to establish a non-commercial television channel at some point but has not done so yet.

<sup>55</sup> <https://betterpublicmedia.org.nz> [notified 16 February 2018, last accessed 5/02/19].

### **Ancillary test**

41. Applying the third step of Ellis J's three-step process,<sup>56</sup> the Board has considered whether the Trust's advocacy for PSM can be said to be merely ancillary to an identified charitable purpose.
42. The Trust accepts that it expresses certain points of views on how to promote PSM, for example, by ensuring that Radio New Zealand funding is secured, and by promoting advertisement free television.<sup>57</sup> The Trust submits, however, that its advocacy is an ancillary purpose, and that any advocacy it undertakes is charitable."<sup>58</sup>
43. The Board notes that the Trust does not provide any PSM platforms itself, and considers that the Trust's activities "largely involve the assertion of its views."<sup>59</sup> Specifically, the Board considers the focus of the Trust is promoting its views on the importance of PSM, and advocating for increased funding and support for PSM. The Board considers this focus is demonstrated through the Trust's activities and in the content of the Trust's website. Given the Trust's focus on promoting its views on PSM, the Board does not consider this purpose can be said to be merely ancillary to an identified charitable purpose.
44. The Board's conclusions on the Trust's advocacy for PSM means that the Trust is not established and maintained for exclusively charitable purposes and therefore it does not qualify for registration as a charity.
45. The Board has also considered whether the Trust has a charitable purpose to advance education, or to promote good citizenship under the fourth head of charity (other purposes beneficial to the community). The Board's consideration of these purposes is outlined below.

### **Does the Trust have a charitable purpose to advance education?**

46. The Trust submits that it advances education *about* PSM and *through* PSM.<sup>60</sup> The Board has considered the Trust's submissions and website in determining whether the Trust has a purpose to advance education.
47. The advancement of education falls within the description of charitable purpose at section 5 of the Act. The most recent New Zealand decision on whether an entity advances education is *FAAR and FRSSH*, which applied the summary of the law from *Re Collier*.<sup>61</sup>
48. In *Re Collier*, Hammond J stated that for material to qualify as educational:<sup>62</sup>

...it must first confer a public benefit, in that it somehow assists the training of mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the research must reach some minimum standard.
49. Where it is established that an entity does have a purpose to advance education, it is presumed this will lead to a benefit to the public.<sup>63</sup>

---

<sup>56</sup> *FAAR and FRSSH* at [88].

<sup>57</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [9].

<sup>58</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [8].

<sup>59</sup> *Aid/Watch* at [68]-[69].

<sup>60</sup> The Trust's submissions to Charities Services dated 6 May 2016 at 4(d) and [30];

<sup>61</sup> *FAAR and FRSSH* at [56]; *Re Collier* [1998] 1 NZLR 81 (HC) ("*Re Collier*") at 91-92.

<sup>62</sup> *Re Collier* at 91-92.



50. The education must be sufficiently structured to assist the training of the mind, or advancement of research: the compiling and publishing of facts already in the public domain will not amount to research.<sup>64</sup>
51. The Supreme Court held that purposes to promote a point of view are not educational.<sup>65</sup> The Supreme Court distinguished between an organisation that advances education objectively, and an organisation that promotes a cause.<sup>66</sup> The Board considers that an organisation that promotes a cause through the dissemination of research or information that promotes a point of view must demonstrate how the cause itself is consistent with or supportive of a charitable purpose.

### **Educating about PSM**

52. The Trust submits that it advances education about PSM primarily through community engagement and arranging events “which encourage others, either professionals or students, to contribute scholarship and thereby increase knowledge and skills.”<sup>67</sup>
53. The Trust advised of the following activities which it submits advance education:<sup>68</sup>
- a. A scholarship to support writing on media issues by high school students;
  - b. Supporting a “People’s Commission” composed of professionals in public service and private media that discussed the state of media in New Zealand and provided a report with policy recommendations to the Government;
  - c. Hosting public lectures on media issues;
  - d. Commissioning research from survey companies on various aspects of PSM;<sup>69</sup>
  - e. Academic research.<sup>70</sup>
54. Applying the second step of Ellis J’s three-step process,<sup>71</sup> the Board considers that some of these activities may advance education in a charitable manner, for example, the ‘People’s Commission’,<sup>72</sup> and research conducted on behalf of the Trust which sought New Zealanders views on the state of New Zealand television.<sup>73</sup>

---

<sup>63</sup> *FAAR and FRSSH* at [67].

