

Registration decision: Queenstown Lakes Community Housing Trust (QUE51343)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of Queenstown Lakes Community Housing (**the Trust**) under the Charities Act 2005 (**the Act**).¹
2. The Trust has applied for registration on the basis that it is focused on assisting low income households via rental programmes as well as supporting low to moderate income households into home ownership. The Trust submits that these activities advance charitable purposes.
3. The Board has determined that the Trust is not qualified to be registered as a charitable entity under the Act. In assessing the Trust's purposes and activities, the Board is bound to apply the High Court decision relating to this Trust (*Re Queenstown Lakes Community Housing Trust*² (**QLCHT**)). While some of the Trust's rental activities may advance charitable purposes, the Trust's focus is on supporting families and individuals into home ownership. Applying *QLCHT* in the light of the Trust's amended stated purposes and current activities, the Board considers that the Trust's home ownership purpose is not charitable as it confers significant private benefits on individuals and is not directed towards people in poverty. Further, this purpose is not charitable under the fourth head of charity "any other matter beneficial to the community". This purpose is a dominant focus of the Trust and cannot be considered ancillary to any charitable purpose.
4. The Board's reasons are organised as follows:
 - A. Background
 - B. Legal Framework for Registration Decision
 - C. Assessing Housing Purposes
 - D. The Charities Registration Board's Analysis
 - E. Section 5(3)
 - F. The Trust's Other Submissions
 - G. Determination

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

² *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011] (**QLCHT**).

A. Background

5. The Trust was established by Deed of Trust on 15 January 2007 (**the Trust Deed**). The Trust incorporated under the Charitable Trusts Act 1957 on 12 July 2007.
6. The Trust was registered under the Act (registration number CC20519) with an effective registration date of 16 January 2008.
7. On 18 August 2010, the Charities Commission, made a decision to deregister the Trust with effect from 15 September 2010.
8. The Trust appealed the Charities Commission's deregistration decision to the High Court. The Trust was restored to the Charities Register pending the outcome of the appeal.
9. On 24 June 2011, the High Court dismissed the Trust's appeal and ordered that the Trust remain on the Charities Register until 15 July 2011. The Trust was deregistered on 15 July 2011.
10. On 1 May 2015, the Trust amended its Trust Deed and, on 26 May 2015, the Trust applied for registration under the Act.
11. The Trust's purposes, as set out in clause 3 of the amended Trust Deed, are as follows:
 - 3.1 The primary objects and purposes for which the Trust is established are:
 - 3.1.1 To relieve housing poverty by providing or assisting the provision of Social Housing and Affordable Housing in the Queenstown Lakes District.
 - 3.1.2 To increase the supply of Social Housing and Affordable Housing in the Queenstown Lakes District through housing development projects that promote innovative, sustainable, energy efficient housing solutions.
 - 3.1.3 To partner with Government, Local Authorities, and other social agencies to assist in the provision of Social Housing with the Region.
 - 3.1.4 To advise, educate and support households facing housing stress through hosting seminars, workshops and any other means deemed appropriate by the Trustees that help households plan for their housing needs.
 - 3.1.5 To design, implement and manage programmes that assist low to medium income households into satisfactory housing circumstances, appropriate to their needs.

12. Clause 1A of the amended Trust Deed provides the following definitions:

Affordable Housing means housing where the cost to rent or own is within the reasonable means of low-medium income households.

Region means the catchment areas included within the wider Otago and Southland regions.

Social Housing includes rental housing for households who require additional Government support through an income related rent subsidy.

13. During the application process the Trust provided information about its activities.³ The Trust advised that over the past five years its operations have expanded and that it now offers programmes to assist lower income residents.⁴ The Trust's programmes include:

- Affordable Rental Programme⁵ – the primary goal is to provide affordable, secure tenure in decent quality homes to low income households. Households are charged below market rent (usually around 80% of the market value). Some tenants may be eligible for the Income Related Rent Subsidy (**IRRS**) in which case MSD sets their rent as 25% of their income. Tenants sign a standard residential tenancy agreement with the Trust as well as an Affordable Rental Agreement which outlines their debt repayment and savings goals for the next five years.⁶ The Trust has advised that it prioritises according to those that need IRRS. It looks to support very low income families currently living in high rent properties which are cold and damp.⁷
- Rent Saver⁸ – a market rental programme. This programme combines rental accommodation with a savings incentive to assist low income households into home ownership. Households pay market rent on the property but commit to a savings goal (minimum of \$50 per week). At the end of five years they will have saved a minimum of \$13,000 which the Trust matches dollar for dollar up to \$13,000. This deposit of at least \$26,000 is then used as the household transitions into the shared ownership. Households sign a standard tenancy agreement as well as a Rent Saver Agreement which binds them to the savings schedule.⁹

³ Refer to the Trust's letters of 26 May 2015, 11 June 2015 and 24 August 2015 and its email of 23 September 2015.

