

Registration decision: Clevedon Village Trust (CLE53288)

Background

1. Clevedon Village Trust (the Trust) incorporated as a trust board on 8 March 2016 and applied for registration as a charity under the Charities Act 2005 (the Act) on 29 April 2016.
2. The Board has considered all documents provided to, and considered by Charities Services during the registration process.

Decision

3. The Charities Registration Board's (the Board) decision made under section 19 of the Act is to grant the application to register the Trust as a charity because it is satisfied the charity meets the essential requirements of registration. The Board is satisfied the Trust is of a kind in relation to which an amount of income is derived of the trustees in trust for charitable purposes.
4. The Board is satisfied that the Trust qualified for registration at all times between the receipt of a properly completed application from the Trust by Charities Services, and the date of this determination. Therefore, the Board directs that the registration of the Trust be backdated to 29 April 2016.

What are the purposes of the Trust?

5. The purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes.¹
6. The purposes of the Trust are listed at clause 4.1. of its rules:
 4. The purposes and aims of the Trust are to use or employ both capital and income of the Trust Fund as the Trustees see fit towards any one or more of the following charitable objects and purposes which are declared to be the objects and purposes of the Trust:

¹ *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 ("Greenpeace SC") at [18].

- (a) To develop a master plan, (“the Master Plan”) to contain, describe and express the Clevedon community’s collective vision for the use of land and amenities; the type location and design of infrastructure, the design and appearance of buildings both private and public; the design and uses of public open spaces, in and around the Clevedon Village, such as will promote, preserve, protect and enhance the present rural village atmosphere, appearance, amenities and heritage of Clevedon as a country village, and thereby benefit the Clevedon community now and in the future indefinitely.
 - (b) To raise funds by way of donations to fund and meet the cost of the engagement of consultants to prepare the Master Plan.
 - (c) To keep the Clevedon community fully informed about the process of gathering information from the community and regarding the progress of and implementation of the Master Plan.
 - (d) To encourage, empower, and enable the Clevedon community to be involved in the relevant aspects of the implementation of the Auckland Council District Plan Change 32 in a manner which is consistent and will promote best practice environmental and urban design outcomes consistent with the wishes of the community.
 - (e) To collaborate and liaise with landowners undertaking or proposing to undertake subdivisional or other forms of land development, to implement and encourage excellence and outcomes that maintain and enhance the rural character, community spirit and cultural and rural heritage of Clevedon.
 - (f) To seek financial support and contribution from Auckland Council to meeting the cost of planning and developing new amenities consistent with the Master Plan.
 - (g) To promote and encourage the adoption of the Master Plan by the Auckland Council and all parties and persons involved in the development of properties, construction of buildings, infrastructure and amenities in and around the Clevedon Village.
 - (h) To make donations to such charitable organisations that have approved donee status under the Income Tax Act 2004 or any substitute or additional Act and whose Charitable Purposes are exclusively within the Clevedon area.
7. After discussions with Charities Services, the Trust indicated they intend to amend their purposes to the following:
- (i) To enhance, develop and maintain Clevedon’s rural village amenities for the benefit of the Clevedon community.

- (j) To offer and provide support in the way of knowledge, direction and other financial and non-financial assistance to Clevedon community ventures and projects consistent with the objects of the Trust and directed towards any charitable purposes, such as environmental enhancement, preservation of established heritage or the social cohesion of Clevedon for the benefit of the community.
 - (k) To advance education into the history of Clevedon and its surrounds, and the buildings, features, and other amenities.
 - (l) To promote the protection and preservation of the physical, cultural and environmental amenities of Clevedon and its surrounds.
 - (m) To promote, support, and develop participation and involvement of members the Clevedon Community in activities and projects directed towards any charitable purposes, such as environmental enhancement, preservation of established heritage or the social cohesion of Clevedon for the benefit of the community in all or any respects consistent with the objects of the Trust and for the benefit of the members of the Clevedon community.
 - (n) In all respects the activities of the Trust are to be directed towards the benefit of the Clevedon community as a whole.
8. As the Trust has not yet formally made the changes, and the activities have remained the same, the Board has considered both the original purposes and the amended purposes in its assessment.²
9. The purposes of the Trust need to be understood in the context of Clevedon's local authority governance. Clevedon Village is just east of Manukau City Centre and was under the Manukau City Council, until Auckland Council took over the functions of the Auckland Regional Council on 1 November 2010. In August 2010, the Manukau City Council undertook a Sustainable Development study,³ which shaped Plan Change 32, formally adopted by Auckland Council in early 2015.⁴

