

Registration decision: New Zealand Asian Leaders Trust Board (NEW48001)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of the New Zealand Asian Leaders Trust Board (**the Trust**) under the Charities Act 2005 (**the Act**).¹
2. The Trust has applied for registration on the basis that it has the following purposes and that these purposes are charitable:
 - advancement of education about Asian culture and business practice;
 - benefitting the community by reducing discrimination against Asian peoples on governance boards and in senior management; and
 - promoting cultural inclusiveness and diversity.
3. The Board has determined that the Trust is not qualified to be registered as a charitable entity under the Act.² The Board considers that the Trust has non-charitable purposes that are not ancillary to any charitable purpose. In particular, the Board considers that the Trust has a purpose to provide private benefits through professional development to its members which are not ancillary to any valid charitable purpose.
4. The Board's reasons are organised as follows:
 - A. Background
 - B. Legal Framework for Registration Decision
 - C. The Charities Registration Board's Analysis
 - D. Section 5(3)
 - E. The Trust's Other Submissions
 - F. Determination

¹ This decision is made under section 19 of the Charities Act 2005 ("the Act").

² The essential requirements for registration are set out in section 13 of the Act.

A. Background

5. The Trust was established by deed of declaration of trust on 26 August 2013 (**the Trust Deed**). The trustees incorporated as a board under the Charitable Trusts Act 1957 (**the CTA**).
6. The Trust's purposes, as set out in clause 3.1 of the Trust Deed, are as follows:
 - 3.1 The charitable purposes of the Trust will be as follows:
 - (a) To advance education and benefit the community by providing information about the relationship between New Zealand and Asia;
 - (b) To provide training, mentoring and educational workshops for Asian and non-Asian New Zealanders who aspire to leadership roles in the public and private sectors, and who seek to enhance New Zealand's relationship with Asia;
 - (c) To benefit the community by enhancing networks between New Zealand companies doing business in Asia or intending to expand into Asia, and New Zealand individuals;
 - (d) To raise awareness in New Zealand of the need for cultural understanding and links with Asia;
 - (e) To provide opportunities for emerging leaders to be mentored by senior executives, by collaborating with various organisations such as the Institutes of Directors; and
 - (f) To include New Zealanders who contribute to public life or the public good, in the Trust's operations.
7. The Trust applied for registration under the Act on 13 November 2013.
8. In December 2013, the Department of Internal Affairs – Charities Services (**Charities Services**) completed an initial review of the application and sent a notice that the application may be declined because the Trust is not exclusively charitable. In particular, the initial review found that the Trust had non-charitable purposes to promote relations between New Zealand and Asia and to provide professional development to individuals. On 21 February 2014 the Trust met with Charities Services and on 24 February 2014 the Trust provided written submissions.
9. There followed a period of further correspondence and conversation between the Trust and Charities Services. The Trust provided information about its activities, and submissions about its purposes and the correct interpretation of the law cited by Charities Services.

10. During the course of the correspondence, Charities Services was satisfied that the Trust did not have a purpose to promote relations between Asia and New Zealand.
11. On 5 June 2014, Charities Services provided a further notice to the Trust advising that it continued to consider that the Trust did not qualify for registration under the Act because the Trust has a purpose to provide private benefits to members through professional development.
12. On 14 July 2014, Charities Services advised the Trust by email that the next step in the application process was for a final determination to be made by the Board. This email invited the Trust to provide final submissions to the Board. The Trust provided these submissions on 23 July 2014.
13. In the course of correspondence, the Trust submitted that:
 - the Trust's main focus is on the education of the New Zealand public regarding Asian culture and business practices;³
 - the Trust does not have a focus on promoting relations between New Zealand and Asia. Rather, it will provide education in order to allow "New Zealand communities as a whole [to] be able to better understand Asian culture and consequently, the contributions ethnic Asian members of the New Zealand community are able to make";⁴
 - any assistance to individuals and businesses will be ancillary to the charitable purposes of the Trust, specifically, the education of the public regarding the diversity of New Zealand culture;⁵ and
 - the Trust does not have a focus on professional development and the reference to "emerging leaders" is not intended to limit benefits to the members of the Trust.⁶

B. Legal Framework for Registration Decision

14. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(a) of the Act, a trust qualifies for registration if it is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes. This criterion is not met unless the income is derived for exclusively charitable purposes.⁷

³ Letter from the Trust dated 26 June 2014.

