

## Registration decision for Piha Ratepayers and Residents Association Incorporated

### The facts

1. The Piha Ratepayers and Residents Association Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 25 June 1948.
2. The Applicant applied to the Charities Commission for registration as a charitable entity under the *Charities Act 2005* (the Act) on 11 May 2008.
3. The Applicant's original objects were set out in clause 2 of its constitution;  
*"The objects of the Association shall be:*
  - (a) *To promote and represent the views of the Association's members in all affecting Piha, its wellbeing, environment and development*
  - (b) *To protect and enhance the unique nature of the ecological and social environments of Piha*
  - (c) *To provide a forum within which the community can identify, discuss and deal with local issues and concerns*
  - (d) *To support and co-operate with the Piha surf lifesaving clubs and other organisations, individuals and other projects within the Piha area whose activities will assist in meeting the objects of the Association*
  - (e) *To provide an informed and united voice to represent Piha ratepayers and residents to local and regional bodies and to ensure that their views are reflected in the development of policies which affect the area*
  - (f) *To endeavour to ensure that rates paid by ratepayers in respect of property within the district are the subject of the maximum fair expenditure by the appropriate body within the district for the benefit of residents and visitors to Piha*
  - (g) *To carry out such other actions as are incidental or conducive to attaining any or all of the above objects"*
4. The Applicant's winding-up clause was set out in clause 15:  
*"In the event of the winding up or dissolution of the Association any surplus assets of the Association shall be distributed to such other incorporated body or bodies in the Piha district as decided at a general meeting of the Association to deal with matters relating to the wind up of the Association."*

5. The Commission analysed the application for registration and on 20 April 2009, sent the Applicant a notice that may lead to decline on the basis that clause 2 was not a charitable purpose because it was primarily aimed at promoting the interests of ratepayers and residents and clauses 2(e) and (f) were political purposes. In addition, clause 15 did not limit distribution of surplus assets to charitable purposes in the event of the Applicant winding up. The notice also included a recommendation that the Applicant add clauses to its constitution preventing private pecuniary profit.
6. The Applicant responded to the notice on 24 May 2010, stating that it had amended clauses 2 and 15 and added clauses to prevent private pecuniary profit. Clause 2 then stated:

*“The objects of the Association shall be:*

  - (a) To promote and represent the views of the Association’s members in all affecting Piha, its wellbeing, environment and development*
  - (b) To protect and enhance the unique nature of the ecological and social environments of Piha*
  - (c) To provide a forum within which the community can identify, discuss and deal with local issues and concerns*
  - (d) To support and co-operate with the Piha surf lifesaving clubs and other organisations, individuals and other projects within the Piha area whose activities will assist in meeting the objects of the Association*
  - (e) To provide postal and other community services*
  - (f) To carry out such other actions as are incidental or conducive to attaining any or all of the above objects”*
7. The Commission considered that the amendments were sufficient to meet registration requirements regarding winding up and the prevention of private pecuniary profit.
8. The Commission considered the amended purposes of the Applicant and on 31 May 2010, sent a second notice that may lead to decline. The notice was on the basis that the purposes in clause 2 of the Applicant’s rules continued to be primarily aimed at promoting the interests of ratepayers and residents and information on the website [www.piha.co.nz](http://www.piha.co.nz) showed that a main activity of the Association was political advocacy, which are not charitable purposes.
9. On 25 June 2010, the Applicant responded to the notice submitting that:
  - Clauses 2(a) to (f) are not in ordinal order of importance, however they are interdependent. Clauses (b) to (f) have charitable purposes of matters that are beneficial to the environment and general wellbeing of the community and clause (a) is an advocacy purpose to achieve these objects

- The Association partakes in charitable activities such as Piha Safe walkway project, acting as an umbrella for the Piha Community Library, operates Piha Post Office, supports Piha Coastcare and Surf Lifesaving clubs, partner of strategic weed initiative works for the improvement of water quality in Piha
- The advocacy in clause 2(a) is representational and an inevitable consequence of the primary purpose of working for the benefit of Piha at large
- The Association does not actively seek to change the law for a political purpose, advocate for the views/support a political party or perpetuate advocacy of a particular point of view
- The Association responds to calls for public submissions as a legitimate means of furthering their charitable purposes
- The Association fails to see where the website shows it is involved in political advocacy. The website is there to inform Piha on all matters that are beneficial to the wellbeing of the community and is beyond the activities of the Association
- The website's main aim is to inform, provide means of communication, which contributes to the overall wellbeing of the community and does not perpetually advocate a particular point of view
- Other Ratepayer associations are registered with the Commission "whose objects are nearly identical in purpose to those of Piha R & R Association."
- The Association has over 250 members in a community of approximately 600 residents. It has a long tradition of working for the benefit of the community, whose inhabitants are ratepayers and residents to foster their social and physical wellbeing and the environment they live in
- The Association needs to be on an equal footing with other like minded organisations with charitable purposes to apply for funding on future projects