² The Trust initially indicated in correspondence with Charities Services they intended to add these clauses (Trust's email of 26 February 2017). However, the Trust's most recent correspondence of 4 April 2017 indicated the Trust intended to replace the clauses with the suggested amendments.

³ Boffa Miskell, *Clevedon Village Sustainable Development Plan Draft* (August 2010): <http://www.manukau.govt.nz/SiteCollectionDocuments/SDP%20V5-02Aug10.pdf> ; <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/hearings/hearingsrptclevedonvillage201108290930.pdf> [accessed 10 April 2017].

⁴ Auckland Council, *Plan Change 32 Clevedon Village to the Auckland Council District Plan (Manukau Section) to be made Operative*, File No: CP2015/00631, http://infocouncil.aucklandcouncil.govt.nz/Open/2015/02/AUC_20150212_AGN_5683_AT.htm [accessed 12 April 2017].

10. The plan change provided for the expansion and intensification of Clevedon village outside the current village boundaries onto rural land.⁵ The plan change specifically acknowledged the “special qualities” that make Clevedon unique and an attractive place to live, noting that “uncoordinated or more intensive development runs the risk of eroding the character and historic cultural heritage of the existing village and its environs.”⁶
11. The Auckland Council’s new Proposed Unitary Plan (PAUP) was passed on 19 August 2016, and incorporated aspects of Plan Change 32.
12. The PAUP defines a Clevedon district “to incorporate the outcomes of the Clevedon Village Sustainable Development Plan into PAUP and provide for integrated growth in a coordinated manner and sustainable management of the area.”⁷
13. Acknowledging the impacts of change 32 and PAUP, the Clevedon Community and Business Association’s Design and Planning Subcommittee (“Clevedon Conversations”) engaged with the Clevedon community in late 2015 to talk about how the growth anticipated in the plan change might benefit the community. As a result of the engagement, the “Report on Great Outcomes” recommended Clevedon Conversations produce a master plan for the Clevedon District.⁸
14. To produce the master plan, Clevedon Conversations is relying on funding through grants and crowd-funding. Accordingly, it set up the Trust to enable tax-deductible donations.⁹ The Trust’s main activity to date is the commissioning of a master plan. Its website notes:¹⁰

The purpose of the master plan is to provide an aspirational and best practice toolkit that will help coordinate future development in Clevedon Village and incorporate the communities ideas for ‘Great Outcomes’. The master plan will also identify future infrastructure priorities for the community...

A master plan is an integrated, coordinated, holistic document that would fill the gap between Plan Change 32 intent, the Proposed Auckland Unitary Plan (PAUP), and their successful delivery. It is a document that would set out a clear future vision for our village and provide us all with tools to deliver it.

⁵ Report – Hearing of Submissions to Plan Change 32 Clevedon Village (adopted 21 September 2010) (Plan Change 32): <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/hearings/hearingsrptclevedonvillage201108290930.pdf> [accessed 12 April 2017].

⁶ Plan Change 32, Issue 17.18.2.2.

⁷ Auckland Unitary Plan Operative Chapter, I408. Clevedon Precinct <http://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20%20Precincts/4.%20South/I408%20Clevedon%20Precinct.pdf> [accessed 10 April 2017].

⁸ Clevedon Conversations, *Community ideas for Great Outcomes* (1 December 2015), <http://www.clevedon.co.nz/sites/default/files/Report%20On%20Great%20Outcomes%2001%20Dec%202015.pdf> [accessed 10 April 2017].

⁹ <http://www.clevedon.co.nz/clevedon-conversations/clevedonmasterplan> [accessed 10 April 2017].

¹⁰ <http://www.clevedon.co.nz/clevedon-conversations/clevedonmasterplan> [accessed 3 April 2017].

