

Deregistration decision: QLCHT Developments Limited (CC32548)

Summary

1. The Charities Registration Board (the Board) has determined that QLCHT Developments Limited (the Company) is not qualified for registration as a charitable entity, therefore it is in the public interest to remove the Company from the Charities Register.
2. The Board considers that the Company's purpose is to further the purposes of the Queenstown Lakes Community Housing Trust which have been found by the High Court not to be charitable. It therefore follows that the purpose of the Company cannot be considered to be charitable.
3. As the Company is not exclusively charitable it does not qualify for registration¹ and meets the grounds for removal from the Charities Register.²

A. Background

4. The Company was incorporated as a company under the Companies Act 1993 on 23 April 2008. The Company is a wholly owned and controlled subsidiary of the Queenstown Lakes Community Housing Trust (the Trust). The Company was registered as charitable under the Act by the Charities Commission (the Commission) on 30 June 2008.
5. Clause 3.1 of the Constitution sets out the purposes of the Company as:

3.1 Charitable purpose: *The Company is established solely for charitable purposes.*

The Company has been established to promote opportunities for the provision of housing to meet the purposes of the Trust and if so directed by the Trust other charitable purposes.

The income and property of the Company shall be applied solely towards these charitable purposes and for the purposes of section 16(2) of the Act, this clause shall be a provision limiting the capacity, rights, powers and privileges of the Company accordingly.

6. Clause 2.1 of the Company's constitution defines the "Trust" as:

"Trust" *means the Queenstown Lakes Community Housing Trust acting under its Deed of Trust dated 15 January 2007.*

¹ Section 13(1)(b) of the Charities Act 2005.

² Sections 32(1)(a) and 35(1)(a) of the Charities Act 2005.

7. On 18 August 2010, the Commission determined that the Trust did not qualify for registration as the purposes were not exclusively charitable. An appeal to the High Court failed and the Trust was removed from the Charities Register effective 15 July 2011.
8. As a result of the Trust's deregistration, the Commission reviewed the Company's purposes and activities and determined that it also did not qualify for registration. The Company did not demonstrate any activity other than the construction and management of housing on behalf of the Trust. Accordingly, a notice of intention to remove the Company from the register was sent on 31 July 2012, stating a date of response of 11 September 2012.
9. To date the Company has not responded to the notice.

B. Legal framework for deregistration

10. Section 32(1)(a) of the Act provides that the Charities Registration Board may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
11. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Act empowers the Chief Executive to examine and enquire into matters in connection with charitable entities or persons.³
12. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the register is received, the Board must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.
13. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
14. 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, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.⁴ This means that the purpose must be directed to benefiting the public or a sufficient section of the public.

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This includes:

- (a) the activities and proposed activities of the charitable entity or person:
- (b) the nature, objects, and purposes of the charitable entity:
- (c) the management and administration of the charitable entity:
- (d) the results and outcomes achieved by the charitable entity or person:
- (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person.

⁴

See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

15. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
16. Courts have held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.⁵

C. Charities Registration Board's analysis

C.1 Overview

17. The Board is satisfied that the purpose of the Company is to further the purposes of the already deregistered Trust. The High Court has considered the purposes of the Trust against the provisions of section 5(1), in relation to the relief of poverty and other matters beneficial to the community, and found the purposes of the Trust are not charitable. Consequently, the Company's purposes, as set out in clause 3.1 of its constitution are also not charitable.

C.2 Company's purposes

18. The financial statements for the years ended 31 March 2009 to 31 March 2011 show that the Company's main activity is the construction and management of housing developments in order to further the purposes of the Trust.
19. The financial statements contain no evidence of any other activity for any other charitable purpose.

C.3 The High Court's decision on the Trust's purposes

20. In *Queenstown Lakes Community Housing Trust*⁶, the High Court upheld the Commission's determination that the Trust's purposes were not charitable in law.
21. First, the High Court found that the purposes of the Trust could not be considered charitable under the relief of poverty head as those who were

⁵ See *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194; *Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55 at para 70; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633 [23 September 2010] at para 71; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011], paras 60 and 68.

⁶ HC WN CIV-2010-485-1818 [24 June 2011].

eligible to participate in the Trust's shared ownership programme could not be considered to be 'poor'⁷. Justice MacKenzie went on to state:

"...Their inability (if it be such) to meet their housing needs relates to a particular form of housing, in a particular location. While housing is a basic need, and right, home ownership is not. Many people who are not objectively 'poor' may have difficulty providing a deposit on a house or servicing a mortgage. Renting would generally be recognised as an alternative which, if affordable to the person concerned, would mean that that person was not in need to the extent of poverty. Nor is housing in a particular location a basic need, if there are reasonably available alternatives..."⁸

22. Second, the High Court found that the purposes of the Trust could not be considered charitable under the 'other matters beneficial to the community' head as the public benefit was indirect and only achieved by conferring a private benefit on private individuals⁹. Justice Mackenzie went on to state:

"...The fact that those householders are selected because they do or will contribute to the social, cultural, economic and environmental wellbeing of those living within the Council's district does not in my view confer on the community a sufficiently tangible and clearly defined benefit so as to bring within the fourth head of charity the means by which the claimed public benefit is sought to be achieved..."¹⁰

C.4 Public Interest

23. For the reasons given above, the Company does not have exclusively charitable purposes and does not meet the requirements for registration.
24. Section 3(a) of the Act provides that a purpose of the Act is to promote public trust and confidence in the charitable sector. The Board considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register.

D. Charities Registration Board's determination

25. The Charities Registration Board determines that the Company is not, or is no longer, qualified for registration as a charitable entity because it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act.

⁷ At [41].

⁸ At [41].

⁹ At [71].

¹⁰ At [75].

26. The Board considers that the Company's purpose is to further the purposes of the Trust which have been found by the High Court not to be charitable. It therefore follows that the purpose of the Company cannot be considered to be charitable.
27. Under section 35(1) of the Act, the Charities Registration Board is satisfied that it is in the public interest to proceed with the Company's removal from the register and that one ground for removal from the register has been satisfied, in that the Company is not, and is no longer qualified for registration as a charitable entity.
28. The decision of the Charities Registration Board is therefore to remove the Company from the Register, pursuant to section 31 of the Act, with effect from xxx.

For the above reasons, the Charities Registration Board determines to deregister the Company as a charitable entity by removing the Company from the Register.

Signed for and on behalf of the Charities Registration Board

.....
Roger Holmes Miller
Chair

..... 05/11/2012

Date