## **The issues**

10. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case the key issue for consideration is whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular:
  - (a) whether all of the Applicant's purposes are charitable?
  - (b) if any of the Applicant's purposes are non-charitable, whether those purposes are ancillary to a charitable purpose?

## **The law on charitable purposes**

11. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
12. 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, the advancement of religion or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.<sup>1</sup> This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution if the non-charitable purpose is:
  - (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and
  - (b) not an independent purpose of the trust, society or institution.
15. In considering a registration application, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity at the time the application was made, the entity’s proposed activities, and any other information that the Commission considers relevant.

## **Charities Commission’s analysis**

16. The Commission does not consider that the Applicant’s purposes indicate an intention to relieve poverty or advance religion. The Applicant’s purposes have therefore been considered under advancement of education and “other matters beneficial to the Community.
17. The Commission considers that clauses 2(d) and 2(f) of the Applicant’s amended rules are powers and not purposes of the entity.

### ***Advancement of education***

18. In order to advance education a purpose must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services, promotion of a particular point of view, or the study of subjects that have no educational value.<sup>2</sup>

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<sup>1</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

<sup>2</sup> *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins’ Will Trusts* [1965] 1 Ch 669. See also *Re Collier* [1998] 1 NZLR 81.

19. In *Re Shaw (deceased)*,<sup>3</sup> the Court held that “there is no element of teaching or education combined with this [increase of public knowledge] nor does the propaganda element in the trusts tend to more than to persuade the public that the adoption of the new script would be “a good thing”, and that, in my view, is not education”.<sup>4</sup>
20. Similar results were arrived at in *Re Hopkins’ Will Trusts*<sup>5</sup> in which there was a bequest to the Francis Bacon Society Inc for the purposes of ‘finding the Bacon-Shakespeare manuscripts’. Wilberforce J wrote that in order to qualify as educational research:

*“Research must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational material, or so as to improve the sum of communicable knowledge in an area which education may cover – education in this last context extending to the formation of literary taste and appreciation.”*<sup>6</sup>

21. In *Re Elmore, deceased*,<sup>7</sup> the testator’s manuscripts were held to be literally of no merit or educational value. That decision followed *Re Pinion, Deceased*,<sup>8</sup> in which case Harman LJ thought there to be “no useful object to be served in foisting upon the public this mass of junk” at issue in that case.
22. In New Zealand in *Re Collier (deceased)*,<sup>9</sup> Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*“It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator’s manuscripts were held to be literally of no merit or educational value.”*<sup>10</sup>

23. In *Re Collier*, Hammond J held that the bequest in question (for publication of a book) did not qualify as charitable under the test:

*“In my view, the minimal threshold test is not met. There is no educative value, or public utility in the ‘book’. Further, it is no more than an attempt to perpetuate a private view held by Mrs Collier.”*<sup>11</sup>

<sup>3</sup> [1957] 1 WLR 729.

<sup>4</sup> [1957] 1 WLR 729, 738.

<sup>5</sup> [1965] 1 Ch 669.

<sup>6</sup> [1965] Ch 669, 680.

<sup>7</sup> [1968] VR 390.

<sup>8</sup> [1965] 1 Ch 85, 107.

<sup>9</sup> [1998] 1 NZLR 81.

<sup>10</sup> [1998] 1 NZLR 81, 91-92.

<sup>11</sup> [1998] 1 NZLR 81, 92.

24. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*,<sup>12</sup> Iacobucci J wrote:

*“So long as information or training is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge and abilities of the recipients – and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.”*<sup>13</sup>

25. The purposes set out in clause 2(a) and 2(c) of the Applicant’s rules document are:

- “(a) To promote and represent the views of the Association’s members in all affecting Piha, its wellbeing, environment and development*
- (c) To provide a forum within which the community can identify, discuss and deal with local issues and concerns”*

26. Further, the Applicant runs a website <http://www.piha.org.nz/>, in its letter of 25 June 2010 it stated:

*“The purpose of the website is to inform the Piha Community on all matters that are beneficial to the wellbeing of the Community. As such, the information extends beyond merely listing the Associations activities. .... the website’s main aim is to inform, and provide means of communication, which has contributed to the overall wellbeing of the Community.”*

27. In applying the case law cited above, the Commission does not consider that the purposes in clauses 2(a) and 2(c) are charitable under advancement of education. Further, the Commission does not consider that providing a website which informs, ‘*the Piha Community on all matters that are beneficial to the wellbeing of the Community*’ is sufficiently charitable under the advancement of education.

### ***Other matters beneficial to the community***

28. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth)<sup>14</sup>, which are:

- relief of aged, impotent, and poor people
- maintenance of sick and maimed soldiers and mariners
- schools of learning

<sup>12</sup> [1999] 169 DLR (4<sup>th</sup>) 34.

<sup>13</sup> [1999] 169 DLR (4<sup>th</sup>) 34, 113.

<sup>14</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667-669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

- free schools and scholars in universities
- repair of bridges, ports, havens, causeways, churches, sea banks, and highways
- education and preferment of orphans
- relief, stock or maintenance of houses of correction
- marriage of poor maids
- supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
- relief or redemption of prisoners or captives and
- aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

29. In *Travis Trust v Charities Commission*<sup>15</sup>, Joseph Williams J. noted that

*“... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.”*

30. Furthermore, not all organisations which have purposes that benefit the community will be charitable. In *Williams Trustees v Inland Revenue Commissioners*,<sup>16</sup> Lord Simonds wrote:

*“The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaughten in *Income Tax Commissioners v Pense* [1891] A.C. 531 at 583 must always be read subject to the qualification appearing in the judgement of Lindley L.J. in *In re Macduff* [1896] 2 Ch, 451 at 466: **“Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaughten did not mean to say that every object of public general utility must necessarily be a charity. Some may be and some may not be.”** This observation has been expanded by Lord Cave L.C. in this House in these words: **“Lord Macnaghten did not mean that all trusts for purposes beneficial to the community are charitable, but that there were certain beneficial trusts which fell within that category: and accordingly to argue that because a trust is for a purposes beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here, it is not enough to say that the trust in question is for public purposes beneficial to the community or for the public welfare: you must also show it to be a charitable trust.** See *Attorney-General v National Provincial & Union Bank of England* [1924] A.C. 262, 265.”<sup>17</sup> [Emphasis added]*

### The purpose in clause 2(b)

31. The purpose stated in clause 2(b) is:

*“To protect and enhance the unique nature of the ecological, geographical and social environments of Piha”*

<sup>15</sup> (2009) 24 NZTC 23,273 at para. 20.

<sup>16</sup> [1947] AC 447, 455. (Applied by Kennedy J *In re Cumming* [1951] NZLR 498).

<sup>17</sup> [1947] AC 447, 455.

32. The Commission considers that to protect and enhance the unique nature of the ecological and geographical environments of Piha is likely to be charitable under another benefit to the community as activities undertaken under this clause are likely to be considered 'beautification' and 'preservation of a locality'.<sup>18</sup>
33. Activities listed in the Applicant's letter of 25 June 2010 which are likely to be charitable under this purpose include the partnership with 'Strategic Weed Initiative,' working for 'the improvement of water quality in Piha's streams and lagoons', and supporting 'Piha Coastcare.'
34. However, the Commission does not consider that enhancing the 'social environment' is a charitable purpose. In *Inland Revenue Commissioners v Baddeley*,<sup>19</sup> the House of Lords wrote that "it is well settled that the provision of entertainment or amusement is not by itself a charitable purpose".<sup>20</sup> Moreover, in *Travis Trust v Charities Commission*<sup>21</sup> Williams J. stated the following;

*"In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable."*

35. The Commission considers that the part of clause 2(b) which relates to enhancing the social environment of Piha will allow the Applicant to undertake non-charitable purposes. Therefore, the Commission considers that this part of clause 2(b) of the Applicant's rules is not exclusively charitable.

