

Registration decision: The New Zealand China Maori Friendship Charitable Trust (THE43988)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of The New Zealand China Maori Friendship Charitable Trust (**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 charitable purposes:
 - advancement of education; and
 - relief of poverty; and
 - promoting the growth of Māori by supporting educational and cultural interactions between Chinese and Māori.
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 merely ancillary to any charitable purpose. In particular:
 - The Trust's aim to create employment is a non-charitable economic development purpose. On authority of the High Court in *Canterbury Development Corporation*³ (**CDC**), the Trust's economic development purpose is outside the scope of charity. The Trust's activities to promote this purpose confer private benefits to individuals and businesses and these benefits are not the means by which the Trust provides a public benefit recognised in law.
 - The Trust has a purpose to promote friendship and closer and more sympathetic understanding between Māori and Chinese people which is outside of the scope of charity.
4. The Board's reasons are organised as follows:
 - A. Background
 - B. Legal Framework for Registration

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.
³ *Canterbury Development Corporation* [2010] 2 NZLR 707 ("CDC").

- C. The Charities Registration Board's Analysis
- D. Section 5(3)
- E. The Trust's proposed amendments
- F. Determination

A. Background

- 5. The Trust was incorporated under the Charitable Trusts Act 1957 on 10 February 2003.
- 6. The Trust's purposes are set out in clause 2.2 of the Trust Deed.⁴ This clause states:

2.2 Objects: - the trustees shall hold the Trust fund in perpetuity, for any or all of the following purposes or objects (in each case within New Zealand) of the Trust:-

- (a) To foster the cultural, social and economic development of the Maori people of Aotearoa New Zealand, through the establishment, maintenance and promotion of friendship, sharing and mutually beneficial relationships with the people of the People's Republic of China by:
 - i. Providing network infrastructure, which will facilitate friendship and cooperation initiatives between Maori people and the peoples of The Peoples Republic of China
 - ii. Promoting the exchange of visits between Maori and Chinese people in order to develop a greater awareness and learning through sharing of information to develop and enhance education in general
 - iii. Supporting cultural, social and economic development projects and programmes between Maori and Chinese peoples
- (b) To retain, practice and promote the values of friendship including aroha-love, tiaki-benevolence, manaakitanga-caring for others and whanautanga-fellowship.

- 7. The Trust made a previous application for registration on 18 June 2008. This application was declined on 6 August 2009 after the Trust did not provide a response to a notice that may lead to decline about its non-charitable purposes.
- 8. On 16 April 2012 the Trust re-applied for registration under the Act.

⁴ During the application process the Trust has provided proposed amendments to its Trust Deed. The most recent proposed amendments are discussed in paragraph 12 below.

9. In July 2012, the Department of Internal Affairs – Charities (**Charities Services**) completed an initial review of the application and sent a notice that the application may be declined because the Trust was not exclusively charitable; in particular, the Trust’s main purpose to promote friendship and improve relations between people of different countries was outside the scope of charity. On 30 July 2012 the Trust provided information and submissions.
10. There followed a period of further correspondence between the Trust and Charities Services where the Trust provided information about its activities, submissions about its purposes and proposed various amendments to its purposes. Charities Services provided a number of notices to the Trust advising that despite the proposed amended purposes and activities information, Charities Services continued to consider that the Trust did not qualify for registration under the Act.
11. Most recently, the Trust provided proposed amended purposes on 27 August 2013 and information about its activities on 28 April 2014. Charities Services emailed the Trust advising that it still did not qualify for registration. The Trust was given until 11 June 2014 to provide further submissions before a final decision was made. The Trust has provided no further response.
12. The Trust proposed amendments in its email of 27 August 2013 so that clause 2.2 would now read:

2.2 Objects: - the Trustees shall hold the Trust Fund, in perpetuity, for any or all of the following specific charitable purposes or objects (in each case within New Zealand) of the Trust:

1. Education

To advance the education of New Zealand Maori by:

- (a) Fostering and facilitating the cultural, social, and spiritual learning and development of the Maori people of Aotearoa (New Zealand) with the people of the People’s Republic of China, through the establishment, maintenance and promotion of:
 - i. networks and infrastructure which will facilitate educational opportunities and initiatives between Maori and the minority people of the People’s Republic of China.
 - ii. exchange visits between Maori and Chinese people in order to develop a greater awareness and learning of cultural differences through mutual sharing of information, including, without limitation, sharing of traditional healing methods and teaching of native languages.
 - iii. promotion and development of sister school initiatives between Kura Kaupapa Maori schools and Chinese educational organizations catering for Chinese minority peoples.