It is delivered, in consultation with key stakeholders, by specialist consultants with expertise in planning, urban design, architecture, landscape architecture and transport planning.

A master plan typically addresses pedestrian connectivity (including the proposed network of trails), road layout and transport planning, development patterns, recreation needs and community facilities, cohesive streetscapes, and architectural typologies.

Importantly, it would also address our main street. The community has clearly expressed their desire to create a pedestrian friendly, traffic-calmed environment with strong rural village character, but currently there are no plans to upgrade this space.

15. Although Clevedon Conversations acknowledges it is unlikely that the masterplan could gain statutory weight, the Trust will advocate for the master plan to be adopted by the Franklin Local Board and relevant stakeholders. Its goal is to specifically improve infrastructure and amenities, and ensure development meets environmental and urban design outcomes.¹¹
16. Based on the stated purposes and activities above, we consider there are two main purposes to consider:
 - a. The development of a master plan for Clevedon based on the engagement of the community of Clevedon (clause 4(a),(b),(c)); and
 - b. Advocating for that master plan to be adopted by stakeholders (including the Auckland Council and private developers) (clause 4(d),(e),(g)).
17. The Trust's proposed amended purposes include supporting and encouraging participation in groups carrying out other charitable purposes (clause 4(j) and 4(m)), as well as advancing education (clause k), and promoting and preserving community amenities and the environment of Clevedon (clause 4(i) and (l)). However, the Trust does not currently plan activities under these purposes, except insofar as they support its two main purposes.

Are the purposes charitable?

18. A trust qualifies for registration as a charitable entity under section 13(1)(a) of the Act if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
19. The Charities Act follows earlier case law in defining charitable purposes into four "heads": the relief of poverty, advancement of education and religion, and other matters beneficial for the community.

¹¹ [http://www.clevedon.co.nz/clevedon-conversations/clevedonmaster plan](http://www.clevedon.co.nz/clevedon-conversations/clevedonmaster_plan) [accessed 12 April 2017].

20. What constitutes a charitable purpose is decided on a case by case basis by analogy with previous common law authorities falling generally within the “spirit and intendment” of the preamble to the Statute of Charitable Uses 1601.¹² This means a purpose must advance a public benefit that is similar or identical to what has previously been accepted as charitable by the courts.
21. The starting point of analysis of charitable purpose is looking at the stated purposes of an applicant. If they are charitable (or the purposes are capable of being interpreted as charitable), the focus shifts onto the activities to determine whether those activities are consistent with or supportive of the identified charitable purpose.¹³
22. A non-charitable purpose will not prevent registration if it is “merely ancillary to the charitable purpose of the trust”.¹⁴ A non-charitable purpose is ancillary if “ancillary, secondary, subordinate, or incidental” to a charitable purpose and if it is not “an independent purpose” of the trust.¹⁵

DEVELOPING A MASTER PLAN FOR AN AREA

23. The development of a master plan for a locality has not been accepted as a charitable purpose in a New Zealand context specifically. In developing a master plan, the Trust is commissioning an independent report on what would be beneficial for Clevedon, which is guided by extensive engagement of residents and stakeholders in the Clevedon area. The group considers this plan will play a useful role in informing decision making for both local government and private developers. The Board considers the development of a master plan can be characterised as a means of engaging residents in democratic processes, and developing documentation to support maintenance of the law. The Board considers these purposes are capable of being charitable under the fourth head: other matters beneficial to the community.

¹² *Greenpeace SC* at [18].

¹³ *The Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* [2016] NZHC 2328 at [88].

¹⁴ Section 5(3) of the Act.

¹⁵ Section 5(4) of the Act.

