

Dated: 18 May 2022

Registration Decision: Enhanced Future Charitable Trust

Board Decision

1. The role of Te Rātā Atawhai, 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. The Board makes its decisions by applying the law to the facts before it. The Board must decline to register an organisation when it does not advance a charitable purpose for the public benefit.
2. The Board’s decision is to decline to register Enhanced Future Charitable Trust (“the Trust”) because it does not advance exclusively charitable purposes.
3. The Board considers that the Trust’s draft purposes are not capable of advancing charitable purposes to relieve poverty, advance education, protect the environment or promote good citizenship and its activities are not consistent with charitable purposes. The Board considers that the Trust does not have a purpose which is analogous to an identified charitable purpose, therefore, it does not qualify for registration as a charity.
4. The Board has carefully considered all of the Trust’s submissions and has based its assessment on the application of the law to the facts before it.
5. This decision is separated into the following sections:
 - Background
 - Framework for registration
 - What are the purposes of the Trust?
 - Are any non-charitable purposes ancillary?
 - Determination

Background

6. The Trust applied for registration as a charity in April 2021. Charities Services¹ notified the Trust that it did not meet registration requirements² because its rules did not have identifiable stated purposes, or sufficient protections against private pecuniary profit.³ Charities Services also requested further information on the Trust’s activities.

¹ Charities Services, Ngā Ratonga Kaupapa Atawhai, administers the Charities Act 2005 (“the Act”). Charities Services also makes routine registration decisions acting under the Board’s formal delegation and guidance. When an applicant disagrees with Charities Services’ decision about whether the entity qualifies for registration, the matter is referred to the Board for its decision.

² Charities Services’ notice to the Trust dated 30 June 2021.

³ Charities Services considered that the entity is not a validly constituted trust, therefore, it assessed the application as an unincorporated society.

7. The Trust responded but did not include draft stated purposes.⁴ Charities Services advised the Trust that it needed to provide stated purposes and more activities information to progress the application.⁵ The Trust provided draft stated purposes but no additional activities information.⁶
8. Charities Services notified the Trust that it did not meet registration requirements because the Trust's draft purposes were not exclusively charitable, and the rules did not have sufficient protections against private pecuniary profit.⁷
9. The Trust responded, including providing links to YouTube videos the Trust intended to promulgate on its website.⁸ Charities Services notified the Trust that it failed to demonstrate its purposes were capable of being charitable and provided an opportunity for the Trust to make any final submissions for consideration by the Board.⁹ The Trust did not make any further submissions.

Framework for registration

10. A society qualifies for registration under the Act¹⁰ if it is established and maintained for exclusively charitable purposes and not carried on for the private pecuniary profit of any individual.¹¹
11. Section 5(1) of the Act lists charitable purposes as any charitable purpose that relieves poverty, advances education or religion, or is otherwise beneficial to the community. To qualify as a registered charity, a society must advance a purpose that provides a public benefit previously recognised as charitable by the courts. The purpose must also provide a benefit to the public or a sufficient section of the public. Any non-charitable purposes must be incidental to a charitable purpose.
12. Section 18(3) of the Act also requires the Board to have regard to the activities of an entity. The Supreme Court in its *Re Greenpeace of New Zealand Incorporated* decision clarified that the purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes.¹² This was qualified in the decision of *Greenpeace of New Zealand Incorporated*; for example, the activities may help to determine the relative weight of an entity's stated objects.¹³

⁴ The Trust's email to Charities Services dated 26 July 2021.

⁵ Charities Services' email to the Trust dated 4 August 2021.

⁶ The Trust's email to Charities Services dated 21 September 2021.

⁷ Charities Services' notice to the Trust dated 28 September 2021.

⁸ The Trust's email to Charities Services dated 5 October 2021.

⁹ Charities Services' notice to the Trust dated 14 October 2021.

¹⁰ Section 13(1)(b) of the Act.

¹¹ As noted above, the entity is a society rather than a validly constituted trust.

