

Deregistration decision: New Zealand Global Women CC39719

Executive Summary

1. The Charities Registration Board (**the Board**) has determined that New Zealand Global Women (**NZGW**) is no longer qualified for registration as a charitable entity and that it is in the public interest that it be removed from the Charities Register.
2. The Board considers that NZGW no longer qualifies to be registered as a charitable entity under the Charities Act 2005 (**the Act**).¹ The Board has considered NZGW's Trust Deed as well as its activities, information in its annual returns, and its submissions. The Board acknowledges NZGW developing women leaders is beneficial for New Zealand, but not in a way the law recognises as within the scope of charity. The Board considers that NZGW has a mix of charitable and non-charitable purposes. In particular, the Board considers that NZGW has an independent purpose to provide private benefits to a closed group through its BreakThrough Leaders programme (**BLT**) and also other networking, career promotion and training opportunities for members.
3. The Board is satisfied that it is in the public interest that NZGW be removed from the Charities Register.² The purposes of the Act include purposes to promote public trust and confidence in the charitable sector, and the effective use of charitable resources.³ The Board considers that it would not promote these purposes if an entity that does not qualify for registration were allowed to remain on the Charities Register.
4. NZGW has submitted that it continues to qualify for registration. It has submitted that it has the following purposes and that these are charitable:
 - advancement of education; and
 - advancement of women and ethnic minority leaders.
5. The Board's reasons are organised as follows:

¹ The essential requirements for registration are set out in section 13 of the Charities Act 2005 ("the Act").

² Section 32(1)(a) of the Act provides, 'The Board may direct that an entity be removed from the register if – (a) the entity is not, or is no longer, qualified for registration as a charitable entity.' Section 35(1) further provides that, if an objection to removal is received, the Board must not proceed with the removal unless satisfied that it is in the public interest to proceed with the removal.

³ See section 3(a) and (b) of the Act.

- A. Background
- B. Legal framework for deregistration
- C. The Charities Registration Board's Analysis
- D. Section 5(3)
- E. Public Interest
- F. Determination

A. Background

6. NZGW was established by deed of declaration of trust on 18 March 2009. The trustees incorporated as a board under the Charitable Trusts Act 1957 on 26 March 2009. NZGW was registered as a charitable entity under the Act with an effective registration date of 4 May 2009.

7. NZGW's stated objectives, as set out in clause 4.2 of its Trust Deed, are as follows:

4.2 Objectives

- (a) The objectives of the Trust shall be to promote, encourage and facilitate the development of New Zealand women leaders and other New Zealand women to achieve their full leadership potential including by (without limitation):
 - (i) providing New Zealand women leaders with relevant opportunities to develop professionally;
 - (ii) building a supportive and collegial environment for New Zealand women leaders to develop their professional capabilities, competencies and skills;
 - (iii) offering New Zealand women leaders opportunities for focused and relevant interactions in order to learn and improve capabilities, competencies and skills;
 - (iv) encouraging and assisting New Zealand women leaders to take up roles on private and public boards by developing and supporting their professional capabilities, competencies and skills;
 - (v) providing New Zealand women leaders with opportunities to broaden and build knowledge and networks, including internationally; and
 - (vi) nurturing talented middle management New Zealand women into senior leadership roles through mentoring programmes, providing scholarships and influencing New Zealand business community leaders.

- (b) An ancillary objective of the Trust shall be to increase the representation of ethnic minorities (male and female) in leadership roles in New Zealand, including by (without limitation) being involved in projects and other activities which aim to increase the representation of women and/or ethnic minorities (male and female) in leadership roles in New Zealand and which promote the rights of women and/or ethnic minorities (male and female) to equal opportunities in New Zealand.⁴
8. NZGW has filed annual returns, as required under the Act, for its financial years ending 31 March 2010, 2011, 2012, 2013 and 2014. NZGW also maintains a website that documents its activities.⁵
9. While assessing another organisation's application, Charities Services was advised of NZGW and possible similarities to the other organisation. Charities Services commenced a review of NZGW. On 4 December 2014, after reviewing NZGW's stated objectives and its activities, Charities Services sent a notice of intention to remove NZGW from the Charities Register on the grounds that it no longer qualified for registration. The notice explained that Charities Services considered that NZGW had an unstated non-charitable purpose to provide benefits to members and to participants in the BLT programme.
10. On 26 February 2015, NZGW submitted a written objection to the notice of intention to remove. NZGW's submission is discussed in part C of this decision.
11. On 15 April 2015, Charities Services sent a response to NZGW outlining that, after considering NZGW's submission, Charities Services continued to consider that NZGW no longer qualifies for registration. The email provided a further opportunity for NZGW to provide any further submissions by 8 May 2015. NZGW provided further submissions dated 28 May 2015. These are discussed in part C of this decision.