Engaging residents in democratic processes

24. The Board considers purposes to engage residents in democratic processes may be analogous to the promotion of good citizenship, depending on the nature of the engagement.¹⁶ Although New Zealand courts followed earlier decisions in accepting purposes directed towards good citizenship may be charitable, they did not accept anything directed at what a group considers improves citizens will be charitable.¹⁷ Where a charity advances an abstract concept, such as good citizenship the focus should instead be on how that abstraction is going to be furthered.¹⁸ For a purpose to advance citizenship to be charitable, the purpose would need to advance a public benefit similar to what was previously accepted as charitable.
25. The Board notes charity regulators in the United Kingdom have expressly acknowledged the advancement of citizenship and community development in legislation.¹⁹ The Office of the Scottish Charities Regulator expressly includes an example of “helping the development of a community plan to identify local needs and set out a programme for addressing them” under the advancement of community development.²⁰ Although this has not been explicitly articulated in New Zealand courts, the Board notes the High Court has been regularly guided by how the United Kingdom regulators address other areas of charitable purpose, and treats other jurisdiction’s analysis as persuasive. The Board considers that the position of the United Kingdom regulators supports recognition of a charitable public benefit in the purpose here, a purpose of developing a master plan.²¹
26. The most recent New Zealand case that has addressed the promotion of good citizenship as a charitable purpose, *In Re Draco Foundation (NZ) Charitable Trust (Re Draco)*, considered whether a group advanced citizenship alongside whether the group advanced education.²² Here the High Court found 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. The Draco Foundation’s main activity was populating two websites with basic information about local authorities and government agencies, an overview of citizen’s rights and responsibilities, including plain language précis of particular legal rights and opinion pieces on local government.²³ In that case, the Court found:

¹⁶ See for example: *Re Grand Lodge of Antient Free Masons* HC WN CIV 2009-485-2633 [23 September 2010] at [57].

¹⁷ *Re Draco Foundation (NZ) Charitable Trust* HC WN CIV-2010-485-1275 [3 February 2011] (*Re Draco*).

¹⁸ *Greenpeace SC* at [102].

¹⁹ *Charities Act (England and Wales) 2011*, section 3(1); *Charities Act (Northern Ireland) 2008*, section 2(2)(e); *Charities and Trustee Investment (Scotland) Act 2005*, section 7(2)(f).

²⁰ <http://www.oscr.org.uk/charities/guidance/meeting-the-charity-test-guidance/f-the-advancement-of-citizenship-or-community-development>

²¹ *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011] at [73]; *Canterbury Development Corporation v Charities Commission* [2010] 2 NZLR 707 at [90], *Re Draco* at [74].

²² *Re Draco*.

²³ See the summary in *Re Draco* at [39].

- a. First, posting summaries of information available from other sources on a website would not be sufficiently structured to promote a public benefit aligned with either education or good citizenship.²⁴
 - b. Second, posting partisan opinions on a website was a political purpose, and incapable of demonstrating public benefit.
27. The Board considers the structure of the intended master plan is sufficient to be capable of promoting public benefit aligned with good citizenship. Rather than replicating or summarising information available elsewhere, the Trust is commissioning a new document, informed by community engagement, that is intended to support decision making impacting on the community. If the Trust was merely posting information about the council's plans or the community's opposition to those plans, in one place, it could not be said to promote civic engagement.
28. Since the *Greenpeace SC* decision, political purposes are capable of being charitable. However, the Supreme Court noted it is unlikely for a group that promotes ideas, as opposed to tangible benefit, to qualify as it is hard to objectively demonstrate ideas will be for the benefit of the public.²⁵ The Board considers if the Trust was simply expressing its opinions on how rural character of the Clevedon area can be maintained, it would be difficult to demonstrate that the development of a plan based on those opinions would be for the benefit of the public. There are distinguishing features in this case: the report is being commissioned independently, it is being based on community engagement conducted by experts,²⁶ and the community engagement document itself indicates a balanced approach to sustainable development.²⁷ As the Trust is supporting the community to participate in democratic processes in a balanced and constructive manner through the creation of an independent report, the Board considers this advances a public benefit similar to what has previously been accepted as charitable in the good citizenship cases.

²⁴ See *Re Draco* at [41] and [72].

²⁵ *Greenpeace SC* at [102], [114].

²⁶ Clevedon Communications is led by a planner and a landscape architect and community engagement consultant.
<http://www.clevedon.co.nz/sites/default/files/Report%20on%20Great%20Outcomes%2001%20Dec%202015.pdf> at 3.