#### The purpose in clause 2(e)

36. The purpose stated in clause 2(e) is;

*"To provide postal and other community services"*

37. The Applicant stated in its letter of 25 June 2010 that it "acts as an umbrella for the Piha Community Library" and "operates and fundraises for the Piha post office".
38. The provision of a public library has been held charitable by the courts as it provides a public amenity<sup>22</sup> and the Commission considers that the provision of a post office may be charitable under providing essential public works and services, as it could be analogous to supplying a town with water.<sup>23</sup>

<sup>18</sup> *Re Pleasant* (1923) 39 TLR 675 *Re Cotton Trust for Rural Beautification* (1980) 117 DLR (3d) 542, *Scott v National Trust for Places of Historical Interest or Natural Beauty* [1998] 2 All ER 705.

<sup>19</sup> [1955] AC 572.

<sup>20</sup> [1955] AC 572, 600 per Lord Reid.

<sup>21</sup> (2009) 24 NZTC 23,273.

<sup>22</sup> *Carson v Presbyterian Church of Queensland* [1956] St R Qd 466.

<sup>23</sup> *Jones v Williams* (1967) Amb 651; *A-G v Heelis* (1824) 2 Sim & St 67.

39. However, the Commission considers that the reference to “other community services” in clause 2(e) would allow the Applicant to undertake non-charitable purposes that could not be considered analogous with any of the public services case law and may not provide sufficient public benefit. As indicated in *Williams Trustees v Inland Revenue Commissioners* cited above, not all purposes which benefit a community will be considered charitable.

### ***Public benefit***

40. The public benefit criterion necessarily requires that any private benefits arising from the Applicant’s activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.<sup>24</sup> In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.<sup>25</sup>

### **Promotion of member’s interests**

41. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society* the Court said:

*“There can be no doubt that a society formed for the purposes of merely benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated ... or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only.”<sup>26</sup>*

42. In *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*, Tipping J stated:

*“I consider that the following words of Lord Normand at page 396 in the Glasgow Police Association case are highly material:-*

*‘. . . what the respondents must show in the circumstances of this case is that so viewed objectively, the association is established for a public purpose and that the private benefits to members are unsought consequences of the pursuit of the public purpose and can therefore be disregarded as incidental. That is a view which I cannot take. The private benefits to members are essential.’*

*While there can be no doubt that there are distinct public benefits from the objects and functions of IPENZ it is my view, after careful consideration of both the oral and documentary evidence, that the private benefits cannot be disregarded as incidental.”<sup>27</sup>*

<sup>24</sup> *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 CTC 294.

<sup>25</sup> *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

<sup>26</sup> [1928] 1 KB 611, 631.

<sup>27</sup> [1992] 1 NZLR 570, 582.

43. The purpose set out in clause 2(a) is “to promote and represent **the views of the Association’s members** in all affecting Piha, its wellbeing, environment and development”. [Emphasis added].
44. The Commission considers that the case law cited above indicates that the purpose in clause 2(a) does not provide a sufficient public benefit.

#### Political Purpose

45. Political purposes have been defined as purposes directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in New Zealand or abroad.<sup>28</sup>
46. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*.<sup>29</sup>

“ ... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.”
47. In New Zealand, the *Bowman* case has been applied by the High Court in *Re Wilkinson (deceased)*,<sup>30</sup> when deciding the charitable status of the League of Nations Union of New Zealand, and in *Knowles v Commissioner of Stamp Duties*,<sup>31</sup> when deciding whether a temperance organisation was charitable.
48. The New Zealand Court of Appeal has also applied *Bowman* in *Molloy v Commissioner of Inland Revenue*<sup>32</sup> when considering whether a gift to the New Zealand Society for the Protection of the Unborn Child was tax deductible. In that case, Somers J held that a political purpose included both advocating and opposing any change in the law. He also noted that to preclude recognition as a valid charity the political object must be more than an ancillary purpose, it must be the main or a main object.
50. In the United Kingdom, the *Bowman* case has been applied in *National Anti-Vivisection Society v Inland Revenue Commissioners*<sup>33</sup> and in *McGovern v Attorney-General*<sup>34</sup>, when the Court was considering the purposes of a trust established by Amnesty International. In the latter case, Slade J summarised his conclusions in relation to trusts for political purposes as:

<sup>28</sup> *Re Wilkinson* [1941] NZLR 1065, 1077.

<sup>29</sup> [1917] AC 406.

<sup>30</sup> [1941] NZLR 1065.

<sup>31</sup> [1945] NZLR 522.