⁴ Letter from the Trust dated 24 February 2014.

⁵ Letter from the Trust dated 24 February 2014.

⁶ Letter from the Trust dated 24 February 2014

⁷ See *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 at 794-796; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 ("*Molloy*") at 691. See also the assumption evident in the

15. Section 5(1) of the Act defines charitable purpose as including every charitable purpose “whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community”. This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.⁸
16. Not all purposes which provide public benefit will be charitable at law.⁹ To be charitable a purpose must advance a public benefit at law. That public benefit must also be within the spirit of the cases based on the Statute of Charitable Uses Act 1601 (**the Preamble**).¹⁰
17. First, the purpose must provide a benefit to the public or a sufficient section of the public. The assessment of whether a purpose provides a benefit focuses on the clearly identifiable consequences of the undertaking—benefits that are nebulous and remote, or simply ‘hoped for’, are excluded.¹¹ If a purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice.¹² Any private benefits arising from an entity’s activities must be a means

provision at section 5(3) and (4) of the Act that a trust will not be disqualified from registration because it has *ancillary* non-charitable purpose.

⁸ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) (“The Statue of Elizabeth”) and previous common law: *Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace, SC*”) at [12],[15] and [17]; *Re Education New Zealand Trust* (2010) 24 NZTC 24,354 (“*Education New Zealand Trust*”) at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

⁹ *Greenpeace, SC* at [27].

¹⁰ The Statue of Elizabeth.

¹¹ See discussion in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32] - [37]. The courts have held that the downstream benefits of an entity’s activities do not serve to characterise the purpose of the entity: see *New Zealand Society of Accountants v Commissioners of Inland Revenue* [1986] 1 NZLR 147 at 153 (the “generalised concept of benefit” identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients’ interests is too “nebulous and remote” to characterise the purpose of the fund); *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 at [30] – [35] (holding that where the express purpose was to “support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes”, the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011] (“*QLCHT*”) at [68] – [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the ‘hope and belief’ that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose); *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) (“*Grand Lodge*”) at [59] – [60] (the purpose is to improve the character of members of a closed group, the public benefit in this is ‘too remote’).

¹² See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (“*Professional Engineers*”) at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] (“*Computer Society*”) at [42]; *Education New Zealand Trust* at [23]; *QLCHT* at [68]–[76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218

of achieving an ultimate public benefit only and therefore be ancillary or incidental to it.¹³

18. If public benefit has been established, the second part of the test is whether the public benefit is within the spirit of the Preamble.¹⁴ The Board is bound to apply the law as declared by the courts. Purposes that relieve poverty, advance education, and advance religion are all treated as being within the spirit of the Preamble.¹⁵ For purposes under the fourth head, “any other matter beneficial to the community,” this part of the test is to be considered by analogy to previous cases or by reference to legislation.¹⁶
19. Finally, section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Pursuant to section 5(4) of the Act, a non-charitable purpose is ancillary if the non-charitable purpose is:
 - (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and
 - (b) not an independent purpose of the trust, society or institution.
20. Determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.¹⁷ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity’s overall endeavour.¹⁸

Relevance of entity’s activities in registration decision-making

21. Section 18(3)(a)(i) and (ii) of the Act mandate that the Board and Charities Services take activities into consideration when determining whether an entity qualifies for registration under the Act.¹⁹ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.²⁰

(“Oldham”); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294 (“*Travel Just*”).

¹³ See for example *Professional Engineers* at 578; *Computer Society* at [42]; *Education New Zealand Trust* at [23]; *QLCHT* at [68] – [76]; *CDC* at [67]. Compare *Oldham*; *Travel Just*.

¹⁴ *Greenpeace, SC* at [18] and [27-31].

¹⁵ *Greenpeace, SC* at [27].