B. Legal framework for deregistration

12. Section 50 of the Act provides that the Chief Executive of the Department of Internal Affairs may examine and inquire into any registered charitable entity, including into its activities and proposed activities, and its nature, objects and purposes.
13. Section 32(1)(a) of the Act provides that the Board may direct that an entity be removed from the register if the entity is not, or is no longer, qualified for registration as a charitable entity, provided that the entity has been given notice under section 33. Under section 35(1)(a) of the Act, if an objection to the

⁴ Clause 4.2(b) was added to New Zealand Global Women's ("NZGW") stated purposes on 16 June 2014.

⁵ NZGW's website is <http://www.globalwomen.org.nz/>. NZGW also is a partner in an initiative called DiverseNZ. Information about this initiative is available at <http://www.globalwomen.org.nz/Diversity+Initiative.html>.

removal of an entity from the register is received, the Board may proceed with the removal if 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.

14. The power under section 32(1)(a) is to be exercised on the grounds set out in sections 32 and 35, and for the purposes of the Act as set out in section 3.⁶
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.⁷
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.⁸
17. To be charitable at law a purpose must be for the public benefit.⁹ Public benefit must be expressly shown where the claimed purpose is under the fourth head of charity, “any other benefit to the community”.¹⁰ Further, in every case, the benefit of the entity’s purposes must flow to the public or a sufficient sector of the public.
18. 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. If a purpose is to benefit a private

⁶ *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 (“*Greenpeace, CA*”) at [34], [37], [38].

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 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 as stated in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531. See: *Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace, SC*”) at [12],[15] and [17]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 (“*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 Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioners of Inland Revenue* [1986] 1 NZLR 147 (“*Accountants*”) at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 (“*Latimer, CA*”) at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (“*Travis Trust*”) at [54]-[55] (Joseph Williams J); *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011] (“*Queenstown Lakes*”) at [30]; *Education New Zealand Trust* at [23].

¹⁰ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 (“*CDC*”) at [45].

group, the consequential downstream benefits to the public will not suffice.¹¹ 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.¹²

19. The fourth head of charity, described in section 5 of the Act as "any other matter beneficial to the public", has a specific meaning in law.¹³ It is not intended to indicate that all purposes that provide public utility qualify as charitable. In order to qualify as charitable under this head, the purpose must be both for the benefit of the community and beneficial in a way that the law regards as charitable. More particularly, the purpose must be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth I).¹⁴
20. This two-stage test for charitable purposes 'beneficial to the community' (requiring that a purpose be both beneficial to the community and within the spirit and intendment of the Preamble) is well-established in law.¹⁵ Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth I, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances.¹⁶

¹¹ See for example the discussion in *Latimer, CA* 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; *Queenstown Lakes* 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).

¹² See for example *Institution of Professional Engineers New Zealand Incorporated 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]; *Queenstown Lakes* 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.

¹³ See generally Gino Dal Pont, *Charity Law in Australia and New Zealand* (2nd ed., Lexis Nexis Butterworths, 2010) at [11.3] - [11.8].

¹⁴ *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4).

¹⁵ Refer *Queenstown Lakes* [48]; see also *Latimer, CA* at 208-209; *Travis Trust* at [20]; *Accountants* at 157 (Somers J); *Re Tennant* [1996] 2 NZLR 633 at 638). This is consistent with the approach taken in other jurisdictions, see for example *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-148, 15; *Brisbane City Council v Attorney-General for Queensland* [1979] AC 411 at 422 (PC); *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305.

