

Registration decision: Restore Christchurch Cathedral Group Incorporated (RES50915)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to grant the application for registration of the Restore Christchurch Cathedral Group Incorporated (**the Society**) under the Charities Act 2005 (**the Act**).¹ The Board has directed that the Society be registered, effective 26 March 2015.
2. The Board considers that the Society meets the requirements for registration under the Act.² In particular, the Board is satisfied that the Society's advocacy to restore the Christchurch Cathedral (**the Cathedral**) advances a charitable public benefit, specifically the restoration of heritage buildings.
3. The Board is satisfied that advocating to restore buildings with established heritage value is analogous with the preservation of heritage buildings. Despite the opposing view of the church owners and the issue being controversial in the community, the Board considers the Society's activities fit within charitable advocacy, and advance a charitable public benefit in law.
4. The Board notes this is a decision about the established charitable public benefit in heritage buildings. The Board is not taking a position on whether or not restoring the Cathedral would in fact be the best outcome for Christchurch.
5. The Board's reasons are organised as follows:
 - A. Background
 - B. Legal Framework for Registration Decision
 - C. The Charities Registration Board's Analysis
 - D. Determination

A. Background

6. The Society was constituted on 16 December 2014, and incorporated on 24 December 2014.
7. The Society's purposes, as set out in clause 4.1 of its rules document, are as follows:

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. To promote and assist with the restoration of Christ Church Cathedral, Cathedral Square, Christchurch, following the Christchurch earthquakes.
 - b. To produce and disseminate materials about the historic, cultural, religious and architectural significance of Christ Church Cathedral, for Christchurch, New Zealand and internationally.
 - c. To produce and disseminate materials about the methodology and cost of fully restoring the cathedral to the latest earthquake code.
 - d. To conduct such activities as will promote membership of the Society and support its objectives.
 - e. To carry out other activities incidental to or conducive to the attainment of the foregoing objects of the Society.³
8. The Society applied for registration under the Act on 26 March 2015.
9. During the application process, the Trust provided information to the Department of Internal Affairs – Charities Services (**Charities Services**) about its current and future intended activities.⁴
10. The Society's current and planned activities are:
- Disseminating information through a website, the media and presentations to interested groups, regarding the Society's submissions that the Cathedral can be restored to the full extent of the code for public buildings and why the Society considers it is important to do so.
 - Running a permanent heritage display in Christchurch. The heritage display provides information on the heritage values of the Cathedral, and promotes restoration of the Cathedral. Although a large proportion of the information is about the Cathedral, there is also information on other heritage buildings in Christchurch.
 - Participating in resource consent hearings in the event that the Church Property Trustees applies for demolition under the Christchurch City Plan.
 - Preventing further damage to the Cathedral. For example: a proposal for a cost-effective method to weather proof the Cathedral.
 - If possible, providing financial support for restoring the Cathedral.
11. The Board has also considered publicly available information regarding the Society.⁵

³ Rules of the Society [included at Appendix A].

⁴ Refer to the Society's letter of 20 May 2015.

B. Legal Framework for Registration Decision

12. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively charitable purposes and not for private pecuniary profit.
13. 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.⁶
14. Not all purposes which appear beneficial to the community will be charitable at law.⁷ 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).⁸
15. 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.⁹ If a purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice.¹⁰ Any private benefits arising from an entity’s activities must be a means of achieving an ultimate public benefit only and therefore be ancillary or incidental

⁵ <http://restorechristchurchcathedral.co.nz/> [accessed 3/09/2015].

⁶ 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 Statute 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 (“*Re Draco Foundation*”) at [11].

⁷ *Greenpeace, SC* at [27].

⁸ The Statute of Elizabeth.

⁹ 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 for example *New Zealand Society of Accountants v Commissioners of Inland Revenue* [1986] 1 NZLR 147 at 153, *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (“*Travis Trust*”) at [30]; *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818, 24 June 2011 (“*QLCHT*”) at [68] – [76]; *Canterbury Development Corporation* [2010] 2 NZLR 707 (CDC) at [67]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) (“*Grand Lodge*”) at [59] – [60]

¹⁰ 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 (“*Oldham*”); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294 (“*Travel Just*”).

to it.¹¹ Moreover, if a purpose is to promote an idea, the focus of the enquiry into public benefit will be on the means the entity intends to use to advance the idea.¹²

16. If public benefit has been established, the second part of the test is whether the public benefit is within the spirit of the Preamble.¹³ The Board is bound to apply the law as declared by the courts. Purposes that relieve poverty, advance education, and advance religion are all presumed as being within the spirit of the Preamble, although this presumption can be rebutted.¹⁴ 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.¹⁵

Relevance of entity's activities in registration decision-making

17. Sections 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.¹⁶ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹⁷
18. While activities are not to be elevated to purposes,¹⁸ 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;¹⁹
 - whether the entity is acting for an inferred or unstated non-charitable purpose;²⁰
 - whether the entity's purposes are providing benefit to the public;²¹ and

¹¹ 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*.

¹² *Greenpeace*, SC at [102].

