

Registration decision: Society for the Protection of Auckland Harbours (SOC51367)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of the Society for the Protection of Auckland Harbours Incorporated (**the Society**) under the Charities Act 2005 (**the Act**).¹
2. The Society has applied for registration on the basis that it advocates for the betterment of a public amenity, the Auckland harbours, for the benefit of all of Auckland to enjoy. The Society's activities focus on advocating to prevent any expansion of the Ports of Auckland, relocating the Ports of Auckland from the central business district of Auckland, and through this advocacy, transforming the waterfront into a "thriving urban environment."² The Society submits that these activities advance charitable purposes.
3. The Board has determined that the Society is not qualified to be registered as a charitable entity under the Act.³ In assessing purposes to advocate for a point of view, the Board is bound to apply the Supreme Court decision of *Re Greenpeace of New Zealand Incorporated (Greenpeace SC)*.⁴ While the Board is satisfied that the Society's manner of promotion and some of the Society's ends are capable of being charitable, the Society's means of achieving its ends are focused on advocating a point of view that the Ports of Auckland should be limited in their expansion and relocated from the Auckland central business district. Applying *Greenpeace SC* to the Society's stated purposes and activities; the Board considers the Society's advocacy for a point of view is not charitable as the Board is not able to determine a charitable public benefit when all of the consequences are taken into account.
4. The Board is not taking a position on whether limiting or relocating the Ports of Auckland would in fact be the best outcome for Auckland. The Board notes that this decision is about whether the Society meets the requirements for registration under the Act.

¹ This decision is made under section 19 of the Charities Act 2005 [the Act].

² See email from the Society of 25 February 2016.

³ The essential requirements for registration are set out in section 13 of the Act.

⁴ *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 ("*Greenpeace SC*").

5. The Board's reasons are organised as follows:
- A. Background
 - B. Legal Framework for Registration Decision
 - C. The Charities Registration Board's Analysis
 - D. Other submissions of the Society
 - E. Section 5(3)
 - F. Determination

A. Background

6. The rules establishing the Society were signed on 1 April 2015 (**the Rules**). The Society was incorporated under the Incorporated Societies Act 1908 on 16 April 2015.
7. The Society's purposes, as set out in clause 3.1 of the Rules are as follows:
- To be an effective advocate for the wellbeing of Auckland Harbours and the Hauraki Gulf as an amenity and asset for all
 - To engage in activities, including legal proceedings, to protect Auckland Harbours and the Hauraki Gulf
 - To raise funds as necessary to carry out these objectives
8. The Society applied for registration under the Act on 20 May 2015.
9. During the application process, the Society has provided information about its activities and submissions on its purposes.⁵ The Board has also considered publically available information regarding the Society,⁶ and information pertaining to the relocation of the Ports of Auckland.⁷

⁵ The Society's letters of 1 July 2015, 16 September 2015 and 25 February 2016.

⁶ The Society's website: <http://stopstealingourharbour.co.nz> [accessed 13 July 2016]; The Society's Givealittle page: "Stop Stealing Our Harbour" <https://givealittle.co.nz/cause/stopstealingourharbour>; [accessed 13 July 2016]; the Society's Facebook page: <https://www.facebook.com/StopStealingOurHarbour/> [accessed 13 July 2016].

⁷ Port Future Study, *Recommendations report of the Consensus Group* (July 2016): <http://www.portfuturestudy.co.nz/docs/pdfsconsensusworkinggrouprecommendations072016.pdf> [accessed 8 July 2016] (**Port Future Study Recommendations**); Covec, *Discussion Paper: Future Scenarios for the Port of Auckland* (21 August 2012) (**Future Port Scenarios**); <http://covec.co.nz/wp-content/uploads/covec-port-of-auckland-discussion-paper-full-report-1.pdf> [accessed 10 November 2015]; Price Waterhouse Coopers, *Upper North Island port and port-related infrastructure supply and demand study* (27 November 2012) <https://www.nzta.govt.nz/assets/Planning-and-investment/docs/upper-ni-freight-story-summary-of-critical-issues.pdf> (**Upper North Island Study**) [accessed 10 November 2015]; Deloitte, *Future Freight Scenarios Study* (Ministry of Transport) (November 2014) [accessed 10 November 2015]