²⁷ See for example: "The responses were not merely a wishlist for the major landowners, but represented a shared responsibility and delivery of these great outcomes would require the participation of numerous groups, including Auckland Council, Vector, Ministry of Education, Auckland Transport, Chorus." (page 4); "A masterplan is an integrated, coordinated, holistic document that would fill the gap between Plan Change 32's intent and its successful delivery. It would enable Clevedon to retain its rural vernacular, to be connected, to be integrated, to be sustainable, to thrive." (page 23) in the Report on Great Outcomes.

The maintenance of the law

29. The courts have long held support for the maintenance of the law is capable of being charitable. The most significant case in this area acknowledged the public benefit in the reporting of judge's decisions.²⁸ Previous cases have also held that the provision of research to decision makers, even where it advances a cause, is capable of being charitable where it is directed towards a charitable end.²⁹ The Board considers the master plan can be characterised as a tool to assist in the implementation of the law that has been put in place by local government.
30. Local government are required under the Local Government Act 2002 to consult with the public on significant decisions.³⁰ We consider that the community engagement undertaken by the Trust appears to have been conducted consistent with the principles set out in the Local Government Act 2002 and as the principles are applied by Auckland Council in its current Significance and Engagement Policy document.³¹ As outlined in the Trust's Clevedon Conversations report, the Trust worked to identify people of Clevedon affected by Plan Change 32, provided relevant information to the people, and encouraged and gave opportunities for people to express their views. The report indicates that the Trust's consultation listened to and considered the Clevedon people's ideas with an open mind.³²
31. In *Re Draco*, the appellant sought to compare its plain language descriptions of legal documents for the public, with the publication of law reports. Justice Ronald Young distinguished the case as the law cannot be administered without access to the reports of the decisions of the judges. Although Draco had compiled useful, convenient information, it did not provide "unique material or provide otherwise unavailable essential material".

²⁸ *Commissioner of Inland Revenue v New Zealand Council of Law Reporting* [1981] 1 NZLR 682 (CA); following the approach of the United Kingdom in *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73.

²⁹ *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at 208.

³⁰ See, for example, Section 78(1) ("Local authority must...give consideration to the views and preferences of persons likely to be affected by, or to have interest in the matter"), section 82 (Principles of consultation), 93(2) (use of special consultative procedure in relation to long term plan) of the *Local Government Act 2002*.

³¹ Auckland Council, *Significance and Engagement Policy* (December 2014): <http://www.shapeauckland.co.nz/media/1133/significanceandengagementpolicy.pdf> [accessed 12 April 2017].

³² See for example: Report on Great Outcomes, at 4 (reflections); and 7-11 (process of engaging with the community).

32. As identified in the analysis above, what the Trust is intending to do with the master plan is produce a unique document to supplement local planning rules put in place by the local government. The initial community engagement was guided by experts in town planning, and the master plan itself is being produced by an independent expert group. This is evidence of the utility of the work to local government. The Board considers the report can be characterised as similar to the law reports, providing a framework to assist decision makers and developers to understand what, in the view of the community, would be beneficial for the town, and is consistent with supporting the local council to meet its obligations under the Local Government Act 2002.

Summary of purpose – developing a master plan

33. The Board considers the Trust’s purpose to develop a master plan can be characterised under the fourth head of charitable purpose “another matter beneficial to the community”. Specifically, the Board considers the purpose is analogous to promoting good citizenship and the maintenance of the law for the reasons discussed above.

ADVOCATING FOR THE MASTER PLAN TO BE APPLIED TO A LOCALITY

34. The Trust’s purpose is not only to develop the Master Plan, but also to advocate for the Council to adopt the Master Plan, and for developers to use the Master Plan.
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.³³ 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, whether it advances a public benefit within the spirit of the objects previously accepted as charitable.³⁴ The Supreme Court did not limit political advocacy to activity which is “political” in a narrow sense: it includes “advocacy of views more generally”.³⁵

³³ *Greenpeace SC* at [59]; *Re Collier*.

³⁴ *Greenpeace SC* at [72]-[76]; [102].

³⁵ *Greenpeace SC* at [65].