<sup>64</sup> See for example *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10, (1999) 169 DLR (4<sup>th</sup>) 34 at [171], adopted by Ronald Young J in *Re Draco* at [75].

<sup>65</sup> *Greenpeace* at [74] and [98]; *Aid/Watch* at [62] and [84].

<sup>66</sup> *Greenpeace* at [103]; *Aid/Watch* at [62] and [84].

<sup>67</sup> The Trust’s submissions to Charities Services dated 31 August 2017 at [36].

<sup>68</sup> The Trust’s submissions to Charities Services dated 31 August 2017 at [34]-[36]. It appears the scholarship has been implemented as an essay writing competition for high school students with prize money for first and second place; see <https://betterpublicmedia.org.nz/news/news1/people/> [accessed 5/02/2019].

<sup>69</sup> The Trust’s letter of support accompanying its application, dated 12 October 2015.

<sup>70</sup> The Trust’s letter of support accompanying its application, dated 12 October 2015.

<sup>71</sup> *FAAR and FRSSH* at [88].

<sup>72</sup> <https://betterpublicmedia.org.nz/files/1015/3487/5710/Peoples Commission on Public Broadcasting and Media - Link to Full Report.pdf> [accessed 08/02/2019].

<sup>73</sup> <https://betterpublicmedia.org.nz/files/2314/1933/2467/CBB UMR Research Jul-14.pdf> [notified 16 February 2018, last accessed 2 February 2019].

55. The Board does not consider, however, that the Trust has demonstrated that all of these activities advance education in a charitable sense, for example, the Trust did not clarify whether its public lectures on media issues would be objective and present both sides of an issue.<sup>74</sup>
56. The Board considers that the content of the Trust's website indicates that the focus of the website is on promoting the Trust's views on PSM in order to persuade or influence readers to support those views. The Board considers the majority of the website information can be seen as statement of a position or arguments in support of the Trust's views of PSM, rather than advancing education in a charitable sense.
57. Although the Board considers that some of the Trust's activities may advance education, the Board considers the focus of the Trust is promoting its views on PSM, and advocating for greater funding and support for PSM.

### ***Educating through PSM***

58. The Trust submits that it aims to educate through PSM by creating a non-commercial television station and supporting media projects in other forums.<sup>75</sup>
59. The Board considers that if the Trust established a television station it would need to demonstrate that the content on the television station advanced a charitable purpose. The Trust has not yet established a television station, and has not demonstrated that such a station, if established, would advance a charitable purpose.
60. More broadly, the Board notes that a variety of content can be delivered through PSM, including content intended to "educate, inform and entertain" the public.<sup>76</sup> The Board considers the Trust has not demonstrated that the content delivered through PSM advances education.
61. Although the Board considers that certain types of investigative journalism are capable of advancing education, the Board does not consider the Trust has shown that it is focused on conducting investigative journalism in a way that could be considered charitable. Further, PSM encompasses broader types of news content that would not qualify as charitable research.<sup>77</sup>

### **Does the Trust have a charitable purpose to promote good citizenship?**

62. The Trust submits that promoting PSM will lead to "a more informed and engaged population and supporting active citizenship..." The Trust also submits that "PSM assists the public [to] seek, receive and impart information, which is a fundamental human right, and vital to the functioning of a liberal democracy."<sup>78</sup>

---

<sup>74</sup> Charities Services notice to the Trust dated 16 February 2018 at [48].

<sup>75</sup> The Trust's submissions to Charities Services dated 6 May at [33].

<sup>76</sup> The Trust's cover letter to Charities Services accompanying its application dated 12 October 2015 at 1; see also clause 3.2 of the Trust Deed.

<sup>77</sup> Charities Services notice to the Trust dated 11 November 2016 at [56] citing *News to You*, at [17]; See also *Full Fact*.

<sup>78</sup> The Trust's submissions to Charities Services dated 31 August 2017 at [11].