10. The Society has described its current activities as:
- Reviewing, and where necessary, vigorously opposing any new resource consent applications from any organisation proposing activities that we deem would jeopardise the wellbeing of Auckland’s harbours or gulf waters.
 - Participating as a stakeholder in Auckland Council’s Port Future Study to express their view and findings to ensure the best possible outcome for all Aucklanders.
 - Participating in the Auckland Unitary Plan process to the extent it deals with Auckland harbours.
 - Assisting in finding the best long term solution to the handling of sea freight throughout the North Island while maximising economic, social, recreational, environmental, and aesthetic benefits of Auckland central business district land use.
 - Raising public awareness of the causes through advertising and other public relations activities through the news and social media.
 - Raising funds as necessary to support advertising, public relations and legal actions required.⁸
11. The Society noted it operates as a Committee, with members involved in the delivery of each activity. It commissions industry experts, public relations agents, and legal representatives as appropriate to support its activities. The Society also noted “its intent to engage high profile Aucklanders and the general public through rallies and protests in an effort to draw attention to [its] causes.”⁹
12. The Society further clarified its activities after an information request:¹⁰
- The Society defines the “wellbeing of Auckland’s harbours” as the state in which Auckland harbours’ ecological condition is maintained and enhanced to sustainable environmental levels. It also includes ensuring the harbours’ shorelines are preserved in their present states and maintained to levels that both enhance their environmental qualities and the interaction between the region’s citizens and the harbours.

(Future Freight Scenarios), pages 102-103,
<http://www.transport.govt.nz/assets/Uploads/Research/Documents/Future-Freight-Scenarios-Study.pdf>; *Urban Auckland, the Society for the Protection of Auckland City and Waterfront Incorporated v Auckland City* [2015] NZHC 1382; Ports of Auckland, Ports of Auckland development – fact sheet, <https://www.poal.co.nz/about-us/Documents/Bledisloe%20Extension%20Fact%20Sheet.pdf> [accessed 8 July 2016].

⁸ Email from the Society of 1 July 2015.
⁹ Email from the Society of 1 July 2015.
¹⁰ Email from the Society of 16 September 2015.

- The Society questions whether or not having an industrial port zone at the heart of Auckland CBD and positioned on Auckland's most culturally sensitive and highly valued waterfront land provides the best long-term social, environmental and economic benefits to both the citizens of Auckland and the well-being of the Auckland harbours.
 - The Society has engaged with experts in the area of sea freight handling, port design and urban planning in order to seek viable options for both the handling of sea freight throughout the upper North Island and redevelopment of the current port and waterfront land in a fashion supportive of Auckland's goal to be the most liveable city. The Society is specifically examining the viability of creating a new modern port and associated infrastructure in either the Firth of Thames or Manukau Harbour.
13. The Society also provided an independent study it had commissioned with the Committee for Auckland demonstrating the benefits in relocating the Ports of Auckland.¹¹
 14. The Department of Internal Affairs - Charities Services (**Charities Services**) notified the Society on 18 December 2015 that it did not have sufficient information to determine if the Society's purposes met registration requirements. Charities Services accepted that the Society has charitable ends of community beautification and protecting the environment, and advocates in a charitable manner. However, Charities Services considered that the primary means by which the Society is seeking to achieve its end is preventing further incursions by the Ports of Auckland and other bodies into the Auckland harbours, and relocating the Ports of Auckland to a position outside the central business district of Auckland.
 15. Charities Services noted that although the Society had provided evidence demonstrating benefits to relocating the Ports of Auckland, other studies commissioned by the Auckland Council and Ministry of Transport have supported retaining the Port in Auckland, and by implication, the expansion of the existing port.¹² Charities Services advised that it did not consider the Board was placed to make a determination that the relocation of the Ports of Auckland would be for the public benefit, and would need more evidence demonstrating this.
 16. The Society provided further information and submissions on 25 February 2016. In essence, the Society submitted that the Society's main purpose is advocating for the "enhancement of a key public amenity for the betterment of all citizens"

¹¹ Future Port Scenarios.

¹² Upper North Island Study, <https://www.nzta.govt.nz/assets/Planning-and-investment/docs/upper-ni-freight-story-summary-of-critical-issues.pdf>; Future Freight Scenarios, pages 102-103, <http://www.transport.govt.nz/assets/Uploads/Research/Documents/Future-Freight-Scenarios-Study.pdf>.

and transforming the waterfront area by relocating the port. The Society further noted the following:

- The Society does not have a political advocacy purpose, as unlike Greenpeace of New Zealand Incorporated, it is not advocating for any political change.
- The Society's goals are aligned with the Auckland City Council's plans for the waterfront area.
- The economic, social and environmental benefits from recent development of the western end of the Auckland waterfront, and developments in other port cities demonstrate a benefit to the public from relocating the Ports of Auckland.
- Urban development experts support the relocation of the Ports of Auckland.
- The Society considers the relocation of the Ports of Auckland to a location that is connected to the warehousing and industrial hub of Auckland will amplify all associated positive economic outcomes for the port for the greater benefit of the Auckland economy.
- The benefits sought are analogous to the public benefit recognised in the decision of the Board in the Restore Christchurch Cathedral Group Incorporated decision.