36. While acknowledging that the circumstances in which advocating for a point of view will be shown to be charitable are likely to be uncommon,³⁶ the Supreme Court accepted some purposes may necessitate persuading decision makers and the public to a point of view and that advocacy may be charitable in some such circumstances.³⁷ In assessing whether an advocacy purpose advances charitable public benefit, the Supreme Court found that 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.³⁸
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.³⁹ 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.⁴⁰ This is a balancing exercise, considering both benefits and detriments of the purpose in question.⁴¹ The controversy of a view will not be determinative, but may help explain why a view cannot be assumed to serve the public benefit in the way the law regards as charitable.⁴² The assessment must also take into account the wider context, including public participation in processes and human rights values.⁴³

Identification of ends, means and manner

38. The Board considers the Trust wishes to achieve a number of ends through advocating for the planned Master Plan's adoption by the Council and developers. These can be best characterised by reference to the stated purposes: promoting, preserving, protecting and enhancing the present rural village atmosphere, appearance, amenities and heritage of Clevedon.⁴⁴ The Trust's end is also characterised as "to maintain and enhance the rural character, community spirit and cultural and rural heritage of Clevedon"⁴⁵ and "promot[ing] best practice environmental and urban design outcomes consistent with the wishes of the community."⁴⁶

³⁶ See for example *Greenpeace SC* at [74], [101]-[102] and [116].

³⁷ *Greenpeace SC* at [71].

³⁸ *Greenpeace SC* at [76].

³⁹ *Greenpeace SC* at [102].

⁴⁰ *Greenpeace SC* at [98], [100] – [102].

⁴¹ *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 47 and 49 ("**Anti-Vivisection**").

⁴² *Greenpeace SC* at [75].

⁴³ *Greenpeace SC* at [103].

⁴⁴ Clause 4.2.(a) of the Trust's Deed.

⁴⁵ Clause 4.2.(e) of the Trust's Deed.

⁴⁶ Clause 4.2.(d) of the Trust's Deed.

39. The Board considers the means to achieve this end are developing the master plan, and then advocating for the specific positions adopted in the report, in relation to community improvement, to be applied. Finally, the manner in which this advocacy to be carried out is engaging with democratic processes, and engaging with relevant stakeholders, to encourage the master plan to be adopted.
40. To assess whether there is public benefit in the advocacy, the Board considers the main issue is whether each of the ends sought by the Trust, and how the Trust seeks to implement those ends, is similar to what has previously been accepted as charitable. The Board has accepted the development of the master plan as charitable above. Thus, the focus is on whether the master plan's proposals are sufficiently similar to a previously accepted charitable purpose. The Board does not consider the manner in which the Trust intends to carry out its purposes would prejudice the recognition of charitable benefit.
41. The Board notes that this is not an exercise of carefully matching purposes with previously accepted charitable cases.⁴⁷ Rather the approach involves considering the reasons the courts accepted the public benefit in purposes in previous cases and whether they apply in this fact scenario.

Sustainable improvement of appearance, public amenities, and infrastructure of Clevedon

42. The Supreme Court acknowledged that the promotion of amenities that make communities pleasant may have come to be regarded as a charitable purpose in itself, depending on the nature of the advocacy.⁴⁸ Previous cases concerning the beautification of an area or improvement of amenities or infrastructure have been restrained to tangible improvements of amenities and areas. 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,⁴⁹ prizes for best kept gardens,⁵⁰ the ornamentation of a public reserve,⁵¹ and gifts for fountains, swimming pools or other amenities for a public park⁵² 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.⁵³

⁴⁷ *Re Family First New Zealand* [2015] NZHC 1493 at [86].

⁴⁸ *Greenpeace SC* at [71].

⁴⁹ *Re Spehr* [1965] VR 770.

⁵⁰ *Re Pleasants* (1923) 39 TLR 675 ("*Re Pleasants*").

⁵¹ *Morgan v Wellington City Corporation* [1975] 1 NZLR 416 ("*Morgan*").

⁵² *Grant v Commissioner of Stamp Duties* [1943] NZLR 113 ("*Grant*").

⁵³ *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.