¹⁶ See for example the courts' recognition of free internet: *Vancouver Regional FreeNet Association v MNR* [1996] 3 FC 880, 137 DLR (4th) 206, [1996] 3 CTC 1; (1996) 50 DTC 6440 and environmental protection: *Centrepont Community Growth Trust* [2000] 2 NZLR 325.

21. 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.
22. 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

23. Section 50(2) permits the chief executive to examine and inquire into the activities and proposed activities when reviewing charitable entities. Section 18(3)(a)(i) and (ii) of the Act requires that an entity's activities are taken into consideration when determining whether it qualifies for registration under the Act. The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹⁹
24. Activities are not to be elevated to purposes,²⁰ but 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;²¹
 - whether the entity is acting for an inferred or unstated non-charitable purpose;²²

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]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) ("*Grand Lodge*") at [49]-[51]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

¹⁹ *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].

²⁰ 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.

²¹ See *Professional Engineers* at 575 (Tipping J).

²² *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". *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;²³ and
 - whether a non-charitable purpose is ancillary within the meaning of section 5(3) of the Act.²⁴
25. In the light of the above, we consider there is a statutory mandate supported by case law for the Board to consider an entity's current and proposed activities when determining whether it remains qualified for registration. 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.²⁵

Characterisation of an entity's purposes

26. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.²⁶ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
27. 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.²⁷ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁸

C. The Charities Registration Board's Analysis

28. The Board considers that NZGW has a mixture of charitable and non-charitable purposes. In particular the Board considers that NZGW has a non-charitable purpose to provide private benefits to BLT participants and members, as well as a charitable purpose to advance education. The Board considers that the focus of NZGW is on the non-charitable purpose of benefiting a closed group and that the non-charitable purpose is more than ancillary to the charitable purpose of NZGW.

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

²³ See for example *Glasgow Police Athletic Association; CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68].

²⁴ See for example *Greenpeace, CA* at [40], [48], [87] - [92], [99] and [103]. Earlier authorities to same effect include *Molloy* at 693 and the authorities cited there.

²⁵ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].
²⁶ *Molloy* at 693.

²⁷ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²⁸ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer, PC* at 168; *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.1. Purpose to provide benefits to a closed group of members and BLT participants

29. The Board considers that NZGW has a purpose to provide benefits to a closed group of members and BLT participants that is outside the scope of charity.
30. NZGW's current stated objectives at clause 4.2 of the Trust Deed include:
- "Promote, encourage and facilitate the development of New Zealand women leaders";²⁹
 - Providing women leaders with "opportunities to develop professionally";³⁰
 - Building an environment for women leaders to "develop their professional capabilities, competencies and skills";³¹
 - Encouraging women leaders to take up roles on boards by "developing their professional capabilities, competencies and skills";³²
 - Providing women leaders with "opportunities to broaden and build knowledge and networks";³³ and
 - "Nurturing talented middle management New Zealand women into senior leadership roles through mentoring programmes, providing scholarships and influencing New Zealand business community leaders".³⁴
31. The High Court in *Re Grand Lodge of Antient Free and Accepted Masons in New Zealand*³⁵ (**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.³⁶ This is echoed in *Travis Trust v Charities Commission*³⁷ (**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".³⁸

²⁹ Clause 4.2(a) of the Trust Deed.
³⁰ Clause 4.2(a)(i) of the Trust Deed.
³¹ Clause 4.2(a)(ii) of the Trust Deed.
³² Clause 4.2(a)(iv) of the Trust Deed.
³³ Clause 4.2(a)(v) of the Trust Deed.
³⁴ Clause 4.2(a)(vi) of the Trust Deed.
³⁵ *Grand Lodge*.
³⁶ *Grand Lodge* at [59].
³⁷ *Travis Trust*.
³⁸ *Travis Trust* at [57].