17. The Society noted its most recent activities included:

- Engaging an economist to analyse and write a report on the port financials, "highlighting the poor return on investment the port generates for Auckland Council."¹³
- Commissioning a valuation of the current port land by commercial valuers Prendos.
- Working with an advertising company to develop a campaign to promote SPAH's goals and a film maker to develop a short film communicating SPAH's goals.
- Engaging an architectural illustrator to come up with imagery of a reimagined Port precinct, and commissioning a flyby animation of the Port precinct imagining the removal of the Ports of Auckland from the waterfront.

¹³ Email from the Society of 25 February 2016, page 10.

- Meeting with local Members of Parliament and other politicians to communicate its goals.
18. The Society acknowledged it continues to maintain the Stop Stealing Our Harbour Facebook group, but notes “the Stop Stealing Our Harbour website is not the website for the Society for the Protection of Auckland Harbours...SPAH was set up to promote wider goals, as opposed to Stop Stealing Our Harbour which had only one goal i.e. stopping the Bledisloe wharf extensions.”¹⁴
 19. The Society concluded:

SPAH's advocacy to promote the well-being of Auckland Harbours and the Hauraki Gulf has led us to call for the relocation of the Auckland Port to a more suitable site, which will free the most prized section of Auckland's CBD waterfront for urban renewal.

The success of the western end of waterfront development since it was released back to the public proves that waterfront renewal is more than community beautification and the protection of the environment...

...[It has] transformed Auckland's economy, urban landscape and the public's engagement with the waterfront and the city.¹⁵
 20. Charities Services notified the Society on 29 March 2016 that its purposes did not meet registration requirements. Charities Services acknowledged that the Society had provided evidence of positive economic benefits in relocating the Ports of Auckland. However, Charities Services considered that these benefits were not sufficient for the Board to make a determination that the Society's point of view on limiting or relocating the Ports of Auckland advances a charitable public benefit. Charities Services noted that the promotion of the economic development of Auckland itself is not a charitable purpose. Charities Services also distinguished the decision of Restore Christchurch Cathedral Group. In that case, the organisation's means of promotion, restoring a specific site with established heritage value, was analogous with the restoration of heritage buildings. Charities Services notified the Society that it would accordingly make a recommendation to decline its application to the Board, and invited the Society to provide further submissions.
 21. Charities Services has received no further submissions from the Society.
 22. The Port Future Study released in July 2016 compiled a list of recommendations in relation to facilities to accommodate sea-based imports and exports and the cruise industry flowing to and from Auckland and its wider region. The recommendations included noting the need for comprehensive investigation of alternative locations for the Ports of Auckland, regular monitoring of “relocation

¹⁴ Email from the Society of 25 February 2016.

¹⁵ Email from the Society of 25 February 2016, at page 12-13.

triggers” and the need to establish sufficient additional berth length to accommodate expected growth in large cruise and multi-cargo vessels.¹⁶

23. The Port Future Study noted:

*Transferring a port’s impacts from one community to another requires careful consideration of the social and cultural consequences. It is not considered likely that a port relocation would be welcomed by communities or mana whenua in or near the new location.*¹⁷

24. Although acknowledging benefits to moving the Ports of Auckland, the document stated “it is possible that Auckland’s future unfolds in a way that...the port would accommodate long-term demand at the current site.”¹⁸

B. Legal Framework for Registration Decision

25. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively charitable purposes and not for private pecuniary profit.
26. 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.¹⁹
27. Not all purposes which appear beneficial to the community will be charitable at law.²⁰ To be charitable a purpose must advance a public benefit at law. That public benefit must also be within the spirit of the cases based on the Statute of Charitable Uses Act 1601 (**the Preamble**).²¹
28. First, the purpose must provide a benefit to the public or a sufficient section of the public. The assessment of whether a purpose provides a benefit focuses on the

¹⁶ Port Future Study Recommendations.

¹⁷ Port Future Study Recommendations, page 7.

¹⁸ Port Future Study Recommendations, page 25.

¹⁹ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) (“The Statute of Elizabeth”) and previous common law: *Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace SC*”) at [12],[15] and [17]; *Re Education New Zealand Trust* (2010) 24 NZTC 24,354 (“*Education New Zealand Trust*”) at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275, 3 February 2011 (“*Re Draco Foundation*”) at [11].

²⁰ *Greenpeace SC* at [27].

²¹ The Statute of Elizabeth.

clearly identifiable consequences of the undertaking—benefits that are nebulous and remote, or simply ‘hoped for’, are excluded.²² If a purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice.²³ 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.²⁴ Moreover, if a purpose is to promote an idea or cause, the focus of the enquiry into public benefit will be on the means the entity intends to use to advance the idea or cause.²⁵

29. If public benefit has been established, the second part of the test is whether the public benefit is within the spirit of the Preamble.²⁶ The Board is bound to apply the law as declared by the courts. Purposes that relieve poverty, advance education, and advance religion are all presumed as being within the spirit of the Preamble, although this presumption can be rebutted.²⁷
30. For purposes under the fourth head, “any other matter beneficial to the community,” this part of the test is to be considered by analogy to previous cases or by reference to legislation.²⁸ This is not by testing whether a purpose is identical to a previously accepted or declined charitable purpose.²⁹ Rather the test is whether the public benefit advanced by the purpose is sufficiently similar to reflect the reason the court acknowledged or declined public benefit in the first instance.