⁴ Refer to Trust's letter of 26 May 2015.

⁵ <http://www.qlicht.org.nz/rental-programmes/affordable-rental/> [accessed 15 July 2015].

⁶ Refer Trust's letter of 11 June 2015.

⁷ Refer Trust's email of 23 September 2015.

⁸ <http://www.qlicht.org.nz/rental-programmes/rent-saver/> [accessed 15 July 2015].

⁹ Refer Trust's letter of 11 June 2015.

- Shared Ownership¹⁰ – this programme is for low to moderate income earners who would be able to afford to buy their own home in other parts of New Zealand, but are unable to do so because of the high cost of housing in the Queenstown Lakes District. The Trust and household are co-owners in the property (as tenants in common) through a property sharing agreement. The household is responsible for providing between 60% to 86% of the market value of the property which they pay through their own deposit and a mortgage. The Trust is a silent co-owner and provides 15% to 40% of the property's value. The household is responsible for full rates, maintenance and insurance on the property. The household can purchase the Trust out over time at the current market value.¹¹
- Starter Loans¹² – The Trust has borrowed funds off a large community trust in the form of five year bonds. The funds are then on-lent to first home buyers in the shared ownership programme as five year mortgages. This provides the households with lower interest rate mortgages fixed for five years which are generally 2% below current market rates. The community trust receives principal and interest during the five years, as does the Trust.¹³

These programmes, and the criteria for participation, are discussed further in part D below.

14. The Trust has also advised that it has evolved in other ways (not simply the addition of new programmes).¹⁴ In particular, the Trust:

- is now an approved Community Housing Provider with the Community Housing Authority and is eligible for IRRS.
- is a member of the Queenstown Interagency Group, a group which meets monthly (along with other social service providers) to discuss ways to improve wrap-around services to residents in need.
- is a founding member of Queenstown Community Link and a member of the Trust is based at the Work and Income office monthly to be available for walk-in consultations.
- is part of Strengthening Families, a Government-funded programme which brings together social agencies to assist struggling families.

¹⁰ <http://www.glcht.org.nz/shared-ownership/> [accessed 15 July 2015].

¹¹ Refer Trust's letter of 11 June 2015.

¹² These loans are provided by Queenstown Housing Bonds Ltd, a wholly-owned subsidiary of the Trust - refer <http://www.glcht.org.nz/starter-loans/> [accessed 15 July 2015].

¹³ Refer Trust's letter of 11 June 2015.

¹⁴ Refer to the Trust's letters of 26 May 2015 and 11 June 2015.

15. The Trust's website also provides information about its activities. These are discussed further in part D below.
16. The Department of Internal Affairs - Charities Services (**Charities Services**) notified the Trust on 16 July 2015 that its purposes did not meet registration requirements. Charities Services notified the Trust that, applying the decision of the High Court in *QLCHT*, its stated purposes and activities indicate a purpose to promote and support individuals and families into home ownership. Charities Services notified the Trust that its particular home ownership purpose was not charitable.¹⁵
17. The Trust provided submissions in response to Charities Services' notice.¹⁶ These are discussed in part D below. On 27 August 2015, Charities Services further notified the Trust that its purposes were not charitable and provided the Trust time to provide any further submissions. The Trust provided further submissions dated 23 September 2015.

B. Legal Framework for Registration Decision

18. 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.¹⁷
19. 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.¹⁸

¹⁵ Charities Services also notified the Trust that its Trust Deed does not contain sufficient formal protection against private pecuniary profit. This is because the Trust Deed permits trustees to act where they have a conflict of interest that may lead to private benefits to themselves. However, the Trust, in its letter of 24 August 2015 has offered to amend its Trust Deed to remedy that issue. While the formal changes for the Trust Deed have not yet been executed, this issue is not discussed further in this paper.