¹² *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 at [14].

¹³ *Greenpeace of New Zealand Incorporated* [2020] NZHC 1999 at [22].

13. The Board's approach to assessing charitable purposes follows the three-step test of *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* ("FAAR and FRSSH"):¹⁴
- whether an entity's stated purposes are capable of being charitable;
 - whether an entity's activities are consistent with or supportive of a charitable purpose; and
 - if the entity's activities are found not to be consistent with charitable purposes, whether they can be said to be merely ancillary to an overall charitable purpose.
14. The Trust's application requires consideration of charitable purposes in relation to the promotion of good citizenship; the advancement of education; the relief of poverty; and the protection of the natural environment. These are discussed below.

The law on promotion of good citizenship

15. The Board recognises that purposes to promote good citizenship by promoting public participation in democratic processes are capable of being charitable under the fourth head of charity (other purposes beneficial to the community).¹⁵ Where an entity advances an abstract concept, such as good citizenship, the focus should instead be on how that abstraction is going to be furthered.¹⁶
16. In *Re Draco Foundation (NZ) Charitable Trust* ("Re Draco"), the High Court held that stated purposes directed at "the promotion of democracy and natural justice in New Zealand," and to "raise awareness of and involvement in the democratic process amongst the citizens, organisations, and communities of New Zealand" were capable of being charitable.¹⁷ The Court held, however, that the Foundation's main activity of populating websites with summarised information from other public sources about local authorities, government agencies, citizens' rights and responsibilities, and opinion pieces on government was not sufficiently structured to promote a public benefit aligned with either education or good citizenship.¹⁸

¹⁴ *Re the Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 ("FAAR and FRSSH").

¹⁵ *Re Draco Foundation (NZ) Charitable Trust* HC WN CIV-2010-485-1275 [3 February 2011] ("Re Draco") at [22], [71].

¹⁶ *Greenpeace SC* at [102].

¹⁷ *Re Draco* at [21].

¹⁸ *Re Draco* at [39], [41] and [72]; see also *Re Positive Action Against Pornography v Minister of National Revenue* 49 D.L.R (4th), 74 (HEU), where the Canadian Supreme Court held that simply presenting information does not advance education.

17. In the Board’s decision to decline the application for registration by Digital Democracy Limited (“the Company”),¹⁹ the Board determined that summarising information from publicly available sources on a website and polling the public on government bills was not sufficiently structured to promote good citizenship for public benefit, or otherwise advance a purpose in a way the law recognises as charitable. Further, the Company did not demonstrate how its online resources would assist people to participate in democratic practices.²⁰

The law on advancement of education

18. To advance education, an organisation’s purpose must provide some form of education and be structured enough to ensure learning is passed on to others. Further, to be of charitable public benefit, the information provided must not be limited to one side of complex issues; expressions of opinions are considered propaganda as understood at charities law and therefore not charitable.²¹ For example, running a website that consists of the “combination of informational material ... and a series of opinion pieces, many of which hold a particular point of view”, would not fall within the threshold of advancement of education.²²

The law on relief of poverty

19. To be charitable as relieving poverty, an organisation’s purposes must be directed at people who are poor, in need, aged, or suffering genuine hardship as a result of their circumstances. The people to whom relief is provided should have an identifiable need arising from their circumstances that requires support and have difficulty in addressing that need themselves, and the relief provided should be commensurate to that need.²³

The law on protection of the environment

20. The protection of the natural environment has long been recognised by the courts as a charitable purpose under the fourth head.²⁴ Cartwright J in the case of *Re Centrepoint Community Growth Trust*²⁵ agreed that it was appropriate that environmental purposes should now be formally recognised as charitable under other purposes of benefit to the community.

¹⁹ See *Decline Decision: Digital Democracy Limited (DIG54724)* (“Digital Democracy”).

²⁰ [22] of the *Digital Democracy* decision.

²¹ Young J in *Re Draco* at [67].