<sup>32</sup> [1981] 1 NZLR 688.

<sup>33</sup> [1948] AC 31.

<sup>34</sup> [1982] 1 Ch 321.

- (1) *Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker's pronouncement in Bowman's case can never be regarded as being for the public benefit in the manner in which the law regards as charitable.*
- (2) *Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either:*
- (i) *to further the interests of a particular political party; or*
  - (ii) *to procure changes in the laws of this country; or*
  - (iii) *to procure changes in the laws of a foreign country; or*
  - (iv) *to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or*
  - (v) *to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.*<sup>35</sup>

51. Two reasons for the principle that the Court will not regard as charitable a trust which has a main object of procuring an alteration of the law were cited by Slade J:

*"... first, the court will ordinarily have no sufficient means of judging as a matter of evidence whether the proposed change will or will not be for the public benefit. Secondly, even if the evidence suffices to enable it to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would usurp the functions of the legislature."*<sup>36</sup>

53. The judge noted that the mere fact that political means were employed in furthering the non-political purposes of a trust would not necessarily render it non-charitable. *"If all the main objects of the trust are exclusively charitable, the mere fact that the trustees may have incidental powers to employ political means for their furtherance will not deprive them of their charitable status."*<sup>37</sup>
54. Since *McGovern* was decided, there has been some divergence of views between the leading authorities as to what will constitute a political purpose. According to *The Law and Practice Relating to Charities*<sup>38</sup> a principle purpose of educating the public in one particular set of political principles or of seeking to sway public opinion on controversial social issues will be a political purpose and therefore will not be able to be considered charitable.
55. Alternatively, *Tudor on Charities*<sup>39</sup> suggests that a strong case can be made that advocating for a change in the law and encouraging debate is analogous with educating the public in forms of government and encouraging political awareness. It could therefore be charitable as long as the public benefit test is still satisfied. The author suggests that a neutral stance could be taken in relation to political purposes in the same way that it is taken between religions.

<sup>35</sup> [1982] 1 Ch 321, 340.

<sup>36</sup> Ibid pp 336-7.

<sup>37</sup> Ibid p 343.

<sup>38</sup> 1999, 3<sup>rd</sup> edition, Butterworths, London, Dublin & Edinburgh, p 189.

<sup>39</sup> 2003, 9<sup>th</sup> edition, Sweet & Maxwell, London, p 68.

56. The author of *Tudor* notes that more recent Commonwealth decisions do not appear to have upheld the principles cited in *McGovern* with absolute certainty. For example, when considering a trust to remove racial discrimination and advance the interests of Aborigines and Torres Strait Islanders, the Supreme Court of Australia in *Public Trustee v Attorney-General of New South Wales*<sup>40</sup> considered that a purpose directed to changing the law in a direction that the law was already going, particularly if reinforced by treaty obligations, should be charitable.

57. In that case, Santow J noted:

*"The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government, to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred one, involving at the margin matters of tone and style. ..."*

*Persuasion directed to political change is part and parcel of a democratic society in which ideas and agendas compete for attention and allegiance. Much will depend on the circumstances including whether an object to promote political change is so pervasive and predominant as to preclude its severance from other charitable objects or subordinate them to a political end. It is also possible that **activities** directed at political change may demonstrate an effective abandonment of indubitably charitable objects."<sup>41</sup>*

58. In New Zealand in *Re Collier (deceased)*<sup>42</sup> Hammond J upheld the principle that a trust with purposes of changing the law was not charitable, but also considered that a court could recognise an issue as worthy of debate even though the outcome of the debate could lead to a change in the law.

59. Hammond J criticized these decisions, especially in light of section 13 (freedom of thought, conscience, and religion) and section 14 (freedom of expression) of the *New Zealand Bill of Rights Act 1990*. Nevertheless, he wrote:

*"I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all, hence the inability of the Court to resolve the merits is irrelevant [...] In this Court at least, there is no warrant to change these well established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them."<sup>43</sup>*

60. In *The Law and Practice Relating to Charities*, Hubert Picarda states:

*"sustained efforts aimed at influencing policy-making process are similarly not charitable activities but are rather political"<sup>44</sup>*

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<sup>40</sup> (1997) 42 NSWLR 600.

<sup>41</sup> (1997) 42 NSWLR 600, 621.

<sup>42</sup> [1998] 1 NZLR 81.