¹⁶ *Greenpeace, SC* at [18] and [27-31].

¹⁷ For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

¹⁸ The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] (“*Greenpeace, HC*”) at [68]; *Computer Society* at [16]; *Education New Zealand Trust* at [43]-[44]; *Grand Lodge* at [49]-[51]. The Board notes the Court of Appeal’s observation in *Greenpeace, CA* at [92], including footnote 95.

¹⁹ See also section 50(2)(a) of the Act.

²⁰ *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *QLCHT* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68]; *Greenpeace, HC* at [75].

22. While activities are not to be elevated to purposes,²¹ reference to activities may assist, for example, to make a finding about:
- the meaning of stated purposes that are capable of more than one interpretation;²²
 - whether the entity is acting for an inferred or unstated non-charitable purpose;²³
 - whether the entity's purposes are providing benefit to the public;²⁴ and
 - whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.²⁵
23. In determining qualification for registration under the Act, substance must prevail over form, and an entity cannot qualify for registration, even if its stated purposes are exclusively charitable, if its activities belie its stated charitable purposes.²⁶

Characterisation of an entity's purposes

24. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.²⁷ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
25. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.²⁸ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁹

²¹ See: *McGovern* at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

²² See *Professional Engineers* at 575 (Tipping J).

²³ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2005] HCA 55 at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²⁴ See for example *Glasgow Police Athletic Association; CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *QLCHT* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68].

²⁵ See for example *Greenpeace, CA* at [40], [48], [87] - [92], [99] and [102], [103]. Earlier authorities to same effect include *Molloy* at 693 and the authorities cited there.

²⁶ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) ("*Dal Pont*") at [2.12], [13.19], [13.20].

²⁷ *Molloy* at 693.

²⁸ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²⁹ *Dal Pont* at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer, PC* "whether the purposes of the trust are charitable does not depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not,

C. The Charities Registration Board's Analysis

26. The Board considers that the Trust has a mixture of charitable and non-charitable purposes. In particular the Board considers that the Trust has a non-charitable purpose to provide private benefits to members through professional development as well as a charitable purpose to advance education. The Board considers that the focus of the Trust is on the non-charitable purpose and that the non-charitable purpose is more than ancillary to the charitable purpose of the Trust.

C.1. Education purpose

27. The Trust submitted that it “was established to advance education in New Zealand in respect of Asian culture and business practices, as well as providing a forum to benefit the community as a whole by mentoring members of the New Zealand general public”.³⁰ The Trust continued that all of the stated purposes of the Trust in clause 3.1 “must be read with this purpose in mind”,³¹ and that the stated purpose at clause 3.1(a) of the Trust Deed is the “clear and overarching purpose of the Trust”.³²
28. The Trust also submitted that through the education it provides, the Trust would seek to address discrimination and promote cultural inclusiveness in New Zealand. This is echoed in the Trust’s current stated purposes at clause 3.1(d) to “raise awareness in New Zealand of the need for cultural understanding and links with Asia.” The Trust’s submissions also expand on the need for greater cultural understanding of Asians in New Zealand.³³
29. The Board considers that some aspects of the Trust’s activities advance education regarding Asian culture and that this is a charitable purpose.³⁴ However, the Board considers that many aspects of the ‘education’ provided by the Trust do not fall within the definition of charitable education, either as it is available only to a closed group (discussed at C.2. below) or because some aspects of the content are not of a kind that charitable education covers.
30. The High Court in *Canterbury Development Corporation v Charities Commission*³⁵ (**CDC**) makes it clear that “supporting businesses by providing

what was the settlor’s purpose in establishing the trust? But, what are the purposes for which trust money may be applied?”); *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

³⁰ Letter from the Trust dated 23 July 2014.

³¹ Letter from the Trust dated 23 July 2014.

³² Letter from the Trust dated 24 February 2014.

³³ See specifically the letter from the Trust dated 23 July 2014.

³⁴ See New Zealand Asian Leaders Trust “Our Programme” (2014) <<http://www.nzasianleaders.com/our-programme/our-programme/>> [accessed 25 July 2014] for information regarding the seminars.