²² See discussion in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32] - [37]. The courts have held that the downstream benefits of an entity’s activities do not serve to characterise the purpose of the entity. See for example *New Zealand Society of Accountants v Commissioners of Inland Revenue* [1986] 1 NZLR 147 at 153; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 at [30]; *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818, 24 June 2011 (“QLCHT”) at [68] – [76]; *Canterbury Development Corporation* [2010] 2 NZLR 707 (“CDC”) at [67]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) (“Grand Lodge”) at [59] – [60]

²³ 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 (“Oldham”); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294 (“Travel Just”).

²⁴ See for example *Professional Engineers* at 578; *Computer Society* at [42]; *Education New Zealand Trust* at [23]; QLCHT at [68] – [76]; CDC at [67]. Compare *Oldham*; *Travel Just*.

²⁵ *Greenpeace SC* at [102].

²⁶ *Greenpeace SC* at [18] and [27-31].

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

²⁸ *Greenpeace SC* at [18] and [27-31].

²⁹ *Family First of New Zealand* [2015] NZHC 1493 at [86].

Relevance of entity's activities in registration decision-making

31. Sections 18(3)(a)(i) and (ii) of the Act mandate that the Board and Charities Services take activities into consideration when determining whether an entity qualifies for registration under the Act.³⁰ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.³¹
32. While activities are not to be elevated to purposes,³² 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;³³
 - whether the entity is acting for an inferred or unstated non-charitable purpose;³⁴
 - whether the entity's purposes are providing benefit to the public;³⁵ and
 - whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.³⁶
33. In relation to purposes to advocate for a cause or point of view, activities information is important in assessing how the entity wishes to pursue its end goal, and accordingly whether the purposes advance a charitable public benefit.³⁷

³⁰ See also section 50(2)(a) of the Act.

³¹ *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]; *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at [75].

³² See: *McGovern v Attorney-General* [1982] 1 Ch 321 at 340 at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

³³ See *Professional Engineers* at 575 (Tipping J).

³⁴ For recent judicial comment see *Greenpeace*, SC at [14] "The purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes, as s 18(3) of the Act now makes clear".

³⁵ See for example *Inland Revenue Commission v City of Glasgow Police Athletic Association* [1953] AC 380; *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].

³⁶ See for example *Greenpeace*, SC at [50]; *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 at [40], [48], [87] - [92], [99] and [102], [103].

³⁷ *Greenpeace*, SC at [103].

Characterisation of an entity's purposes

34. Once an entity's purposes are established as a matter of fact, the question of whether they are charitable is a question of law and involves an objective characterisation, rather than an assessment of the subjective intentions of the founders.³⁸ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

C. Assessing advocacy purposes

35. Before the Supreme Court decision of *Greenpeace SC*, a purpose to advocate for a point of view or to change law or policy would prevent registration, unless ancillary to a charitable purpose.³⁹ The majority of the Supreme Court, however, found the appropriate question was not whether an entity had a political purpose but rather whether a purpose to advocate for a point of view was charitable, that is, it advances a public benefit within the spirit of the objects previously accepted as charitable.⁴⁰ The Supreme Court did not limit political advocacy to activity which is "political" in a narrow sense, but includes "advocacy of views more generally."⁴¹
36. Acknowledging that the circumstances in which advocating for a point of view will be shown to be charitable are likely to be uncommon,⁴² the Supreme Court accepted some purposes may necessitate broad-based support and that advocacy may be charitable in some such circumstances.⁴³ In assessing whether an advocacy purpose advances charitable public benefit, the Supreme Court found the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted should all be considered.⁴⁴
37. Specifically, where a charity promotes an abstract end, the focus in assessing charitable purpose should be on how that abstraction is to be furthered.⁴⁵ The Supreme Court noted that how an abstraction is to be furthered can often have wide consequences. All of the consequences of that choice, local and international, must be taken into account.⁴⁶ This is a balancing exercise, considering both benefits and detriments of the purpose in question.⁴⁷ The controversy of a view will not be determinative, but may help explain why a view

³⁸ *Molloy* at 693.

³⁹ *Greenpeace SC* at [59]; *Re Collier [1998] 1 NZLR 81*.

⁴⁰ *Greenpeace SC* at [72-76]; [102].

⁴¹ *Greenpeace SC* at [65].

⁴² See for example: *Greenpeace SC* at [74], [101-102] and [116].

⁴³ *Greenpeace SC* at [71].