²² *Re Draco* at [77]. The Board notes that in *Family First New Zealand v Charities Registration Board and Attorney General (Family First CA)* the Court of Appeal found held that commissioned research or reports that promoted one side of a political debate could advance education in a charitable manner. As the Trust has not commissioned or undertaken research, however, the Board considers that the Court of Appeal’s conclusion on this issue is not relevant to the assessment of the Trust’s activities.

²³ *Joseph Rowntree Memorial Trust Housing Association v Attorney-General* [1983] 1 All ER 288.

²⁴ See, for example: *Re Bruce* [1918] NZLR 16 at 32; *Kaikoura County v Boyd* [1949] NZLR 233 (CA).

²⁵ *Re Centrepoint Community Growth Trust v Commissioner of Inland Revenue* [2000] 2 NZLR 325.

What are the purposes of the Trust?

The Trust's stated purposes

21. As noted above, the rules provided in the Trust's application do not contain any clauses that are clearly recognisable as stated purposes, therefore, the Board has assessed the draft purposes provided by the Trust.²⁶
22. The Board notes that the Trust's draft stated purposes include references to relieving poverty, advancing education and religion, and benefitting the environment. The Board considers, however, when read in conjunction with the 'Pilot Initiative' referred to in the draft purposes (and in the Trust's original rules), the draft purposes as a whole are not capable of being charitable.
23. The Pilot Initiative relates to advocating for and educating voters in democratic states and flushing out corruption where possible by promoting information about (inter alia) candidates for political office via a website. The Pilot Initiative is discussed in further detail at [27] to [28].
24. The Board considers that the draft purposes are not capable of the following charitable purposes:
 - The relief of poverty: the purposes are not expressly directed at people in poverty, nor does it expressly provide relief. Any intended relief provided to those in charitable poverty through helping people choose better representatives would be considered too remote or hoped-for.
 - The protection of the environment: the purposes are focussed on the intended benefits from educating the community about candidates and voting for elected representatives who will best serve the community and the natural environment. Any intended benefits to the environment would also be considered too remote.
 - The advancement of education: the purpose is not capable of advancing education because posting information about political candidates on a website which is information summarised from other available sources is not sufficiently structured enough to promote education.
25. The Board notes the draft purposes may refer to the promotion of good citizenship, however, it considers that the website is not structured enough to be capable of promoting good citizenship. Further, the Trust has not demonstrated how the online information would support individuals to participate fully in existing democratic processes for public benefit.
26. The Board considers the Trust's draft purposes are not capable of being charitable for the reasons discussed.

²⁶ The Trust's response to Charities Services dated 21 September 2021.

The Trust's activities

27. The only activities information provided by the Trust relates to its Pilot Initiative. The Pilot Initiative will advocate for and educate voters in democratic states and to flush out corruption where possible.²⁷ It states, “[b]etter Leaders/Representatives will lead to a better world.”²⁸
28. In practical terms, the Trust investigates candidates for political office and posts information about them, and other material, on a website. The Trust stated that the website will include video content on how to vote and the importance of voting,²⁹ however, the only examples provided of video content for the website do not refer to such information. The video content discussed further at “The Trust’s submissions” below.
29. The Board considers that the Trust has not shown how the Pilot Initiative is consistent with charitable purposes, therefore the Board considers the activities are not consistent with charitable purposes.
30. The Trust has not provided any information on any other initiatives it intends to undertake as it states it does not know what they will be.³⁰ In the absence of any such information, the Board is unable to assess whether such other initiatives would be in furtherance of purposes which are charitable at law.
31. As a secondary issue, the Board notes that the Trust’s draft purposes and activities may demonstrate it also has an unstated purpose to promote its own point of view about the merits of certain electoral candidates, or its own political views. A purpose to support or oppose a political candidate is not a charitable purpose. The Board has not considered this further, however, as it considers the Trust does not qualify for the other reasons discussed above.