³⁵ *CDC*.

assistance to their proprietors, in such aspects as financial management or marketing”³⁶ is not the advancement of education but rather providing private benefits. The Court continues by stating that the support and assistance provided by CDC to businesses was merely to “make the businesses more profitable” and that the “central focus... remains on increasing the profitability of businesses not public benefit.”³⁷

31. The Board considers that aspects of the Trust’s ‘education’ appear to be analogous to the non-charitable topics encompassed in the judgment in *CDC* (quoted at paragraph 30 above).³⁸
32. Further, as detailed below, the Board considers that Trust’s focus is not on public charitable education but is instead on providing benefits to its members through professional development.

C.2. Purpose to provide benefits to a closed group of members through professional development

33. The Board considers that the Trust has a purpose to provide benefits to a closed group of members through professional development that is outside the scope of charity.
34. The Trust’s current stated purposes at clauses 3.1(b), (c) and (e) of the Trust Deed include:
 - providing “training, mentoring and educational workshops for Asian and non-Asian New Zealanders who aspire to leadership roles in the public and private sectors, and who seek to enhance New Zealand’s relationship with Asia”,³⁹
 - benefitting “the community by enhancing networks between New Zealand companies doing business in Asia or intending to expand into Asia, and New Zealand individuals”,⁴⁰ and
 - providing “opportunities for emerging leaders to be mentored by senior executives, by collaborating with various organisations such as the Institute of Directors”.⁴¹

³⁶ *CDC* at [33].

³⁷ *CDC* at [60].

³⁸ For example aspects of the seminars and the Conference are aimed at how Asian Leaders can grow business relationships, improve their abilities as company directors, building successful businesses. See New Zealand Asian Leaders Trust “Our Programme” (2014) <<http://www.nzasianleaders.com/our-programme/our-programme/>> [accessed 25 July 2014] for information regarding the seminars; and “NZAL Conference Programme 2014” (2014) <<http://www.nzasianleaders.com/wp-content/uploads/2014/02/NZAL-Conference-Programme-2014.pdf>> [accessed 2 September 2014] for information regarding the Conference.

³⁹ Clause 3.1(b) of the Trust Deed.

⁴⁰ Clause 3.1(c) of the Trust Deed.

⁴¹ Clause 3.1(e) of the Trust Deed.

35. The High Court in *Re Grand Lodge of Antient Free and Accepted Masons in New Zealand*⁴² (**Re Grand Lodge**), made it clear that where an organisation seeks to advance a charitable purpose through the improvement of its members, this method of effecting its purpose may mean charitable status is unavailable.⁴³ This is echoed in *Travis Trust v Charities Commission*⁴⁴ (**Travis Trust**) which states that “it is inappropriate... to expand the beneficial class to those who might derive some benefit as a by-product of the Trust’s purposes”.⁴⁵

Closed membership

36. The Board considers that the Trust has a closed membership that does not constitute a sufficient section of the public. The Board notes that the Trust Deed does not contain any reference to membership criteria. However, the Board considers that there are references to the Trust having restricted membership available in the public domain. For example, the Trust’s website states that “[m]embership is by invitation only. The membership criteria are: (a) Leadership achievements to date; (b) Contributions to public life or the public good; and (c) Referees supporting their membership applications”.⁴⁶

37. As well as stating these criteria:

- the Trust’s website indicates that membership is intended for people who consider themselves to be a “top Asian CEO or leader, or a top emerging Asian leader”;⁴⁷
- the Trust’s website states that it “is a professional organisation for top Asian New Zealanders who are CEOs and leaders and for high achieving Asians in New Zealand who aspire to become leading CEOs”;⁴⁸
- the Trust’s website states that “NZ Asian Leaders provides a place for Asian New Zealanders who are CEOs or leaders to enjoy peer to peer support and to have visibility with New Zealand companies doing business with Asia or wanting to... The role of NZ Asian Leaders is to provide confidence building for Asian New Zealand leaders to offer their expertise to help NZ

⁴² *Re Grand Lodge*.

⁴³ *Re Grand Lodge* at [59].

⁴⁴ *Travis Trust*.