- (b) To retain, practice, promote and educate New Zealand Maori and Chinese minority peoples of the Maori values of friendship and whanau including, without limitation, aroha, tiaki-benevolence, manaakitanga-caring for others and whanautanga-fellowship.

2. Relief of poverty

To encourage and facilitate employment of New Zealand Maori, with particular focus on Maori from areas of social and economic deprivation within New Zealand by:

- i. providing unique forums to interact with the people of the People's Republic of China in order to give insight into employment opportunities.
 - ii. giving an understanding of factors attributing to poverty affecting New Zealand Maori and people of the People's Republic of China and methods to avoid and/or rectify such factors.
 - iii. Providing support and guidance to encourage self determination of individuals, iwi and hapu.
13. The Board's decision is based on the purposes of the Trust set out in the current Trust Deed (as set out in paragraph 6). However, as the Trust has proposed changes to its Trust deed (as set out in paragraph 12), this paper also considers whether the proposed changes, if adopted, would permit the Trust to be registered.
14. In the course of correspondence, the Trust provided information that:
- Since its establishment, the Trust has formed and consolidated friendly relationships between Māori and Chinese people in China.⁵
 - The Trust enters into sister school relationships between Chinese minority schools and rural and Māori schools in New Zealand.⁶
 - The Trust introduces whānau, hapū or iwi looking at ways of becoming self-sustaining to Chinese interests, and introduces Chinese commercial interests wanting to build business relationships with New Zealand Māori.⁷
 - The Trust's Māori Friendship Delegation exchanges with Chinese people have built cross-cultural trust and confidence that will transfer into social and economic benefits.⁸
 - The Trust will organise forums for people seeking to establish businesses. It hopes that employment opportunities will be

⁵ Email from Trust dated 28 August 2012.

⁶ Emails from Trust dated 6 November 2012 and 28 April 2014.

⁷ Email from Trust dated 28 April 2014.

⁸ Email from Trust dated 6 November 2012.

forthcoming from discussion of similar business ideas and objectives.⁹

- The Trust will reach out to areas of New Zealand affected by social and economic deprivation to introduce and foster relationships between Māori and Chinese. It hopes that employment opportunities for Māori in these areas will manifest as the result of proper guidance and interactive forums.¹⁰
- The Trust aims to relieve poverty by increasing understanding of the factors affecting poverty, and encouraging action to address root causes.¹¹
- The Trust will encourage mutual sharing of information about traditional healing methods between health professionals.¹²

B. Legal Framework for Registration

15. 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.¹³
16. 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.¹⁴
17. Not all purposes which provide public benefit will be charitable at law.¹⁵ To be charitable a purpose must advance a public benefit at law. That public benefit

⁹ Email from Trust dated 28 April 2014.

¹⁰ Email from Trust dated 18 February 2014.

¹¹ Email from Trust dated 28 April 2014.

¹² Emails from Trust dated 6 November 2012 and 28 April 2014.

¹³ 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 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.

¹⁴ 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].

¹⁵ *Greenpeace, SC* at [27].

must also be within the spirit of the cases based on the Statute of Charitable Uses Act 1601 (**the Preamble**).¹⁶

18. 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.¹⁷ If a purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice.¹⁸ 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 to it.¹⁹
19. If public benefit has been established, the second part of the test is whether the public benefit is within the spirit of the Preamble.²⁰ 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.²¹ For purposes under the fourth head, “any other matter beneficial to

¹⁶ The Statue of Elizabeth.

¹⁷ 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’).

¹⁸ 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*”).

¹⁹ 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*.

²⁰ *Greenpeace, SC* at [18] and [27-31].

²¹ *Greenpeace, SC* at [27].

the community,” this part of the test is to be considered by analogy to previous cases or by reference to legislation.²²

20. 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.

21. Determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose. It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity’s overall endeavour.²³

Relevance of entity’s activities in registration decision-making

22. 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.²⁴ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.²⁵

23. While activities are not to be elevated to purposes,²⁶ 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;²⁷
- whether the entity is acting for an inferred or unstated non-charitable purpose;²⁸

²² *Greenpeace, SC* at [18] and [27-31].