¹⁶ Refer to the Trust's letter of 24 August 2015.

¹⁷ See *McGovern v Attorney-General* [1982] 1 Ch 321 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.

¹⁸ 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: *Re 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

20. To be charitable at law a purpose must be for the public benefit.¹⁹ Public benefit must be expressly shown where the claimed purpose is under the fourth head of charity, “any other benefit to the community”.²⁰ Further, in every case, the benefit of the entity’s purposes must flow to the public or a sufficient sector of the public.
21. 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 group, the consequential downstream benefits to the public will not suffice.²¹ 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.²²
22. There is no presumption that if something is of benefit to the public, this will also mean that it is a charitable object.²³ Rather, there is a two-stage test for finding charitable purposes ‘beneficial to the community’ under the fourth head. As well as the purpose needing to be for the public benefit, the second part of the test requires an analogy to objects that have already been found to be charitable.²⁴

(“*Education New Zealand Trust*”) at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

¹⁹ 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 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 at [54]-[55] (Joseph Williams J); *QLCHT* at [30]; *Education New Zealand Trust* at [23].

²⁰ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 (“*CDC*”) at [45].

²¹ 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).

²² 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]; *QLCHT* at [68] – [76]; *CDC* at [67]. Compare *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

²³ *Greenpeace SC* at [18], [31].

²⁴ *Greenpeace SC* at [18], [30].

23. 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.
24. Determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.²⁵ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.²⁶

Relevance of entity's activities in registration decision-making

25. 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. The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.²⁷
26. While activities are not to be elevated to purposes,²⁸ 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;²⁹
 - whether the entity is acting for an inferred or unstated non-charitable purpose;³⁰

²⁵ For recent judicial comment on the qualitative test see *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 ("*Greenpeace, CA*") at [62], [83] – [91].

²⁶ 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.

²⁷ *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].

²⁸ 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.

²⁹ See *Professional Engineers* at 575 (Tipping J).

³⁰ *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;³¹ and
- whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.³²

27. 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.³³

Characterisation of an entity's purposes

28. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.³⁴ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

29. 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.³⁵ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.³⁶

C. Assessing Housing Purposes

30. The leading decision in New Zealand relating to whether housing providers can be charitable is *QLCHT* (the High Court decision relating to this Trust). The Board is bound by that decision. The High Court determined that the Trust, at the time of the decision in 2011, was not charitable.

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

³¹ 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].

³² 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.

³³ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) ("*Dal Pont*") at [2.12], [13.19], [13.20].

³⁴ *Molloy* at 693.

³⁵ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

³⁶ *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).

31. The provision of housing can advance a number of charitable purposes (for example the provision of accommodation for the elderly can relieve the needs associated with old age³⁷, the provision of low cost rental accommodation to people in need can relieve poverty³⁸ and the provision of temporary accommodation can assist victims of disasters).³⁹ However, the provision of affordable housing to any person (or to a wider class of people who are not in need) is often a non-charitable purpose as it confers private benefits that do not relieve a charitable need.⁴⁰
32. To determine whether or not the trust is for the **relief of poverty** the High Court held that the primary focus of the inquiry is the needs of the participants and persons eligible for participation in the programme, and their ability to meet those needs.⁴¹ This includes consideration of the following factors:
- Whether those eligible to participate are selected on the basis of a need which falls within the scope of the term poverty;⁴²
 - There is no “‘bright line’ definition of poverty and no single fixed criterion of what constitutes poverty for the purposes of charity, so the law must be flexible to address new categories of need as they emerge. The question is a fact-specific one, in which the decision-maker is to be guided by the general propositions which the case law establishes;⁴³
 - Where there are reasonably available alternatives, that may mean that a person is not in need to the extent of poverty, and they are to be considered as able to meet their needs.⁴⁴ In the *QLCHT* decision, the High Court pointed to the availability of cheaper accommodation in other areas within the region.⁴⁵

³⁷ *Re Chapman* High Court, Napier, CP 89/87, 17 October 1989, per Greig J.

³⁸ *Re Cottam's Will Trust* [1955] 1 WLR 1299; *Common Equity Housing Ltd v Commissioner of State Revenue* (1996) 33 ATR 77.