⁴⁵ *Travis Trust* at [57].

⁴⁶ New Zealand Asian Leaders Trust “The Value of a NZ Asian Leaders Membership: Membership criteria” (2013) <<http://www.nzasianleaders.com/the-value-of-nz-asian-leadership-membership/>> [accessed 17 July 2014].

⁴⁷ New Zealand Asian Leaders Trust “What you can do to support the NZAL vision” (2013) <<http://www.nzasianleaders.com/register/what-you-can-do-to-support-the-nzal-dream/>> [accessed 21 July 2014].

⁴⁸ New Zealand Asian Leaders Trust “Welcome to NZ Asian Leaders” (2013) <<http://www.nzasianleaders.com/>> [accessed 21 July 2014].

inc and to help them understand they have important expertise to contribute”;⁴⁹ and

- the Trust’s LinkedIn profile contains a statement that the Trust is “[n]ow taking applications for top Asian NZers who are CEOs or leaders to become members with NZAL.”⁵⁰

38. The Trust stated that Charities Services misinterpreted the membership criteria and suggested that membership of the Trust is not “only open to a select few.”⁵¹ Further, the Trust has submitted that mentoring is available to the general public and that the terminology “emerging leaders” should not be interpreted as only the members of the Trust known as “Emerging Leaders”.⁵²
39. Charities Services invited the Trust to provide further information regarding the membership criteria used by the Trust to show that the Trust’s membership is open and that benefits are available to the general public. In the Trust’s submissions of 23 July 2014, the Trust repeated its previous statement⁵³ that the membership model is “merely an application mechanism intended to ensure those who engage in NZALT align with the interests of NZALT and that all members or sponsors are committed to achieving NZALT’s charitable purpose.” The Trust further submitted that case law has shown that membership fees do not affect an organisation’s charitable status where it is merely to cover costs, and that the Trust’s fees “are not indicative of exclusivity or a failure to provide sufficient public benefit they are reflective of the overall charitable purpose.”⁵⁴
40. The Board does not consider that the Trust has shown that the membership criteria mentioned by Charities Services (and detailed at paragraphs 37-37) are merely descriptions of “target members”.
41. The Board is bound by the High Court’s decision in *Travis Trust*, which stated that where admission to membership of an entity is vested in an executive or management committee, the membership cannot be considered to be a section of the public.⁵⁵

⁴⁹ New Zealand Asian Leaders Trust Board (2013) “Home – NZ Asian Leaders” <<http://www.nzasianleaders.com/>> [accessed 22 July 2014].

⁵⁰ New Zealand Asian Leaders Trust “NZ Asian Leaders: Overview | LinkedIn” (2014) <<http://www.linkedin.com/company/asianz-ceo>> [accessed 24 July 2014].

⁵¹ Letter from the Trust dated 26 June 2014.

⁵² See New Zealand Asian Leaders Trust “New Zealand Asian Leaders – Emerging Leaders” (2013) <<http://www.nzasianleaders.com/category/emerging-asian-leaders/>> [accessed 30 July 2014].

⁵³ As stated in the letter from the Trust dated 26 June 2014.

⁵⁴ Letter from the Trust dated 23 July 2014.

⁵⁵ *Travis Trust* at [56]-[57]. This passage includes a quote from *Strathalbyn Show Jumping Club Inc v Mayes* (2001) SASC 73 that states “...admission to membership and exclusion from membership is vested in the relatively small Board of Directors or committee of management. It is not open to any member of the public wishes to join... It indicates, however, that those who may benefit from the provisions of the first limb of Trust Deed constitute a highly restricted class... It is not a class which is open to members of the public or any significant section of it.” Similarly, in *Re*

42. The Trust has submitted that because the members of the Trust are not limited to members of one particular profession, the cases applying to professional/protective societies do not apply to the Trust. The Board considers that the reasoning in the “professional society cases”⁵⁶ focuses on the provision of private benefits to a closed group. Further, the Board notes that analogous reasoning is applied in *Travis Trust* and *Re Grand Lodge* which do not relate to professional organisations. Therefore, the Board considers that the law regarding the provision of private benefits to members (discussed at paragraphs 44 to 49 above) applies to any organisation, not just professional organisations.
43. In the light of the above, Board considers that the information contained on the Trust’s website indicates that membership of the Trust is available only to a closed group of individuals that does not constitute a sufficient section of the public. Therefore, the Board considers that any benefits available to these members will not be for the public benefit.