43. Advocating for the proposed master plan to be adopted is intended to directly improve amenities and infrastructure, and maintain or enhance the aesthetic qualities of Clevedon.⁵⁴ To demonstrate that advocacy to adopt the master plan advances a public benefit consistent with these cases, the Board considers an entity would need to demonstrate the proposed improvements within the master plan would objectively improve the area.
44. The Supreme Court also held the assessment of advocacy purposes needs to take into account the wider consequences of the specific advocacy. Accordingly, the Board considers in this case any advocacy would also need to balance the wider consequences of adopting the master plan, for example, the need to balance housing development with the improvement of appearance, amenities and infrastructure. The master plan would also need to reflect the context of public participation in processes.
45. The Board considers the way in which the master plan is being developed supports a conclusion that advocating for the master plan would objectively improve the area in a manner consistent with the previous cases on the promotion of amenities. First, the stated purpose of “promot[ing] best practice environmental and urban design outcomes consistent with the wishes of the community” reflects a goal of focussing on sustainable development. It is also illustrated in the community engagement document that the master plan is designed to promote sustainable development; that is balancing housing needs with maintaining aesthetic values and improving public amenities.⁵⁵ That the community engagement encompassed both residents of the town and major developers is further evidence that the master plan’s adoption would support sustainable development and thus the advocacy is taking into account the wider consequences of the adoption of the proposed master plan. The fact experts in architecture, landscape and urban design are preparing the master plan is further evidence that the master plan will be designed with objective standards to improve existing the town’s appearance and the public amenities. Moreover, the use of community engagement to inform the expertise provides evidence that there will be aesthetic value to the proposed plan. Although lack of controversy by itself is not determinative of aesthetic value.
46. Although the adoption of the master plan may have wider consequences, and may differ from what the Council has currently planned, the Board does not consider these consequences would materially differ from the public benefit accepted by the courts in relation to the tangible beautification of an area, and the improvement of public amenities and infrastructure.

⁵⁴ <http://www.clevedon.co.nz/clevedon-conversations/clevedonmasterplan> [accessed 12 April 2017].

⁵⁵ Report on Great Outcomes at 23-24.

Promotion of heritage and the rural character of Clevedon

47. The preservation of heritage buildings has long been established as a charitable purpose in New Zealand,⁵⁶ and the Board has previously acknowledged advocating for the preservation of buildings is capable of being charitable.⁵⁷ Previous cases have specifically acknowledged the benefit in retaining rural characteristics due to the benefits associated with the public seeing “beautiful and picturesque buildings and cottages of [this] kind, which have in addition the historical interest which such buildings may bear.”⁵⁸ The public benefit in both the beautification and heritage cases is associated with the advantage for the public from viewing and enjoying buildings and spaces that have some objective aesthetic or historical quality. The Board considers there must be some objective demonstration of historical or aesthetic value for advocacy to demonstrate a public benefit.
48. In this case, the Trust has a clear intent to preserve existing heritage sites with identified historical value through the master plan.⁵⁹ The Board considers this would be sufficient to demonstrate public benefit in that particular aspect of the master plan. However, the Trust goes further to seek to “improve the rural village atmosphere” and “maintain or enhance rural and cultural heritage of Clevedon”. The end of “improv[ing] rural village atmosphere” and “maintain[ing] or enhance[ing] rural village atmosphere” could be seen as being too vague to advance a public benefit.⁶⁰ In some cases, the Board considers maintaining the rural quality of an area would be a matter of opinion, rather than objectively identifiable public benefit. From reviewing the Report on Great Outcomes, the Trust defines promoting a rural identity through the promotion of green spaces in the town and promoting rural architecture.⁶¹

⁵⁶ *Re Verrall: National Trust for Places of Historic Interest or Natural Beauty v Attorney General* [1916] 1 Ch 100; *Re Bruce* [1918] NZLR 16.

⁵⁷ *Registration decision: Restore Christchurch Cathedral Group Incorporated (RES50915)*, Decision No: 2015-3 (12 October 2015): <https://www.charities.govt.nz/assets/Uploads/20151012-Restore-Christchurch-Cathedral-Group-Incorporated.pdf>

⁵⁸ *Re Cranstoun* [1932] 1 Ch 537 at 545.