63. The Board recognises that purposes to promote good citizenship by promoting public participation in democratic processes are capable of being charitable under the fourth head of charity (other purposes beneficial to the community).<sup>79</sup>
64. Although New Zealand courts have followed earlier decisions in accepting purposes directed towards good citizenship may be charitable, they did not accept that anything directed at what an entity considers improves citizens will be charitable.<sup>80</sup>
65. In *Re Draco*, the court held that simply posting summaries of information available from other sources on a website would not be sufficiently structured to promote a public benefit aligned with either education or good citizenship.<sup>81</sup>
66. In *Full Fact v The Charity Commission for England and Wales ("Full Fact")*,<sup>82</sup> the First Tier Tribunal recognised that equipping people with the knowledge and skills to verify information, enabling them to participate fully in democratic processes for public benefit, may promote good citizenship in a charitable sense.<sup>83</sup> The Tribunal held that Full Fact, whose main activity was fact-checking news stories, needed to demonstrate that it provided accurate information based on rigorous standards of objective analysis and factual research. Full Fact failed to demonstrate this.<sup>84</sup>
67. The Trust provided an affidavit from Dr Thompson which included academic commentary and research indicating that PSM has "flow-on benefits for the public in a democratic society"<sup>85</sup> and that PSM "contribute[s] positively to public understanding of democratic and human rights norms, public knowledge about electoral issues and local media plurality more generally."<sup>86</sup>
68. Although the Board accepts that PSM may contribute to the benefits described by Dr Thompson in his affidavit, the Board does not consider the Trust promotes good citizenship in a charitable sense.<sup>87</sup> The Board considers that providing "flow-on" benefits or promoting a form of media which may "contribute" to a more informed and engaged citizenship is too indirect to qualify as promoting good citizenship.<sup>88</sup> The Board considers that promoting PSM in the hope that PSM platforms will receive greater government support, which in turn may lead to more, or improved PSM platforms (for example, more funding for RNZ and a PSM television channel), which in turn may lead to more content that promotes good citizenship, is too indirect to be considered charitable at law. The Board considers that any promotion of

<sup>79</sup> *Re Draco* at [22]; *Greenpeace* at [71].

<sup>80</sup> *Re Draco* decision

<sup>81</sup> *Re Draco* at [41] and [72]; see also *Re Positive Action Against Pornography v Minister of National Revenue* 49 D.L.R (4<sup>th</sup>), 74 (HEU), where the Canadian Supreme Court held that simply presenting information does not advance education; see also Charities Services notice to the Trust dated 16 February 2018 at [32].

<sup>82</sup> *Full Fact v The Charity Commission for England and Wales* Case (2011) No CA/2011/0001 ("*Full Fact*").

<sup>83</sup> *Full Fact* at [3.2.2].

<sup>84</sup> *Full Fact* at [3.2.1]. The Board notes that Full Fact was later registered, on the basis that it was advancing education, after amending its purposes and providing for independent review of its educational work; see Charity Commission for England and Wales, Full Fact – Application for Registration, Decision of the Commission, 17 September 2014.

<sup>85</sup> The Trust's submissions to Charities Services dated 12 July 2018 at [18].

<sup>86</sup> The Trust's submissions to Charities Services dated 12 July 2018 at [19].

<sup>87</sup> Charities Services notified the Trust that it had not explained how the benefits described in Dr Thompson's affidavit advance a charitable purpose (Charities Services' email to the Trust dated 2 July 2018).

<sup>88</sup> The Trust's submissions to Charities Services dated 12 July 2018 at [18]-[19].

good citizenship would constitute “hoped for, but remote and uncertain”<sup>89</sup> downstream benefits.

69. Even if the Trust’s advocacy leads to some PSM content that promotes good citizenship in charitable sense, the Board considers that the array of content delivered through PSM would still be too broad to be limited to material that promotes good citizenship in a charitable sense.<sup>90</sup>

#### Determination

70. The Board determines that the Trust is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1) of the Act.
71. The Board considers that the Trust’s primary purpose to promote PSM is not a charitable purpose. The Board considers that this non-charitable purpose is the focus of the Trust and cannot be considered ancillary to another charitable purpose.
72. The decision of the Board is therefore to decline to register the Trust as a charity, pursuant to section 19 of the Act.

Signed for and on behalf of the Board



Roger Holmes Miller

24th APRIL 2019

Date

---

<sup>89</sup> *Canterbury Development Corporation v Charities Commission* HC Wn CIV 2009-485-2133 [18 March 2010] at [67].

<sup>90</sup> The Board also notes that merely presenting information pertaining to citizenship would not necessarily be sufficiently structured to promote good citizenship in a charitable sense.