⁴⁴ *Greenpeace SC* at [76].

⁴⁵ *Greenpeace SC* at [102].

⁴⁶ *Greenpeace SC* at [98], [100] – [102].

⁴⁷ *National Anti-Vivisection Society v Inland Revenue Commissioners [1948] AC 31* at 47 and 49.

cannot be assumed to serve the public benefit in the way the law regards as charitable.⁴⁸ The assessment must also take into account the wider context, including public participation in processes and human rights values.⁴⁹

D. The Charities Registration Board's Analysis

38. Taking into account the Society's stated purposes, and the Society's activities, the Board considers the Society's main purpose is to advocate for the wellbeing of the Auckland harbours and Hauraki Gulf through promoting a view that the expansion of the Ports of Auckland should be prevented, and the Ports of Auckland should be relocated to a location outside the Auckland central business district.
39. The essential issue for the Board to decide is whether the Society's advocacy to improve the wellbeing of Auckland harbours and the Hauraki Gulf advances a charitable purpose and public benefit consistent with previous cases.
40. To summarise the discussion that follows, the Board considers the advocacy may be directed towards ends of beautification of a public amenity, and protection of the environment, although the Board does not consider the Society's end to promote the urban regeneration of the Auckland waterfront would be charitable. The Board also considers the Society's manner of promotion is charitable. However, the Board does not consider the means by which the Society is advocating to achieve the ends: stopping any extensions of the Ports of Auckland, and relocating the Ports of Auckland outside the Auckland central business district, can be assessed as for the public benefit, consistent with previous cases on charitable purpose.
41. Given the competing views about the benefits of Port expansion and relocation, the Board considers it is not in a position to determine a charitable public benefit when all of the consequences of moving or preventing the expansion of the Ports of Auckland are taken into account.

D.1. The Society's purpose to advocate for the wellbeing of the Auckland harbours and Hauraki Gulf

Identification of purpose

42. In identifying the purpose of an entity, the Board looks to the stated purposes, and the activities of the entity. The Society's stated purposes at clause 3.1 relate to advocating for and protecting the wellbeing of the Auckland harbours and Hauraki Gulf as an amenity and assets for all.

⁴⁸ *Greenpeace SC* at [75].

⁴⁹ *Greenpeace SC* at [103].

43. The Society considers its purpose is to promote the wellbeing of the Auckland Harbours by advocating for the prevention of the expansion of the Ports of Auckland, and the relocation of the Ports of Auckland from the Auckland central business district.⁵⁰ The Society's activities to date have been primarily focussed on both establishing, and advocating the economic, social and aesthetic case for moving the Ports of Auckland from the Auckland central business district.⁵¹
44. The Society has submitted that it does not have a political advocacy purpose, as it is not seeking political change.⁵² However the Supreme Court does not confine political advocacy to activity which is "political" in a narrow sense, but includes "advocacy of views more generally."⁵³
45. Taking into account the stated purposes and the Society's activities, the Board considers the Society has a purpose to promote the wellbeing of the Auckland harbours and Hauraki Gulf by advocating that the expansion of the Ports of Auckland should be prevented and the Ports of Auckland should be relocated.
46. Applying the language used by the Supreme Court in *Greenpeace SC*, the Board considers that the Society's overarching purpose is to promote the wellbeing of Auckland harbours, its 'end goals' are the improvement, environmental protection and urban renewal of the Auckland waterfront, the means by which the Society intends to achieve those goals are to prevent the expansion of the port and to relocate it elsewhere, and the manner by which those means are promoted include encouraging public participation and influencing individual perspectives on those issues.
47. The Board considers that the 'manner' the Society is using to further its ends is not likely to prejudice an assessment of public benefit. The Society is encouraging public participation in the democratic process and influencing government and individuals' perspectives in relation to the wellbeing of the Auckland harbours and Hauraki Gulf. The Society is also seeking policy change through advocating directly to decision makers and seeking to influence people's point of view. *Greenpeace SC* confirmed participating in the democratic process can provide a charitable public benefit.⁵⁴
48. However, the Board considers that some of the ends the Society may be seeking to achieve, and the means by which it seeks to achieve its ends, do not advance a charitable public benefit within the spirit of the Preamble.

⁵⁰ Email from the Society of 25 February 2016; see above at A[16] and [19].

⁵¹ Email from the Society of 1 July 2015; 16 September 2015; and 25 February 2016; see above at A.

⁵² Email from the Society of 25 February 2016; see above at A.

⁵³ *Greenpeace SC* at [65].

⁵⁴ *Greenpeace SC* at [62].