³⁹ *Re North Devon and West Somerset Relief Fund* [1953] 1 WLR 1260 recognised that providing support to flood victims can be charitable.

⁴⁰ While there is no bright line test for poverty (refer *QLCHT* at [40]), words that the courts have accepted as meaning “in poverty” include “poor”, “needy”, “in needy circumstances”, “special needs”, “indigent” and “impoverished” (refer for example to *Re Payne* (1954) 11 WWR 414 (BC (needy Imperial Veterans); *Re Angell Estate* (1955) 16 WWR 342; *Re Wedge* (1968) 63 WWR 396 (BCCA) (needy displaced persons); *Re Cohen (deceased)* [1973] 1 All ER 889 at 895 per Templeman J; *Barby v Perpetual Trustee Company Ltd* (1937) 58 CLR 316 at 323 per Rich J). The Board considers that people of “moderate” income would not be included in the class of words previously accepted by the Court as meaning “poverty”.

⁴¹ *QLCHT* at [31].

⁴² *QLCHT* at [37].

⁴³ *QLCHT* at [40].

⁴⁴ *QLCHT* at [41].

⁴⁵ *QLCHT* at [36] and [42].

33. The consequences for the community are not a relevant factor in assessing whether the assistance provided by the Trust is addressing the needs of individuals, in a way which amounts to the relief of poverty.⁴⁶
34. Mackenzie J stated that:
- I consider that those who are eligible to participate in the shared ownership programme are not, even in the relative sense, poor.... Their inability (if it be such) to meet their housing needs relates to a particular form of housing, in a particular location. While housing is a basic need, and right, home ownership is not. Many people who are not objectively “poor” may have difficulty providing a deposit on a house or servicing a mortgage. Renting would generally be recognised as an alternative which, if affordable to the person concerned, would mean that the person was not in need to the extent of poverty. Nor is housing in a particular location a basic need, if there are reasonably available alternatives.⁴⁷
35. With respect to whether the purposes of the trust are for **some other matter beneficial to the community**, the High Court said this was a two-pronged consideration, and that “the purpose must be both for the benefit of the community, and beneficial in a way which the law regards as charitable.”⁴⁸
36. In *QLCHT*, Mackenzie J accepted housing purposes could be capable of falling under the fourth head by analogy to urban and rural regeneration and the benefit to a locality.⁴⁹ However, the Court found the primary purpose was the provision of housing, and any public benefit from an improvement to the cohesion of the community was too downstream from the personal economic enhancement to the new home owners.⁵⁰ The court considered the contribution of householders to the social, cultural, economic and environmental wellbeing of those living within the Council’s district did not confer a sufficiently tangible and clearly defined benefit.⁵¹ The decision noted the levels of incomes in the Queenstown Lakes area are not indicative of poverty or deprivation in the strict sense.
37. In reaching this conclusion, MacKenzie J accepted the Australian position in *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation (Tasmanian Electronic)*⁵² and *Commissioner of Taxation v Triton Federation*⁵³ (*Triton*). Both of those decisions accepted providing assistance to business and industry in a way which individual businesses benefit would not necessarily preclude being charitable. The distinguishing factor is whether the assistance

⁴⁶ *QLCHT* at [45].

⁴⁷ *QLCHT* at [41].

⁴⁸ *QLCHT* at [48].

⁴⁹ *QLCHT* at [69-70].

⁵⁰ *QLCHT* at [71-76].

⁵¹ *QLCHT* at [75].

⁵² *Commissioner of Taxation v Triton Foundation* [2005] FCA 1319; (2005) 142 FCR 371.

⁵³ *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* [2005] FCA 439; (2005) 147 FCR362.

provided to individuals is specifically directed at advancing an underlying charitable purpose. In the case of the Australian decisions this was through providing advice and assistance with specific aspects of the business directed at regenerating a deprived area of Australia (*Tasmanian Electronic*), and promoting a culture of entrepreneurship (*Triton*).