²³ Refer for example to *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].

²⁴ See also section 50(2)(a) of the Act.

²⁵ *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].

²⁶ 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.

²⁷ See *Professional Engineers* at 575 (Tipping J).

²⁸ *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 Charities Act now makes clear”. Refer also to *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 (“*Glasgow Police Athletic Association*”); compare *Commissioner of Taxation of the*

- whether the entity's purposes are providing benefit to the public;²⁹ and
- whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.³⁰

24. 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.³¹

Characterisation of an entity's purposes

25. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.³² The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

26. 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.³³ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.³⁴

Commonwealth of Australia v Word Investments Limited [2005] HCA 55 at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²⁹ 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].

³⁰ 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.

³¹ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) ("*Dal Pont*") at [2.12], [13.19], [13.20].

³² *Molloy* at 693.

³³ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

³⁴ *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, 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).

C. The Charities Registration Board's Analysis

27. The Board considers that the Trust has a mixture of charitable and non-charitable purposes. The Board considers that the focus of the Trust is on its non-charitable purposes and as such the Trust does not qualify for registration. In particular, the Board considers that the Trust has non-charitable purposes to:
- promote economic development by aiming to create employment. On authority of the High Court in *CDC*, the Trust's economic development purpose is outside the scope of charity. The Trust's activities to promote this purpose confer private benefits to individuals and businesses and these benefits are not the means by which the Trust provides a public benefit recognised in law; and
 - promote friendship and closer and more sympathetic understanding between Māori and Chinese people.

C.1. Economic development purposes

Identification of the purpose

28. The Board considers that the Trust has an economic development purpose which is outside of the scope of charity.
29. The Trust's current purposes at clause 2.2(a) include fostering the economic development of Māori people by promoting and facilitating friendship, mutually beneficial relationships, cooperation and economic development projects between Māori and Chinese people.
30. The Trust's proposed purposes at clause 2.2(2) include encouraging and facilitating employment with a focus on areas of social and economic deprivation, giving insight into employment opportunities with China, and providing support and guidance to encourage self-determination.
31. The Trust has provided information that it facilitates relationships between whānau, hapū and iwi and Chinese commercial interests wanting to build business relationships. This includes organising forums for people seeking to establish businesses. The Trust has acknowledged that its activities aim to confer economic benefits, and create employment opportunities for Māori.
32. In the light of the above, the Board considers that the Trust has economic development purposes similar to the economic development purposes in *CDC*. The decision of the High Court in that case is determinative in relation to both the relief of poverty and the fourth head of charity.

Relief of poverty through employment activities

33. The Trust has submitted that it has a main charitable purpose to relieve poverty. The Trust has provided submissions that by building business relationships between Chinese commercial interests and Māori looking for opportunities to establish businesses and become self-sustaining, it will create employment opportunities.³⁵
34. The Trust's proposed purposes and activities relating to employment are similar to some of the purposes and activities in *CDC*.³⁶ Both the Trust and *CDC* have purposes to encourage employment, and aim to assist new businesses in the hope that they are successful. Support given to businesses by the Trust includes organising forums that introduce Māori to Chinese commercial interests wanting to build business relationships with Māori, in the hope that employment opportunities will be forthcoming.
35. In *CDC*³⁷ the corporation had argued that it created jobs in two ways: (i) where there is a chain of employment, the creation of a new job results in movement of employed persons thus leaving employment for the unemployed; and (ii) the creation of skilled jobs creates the need for service jobs thus providing jobs for the unemployed. Young J confirmed that to be charitable there must be a direct focus on the unemployed.³⁸ He accepted that the unemployed could be one of the ultimate beneficiaries of *CDC* but determined that "the possibility of helping someone who is unemployed is too remote for it to qualify as the charitable purpose of relief of poverty".³⁹ Young J rejected the claim that relief of poverty was a charitable purpose of *CDC* and determined that, in that case, the creation

³⁵ Email from the Trust dated 28 April 2014.

³⁶ Refer to paragraph 12 above for the Trust's proposed stated purposes; refer to *CDC* at [14] for *CDC*'s stated purposes.