D.2. Assessment of the ends of the Society: the wellbeing of the Auckland harbours

49. To advance a charitable purpose, the ends the Society is seeking to achieve must be within the scope of the cases previously decided as charitable.⁵⁵
50. The Society's stated purpose at clause 3.1 includes: "To be an effective advocate for the wellbeing of Auckland Harbours and the Hauraki Gulf as an amenity and asset for all".
51. The House of Lords in *IRC v Baddeley* found that purposes directed towards the wellbeing of a group of people were too broad and vague to be capable of being found within the spirit and intendment of the Preamble.⁵⁶
52. The Society has submitted it defines "the wellbeing of Auckland's harbours" in a manner reflective of a charitable purpose, specifically:

*the state in which our harbours' ecological condition is maintained and enhanced to sustainable environmental levels. It also includes ensuring the harbours' shorelines are preserved in their present states and maintained to levels that both enhance their environmental qualities and the interaction between the region's citizens and the harbours.*⁵⁷
53. Consequently, the Board finds that the Society has two aspects to the end goal of promoting the wellbeing of the Auckland harbours and the Hauraki Gulf: first, the beautification and protection of the Auckland harbours, and second, the urban renewal of the harbour area.
54. Acknowledging the wellbeing of a physical space can be distinguished from the wellbeing of a group of individuals, the Board considers the first aspect of the Society's end goal is capable of advancing charitable purposes. Specifically, in light of the Society's activities, we consider it be characterised as promoting the environment and improvement of the Auckland harbours and the Hauraki Gulf.
55. However, the Board notes the Society has indicated in its submissions it has a broader end to promote the "urban renewal" of the Auckland waterfront.⁵⁸ In the light of the Society's activities, the Board does not consider the urban renewal of the Auckland waterfront is an end that advances a charitable purpose.
56. Both these findings are discussed below.

⁵⁵ *Greenpeace SC* at [73].

⁵⁶ *IRC v Baddeley* [1955] AC 572.

⁵⁷ The Society's email of 16 September 2016.

⁵⁸ See for example: The Society's email of 25 February 2016; see above at [19].

Beautification and the improvement of amenities and the protection of the environment

57. The preservation of the environment as an end has long been accepted as charitable.⁵⁹ The courts have accepted the protection of the environment is acceptable in relation to promoting afforestation,⁶⁰ the making of domains or national parks⁶¹ and the promotion of a sustainable standard of living.⁶² In accepting purposes to protect the environment, the courts have referred to the fact modern governments explicitly provide for the protection of the environment, and many groups in civil society “believe it to be an essential element of promotion of the public benefit.”⁶³ By analogy, the Board has also previously recognised purposes to improve rivers, protect native species from pests or other threats, and other purposes directed at tangible environmental protection.
58. The cases concerning the beautification of an area or improvement of amenities have been restrained to tangible improvements of amenities and areas. The courts have accepted bodies of water are capable of being amenities,⁶⁴ and the Board accepts the Auckland harbours and Hauraki Gulf could be considered as such. However, the cases have either concerned the maintenance or preservation of the areas, or the beautification of the areas. The courts have accepted developing a lake and its foreshore as a beauty spot and tourist resort,⁶⁵ prizes for best kept gardens,⁶⁶ the ornamentation of a public reserve,⁶⁷ and gifts for fountains, swimming pools or other amenities for a public park,⁶⁸ all qualify as charitable public benefits. The reasoning employed in these cases is consistently that the beautification and improvement of public spaces improves qualities of the areas that promote enjoyment for the public at large.⁶⁹
59. In light of the above, the Board considers that these aspects of the Society’s end goal are capable of advancing charitable purposes.

⁵⁹ *Greenpeace SC*, at [71].

⁶⁰ *Re Bruce* [1918] NZLR 16 at 32.

⁶¹ *Grandfield Estate v Jackson* [1999] BCJ No 711.

⁶² *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325 at 338 (“*Re Centrepont*”): “A standard of living which enhances and sustains a quality of life that is not exploitative of the environment or people and that is permanent, healthy and sustainable for future generations.”

⁶³ *Re Centrepont* at 338.

⁶⁴ *Kaikoura County v Boyd* at 261-262; *Re Spehr* [1965] VR 770.

⁶⁵ *Re Spehr* [1965] VR 770, at

⁶⁶ *Re Pleasants* (1923) 39 TLR 675 (“*Re Pleasants*”).

⁶⁷ *Morgan v Wellington City Corporation* [1975] 1 NZLR 416 (“*Morgan*”).

⁶⁸ *Grant v Commissioner of Stamp Duties* [1943] NZLR 113 (“*Grant*”).

⁶⁹ *Re Pleasants* at 675; *Re Knowles* [1938] 3 DLR 178; *Re Cotton Trust for Rural Beautification* (1980) 117 DLR (3d) 542 at 545; *Grant* at 115 per Johnston J; *Morgan* at 419-420.