38. The Board considers that where the provision of housing is part of a charity focussed on the regeneration of an area, the private benefits to individuals may be seen as incidental to the achievement of the public benefit.⁵⁴ However, the Court in *QLCHT* confirmed that any form of public benefit capable of being charitable will not generally be charitable if the public benefit is achieved by means of assistance provided to individuals.⁵⁵
39. The Australian and New Zealand approach differs with the conclusions of the Upper Tribunal in the English decision of *Helena Partnerships Ltd (formerly Helena Housing Ltd) v Revenue and Customs Commissioners (Helena Partnerships Ltd)*.⁵⁶ In that case, the Court confirmed the provision of housing could be charitable if it relieved charitable need. However, it found the conferral of private benefits could not be the means of achieving a purpose under the fourth head. This differs from the approach of the court in *QLCHT*.
40. Despite the decision in *Helena Partnerships Ltd*, the Charities Commission of England and Wales' guidance on urban and rural regeneration for the public includes that some housing may be for the public benefit rather than private benefit.⁵⁷ The guidelines note the area as a whole should be socially and economically deprived, that poor housing is a problem contributing to the social and economic deprivation of the area, and the provision or improvement to housing in those parts will result in regeneration of the area of benefit generally.⁵⁸
41. To summarise, housing purposes can advance a number of charitable purposes. However, not all housing purposes will be charitable. In relation to charities which provide home ownership, it is acceptable for charities to operate home ownership models provided:
 - rental housing or commuting are not reasonable alternatives to home ownership in achieving the charitable purposes; and
 - any private benefits to the recipients are incidental to a charitable purpose or provided to someone in identified charitable need.

⁵⁴ *QLCHT* at [64-68].

⁵⁵ *QLCHT* at [68].

⁵⁶ *Helena Partnerships Ltd (formerly Helena Housing Ltd) v Revenue and Customs Commissioners* [2012] EWCA 569 ("*Helena Partnerships*").

⁵⁷ Charities Commission of England and Wales, *RR2: The promotion of urban and rural regeneration* (March 1999) ("*RR2*"); as cited in *QLCHT* at [73].

⁵⁸ *RR2*, at page 9 (A25(f)).

D. The Charities Registration Board's Analysis

42. Taking into account the Trust's stated purposes and the Trust's activities, the Board considers that the Trust has a purpose to promote and support individuals and families into home ownership (**the Trust's home ownership purpose**).
43. The Board considers that the Trust's home ownership purpose is not charitable because it confers private benefits on individuals who are not in poverty. The Trust's home ownership purpose is not focused on assisting people in charitable need and rental housing or commuting are reasonable alternatives.

D.1. Trust's home ownership purpose

Identification of the purpose

44. The Board considers that the Trust's stated purposes and its activities indicate a purpose to promote and support individuals and families into home ownership (**home ownership purpose**). In particular, the Board notes:
 - The Trust's stated purpose at clause 3.1.1 includes providing or assisting the provision of affordable housing. The definition of affordable housing in clause 1A.1.1 includes reference to owning homes.
 - The Trust's stated purposes at clauses 3.1.1 and 3.1.3 include providing and assisting the provision of social housing. The definition of social housing in clause 1A.1.3 includes rental housing but this definition is an inclusive definition so does not exclude home ownership activities.
 - The Trust's stated purpose at clause 3.1.5 includes to manage programmes that assist households into satisfactory housing circumstances. This wording is broad enough to permit the Trust to assist households into home ownership.
 - The Trust operates programmes to assist people into home ownership including the rent saver programme, the shared ownership programme and the starter loan programme.
 - In the rent saver programme, participants pay market rates for the rental and are assisted by the Trust to save a deposit to eventually purchase the rented property.
 - In the shared ownership programme, people on low to moderate income are assisted into home ownership. This programme is aimed at people who would be able to afford to buy their own home in other parts of New Zealand but are unable to because of the cost of housing in the Queenstown Lakes district.
 - In the starter loan programme, funds are lent at below market interest rates to first home buyers within the shared ownership programme.

45. In summary, the stated purposes and activities of the Trust show a clear focus on promoting and supporting individuals and families into home ownership.

Assessment of the purpose

46. The Board considers that the Trust's home ownership purpose is not a charitable purpose. This is because:

- it confers private benefits on individuals;
- it is not focused on assisting people in poverty; and
- rental housing or commuting are reasonable alternatives.

47. The Board considers that the Trust's home ownership purpose confers private benefits on individuals. The Trust continues to operate the shared ownership programme which the High Court in the *QLCHT* decision found provided private benefits to the households assisted. The Board also considers that the starter loan programme and the rent saver programme confer private benefits (via support in saving for a deposit or low-interest rate mortgages).