³⁷ *CDC* at [27]. The Board also notes that the *CDC* decision is consistent with previous decisions. The Courts have held that relieving unemployment can be charitable under the relief of poverty (see for example *Re Central Employment Bureau for Women and Students' Careers Association Incorporated* [1942] 1 All ER 232. *Oldham, CDC* [26] but any assistance must be directed to a charitable need. (see for example *Joseph Rowntree Memorial Trust Housing Association v Attorney-General* [1983] 1 All ER 288 and *Oldham*). In particular, Lightman J in *Oldham* applied similar reasoning to Young J in *CDC* when he wrote at [249] "So far as the object of *Oldham* TEC is to set up in trade or business the unemployed and enable them to stand on their own feet, that is charitable as a trust for the improvement of the conditions of life of those "going short" in respect of employment and providing a fresh start in life for those in need of it, and accordingly for the relief of poverty."

³⁸ *CDC* at [26]. See also Young J's comments at [91] where he states: "The capital grant or equipment or payment to a new business, where the business is started by someone who is unemployed, and not by someone who has quit employment to start their own businesses, can be charitable. Secondly, where the payment is to an existing commercial business it must be to take on additional staff from unemployed persons before it can be considered charitable. This illustrates the type of direct focus on the unemployed which might be required to relieve poverty and thereby ensure the organisation is charitable. Also with the promotion of economic development, the focus must be directly on the promotion of public development as the primary object."

³⁹ *CDC* at [30].

of jobs through economic development was best considered under the fourth head of charity.⁴⁰

36. In determining that *CDC* did not relieve poverty, the Court considered both the terms of the constitution and the activities. In that case the Court noted that only one of *CDC*'s purposes dealt with unemployment⁴¹ and stated that none of *CDC*'s activities focused directly on the creation of employment for the unemployed.⁴²
37. The Board is bound by the Court's decision in *CDC*. The Trust's current purposes do not deal with poverty or unemployment, and are instead focused on the promotion of economic development generally.⁴³ The Board also notes that some of the Trust's proposed purposes deal with poverty⁴⁴ but that none of the Trust's proposed purposes deal with unemployment. The Trust's proposed purposes are focused instead on the promotion of employment in the general sense. Further, as above in paragraph 34, the Trust's activities are similar to those of *CDC*.
38. The Trust's activities are not focused on creating new jobs for people who are currently unemployed, or promoting economic development in deprived areas,⁴⁵ despite clause 2.2(2) of the Trust's proposed purposes referring to a focus on Māori from areas of social and economic deprivation.⁴⁶ Instead, the Trust has advised that it will act as conduit to link Māori with Chinese commercial interests wanting to build business relationships, and that its forums will mainly be for those seeking to establish businesses with resulting employment opportunities.⁴⁷ The Board therefore considers that like *CDC*, the Trust's activities are not focused directly on the creation of employment for the unemployed. For these reasons, we do not consider that the Trust's economic development purposes are charitable under relief of poverty.

⁴⁰ *CDC* at [31].

⁴¹ Clauses 2.2(a) of *CDC*'s rules stated that in furtherance of the Company's primary purposes the Company could pursue a purpose to "The expansion of employment by the creation of employment for the unemployed, the retention of employment for those persons whose employment may be in jeopardy and the creation and expansion of jobs for all persons". In *CDC* at [29] the Court found that the first part of this clause was the only purpose dealing with unemployment. The Board notes that clause 4.1(a) of *CDC*'s rules had a stated purpose to relieve poverty.

⁴² *CDC* at [29].

⁴³ Refer to paragraph 6 above for the Trust's stated purposes; refer to *CDC* at [14] for *CDC*'s stated purposes.

⁴⁴ The heading of the proposed clause 2.2(2), clause 2.2(2) "to encourage and facilitate employment...with particular focus on Maori from areas of social and economic deprivation", and clause 2.2(2)(ii).

⁴⁵ Email from the Trust dated 28 April 2014, see also email dated 18 February 2014.

⁴⁶ Email from the Trust dated 28 April 2014, see also email dated 18 February 2014.

⁴⁷ Email from Trust dated 28 April 2014.