Promoting urban regeneration

60. Courts have recognised that economic development of a community can be a charitable purpose under “other matters beneficial to the community”. In New Zealand, High Court authorities establish that this charitable purpose is restricted to situations where the area/region is in particular need.⁷⁰ Factors to be taken into account when judging whether an area is disadvantaged include the relative deprivation of the area.⁷¹ Further, the relief provided must be directed towards actually relieving needs in the area, not advantaging individual businesses.⁷²
61. For a Society to promote the regeneration of an area, it must demonstrate a need for regeneration in the area, and that the relief provided by the Society would relieve that need.⁷³
62. Based on statements made by the Society,⁷⁴ the Board considers the Society may also have another end goal, which is to promote urban regeneration in the Auckland Harbour area.
63. The Board does not consider an end goal to regenerate the Auckland waterfront is within the spirit of the cases accepted as charitable. The Board acknowledges that areas within Auckland may have varying levels of deprivation. However, the Society has not provided any information that indicates it is intending to relieve deprivation, or take steps to identify need and relieve a need. We therefore do not consider as a whole, the Auckland waterfront or wider region can be considered in economic or social need such that promoting its wellbeing would qualify as a charitable purpose.
64. The Board notes that the Society could limit its activities to advocacy which advances the charitable ends of promoting the beautification and protection of the environment of Auckland harbours and Hauraki Gulf. However, this is not determinative of the application, as the Board does not consider the means the Society is advocating for, to achieve its ends, are of benefit in the way the law recognises as charitable.

⁷⁰ *Re Tennant* [1996] 2 NZLR 633 (“*Re Tennant*”); *QLCHT* and *CDC*.

⁷¹ See *Re Tennant and Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* [2005] FCA 439.

⁷² Charities Commission of England and Wales, *RR2: The promotion of urban and rural regeneration* (March 1999); as cited in *QLCHT* at [73].

⁷³ See for example: *QLCHT* at [40]; *CDC* at [67].

⁷⁴ Emails from the Society of 1 July 2016, 5 August 2015 and 25 February 2016.

D.3. Assessment of the means promoted by the Society: the relocation of the Ports of Auckland and the prevention of incursions into Auckland harbours and the Hauraki Gulf

65. The Supreme Court in *Greenpeace SC* accepted that some organisations who advocate to protect the environment or to promote the improvement of public amenities may advance a charitable public benefit, depending on the nature of the advocacy.⁷⁵
66. In assessing whether a purpose of promoting peace or nuclear disarmament could be charitable, the Supreme Court considered the focus should be on how the end is to be achieved. The Supreme Court noted to achieve either end, different policies could be adopted.⁷⁶ Where an organisation advocates for specific points of view on what policy would be most appropriate to achieve the end, the wider consequences of that policy must be considered.⁷⁷ The Supreme Court noted in many cases, the court would have no adequate means to judge the public benefit in the promotion of specific policies, taking into account all the consequences, local and international.⁷⁸
67. Where an organisation promotes a policy they consider improves an amenity and preserves the environment of that amenity, it may be only their opinion that the adoption of the policy would advance the quality of that public space. The organisation must demonstrate the policy will advance a charitable public benefit, and in doing so, establish the wider consequences of promoting the policy will not prejudice the recognition of policy as beneficial within the spirit of the Preamble.
68. In the case of the Society, the Board considers questions about the future location and size of the Ports of Auckland are complex and require in-depth consideration of economic, social, environmental and cultural factors. Those considerations are set out above in relation to the Port Future Study and the other studies referred to above.
69. The Board acknowledges the relocation of the Ports of Auckland *may* have the impact of improving the aesthetic quality of the Auckland harbour area, improving economic prospects for certain businesses, and protecting the environment from exposing the immediate Auckland harbour surrounds to less ship traffic. However, the Port Future Studies report indicates any alternative port location would also damage the environment wherever the Port is moved, significantly impact workers at the port, and have significant economic, social and cultural consequences for Auckland and the wider region.⁷⁹

⁷⁵ *Greenpeace SC*, at [71].

⁷⁶ *Greenpeace SC*, at [100].

⁷⁷ *Greenpeace SC*, at [100-101].

⁷⁸ *Greenpeace SC*, at [101].

⁷⁹ See for example: Port Future Study Recommendations at page 20.