⁵⁹ For example, the All Souls Church and cemetery, registered by Heritage New Zealand as a Category II structure, with registration number 682.

⁶⁰ See for example: G Dal Pont, *Charity Law in Australia and New Zealand* (Oxford, 2000), at 217 lists a number of purposes that are too wide or vague to come within the legal concept of charity, for example: ‘raising the standard of life’, *Re Blyth* [1997] 2 Qd R 567 at 581-582 per Thomas J; or ‘benefit maintenance and advancement of youth’. *Re Payne (deceased)* [1968] Qd R 287 at 293 per Matthews J.

⁶¹ See: “use green spaces to ensure we maintain rural feel, lots of grass, lots of planting, wildflower areas and green belts, balance out smaller houses with green spaces” at 33, “Use mix of deciduous/fruit/native to support rural feel”, 36; “Enhance our offering as a unique rural experience with lots of trees, green space, open space, animals and productive rural landuses” at 20 and 37, in Report on Great Outcomes.

49. In relation to the promotion of green space, the courts have accepted the protection of the environment is charitable in relation to promoting afforestation, the making of domains or national parks and the promotion of a sustainable standard of living.⁶² Insofar as the improvement of rural character or maintaining or enhancing the rural village atmosphere refers to the improvement of reserves, and expansion of green spaces, the Board considers it would be consistent with protecting the environment.
50. However, there appears to be a focus on ensuring architecture remains “rural” in nature.⁶³ Although independent expert evidence has not identified the particular historical interest to much of the architecture in Clevedon, the Board considers the express identification of the special character of Clevedon by local authorities,⁶⁴ and the acknowledgment and support by the residents of retaining those characteristics, is sufficient evidence to demonstrate the public benefit in retaining the visual characteristics of Clevedon.
51. As indicated in the above section, a purpose to promote the rural character of an area would need to be balanced against any wider consequences of adopting the master plan. In the current case, the Board does not consider there is evidence that the ideas that would be proposed in the master plan would rebut the public benefit in maintaining the rural character of the Clevedon area.

Summary of purpose – advocating for the master plan to be adopted by stakeholders

52. The Board considers the Trust’s purpose to advocate for the master plan to be adopted by stakeholders can be characterised under the fourth head of charitable purpose “another matter beneficial to the community”. Specifically, the Board considers the end, means and manner adopted by the Trust advance a public benefit analogous to cases concerning the beautification of an area, improving infrastructure and amenities, and conserving and preserving heritage buildings and the environment.

OTHER CHARITABLE PURPOSES

53. The Trust’s stated purposes to support and encourage participation in groups carrying out other charitable purposes (clause 4(j) and 4(m)), advance education (clause k), and promote and preserve community amenities and the environment of Clevedon (clause 4(l)) are all charitable in wording. Given the Trust has not currently carried out any activities, and indicated in discussions with Charities Services that any activities would be consistent with the master plan, the Board considers there is nothing in these stated purposes which would undermine the qualification for registration.

⁶² *Re Bruce* [1918] NZLR 16 at 32; *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325 at 338: “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 Report on Great Outcomes at 24.

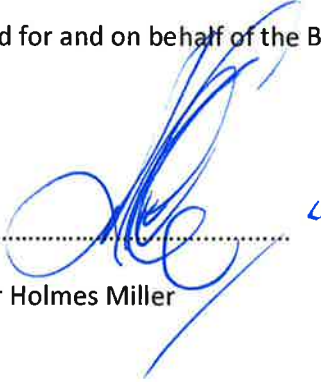
⁶⁴ Plan Change 32, Issue 17.18.2.2.


Determination

- 54. Accordingly, the Board's determination is that the Trust qualifies for registration under the Act and the application for registration should be granted.
- 55. The Board is satisfied that the Trust qualified for registration at all times between the receipt of a properly completed application from the Trust by Charities Services, and the date of this determination. The Board notes the amendments suggested by the Trust are not material to the Trust's application as it considers the Trust's original purposes are charitable. Therefore, the Board directs that the registration of the Trust be backdated to 29 April 2016.

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

Signed for and on behalf of the Board


.....
Roger Holmes Miller


.....
Date 