Economic development purposes and the fourth head of charity

39. The Board does not consider the Trust's economic development purposes and activities fall under the fourth head of charity.
40. Courts have recognised that economic development of a community can, in some circumstances, be a charitable purpose under "other matters beneficial to the community". In New Zealand, High Court authorities (including *Re Tennant*,⁴⁸ *CDC* and *Queenstown Lakes Community Housing Trust (QLCHT)*⁴⁹) establish that this charitable purpose is restricted to situations where the area/region is in particular need.⁵⁰ Factors to be taken into account when judging whether an area is disadvantaged include the relative deprivation of the area.⁵¹ Further, benefits to individual businesses must be ancillary to public benefit.
41. The Trust's current purposes include the promotion of economic development between Māori and Chinese peoples.⁵² The Trust has proposed an amendment to its purposes to refer to a focus on creating employment for Māori from areas of social and economic deprivation.⁵³ The Trust has told us that it will reach out to areas of New Zealand affected by social and economic deprivation to introduce and foster relationships between Māori and Chinese, with the hope that employment opportunities in these areas will manifest as the result of proper guidance and interactive forums.⁵⁴
42. However, the Trust has given no information to suggest that it is involved in economic development in a specific area or region in New Zealand. Instead, the Trust's activities focus on promoting business opportunities for Māori generally across Aotearoa New Zealand, with the hope that employment opportunities will follow.

Summary of assessment of economic development purpose.

43. The Board considers that the Trust has a non-charitable purpose to promote economic development that is not sufficiently focused on the unemployed to be seen as charitable under relief of poverty.
44. The Trust's economic development purposes are also not carried out in an area or region that is disadvantaged. Therefore the Board does not consider that the

⁴⁸ [1996] 2 NZLR 633 ("*Re Tennant*").

⁴⁹ *QLCHT*.

⁵⁰ *Re Tennant* and *CDC*.

⁵¹ See *Re Tennant* and *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* [2005] FCA 439.

⁵² Clause 2.2(a)

⁵³ The proposed clause 2.2(2). The Trust proposed this amendment to its purposes in response to Charities Service's notice of 25 February 2013, which informed the Trust that economic development purposes can be charitable where they improve socio-economic conditions in areas of social and economic deprivation.

⁵⁴ Email from the Trust dated 18 February 2014.

Trust's purpose to promote economic development falls under the fourth head of charity.

45. On authority of the High Court in *CDC*, the Trust's economic development purpose is outside the scope of charity.

C.2. Purpose to promote international friendship

Identification of the purpose

46. The Board further considers that the Trust has an international friendship purpose which does not fall within section 5(1) of the Act.
47. The Trust's current purposes at clause 2.2 include the promotion of friendship, sharing, cooperation, mutually beneficial relationships and greater awareness and learning between Māori and Chinese peoples.
48. While the Trust has proposed amendments to its purposes and name to remove express reference to the promotion of friendship between different countries, the purposes at clauses 2.2(1)(a)(ii) and 2.2(1)(b) continue to include broad wording which would allow the Trust to promote international friendship.⁵⁵ For example clause 2.2(1)(a)(ii) provides that the Trust will promote exchange visits between Māori and Chinese people to develop a greater awareness and learning of cultural differences.
49. Further, the Trust has provided information that it carries out activities to promote international friendship. The Trust's activities include facilitating relationships between Māori and Chinese through the Chinese People's Association for Friendship with Foreign Countries,⁵⁶ organising Māori Friendship Delegations to build cross-cultural trust, confidence and social and economic benefits, friendly relationships and interactions to develop mutual understanding and friendship,⁵⁷ and acting as a conduit to link Chinese with Māori to broaden whānau horizons and introduce Māori to new ideas and opportunities.⁵⁸
50. In determining qualification for registration under the Act, substance must prevail over form. Taking into account the Trust's stated purposes and its activities; the Board considers the Trust has a purpose to promote international friendship.

⁵⁵ In its email of 28 April 2014, the Trust also advised that it could remove the word "Friendship" from its name if necessary.

⁵⁶ Email from Trust dated 28 April 2014.

⁵⁷ Email from Trust dated 6 November 2012.

⁵⁸ Email from Trust dated 28 April 2014.

Characterisation of the Trust's Purpose to Promote International Friendship

51. The Trust has acknowledged that the promotion of friendship “may not be a charitable purpose.”⁵⁹ The Trust has submitted that this purpose advances education. We are not convinced by this submission.
52. In *Toronto Volgograd Committee v Minister of National Revenue*,⁶⁰ the Canadian Federal Court of Appeal considered that a purpose to enhance relationships between residents of Toronto and Volgograd through exchanges to promote understanding was not charitable. This is consistent with previous decisions. In *Anglo-Swedish Society v C.L.R.*,⁶¹ an organisation whose main purpose was to promote closer and more sympathetic understanding between English and Swedish people was held to not be charitable. Purposes to promote closer collaboration or relations between different countries are considered too vague and wide to fall within the spirit and intendment of the Statute of Elizabeth.⁶²
53. In the light of this case law, we consider that the Trust's purpose to promote international friendship falls outside the scope of charity.