32. NZGW submits that it provides benefits to a wider group of people, not simply members and BLT participants. In particular, NZGW submits:
- its intended beneficiaries are women and ethnic minorities and that its activities benefit the public;³⁹
 - that mentoring is available to non-members; and
 - that the terminology “women leaders” should not be interpreted to mean only members of NZGW and BLT participants.⁴⁰

Closed membership

33. The Board considers that NZGW has a closed membership that does not constitute a sufficient section of the public. Clause 14 of the Trust Deed contains provisions in relation to the appointment of members. The Trustees may, on recommendation from an Advisory Board, appoint members.⁴¹
34. 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.⁴²
35. Further, there are references in the public domain to NZGW having restricted membership. For example, the Trust’s website states that “[m]embership to New Zealand Global Women is by invitation only from an existing member... nominations will not be accepted without a Global Women member sponsoring the potential candidate”.⁴³ The selection criteria for membership include: women who have occupied senior leadership positions or positions of influence; women who have demonstrated significant leadership and vision, and women who are well connected and who have demonstrated leadership and influence beyond their principal sphere of activity.

³⁹ Refer NZGW’s letter 26 Feb 2015 part 5.

⁴⁰ Refer paragraph 3.3 of NZGW’s letter of 26 February 2015.

⁴¹ Clause 14.2 of the Trust Deed.

⁴² *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 *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.

⁴³ <http://www.globalwomen.org.nz/Our+Members.html> [accessed 17 April 2015 and 1 September 2015]. NZGW in its letter of 26 February 2015 at paragraph 5.3 also confirmed that membership is by invitation only and that all new members go through a nomination process. Current members are able to vote on new membership.

36. As well as stating these criteria NZGW's website indicates that the current membership is made of "senior leaders"⁴⁴ and that members are some of the "most influential women leaders in New Zealand".⁴⁵
37. NZGW have submitted that the nomination process was put in place to minimise the risk of potential members misrepresenting their status as senior leaders. NZGW has submitted that membership is not capped at 250 people; this is an indicative number only and varies.⁴⁶ The Board does not consider that NZGW has shown that the membership criteria discussed above are merely descriptions of target members.
38. In the light of the above, the Board considers that the information contained on the NZGW's website indicates that membership of NZGW 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.

BLT not open to a sufficient section of the public

39. Moreover, the Board does not consider the BLT programme itself is available to a sufficient section of the public. Since its inception in 2010 BLT has produced 60 graduates.⁴⁷ The programme is "tailored specifically for senior women" and candidates are able to participate only if they are successful in a formal interview with a member of Global Women, and a representative of the Women in Leadership Advisory Committee.⁴⁸ As above, on application of the *Travis Trust* principle this means the benefit is not available to a sufficient section of the public. Moreover, the programme fee is \$27,000 plus GST, which makes it inaccessible to most members of the public.⁴⁹
40. In the context of the limitation on entry and the high programme fee, the Board considers that BLT is not open to a sufficient section of the public for this activity to be seen as a charitable education purpose.

⁴⁴ <http://www.globalwomen.org.nz/Our+Members.html> [accessed 17 April 2015 and 1 September 2015].

⁴⁵ <http://www.globalwomen.org.nz/About+Us.html> [accessed 17 April 2015].

⁴⁶ Refer paragraph 5.3 of NZGW's letter of 26 February 2015. The Board note that NZGW's Vision and Strategy 2020 document on its website states a goal to build an active and relevant membership that will unleash the expertise of an active membership "capped at 250".

⁴⁷ <http://www.globalwomen.org.nz/Leadership+Programmes.html> [accessed 17 April 2015].

⁴⁸ <http://www.globalwomen.org.nz/site/diversenz-dev/files/forms/2016%20Global%20Women%20Breakthrough%20Leaders%20Programme%20Brochure.pdf> and <http://www.globalwomen.org.nz/Leadership+Development.html> [accessed 1 September 2015].

⁴⁹ <http://www.globalwomen.org.nz/Leadership+Development.html> [accessed 31 August 2015].