Benefits are provided to the members

44. The Board considers that the Trust provides private benefits to its members through professional development.
45. The Trust provides a wide range of benefits to its members including:⁵⁷
- “Discounts to NZAL social events outside of the annual program of sessions.”⁵⁸
 - “Discount offers from NZAL sponsors.”
 - “Individual profile on the NZAL website, this will also provide great exposure if you are a business owner.”
 - “Opportunity to be videoed in an interview discussing the contribution that you or your company/organisation has made to NZ Inc. This will be displayed on the NZAL website and promoted through NZAL communications and digital platforms – again great exposure if you are a business owner.”
 - “Peer to peer relationships and organised networking with a high calibre of fellow Asian New Zealand leaders.”
 - “Opportunity to speak at NZAL sessions and further promote your profile and the work of your company/organisation.”

Grand Lodge at [60], Simon France J states that a society whose membership is limited to men aged over 21 could not be considered to be a section of the public.

⁵⁶ For example, *Re Mason, Professional Engineers, and Computer Society*.

⁵⁷ New Zealand Asian Leaders Trust “The Value of a NZ Asian Leaders Membership” (2013) <<http://www.nzasianleaders.com/the-value-of-nz-asian-leadership-membership/>> [accessed 17 July 2014].

⁵⁸ The Board notes that this includes complimentary entry to the 2014 NZ Asian Leaders Conference while members of the public must pay \$99 per ticket. New Zealand Asian Leaders Trust “NZAL Conference Programme 2014” (2014) <<http://www.nzasianleaders.com/wp-content/uploads/2014/02/NZAL-Conference-Programme-2014.pdf>> [accessed 2 September 2014].

- “Be identifiable to NZ companies seeking Asian New Zealanders to sit on boards or for senior management positions, or to serve on not-for profit organisations.”
 - “Be notified of board and senior management position vacancies from NZ companies involved with NZAL.”
 - “Invitations to relevant workshops from professional organisations supporting NZAL – fees for some events will be covered by NZAL for members.”
46. The Trust acknowledges that its members do receive benefits. However, it submits that any private benefits provided to members are merely incidental to its charitable purposes.⁵⁹
47. The Board considers that the Trust provides several benefits to members, including attendance at these seminars (further benefits are detailed at paragraph 45 above). While many of these benefits may not be immediately pecuniary in nature, benefits need not be pecuniary to be considered as private benefits outside the scope of charity. *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*⁶⁰ (**Professional Engineers**) described functions of the Institution to “give advice and assistance to a member on matters affecting his employment or professional activities” as professional functions that provide benefits outside the scope of charity.⁶¹ Further, in *Re Mason*,⁶² where a library was provided for the benefit of members of an institution, the High Court held that while the benefit of the members will be “entirely wholesome and likely to lead to the ultimate benefit of the public”,⁶³ the library was not charitable because it was primarily “a professional library for use by its members in the conduct of their professional practices.”⁶⁴
48. The Trust submits that any organisation or individual can benefit from the Trust’s activities. The Trust has submitted that the Trust has “hosted five sessions [seminars] open to the general public in 2014”. However, the Board notes that the third session was by invitation only and that the sixth session will be open to invitees only as well.⁶⁵ The Trust has not provided information regarding any other activities carried out by the Trust.

⁵⁹ Letter from the Trust dated 24 February 2014.

⁶⁰ *Professional Engineers*.

⁶¹ *Professional Engineers* at 581-582.

⁶² *Re Mason* [1971] NZLR 714 (“*Re Mason*”).

⁶³ *Re Mason* at 725.

⁶⁴ *Re Mason* at 727.