C.3. Other purposes

54. The Trust's current purpose at clause 2.2(a)(ii) is to enhance education and develop greater awareness through sharing information between Māori and Chinese people. The Trust has proposed an amendment to this purpose that would expressly include promoting exchange visits to teach native languages.⁶³ This proposed purpose is to advance education. The Trust undertakes activities that advance education. For example, the Trust has encouraged sister school relationships with Kura Kaupapa Māori and Chinese educational organisations, and teacher exchanges with a focus on teaching and learning Te Reo Māori, English and Chinese.⁶⁴ While this is a charitable purpose, this is not the focus of the Trust.
55. The Trust has also proposed an amendment to the current clause 2.2(a)(ii) which would expressly include sharing information about traditional healing methods.⁶⁵ The Trust has submitted that establishing a forum to share information among medical professionals about traditional healing techniques will advance both schools of learning.⁶⁶ It considers that Chinese and Māori have traditional healing methods that benefit the public and that sharing of information will benefit the

⁵⁹ Email from Trust dated 30 July 2012

⁶⁰ *Toronto Volgograd Committee v Minister of National Revenue* [1988] 3 F.C. 251 (“*Toronto Volgograd*”)

⁶¹ *Anglo-Swedish Society v C.L.R.* (1931) T.C. 34 (K.B.D) (“*Anglo-Swedish Society*”).

⁶² Refer for example to *Toronto Volgograd*; *Anglo-Swedish Society*; *Re Strakosch* [1949] Ch 529 at 536.

⁶³ The proposed purpose is at clause 2.2(1)(a)(ii).

⁶⁴ Emails from Trust dated 6 November 2012 and 28 April 2014.

⁶⁵ The proposed purpose is at clause 2.2(1)(a)(ii).

⁶⁶ Email from Trust dated 6 November 2012.

public as medical professionals could potentially access alternative healing methods for patients.⁶⁷ However, this purpose is not a focus of the Trust.

D. Section 5(3)

56. The Trust's non-charitable purposes to promote economic development and promote international friendship form a significant proportion of the Trust's overall endeavour. These purposes are pervasive purposes of the Trust that cannot realistically be considered ancillary, subordinate or incidental to the Trust's charitable purposes.
57. The Board considers that the Trust's non-charitable purposes to promote economic development and international friendship do not come within the savings provision at section 5(3) of the Act.

E. The Trust's proposed amendments

58. The Board notes the Trust's proposals to amend its purposes in response to the matters notified by Charities Services. As discussed above, the proposed amendments would not be sufficient to establish that the Trust qualifies for registration.
59. The proposed statement that the purposes are charitable, and the headings for the purposes entitled "Education" and "Relief of Poverty" are not determinative of the question whether the Trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.⁶⁸
60. The Board considers that the proposed amendments to the Trust's purposes, when considered in the light of the Trust's activities, continue to include non-charitable purposes to promote economic development and promote international friendship that are not ancillary to any charitable purpose.

F. Determination

61. 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, we consider that the Trust's non-charitable purposes are not ancillary to any charitable purposes.
62. The Board considers that the Trust has a non-charitable purpose to promote economic development that is not sufficiently focused on the unemployed to be seen as charitable under relief of poverty. The Trust's economic development

⁶⁷ Emails from Trust dated 6 November 2012 and 28 April 2014.

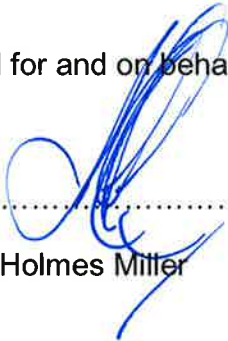
⁶⁸ See above paragraph 25.

purposes are also not carried out in an area or region that is disadvantaged. On authority of the High Court in *CDC*,⁶⁹ the Trust's economic development purpose is outside the scope of charity.

63. Secondly, the Trust has a non-charitable purpose to promote friendship and closer and more sympathetic understanding between Māori and Chinese people.

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

Signed for and on behalf of the Board



Roger Holmes Miller

30th SEPTEMBER 2014

Date

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CDC.