Benefits are provided to the members and BLT participants

41. The Board considers that NZGW provides significant private benefits to its members and BLT participants.
42. NZGW provides a wide range of benefits to its members and BLT participants including:
- bi-monthly members-only dinners to “deepen relationships and strengthen connections with fellow members and new peers” where members are able to “expand their network”;⁵⁰
 - an annual member’s retreat which is a time to “connect, re-energise and deepen relationships with [Global Women] peers”.⁵¹ The 2015 retreat was held from 7 to 9 May in Queenstown. The retreat featured international speakers;
 - members actively “develop and assure leadership opportunities for qualified women among their membership”;⁵²
 - BLT includes leadership coaching and mentoring. It is an “intensive world-class” programme which “aims to unleash the true leadership potential of New Zealand’s high-calibre women”;⁵³
 - an individual profile on NZGW’s website;⁵⁴ and
 - offering “tailored opportunities for members to connect, share and develop thought caucus groups, member dinners, annual retreat, visiting global thought leaders and annual international visit”.⁵⁵
43. In the light of the above, the Board considers that NZGW provides significant benefits to members. While many of these benefits may not be immediately pecuniary in nature, benefits need not be pecuniary to be considered private benefits outside the scope of charity. The High Court in *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* 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.⁵⁶ Further, in *Re Mason*,⁵⁷ where a library was provided for the benefit of members of an institution, the High Court

⁵⁰ <http://www.globalwomen.org.nz/shop/Events/Global+Women+Members+Dinners.html> [accessed 17 April 2015].

⁵¹ <http://www.globalwomen.org.nz/shop/Events/Annual+Global+Women+Retreat.html> [accessed 17 April 2015 and 1 September 2015].

⁵² <http://www.globalwomen.org.nz/Our+Members.html> [accessed 17 April 2015 and 1 September 2015].

⁵³ <http://www.globalwomen.org.nz/Leadership+Programmes.html> [accessed 17 April 2015]

⁵⁴ The Board notes that this provides exposure for NZGW members to increase their profile.

⁵⁵ NGW’s Vision and Strategy 2020 <http://www.globalwomen.org.nz/About+Us.html> [accessed 1 December 2014].

⁵⁶ *Professional Engineers* at 581-582.

⁵⁷ *Re Mason* [1971] NZLR 714 (“*Re Mason*”).

held that while the benefit of the members will be “entirely wholesome and likely to lead to the ultimate benefit of the public”,⁵⁸ the library was not charitable because it was primarily “a professional library for use by its members in the conduct of their professional practices.”⁵⁹

44. In the light of the above, the Board considers that NZGW has a purpose to provide benefits to a closed group of members and BLT participants which is outside the scope of charity.

Private benefits are more than incidental to a charitable purpose

45. NZGW submits that the private benefits to members and BLT participants are incidental. In particular, NZGW submits:

- many of its activities are open to both members and non-members (for example the Activation series of workshops) and that the majority of attendees at these activities are non-members;⁶⁰
- the DiverseNZ initiative constitutes a significant proportion of NZGW's activities;
- members-only events are self-funded by members rather than the organisation;
- members and BLT participants mentor non-members; and
- members are asked to join, not for what the members might derive from NZGW, but for what they can give to other individuals.⁶¹

46. NZGW has submitted that, for members to be able to bring about change within their own organisations and the wider community, members must be provided with the opportunity to share ideas and be informed on research, trends and industry movement. NZGW also advises that members are required to commit to further the goals of NZGW, be an active role model and have a personal commitment to support other women leaders to achieve leadership success.⁶² NZGW submits that the principal purpose that individuals become members for is to share their experiences at NZGW's events in order to benefit and develop other women, who are not NZGW members.⁶³

47. 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 31 above) and the High Court's judgment in *Re New Zealand*

⁵⁸ *Re Mason* at 725.

⁵⁹ *Re Mason* at 727.

⁶⁰ Refer to Appendix A of NZGW's letter of 26 February 2015 for details of the proportion of non-members attending each event and to NZGW's letter of 28 May 2015.

⁶¹ Refer NZGW's letter of 28 May 2015 at paragraph 3.

⁶² NZGW letter 26 Feb 2015 paragraph 4.6.

⁶³ Refer NZGW's letter of 28 May 2015 at paragraph 3.