⁶⁵ The Board notes that the Trust’s website states that the Third Session provided by the Trust is “by invitation only” and that invitations are to be sent out for the Sixth Session (New Zealand Asian Leaders Trust “Third Session” (2013) <<http://www.nzasianleaders.com/events/third-session/>>; and New Zealand “Sixth Session” (2013) <<http://www.nzasianleaders.com/events/sixth-session/>> respectively, [both accessed 22 July 2014]).

49. In the light of the above, the Board considers that the Trust has a purpose to provide benefits to a closed group of members through professional development which is outside the scope of charity.

Private benefits are more than incidental to a charitable purpose

50. The Trust has acknowledged that “advantages of membership do exist” but it states that “these are merely ancillary to NZALT’s charitable purpose”.⁶⁶ The Trust cited the Privy Council’s judgment in *Latimer v Commissioner of Inland Revenue* in support of this assertion. This citation states:⁶⁷

[T]he distinction is between ends, means and consequences. The ends must be exclusively charitable. But if the non-charitable benefits are merely the means or the incidental consequences of carrying out the charitable purposes and are not ends in themselves, charitable status is not lost.

51. The Board does not consider that providing benefits to the Trust’s members can be considered to be a means by which charitable education is advanced. Further, the Board does not consider that the benefits are merely a means to attract people to join the Trust in order to promote its charitable purposes.
52. The Trust further submitted that providing development to “high calibre leaders” will lead to “transformational change” and increased cultural diversity, thereby advancing a charitable purpose.⁶⁸
53. The Board notes that there may be downstream benefits to the public from the Trust developing its members. However, in line with *Re Grand Lodge* (mentioned at paragraph 35 above) and the High Court’s judgment in *Re New Zealand Computer Society Inc*,⁶⁹ while there may be downstream benefits, the Board considers that “any such benefits are merely ancillary and cannot constitute independent charitable purposes.”⁷⁰

Trust’s further submission that the Trust is a learned society

54. The Trust has submitted that one means of its advancement of education is that it is “a learned society aimed at developing a body of learning central to the trust’s audience making it charitable.”⁷¹ The Trust submits that this is supported by the membership requirements because it is necessary to “ensure those who engage in NZALT align with the interests of NZALT and that all members or sponsors are committed to achieving NZALT’s charitable purpose.”⁷²

⁶⁶ Letter from the Trust dated 26 June 2014.

⁶⁷ *Latimer, PC* at [36].

⁶⁸ Letter from the Trust dated 23 July 2014.

⁶⁹ *Computer Society*.

⁷⁰ *Computer Society* at [56].

⁷¹ Letter from the Trust dated 26 June 2014.

⁷² Letter from the Trust dated 26 June 2014.

55. In *Re Mason*, McMullin J accepts that there is a line of cases that draws a distinction between organisations that regulate a profession for the advantage of those practising it, and those “whose interests include the advancing of some branch of science in a wide sense.”⁷³ In *Computer Society*, MacKenzie J draws a number of distinctions between “learned societies” and “protective societies”. Examples of the “learned society functions included advancement of the science... facilitating and disseminating publications, making awards, facilitating the activities of technical groups, and arranging conferences.”⁷⁴
56. In *Professional Engineers*, Tipping J also quotes Lord Hanworth MR in saying that “if there is an object, e.g., the promotion of the profession in addition to the promotion of science that is collateral and not merely incidental, the result is that the institution cannot be described as established for charitable purposes only.”⁷⁵
57. The Board notes that some members of the Trust participate in leading the Trust’s public seminars. However, the Board does not consider that this elevates the Trust to a learned society. The key factor of a learned society is that it is established primarily in order to develop thinking in a specific area. It may do so in a number of ways including through the discussion of matters of research in specialised panels, the provision of awards and scholarships to encourage advances in knowledge. The Board does not consider that the Trust can be categorised as a learned society.

Summary

58. In summary, the Board considers that the Trust has a mix of charitable and non-charitable purposes. The Board considers that the Trust has a charitable purpose to advance education regarding Asian culture. However, the Board considers that the Trust has an independent non-charitable purpose to provide benefits through professional development to a closed group of members that does not constitute a sufficient section of the public. The Board does not consider that the provision of these private benefits is ancillary to the advancement of a charitable purpose.