70. The Board notes although the Port Future Study favours moving the Ports of Auckland from its current location, the results of the Port Future Study did not establish a clear benefit in relocating the Ports of Auckland.⁸⁰ Neither assessed locations were determined as feasible at the time of the study.⁸¹ The study also indicated any move would pose significant economic, environmental and cultural issues needing more detailed assessment.⁸² Given these competing arguments for and against the Port's relocation, the Board is not in a position to determine whether there is a demonstrable public benefit in the means advanced by the Society. Consequently, as there is no clear public benefit, the Board does not consider this means to be charitable.
71. However, as already discussed, even if the Board was to acknowledge an economic benefit in the relocation of the Port, the Board does not consider improving the economic outlook of the Auckland region is material in assessing whether the Society's advocacy advances a charitable public benefit. As discussed at D2, the Board does not consider promoting an end of urban regeneration of the Auckland waterfront is charitable, nor the economic development of the Auckland region.
72. The Board has also considered the importance of public participation in decision making in this area, and acknowledges the Society's participation in the reference group of the Future Port Study as propagating its member's views in decision making processes. However, on balance, the wider consequences are too significant and diverse to assess relocating the Ports of Auckland or restricting its future growth as clearly advancing a charitable public benefit.
73. The Board notes that if a decision is made to move the Ports of Auckland and the Society's activities focus on the tangible beautification and environmental protection of the waterfront and harbour area for the benefit of residents and visitors to Auckland, it may be capable of being registered. However, the Society is not currently carrying out activities to beautify or protect the waterfront and harbour area. The Board acknowledges the Society's advocacy may have the downstream effect of supporting the tangible beautification of the waterfront area in the future. However, the Board does not consider this is sufficient to consider the Society advances a charitable public benefit.⁸³ The Society's current focus is on persuading decision makers and the public that moving the port is the most beneficial course of action for the Auckland community, and for the reasons discussed above, the Board does not consider this advances a charitable public benefit.

⁸⁰ Port Future Study Recommendations at pages 19-21, and 25; the Board notes that although the Consultant Report suggests moving to Manukau may be more feasible than expanding at the current location; it also could not clearly recommend the movement given the significant factors needing consideration.

⁸¹ Port Future Study Recommendations at page 20.

⁸² Port Future Study Recommendations at pages 18-20.

⁸³ CDC at [67].

E. Other submissions of the Society

74. The Society has submitted its purposes are analogous to the Restore Christchurch Cathedral group. In that case, the Board considered the end of promoting heritage through means of promoting the restoration of a building with established heritage value constituted a charitable purpose. The Board notes that although each decision is made on a case by case basis, the Christchurch Cathedral itself was a building with objectively assessed heritage value, and the restoration of heritage buildings is a well-established charitable public benefit.⁸⁴ The wider consequences in that case were necessary results of the pursuit of a public benefit, and did not prejudice the recognition of that public benefit.
75. The Board also notes in its most recent correspondence the Society has sought to distinguish itself from the Stop Stealing Our Harbour group.
76. The Board acknowledges the Society has broader purposes than the Stop Stealing Our Harbour group, however considers it retains the goal of preventing any further extensions of the Ports of Auckland. Accordingly, the Board considers the website of the Stop Stealing Our Harbour Group and Facebook page remain relevant in the consideration of the Society's purposes.
77. The Society has also submitted its plans are consistent with the Auckland Council's Waterfront Plan.⁸⁵ The Board notes the plan does not appear to contemplate relocating the Ports of Auckland. Rather Waterfront Auckland is working to improve waterfront sustainability, "greening the grey", and integrating its activities across the wider waterfront within Waterfront Auckland's area of influence.⁸⁶

F. Section 5(3)

78. As discussed above, the Board considers the Society's purposes are principally directed towards preventing the expansion of the Ports of Auckland, and relocating the Ports of Auckland for the end goal of promoting the wellbeing of the Auckland harbours and Hauraki Gulf.⁸⁷ Applying the decision of the Supreme Court in *Greenpeace SC*, the Board does not consider this is a charitable purpose.

⁸⁴ Registration decision: *Restore Christchurch Cathedral Group Incorporated (RES50915)* (12 October 2015), <https://www.charities.govt.nz/assets/Uploads/20151012-Restore-Christchurch-Cathedral-Group-Incorporated.pdf> [accessed 13 July 2016] at C2, pages 6 to 8.

⁸⁵ Email from the Society of 25 February 2016.

⁸⁶ The Waterfront Plan 2012 <http://www.panuku.co.nz/www/uploads/moduleresourceitems/the-waterfront-plan-2012-9e08935901.pdf> [accessed 16 June 2016], at page 11 and 113.

⁸⁷ Refer to Section C.1. above.

79. The Board considers the Society has not provided sufficient information of other activities indicating its advocacy could be ancillary to a charitable purpose. The Society's activities have focussed on advocating for the removal of the Auckland Port, through directly persuading decision makers and the public to their point of view; commissioning experts to support their point of view; and commissioning marketing companies to persuade the public of its point of view.⁸⁸
80. The Board considers the Society's purpose is to advocate for a point of view where the charitable public benefit cannot be established, and accordingly, the Society's purpose is not ancillary to a charitable purpose.

G. Determination

81. The Board's determination is that the Society does not qualify for registration under the Act and the application for registration should be declined.

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

Signed for and on behalf of the Board

.....
Roger Holmes Miller

1st SEPTEMBER 2016
.....
Date

⁸⁸ Refer above to Section A; at [10] and [17].