Computer Society Inc,⁶⁴ while there may be downstream benefits, the Board considers that “any such benefits are merely ancillary and cannot constitute independent charitable purposes.”⁶⁵

48. The Board does not consider that providing benefits to NZGW members and BLT participants can be considered to be a means by which charitable education or another charitable purpose is advanced.
49. NZGW has also submitted that any private benefits derived by attendees at its events are no different in the manner in which other charitable organisations operate in New Zealand.⁶⁶ The Board considers each entity on a case-by-case basis considering the specific rules document and activities.⁶⁷ Two entities may appear similar but the specific nature of each may render one charitable and the other non-charitable. For the reasons provided above, the Board considers that NZGW has a purpose to provide benefits to a closed group of members and BLT participants that is outside the scope of charity.

C.2. Education purpose

50. NZGW has submitted that it has a charitable education purpose.⁶⁸ In support of this submission, NZGW makes specific reference to its object at clause 4.2(a)(vi) of its Trust Deed which relates to nurturing talented middle management women into senior leadership roles through mentoring programmes, providing scholarships and influencing business community leaders.
51. In support of this submission, NZGW also referred to its activities including:
 - a scholarship scheme (in partnership with another organisation) which sponsors participants in the BLT programme. The scheme supported two individuals each year from 2011-2014 and has been expanded to support four individuals in 2015.
 - educational events (for example a talk “Activation” series) which are available to the public and are not limited to members or participants of BLT.
52. The Board acknowledges that some aspects of NZGW’s activities advance education and that this is a charitable purpose. For example some of the public educational events provide charitable education to the general public. NZGW’s

⁶⁴ *Computer Society*.

⁶⁵ *Computer Society* at [56].

⁶⁶ Refer to NZGW’s letter of 28 May 2015 at paragraphs 4 and 5 (for example universities, Rotary clubs, classes offered at community centres and individuals who obtain free legal advice from community law centres).

⁶⁷ *Greenpeace SC* at [18].

⁶⁸ Refer to NZGW’s letter of 26 February 2015.

involvement in DiverseNZ also advances charitable education (for example this initiative includes research into diversity).⁶⁹

53. However, the Board considers that many aspects of the 'education' provided by NZGW do not fall within the definition of charitable education, either as it is available only to a closed group (discussed at C.1. above) or because some aspects of the content are not of a kind that charitable education covers (discussed in paragraphs 54 and 55 below).
54. The High Court in *Canterbury Development Corporation v Charities Commission (CDC)* makes it clear that "supporting businesses by providing assistance to their proprietors, in such aspects as financial management or marketing"⁷⁰ 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."⁷¹
55. The Board considers that aspects of NZGW's 'education' appear to be analogous to the non-charitable topics encompassed in the judgment in *CDC* (quoted at paragraph 54 above). For example they create opportunities for business women to hear from prominent business professionals and network, to learn about business issues and for mid-management women to enhance their career path.⁷²
56. Further, as detailed above, the Board considers that NZGW's focus is not on charitable education for the public benefit rather it provides benefits to its members and participants in BTL.

C.3. Purpose to advance women leaders and ethnic minority leaders

57. NZGW has submitted that it has a purpose to advance women leaders and ethnic minority leaders and that this purpose is charitable under the fourth head "any other matter beneficial to the community". From NZGW's submissions, stated objectives and activities,⁷³ the Board considers that NZGW has an aim to advance women leaders and ethnic minority leaders.
58. However, the Board considers that NZGW's activities to further this purpose confer significant private benefits on a closed group of individuals (discussed above in part C.1). Further, while the Board recognises that there is a public

⁶⁹ DiverseNZ is a collaboration catalysed by NZGW (refer <http://www.globalwomen.org.nz/Diversity+Initiative.html> [accessed 1 September 2015]). This initiative includes research into diversity and the development of tools for organisations to use and consider diversity and inclusion.

⁷⁰ *CDC* at [33].

⁷¹ *CDC* at [60].

⁷² Refer to Annexure One of NZGW's letter of 26 February 2015 (at paragraphs 1, 4 and 5).

⁷³ For example BLT and the DiverseNZ initiative.

benefit in increasing diversity, we consider that any public benefit from NZGW's activities to advance women leaders and ethnic minority leaders is too downstream for this purpose to be charitable.

