

**Registration Decision: Sea Shepherd New Zealand Trust (SEA47609) and**

**Sea Shepherd New Zealand Limited (SEA47604)**

**Board Decision**

1. The role of the independent Charities Registration Board (“the Board”) is to maintain the integrity of the Charities Register through ensuring that entities on the Charities Register qualify for registration.
2. A purpose is charitable if it advances a public benefit in a way that is analogous to cases that have previously been held to be charitable.<sup>1</sup> The Board makes its decisions based on the facts before it, applying the law including relevant case law,<sup>2</sup> and maintaining consistency of approach with previous Board decisions.
3. The Board’s decision is to approve the applications of Sea Shepherd New Zealand Trust (“the Trust”) and Sea Shepherd New Zealand Limited (“the Company”) (collectively, “the Sea Shepherd New Zealand entities”) because they advance charitable purposes and the Board considers that any non-charitable purposes are merely ancillary to their charitable purposes.
4. The Board considers that both the Sea Shepherd New Zealand Trust and Company have charitable purposes to advance education, protect the environment and advance animal welfare .
5. The Board has not made a determination on whether the Trust’s advocacy for points of view on environmental protection laws and animal welfare is charitable, as it considers any advocacy is merely ancillary to the Trust’s identified charitable purposes.
6. The Company does not engage in any advocacy and does not undertake activities to protect the environment or advance animal welfare.

**Background**

7. The Sea Shepherd New Zealand entities applied for registration under the Charities Act 2005 (“the Act”) on 16 September 2013. By agreement the applications were placed on hold on 7 August 2014 pending the *Re Greenpeace* Supreme Court judgment.
8. The applications were dealt with concurrently as the Trust is the sole shareholder in

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<sup>1</sup> *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Re Greenpeace*”) at [18], [30], and [31].

<sup>2</sup> In particular, the Board has applied the guidance of the courts in *Re Greenpeace*, *Re Family First New Zealand* [2015] NZHC 1493 (“*Re Family First*”), and *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“*FAAR* and *FRSSH*”).

the Company, and the entities are closely related. The Sea Shepherd New Zealand entities provided a substantial amount of activities information to assist the Board in its assessment of the application.

9. Sea Shepherd is a global conservation movement, with various independent and legally distinct regional entities, linked by the Sea Shepherd brand. The Sea Shepherd New Zealand entities are separate legal entities from the international organisations. They carry out their activities in New Zealand independently of international Sea Shepherd entities, although the Trust has acknowledged providing support to some international Sea Shepherd entities on a case by case basis.

#### **What are the purposes of Sea Shepherd New Zealand?**

10. The Sea Shepherd New Zealand entities' stated purposes are identical.
11. Their stated purposes are:
  - a) To educate the New Zealand public about marine conservation;
  - b) To protect and preserve New Zealand's ocean environment including its ecosystems, flora and fauna; and
  - c) To support organisations and initiatives consistent with and will further the charitable purposes set out above.
12. The Board considers the stated purposes are capable of being charitable as advancing education, protecting the environment and preventing animal cruelty. The Board, following the approach of Ellis J in *FAAR and FRSSH*, considered whether the Sea Shepherd New Zealand entities' activities are consistent with or supportive of an identified charitable purpose.

#### **Do the Sea Shepherd New Zealand entities have charitable purposes to advance education?**

13. The advancement of education is a charitable purpose.<sup>3</sup> In order for a purpose to advance education, the education must be sufficiently structured and meet a minimum standard.<sup>4</sup> The information must be presented in a balanced, objective and neutral manner, rather than expressing a one-sided perspective intended to persuade the public to a particular point of view.<sup>5</sup> Information being provided as part of a formal course of learning or to school-aged children, supports a finding of education in a charitable sense.
14. The Board considers that the Trust advances education through, by way of examples, its informative talks at schools, other children's spaces, Te Papa Tongarewa and in collaboration with Wellington and Auckland City Councils, and through the collection of marine wildlife data for Otago University and the provision of marine mammal

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<sup>3</sup> Section 5(1) of the Act.