¹³ *Greenpeace*, SC at [18] and [27-31].

¹⁴ *Greenpeace*, SC at [27]; *Liberty Trust v Charities Commission* [2011] NZHC 577 at [100].

¹⁵ *Greenpeace*, SC at [18] and [27-31].

¹⁶ See also section 50(2)(a) of the Act.

¹⁷ *Greenpeace* SC at [14]. 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].

¹⁸ 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*").

¹⁹ See *Professional Engineers* at 575 (Tipping J).

²⁰ For recent judicial comment see *Greenpeace* SC at [14] "The purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes, as s 18(3) of the Act now makes clear".

- whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.²²

Characterisation of an entity's purposes

19. Once an entity's purposes are established as a matter of fact, the question of whether they are charitable is a question of law and involves an objective characterisation, rather than an assessment of the subjective intentions of the founders.²³ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

C. The Charities Registration Board's Analysis

20. Taking into account the Society's stated purposes, and the Society's activities, the Board considers the Society has a primary purpose to advocate for the Cathedral's restoration.
21. The Board considers that this purpose is charitable. The purpose is demonstrated to be for the benefit of the public, rather than any individual or group, and is analogous to previously accepted charitable purposes, specifically the preservation of heritage buildings.
22. In addition, the Board also considers that some of the Society's purposes and activities may advance education on the heritage value of the Cathedral.

C.1. Background to the Cathedral

23. The Church Property Trustees²⁴ owns the Cathedral and land surrounding the cathedral. The *Anglican (Diocese of Christchurch) Church Property Trust Act 2003 (CPT Act)* recognised the Trust and it was registered as a charity on 16 December 2008.²⁵
24. After the earthquake of 22 February 2011 damaged the building, the Church Property Trustees resolved to demolish the Cathedral in accordance with a Christchurch Earthquake Recovery Authority process. Work began on demolition in late March 2012.²⁶ However, parties supporting the restoration of the Cathedral, specifically the Great Christchurch Buildings Trust, challenged this

²¹ 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].

²² 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.

²³ *Molloy* at 693.

²⁴ Also known as the Anglican Diocese of Christchurch.

²⁵ CC36062.

²⁶ See for example: <http://www.stuff.co.nz/the-press/news/christchurch-earthquake-2011/6791906/Crane-begins-towers-demolition> [accessed 3/09/2015].

decision in the High Court.²⁷ Although the High Court initially agreed on a stay on demolition, it confirmed the CPT Act permitted the demolition of the Cathedral, as long as a new Cathedral was built and the decision was made according to the CPT Act.²⁸ The stay on demolition has subsequently been lifted and the consequent decision of the Church Property Trustees to demolish confirmed as valid by the High Court.²⁹

C.2. The restoration of heritage buildings as a charitable purpose

25. The preservation of heritage buildings has long been established as a charitable purpose in New Zealand.³⁰ The Board follows the Charities Commission for England and Wales' approach in finding that organisations set up for preservation purposes may be charitable if:
- a. there is independent expert evidence that the building or site is of sufficient historical or architectural interest;
 - b. the building or site is not used for non-charitable purposes;
 - c. sufficient public access is provided to the building or site; and
 - d. any private benefit to individuals is incidental.³¹
26. The Board considers the preservation of the Cathedral would meet the test for the preservation of a heritage building. The Cathedral is an established heritage building and, if the safety issues are resolved, would be open to the public.³² Finally, the preservation of the building would not confer private benefit to individuals as it is owned by a registered charity. Although the Society is not strictly preserving the Cathedral, but rather seeks to restore the partially damaged Cathedral, the Board considers the restoration of heritage buildings is sufficiently analogous to the preservation of heritage buildings in general. Thus, a

²⁷ *The Great Christchurch Buildings Trust v Church Property Trustees* [2012] NZHC 3045; the initial decision was confirmed by the Court of Appeal, and leave to appeal to the Supreme Court was not granted: *Great Christchurch Buildings Trust v Church Property Trustees* [2013] NZCA 331; *Great Christchurch Buildings Trust v Church Property Trustees* [2013] NZSC 132.

²⁸ *The Great Christchurch Buildings Trust v Church Property Trustees* [2012] NZHC 3045 at [180].

²⁹ *The Great Christchurch Buildings Trust v The Church Property Trustees & Canterbury Earthquake Recovery Authority* [2014] NZHC 1182.

³⁰ Refer for example to *Re Bruce* [1918] NZLR 16 (concerned with afforestation and the making of domains or national parks); applying *Re Verrall* [1916] 1 Ch 100 (promoting the permanent preservation of buildings for the benefit of the nation).

³¹ See for example: Charities Commission (New Zealand), *Registration decision: The Christchurch Heritage Trust* (15 December 2009): <https://www.charities.govt.nz/assets/Uploads/the-christchurch-heritage-trust.pdf>; The Charities Commission of England and Wales, *Preservation and Conservation*, RR9 (February 2001) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358892/rr9text.pdf [accessed 8 September 2015].