C.4. NZGW's other submissions

59. NZGW has submitted that it has not deviated from its objectives since it was registered in May 2009.
60. Under section 10(h) of the Charities Act 2005, Charities Services has a function to monitor charitable entities and their activities to ensure that entities that are registered continue to be qualified for registration. While the stated objectives have not been substantially amended since registration, we must also consider NZGW's qualification in the light of its activities and the current case law. Since registration there have been a number of cases considering private benefits conferred by charities which must now be applied (these cases are referred to in part B of this decision).
61. The Board also notes the recent decision of *Re Family First New Zealand*,⁷⁴ where the High Court did not accept that there had been a substantive legitimate expectation that the entity would not be deregistered as a charity entity unless there were material changes in circumstances from when it was registered.⁷⁵

C.5. Summary

62. In summary, the Board considers that NZGW has a mix of charitable and non-charitable purposes. The Board considers that NZGW has a charitable purpose to advance education. However, the Board considers that NZGW has an independent non-charitable purpose to provide benefits through to a closed group of members and BTL participants. The Board does not consider that the provision of these private benefits is incidental or ancillary to the advancement of a charitable purpose.

D. Section 5(3)

63. As discussed above, we consider that NZGW has an independent purpose to provide benefits to a closed group of members and BLT participants 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.
64. NZGW's non-charitable purpose forms a significant proportion of its overall endeavour.⁷⁶ This purpose is a pervasive purpose of NZGW and cannot

⁷⁴ *Re Family First New Zealand* [2015] NZHC 1493 ("*Family First*").

⁷⁵ Refer *Family First* at [95] to [100].

⁷⁶ The Board notes that NZGW's website has a focus on membership activities and the BTL programme. This focus is also evident in clause 4.2(a) of the Trust Deed. NZGW's wider

realistically be considered ancillary, subordinate, or incidental to NZGW's charitable purposes.

E. Public Interest

65. Section 35(1) of the Act states, where an objection to a notice of intention to remove is received, the Board must not proceed with the removal of an entity from the register unless the Board is satisfied that it is in the public interest to do so.
66. Section 10(h) of the Act obliges the chief executive to monitor charitable entities and their activities to ensure that they continue to be qualified for registration as charitable entities. The purposes of the Act include, in section 3(a), to promote public trust and confidence in the charitable sector and in section 3(b), to promote the effective use of charitable resources.
67. In the light of the purposes of the Act, the Board considers that it is in the public interest that only entities qualified for registration remain on the Charities Register. 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. Further, the Board considers that it would not promote the effective use of charitable resources for non-qualifying entities to remain on the register.
68. Accordingly, the Board considers that it is in the public interest to remove NZGW from the register, as this will maintain public trust and confidence in the charitable sector.

F. Determination

69. The Board determines that NZGW is no longer qualified for registration as a charitable entity. While NZGW has a charitable purpose to advance education, the Board considers that NZGW's non-charitable purpose is more than ancillary to any charitable purpose.
70. The Board considers that NZGW has a non-charitable purpose to provide private benefits to a closed group of individuals (its members and BLT participants). The Board further considers that this is a purpose to provide private benefits to individuals which are not incidental to any charitable public benefit.

diversity purpose in clause 4.2(b) is expressed as an ancillary purpose. NZGW has submitted that the DiverseNZ activity is a significant proportion of its endeavour. However, in the financial statements for the year ended 31 March 2014 the expenditure on the DiverseNZ activity accounts for only 24% of NZGW's total expenditure, for the year ended 31 March 2013 the DiverseNZ activity accounts for only 9% of the total expenditure.

71. As NZGW has an independent (non-ancillary) non-charitable purpose, it does not meet registration requirements and it is in the public interest to proceed with the NZGW's removal from the Charities Register. The grounds for removal under section 32(1)(a) of the Act are satisfied in relation to NZGW.
72. The decision of the Board is therefore to remove NZGW from the register, pursuant to section 31 of the Act, with effect from 9 October 2015.

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

Signed for and on behalf of the Board

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Roger Holmes Miller

11th SEPTEMBER 2015
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Date