<sup>4</sup> *FAAR and FRSSH* at [56]; *Re Collier* [1998] 1 NZLR 81 (HC) at 91–92; *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10, (1999) 169 DLR (4th) 34 at [171], adopted by Ronald Young J in *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) at [75].

<sup>5</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68] and [84].

medic training.

15. The Board considers the Company advances education as it was established solely to run particular educational events; specifically, marine conferences and marine conservation forums.

**Do the Sea Shepherd New Zealand entities have charitable purposes to protect the environment and advance animal welfare?**

16. The protection of the environment has been accepted as a charitable purpose. The case law has acknowledged that protecting the environment includes purposes that tangibly protect the environment, such as protecting the quality of rivers and marine mammals, and the ocean environment.<sup>6</sup>
17. The advancement of animal welfare has been accepted as a charitable purpose, based on its moral improvement of humankind, rather than the benefits to the animals themselves.<sup>7</sup> Purposes to advance animal welfare are not, however, always charitable, particularly where the public benefit in the promotion of moral improvement is outweighed by evidence of another public benefit.<sup>8</sup>
18. As discussed above in paragraph 15, the Board considers the Company advances education; however, it does not consider that it carries out any other tangible activities to protect the environment and advance animal welfare.
19. The Board considers the Trust's primary focus is on carrying out tangible activities to protect the environment and advance animal welfare. For example, the Trust organises monthly beach clean ups, builds little blue penguin nesting boxes, conducts beached whale rescue operations and monitors and collects data to support conservation of Hector's dolphins. The Board considers these activities provide public benefit similar to previous cases on the protection of the environment and advancement of animal welfare.
20. The Board has not made a determination on whether the Trust's advocacy for points of view on environmental protection laws and animal welfare is charitable. The Board considers that the advocacy is a small part of the Trust's overall activities and is connected to the Trust's charitable purposes. For this reason the Board considers that it is merely ancillary to the Trust's identified charitable purposes. As stated above in paragraph 6, the Board does not consider the Company carries out any advocacy.

**Do the Sea Shepherd New Zealand entities have an illegal purpose?**

21. Although issues have arisen over potentially illegal activities in relation to some of the activities of other Sea Shepherd organisations overseas,<sup>9</sup> the Board does not

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<sup>6</sup> *Re Centrepoint Community Growth Trust* [2000] 2 NZLR (HC)

<sup>7</sup> *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 696; *Caldwell v Fleming* [1927] NZLR 145.

<sup>8</sup> *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 47-48.

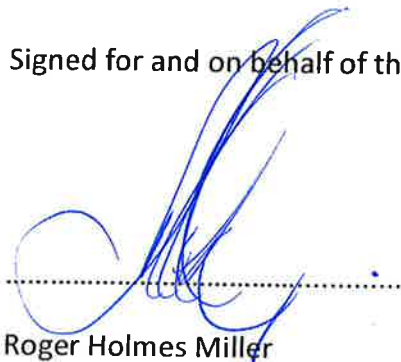
<sup>9</sup> *Institute of Cetacean Research v Sea Shepherd Conservation Society* 702 F.3d 573, 573 (9th Circuit 2012).

consider these activities give rise to an inferred illegal purpose in relation to the Sea Shepherd New Zealand entities. As mentioned above in paragraph 9, the Sea Shepherd New Zealand entities are separate legal entities from the international organisations , and have separate activities.

**Determination**

22. The Board determines that both the Trust and the Company qualify for registration as charitable entities because they are established for exclusively charitable purposes as required by section 13(1) of the Act. Registration will be backdated to 16 September 2013 under section 20 of the Act as that was the date that properly completed applications were received by the Department of Internal Affairs. The Board is satisfied that both Sea Shepherd entities qualified for registration as a charitable entity during the period between 16 September 2013 and the date of this decision.

Signed for and on behalf of the Board



Roger Holmes Miller

22<sup>nd</sup> May 2018

Date