³² The Cathedral is a Category 1 Historic Place: <http://www.heritage.org.nz/the-list/details/46> [accessed 13/08/2015].

purpose to restore the Cathedral may be charitable within the spirit of the cases acknowledging the charitable public benefit in the preservation of heritage buildings.

27. The Board, however, notes the Church Property Trustees decided to demolish the Cathedral, and the courts have confirmed this decision as a valid means of advancing the Church Property Trustee's charitable purpose. While the Society intends in the future to do tangible restoration work, currently the Society is advocating for the cause of restoring the Cathedral.

Purposes to advance a cause as a charitable purpose

28. Before the Supreme Court decision of *Re Greenpeace of New Zealand Incorporated*, a purpose to promote a cause would prevent registration, unless ancillary to a charitable purpose.³³ The majority of the Supreme Court, however, found the appropriate question was not whether an entity had an advocacy purpose, but rather whether that purpose advances a public benefit within the spirit of the objects previously accepted as charitable.³⁴
29. Acknowledging that the circumstances in which advocacy of particular views will be shown to be charitable are likely to be uncommon,³⁵ the Supreme Court accepted some purposes may necessitate broad-based support and that advocacy may be charitable in such circumstances.³⁶ In assessing whether an advocacy purpose advances charitable public benefit, the Supreme Court found the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted should all be assessed.³⁷ Specifically, where a charity promotes an abstraction, the focus in assessing charitable purpose should be on how that abstraction is to be furthered.³⁸ The controversy of a view will not be determinative, but may help explain why a view cannot be assumed to serve the public benefit in the way the law regards as charitable.³⁹ The assessment must also take into account the wider context, including public participation in processes and human rights values.⁴⁰

Promotion of the restoration of the Cathedral as a charitable purpose

30. The Board notes the Society does not advocate for an abstract idea, rather a specific means for achieving the end of the preservation of heritage. As discussed above, the Board accepts the restoration of heritage buildings can be a charitable purpose that advances a charitable public benefit. Where the

³³ *Re Greenpeace of New Zealand Incorporated* [2012] NZCA 533 at [59]; *Re Collier* [1998] 1 NZLR 81.

³⁴ *Greenpeace SC* at [72-76].

³⁵ See for example: *Greenpeace SC* at [74], [101-102] and [116].

³⁶ *Greenpeace (SC)* at [71].

³⁷ *Greenpeace (SC)* at [76].

³⁸ *Greenpeace (SC)* at [102].

³⁹ *Greenpeace (SC)* at [75].

⁴⁰ *Greenpeace (SC)* at [103].

restoration of a specific heritage building meets the test set out above,⁴¹ the Board considers advocacy to restore that heritage building has a public benefit within the spirit of the Preamble.

31. The Board notes the restoration of the Cathedral remains a contentious issue in Christchurch.⁴² However, the Supreme Court found controversy is not determinative. The tangible restoration of heritage itself has a charitable public benefit, regardless of public opinion. The Board considers the facts of public controversy and the owner's decision to demolish does not detract from the charitable public benefit in the restoration of a heritage building.
32. Finally, the Board considers there is nothing in the manner in which the Society is intending to advance its advocacy purpose to disqualify the entity from registration. The activities identified in the application process include fundraising for the physical preservation of the Cathedral in its current state; education on the heritage values of the Cathedral; persuading the public that restoration is possible and preferable; and taking actions in the Courts to try to enforce restoration. These activities either directly preserve heritage, advance a charitable educational purpose or promote public participation in decision making related to advancing a charitable purpose, consistent with the charitable advocacy acknowledged by the Supreme Court in *Greenpeace SC*.⁴³

C.3. Conclusion

33. In the light of the above, the Board considers that advocating for the restoration of the Cathedral as advanced by the Society meets the test of promoting heritage in charity law.

D. Determination

34. Accordingly, the Board's determination is that the Society qualifies for registration under the Act and the application for registration should be granted.
35. The Board is satisfied that the Society qualified for registration at all times between the receipt of a properly completed application from the Society by Charities Services, and the date of this determination. Therefore, the Board directs that the registration of the Society be backdated to 26 March 2015.

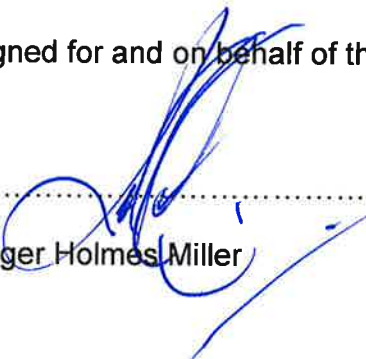
⁴¹ Above at [24].

⁴² For example: in making the decision to demolish the Cathedral, the Church Property Trustees surveyed Christchurch residents and found opinions favoured a new Cathedral design *The Great Christchurch Buildings Trust v The Church Property Trustees & Canterbury Earthquake Recovery Authority* [2014] NZHC 1182, at [51].

⁴³ *Greenpeace SC* at [71] and [103].

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

Signed for and on behalf of the Board


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Roger Holmes Miller

12th October 2015
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Date