48. The conferral of private benefits on individuals can be acceptable for a charity if the private benefits are simply a means to relieve poverty or another charitable need. However, the Board does not consider that the people assisted by the Trust's home ownership purpose are in poverty. The criteria for participation in the rent saver programme, the shared ownership programme and the starter loan programme are as follows:

- Rent saver programme: This programme is aimed at low to moderate income households.⁵⁹ The income cap is 100% of the area's medium income. Households must be able to demonstrate the ability to save and the ability to meet mortgage payments at the end of the rental period. At least one member of the household must be in full-time employment.⁶⁰
- Shared ownership programme: To participate in this scheme, the income caps vary from \$83,000 for a single person to \$126,000 for a 6-person household. Participants must also have a minimum 5% deposit. At least one member must be employed full-time in the district (at least 30 hours per week).⁶¹ The Trust describes people assisted in the shared ownership programme as having "low-moderate" income.⁶²
- Starter loan programme: This is available to first-home buyers within the shared ownership programme, so similar criteria apply.

⁵⁹ <http://www qlcht.org.nz/rental-programmes/rent-saver/> [accessed 15 July 2015].

⁶⁰ <http://www qlcht.org.nz/rental-programmes/rent-saver/eligibility-criteria/> [accessed 15 July 2015]. Some households entering this programme will also have a partial deposit saved (up to a maximum of \$10,000).

⁶¹ <http://www qlcht.org.nz/shared-ownership/eligibility-criteria/> [accessed 15 July 2015].

⁶² Refer to the Trust's letter of 26 May 2015.

49. The Trust has submitted that the income caps in relation to the shared ownership programme have been lowered significantly since the time of the *QLCHT* decision.⁶³ The income cap is now 120% of the region's median average (compared with 140% at the time of the *QLCHT* decision). The income criteria for the Trust's home ownership activities therefore remain similar to the criteria at the time of the *QLCHT* decision.⁶⁴
50. As discussed above in part B, the High Court in the *QLCHT* decision stated that if there are reasonably available alternatives to meet a person's accommodation needs, that may mean that a person is not in need to the extent of poverty. The Board considers that there are reasonably available alternatives to meet the needs of the people assisted by the Trust. The Trust has submitted that there is a rental shortage in the Queenstown Lakes district⁶⁵ and that commuting from Cromwell and Kingston is not a reasonable alternative.⁶⁶ The Board is bound by the principles in the *QLCHT* decision and considers that there are reasonable alternatives to meet the housing needs of people assisted by the Trust (including rental accommodation and commuting from other areas within the region). For example, the people assisted in the rent saver programme pay market rentals. This suggests that rental accommodation is within the means of the people assisted by the rent saver programme. The Board also considers that rental accommodation is likely to be within the means of people assisted by the shared ownership programme (for example based on the income thresholds for participation in the programme).
51. The Board considers that the people assisted by the Trust are not in poverty. The criteria for participation in the schemes do not restrict the Trust to assisting those in poverty only. In addition, there are reasonably available alternatives to meet the housing needs of the people assisted by the Trust.
52. Based on the authority in the *QLCHT* decision, the Board considers that the Trust's purpose to promote and support home ownership is not charitable under relief of poverty.

D.2. The Trust's other purposes

The Trust's rental programme

53. The Board notes that since the time of the *QLCHT* decision, the Trust now provides an affordable rental programme and that its stated purposes have been

⁶³ Refer to the Trust's letter of 26 May 2015.

⁶⁴ The Trust has provided information on the income levels of the last ten households assisted. Refer Trust's email of 23 September 2015. The incomes vary from \$45,500 to \$90,000. The Trust has advised that these are lower incomes than the people assisted at the time of the *QLCHT* decision. However, the Board notes that criteria continue to permit the Trust to support people with higher incomes.

⁶⁵ Refer to paragraph 2 of the Trust's letter dated 24 August 2015 and email of 23 September 2015.