The Trust's submissions

32. As noted above, the Trust did not make any final submissions for the Board’s consideration, however, it has made submissions in its responses that the Trust relieves poverty, promotes the protection of the environment and advances education.

Relief of poverty and promotion of the protection of the environment

33. The Trust submits that poverty “needs to be remedied at the root cause” and considers the root cause to be “bad decisions and bad policy by government”.³¹ The Trust maintains that this can be addressed by “educating people on how decisions made by government affect their lives” and investigating the “psychic mental and physical evaluation of each candidate to determine if they are fit to make these important decisions”.

²⁷ This is outlined in the Trust’s application record and original rules.

²⁸ The Trust has not expressly stated the criteria used to define the term ‘better Leaders/Representatives’.

²⁹ The Trust’s response to Charities Services dated 26 July 2021.

³⁰ The Trust’s response to Charities Services dated 21 September 2021.

³¹ The Trust’s response to Charities Services dated 5 October 2021.

34. As discussed at [24], the Board does not consider that this is capable of the relief of poverty or promotion of protection of the environment, because the Trust's means to relieve poverty and address other problems such as environmental protection are too remote or downstream to be charitable. Further, the Trust's purpose is not expressly directed at people in poverty, and nor does it expressly provide relief.
35. The Board acknowledges that elections may have a causal connection to poverty and addressing environmental concerns through the election of parliamentary representatives who seek to address these issues; however, as stated above, the Board considers that the Trust's aims to relieve poverty and protect the environment by encouraging the public to choose what it considers to be better representatives are too remote or downstream to be charitable.

Advancement of education

36. The Trust provided links to two YouTube videos, which will be promulgated on its website.³² The videos relate to a point of view that governments use tactics such as fear and misinformation, in order to establish totalitarian regimes.³³ Historical examples are provided in relation to Eastern Europe and Nazi Germany, however, the implication is that this occurs on a wider and more generalised basis.
37. The Trust states that this is the type of content it will pass on so that people may "have an awaking (sic) of what is really going on with corruption in government".³⁴ The Trust has also previously stated that it intends only to provide "factual, accurate information".³⁵
38. The Board considers that the YouTube videos are not in themselves capable of advancing education because they are not sufficiently structured. Further, the Board considers that the YouTube videos show the Trust has a particular opinion about spread and use of information by government and the media (for example) which would lack sufficient objectivity to advance charitable education as discussed at [18] and [24].
39. The Board considers that the Trust's submissions do not demonstrate it has a charitable purpose to relieve poverty, protect the environment, or advance education.

Are any non-charitable purposes ancillary?

40. The Board considers the Trust's primary purposes, as demonstrated through its draft stated purposes and activities, are not capable of advancing charitable purposes, for the reasons discussed above. As this is the Trust's focus, it cannot be considered ancillary to an overall charitable purpose.

³² See "MASS PSYCHOSIS – How an Entire Population Becomes MENTALLY ILL" <https://www.youtube.com/watch?v=09maaUaRT4M> and "The Big Lie – How to Enslave the World" <https://www.youtube.com/watch?v=6VfJ0BJvt7Y>.

³³ The Board notes that the videos are not created by the Trust.

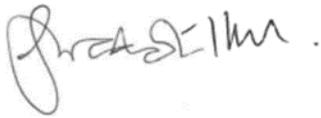
³⁴ The Trust's response to Charities Services dated 5 October 2021.

³⁵ The Trust's response to Charities Services dated 26 July 2021.

Determination

41. The Board determines that the Trust is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1) of the Act.
42. The Board considers that the Trust's draft purposes are not capable of advancing charitable purposes to relieve poverty, advance education, protect the environment or promote good citizenship and its activities are not consistent with charitable purposes. The Board considers that the Trust does not have a purpose which is analogous to an identified charitable purpose, therefore, it does not qualify for registration as a charity.
43. The decision of the Board is therefore to decline to register the Trust as a charity, pursuant to section 19 of the Act.

Signed for and on behalf of the Board



Gwen Keel

Date 18 May 2022