D. Section 5(3)

59. As discussed above, we consider that the Trust has an independent purpose to provide benefits to a closed group of members through professional development and that this purpose does not come within the savings provision at section 5(3) of the Act by being merely ancillary to a charitable purpose.
60. The Trust’s non-charitable purpose forms a significant proportion of the Trust’s overall endeavour. This purpose is a pervasive purpose of the Trust and cannot

⁷³ *Re Mason*, at 723.

⁷⁴ *Computer Society* at [42].

⁷⁵ *Professional Engineers* at 578 quoting *Institution of Civil Engineers v Inland Revenue Commissioners* [1932] 1 KB 149.

realistically be considered ancillary, subordinate, or incidental to the Trust's charitable purpose.

E. The Trust's Other Submissions

E.1. The Trust Deed states that the Trust's purposes may not extend to any matter or thing which is not charitable

61. The Trust has submitted that the Trust Deed states that the Trust's purposes are exclusively charitable.
62. The Board notes that in the Trust Deed:
 - clause 3.1 begins by stating the "charitable purposes of the Trust will be";
 - clause 3.4 states that the "object of the Trust shall be to carry out its charitable purposes under this section"; and
 - clause 5.1 states that the "objects/purposes of this Trust may not extend to any matter or thing which is not charitable in the meaning of the Charities Act 2005..."
63. In *CDC*, the High Court stated that "the mere fact that the constitution says that [an organisation's] objects are charitable does not make [the organisation] charitable although such a declaration is relevant in assessing whether they are."⁷⁶
64. The Board considers that the purposes as stated in the Trust Deed may be charitable. However, the Board considers that the activities of the Trust (as analysed in section C above) advance non-charitable purposes that belie such statements.

E.2. The Trust's website does not show the Trust's true focus

65. At the meeting between the Trust and Charities Services, as well as in the letter of 24 February 2014, the Trust stated that the website was "prepared by volunteers and contains information that will need to be edited."⁷⁷
66. The Board notes these comments. However, the Board considers that the Trust's submissions do not demonstrate that the information contained on the Trust's website is either incorrect or not indicative of the Trust's true purpose and activities.

⁷⁶ *CDC* at [56].

⁷⁷ Letter from the Trust dated 24 February 2014.

E.3. The Trust's activities advance the New Zealand Government's NZ Inc priorities

67. The Trust has submitted that it advances a charitable purpose by benefitting the New Zealand community through aligning with and helping the New Zealand Government's NZ Inc strategy.⁷⁸
68. As stated at paragraphs 16-18 above, public benefit must be shown expressly where the claimed purpose is under the fourth head of charity "any other benefit to the community". Further, consequential, downstream benefits to the public will not suffice to render purposes charitable.
69. The Board considers that any benefit to the public that may be derived through the Trust assisting the NZ Inc strategy is too far downstream to render the purposes of the Trust charitable.⁷⁹

E.4. Similar entities are registered under the Act

70. The Trust has submitted that entities that are similar to the Trust are currently registered under the Act.
71. The Board notes that each application must be taken on its own merits and that minor differences in the purposes and/or operation of entities may render one entity that is "similar" to a registered charitable entity charitable, and another "similar" entity not charitable.

F. Determination

72. The Board's determination is that the Trust does not qualify for registration under the Act and the application for registration should be declined. While the Trust has a charitable purpose to advance education regarding cultural understanding of Asian culture, we consider that the Trust's non-charitable purpose is not ancillary to any charitable purpose.

⁷⁸ For further details regarding the NZ Inc strategies, see Ministry of Foreign Affairs and Trade "NZ Inc" (2014) <<http://www.mfat.govt.nz/NZ-Inc/>> [accessed 28 July 2014].

⁷⁹ CDC at [67].

73. The Board considers that the Trust has a non-charitable purpose to provide private benefits through the professional development of a closed group of individuals. The Board further considers that this is a purpose to provide private benefits to individuals which are not incidental to any charitable public benefit.

For the above reasons, the Board declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Board

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Roger Holmes Miller

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20th SEPTEMBER 2014

Date