⁶⁶ Refer to the Trust's email of 23 September 2015 where the Trust references the state of the roads connecting Cromwell and Kingston to Queenstown in winter and the cost of fuel.

amended to refer to social housing (which includes renting housing). The Board therefore considers that the Trust also has a purpose to provide rental housing. The Trust has advised that it focused on assisting into rental accommodation households which are eligible for the Income Related Rent Subsidy.⁶⁷ In May 2015, the Trust completed stage 1 of a 10-lot development in Suffolk St, Arrowtown. This development is to be used for rental housing with priority given to the Affordable Rental Programme.⁶⁸ The affordable rental programme is not the focus of the Trust. While the affordable rental programme may relieve poverty, the Board considers that it will not be determinative for the Trust's application. As discussed above, the Trust does not qualify for registration due to its home ownership purpose.

The Trust's work with other community organisations

54. The Board also considers that the Trust's work with other community organisations (discussed in paragraph 14 above) may advance charitable purposes. However, this work is not the focus of the Trust.

Purpose to generate affordable housing stock

55. The Trust has amended its stated purposes to include a purpose to increase the supply of social housing and affordable housing.
56. The Trust is currently developing a 44-lot subdivision that will then be available for a mix of shared ownership, rent saver and affordable rental programmes. The Trust has also been involved in previous housing developments. In 2013 the Trust completed a 27-lot development at Lake Hayes Estate. The Trust has submitted that these properties all contribute to the needed new housing supply in the district. We have therefore considered whether this is a charitable purpose.
57. In the *QLCHT* decision the Court considered submissions that the benefits to the community were capable of falling within the charitable purpose of "other purposes beneficial to the community". However, the Court found that the public benefit of the Trust's activities was indirect and that, because of the private benefits to the individuals assisted by the Trust, the Trust did not have a charitable purpose under this head of charity.⁶⁹
58. These developments are not part of a purpose focused on regeneration of a deprived area. Queenstown is not a deprived area in need of regeneration⁷⁰ and the Trust has provided no submissions or evidence that it is.

⁶⁷ Refer Trust letter 26 May 2015 and email of 23 September 2015.

⁶⁸ Refer to the Trust's letter of 11 June 2015.

⁶⁹ Refer to the discussion in *QLCHT* at [47] to [76].

⁷⁰ For example, in the 2013 census the median income in the district is \$35,100 compared to a median of \$28,500 for all of New Zealand and the unemployment rate is 2.5% compared to 7.1%

59. The Board considers that the principles in the *QLCHT* decision continue to apply. Any public benefits from the developments are too indirect. The Trust's purposes are therefore not charitable under the fourth head of charity.

E. Section 5(3)

60. As discussed above, we consider that the Trust has a non-charitable purpose to promote and support individuals and families into home ownership.
61. We consider that the Trust's non-charitable purpose to promote and support home ownership is more than ancillary to any charitable purpose. As outlined above, the Trust's purpose to promote home ownership is a primary focus of the Trust and cannot be regarded as ancillary within the meaning of sections 5(3) and (4) of the Act.

F. The Trust's Other Submissions

62. The Trust has submitted that declining its application would be inconsistent with the approach taken with other registered charities.⁷¹ The Board must take a case-by-case approach with each application considering the specific wording of the applicant's rules document and the activities of the applicant. If the Board becomes aware of entities on the register that may not meet registration requirements, we have the power to enquire into those entities,⁷² and an entity can be deregistered if it no longer qualifies for registration.⁷³ Therefore, even if there are similar entities on the register, this is not determinative in an assessment of the Trust's eligibility for registration.

for all of New Zealand [refer <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-a-place> accessed 2 October 2015].

⁷¹ Refer to paragraph 1 of the Trust's letter of 24 August 2015.

⁷² Sections 50 and 51 of the Act.

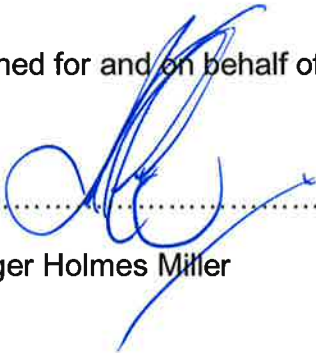
⁷³ Sections 31 and 32 of the Act.

G. Determination

63. The Board's determination is that the Trust does not qualify for registration under the Act and the application for registration should be declined. The Board considers that the Trust has a non-charitable purpose to promote and support individuals and families into home ownership. This purpose provides private benefits to households that are not in poverty and where renting or commuting are reasonable alternatives to meet their housing needs. This non-charitable purpose is more than ancillary.

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



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Roger Holmes Miller

2ND NOVEMBER 2015

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Date