<sup>43</sup> [1998] 1 NZLR 81, 90.

<sup>44</sup> Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd ed. (London: Butterworths, 1999); p178.

61. In *Scarborough Community Legal Services v Her Majesty the Queen*,<sup>45</sup> a community based legal clinic had participated in a rally to protest against changes proposed by a provincial government to its Family Benefits programme and was involved in a committee whose activities were aimed at changing certain municipal by-laws. These activities were determined to be political and detracted from the clinic being determined exclusively charitable.
62. In *Notre Dame de Grace Neighbourhood Association v Revenue Canada, Taxation Section*,<sup>46</sup> the tenants association failed to be registered as a charitable organisation because of its political activities. These included writing a letter to fight cutbacks in government funding and campaigns for inter alia the abolition of water tax and against the conversion of rental properties to condominiums.
63. Information on the Applicant's website <http://www.piha.org.nz> indicates that the society partakes in political advocacy. Under the 'who we are' tab the entity states:
- *We represent the views of our members in all matters affecting Piha*
  - *We work with local clubs, businesses and groups*
  - *We provide a forum for discussion on local issues*
  - *We work with Waitakere City Council and Auckland Regional Council on local environment and planning matters*
  - *We make submissions to local bodies on legislation that affects Piha*
  - *We maintain links with other groups and relevant organisations in Waitakere to make sure our voices are heard*
  - *We own and manage the Piha Post Office and are the umbrella organisation for the Piha Library*<sup>47</sup>
64. Moreover, in the article titled 'WCC LTCCP 2009' of the Applicant's website, the entity states:

*The plan known as the Long Term Council Community Plan (LTCCP) set out the council's key priorities and projects over the next ten years, and their estimated costs.*

*The Piha R & R Association made a written submission to the plan and Association President Mark Mitchinson attended the meeting to speak to our submission.....For the last twenty years, the community at Piha has made submissions to the WCC for improvements to pedestrian access at Piha.*<sup>48</sup>

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<sup>45</sup> [1985] 1 CTC 98,85 DTC 5102, (FCA).

<sup>46</sup> [1988] 2 CTC 14,88 DTC 6279, (FCA).

<sup>47</sup> <http://www.piha.org.nz/?s1=who%20we%20are>, (last accessed 01 July 2010).

<sup>48</sup> <http://www.piha.org.nz/?s1=projects&s2=WCC%20LTCCP> (last accessed 01 July 2010).

The website has the entity's submission on Plan Change 36, the submission states:

*The Association has membership of 230 and has a long history of representing the views of Piha community on Council actions and policies. All Council consultations by way of meetings and open days over the years have been well attended. When written submissions have been invited, the community has responded with many submissions. Therefore the Association is very concerned that there has been no presentation or information to the community reasons or significance of this proposed plan change.<sup>49</sup>*

The website has the entity's submission on Auckland Governance Review on 15 October 2009:

*The Piha Ratepayer and Residents Association has 350 members and has been in existence since 1941. It has been an active advocate for the interests and welfare of the Piha Community and environment and the Waitakere Ranges during that time.*

*The Association strongly supported the Waitakere Ranges Heritage Area Act and was very involved in the development of Waitakere City Council's West Coast Plan.<sup>50</sup>*

The minutes of the committee meeting held on 7 May 2010 reflect how the entity influences council policy:

WCR/ARC reps Kubi Witten-Hannah (chair WCB) reported to the meeting on Waitakere Community Board and Council Activity

- *Plan change 36- the deadline for further submissions has been extended to 4 June*
- *Marine Parade north maintenance- to happen soon*
- *Beach Valley Rd pedestrian safety-the planned speedhumps were approved at last WCB meeting*
- *Piha Events Policy- Kubi will follow up as to progress made on this policy*
- *Real estate signs- Kubi will follow up re WCC legal advice pertaining to the meaning of the word 'outside' in relation to the placement of signs.....*

#### Matters Arising

- *Piha Events Policy- communication received from WCC Haylee Verryt that Policy is still being worked on internally at this stage....*
- *Disabled carpark space. Keith informed the meeting he had sent to WCC, as an individual, a plan for landscaping including disabled car park*

<sup>49</sup> <http://www.piha.org.nz/images/documents/submission%20of%20the%20piha%20ratepayers%20pc36.pdf> (last accessed 01 July 2010).

<sup>50</sup> <http://www.piha.org.nz/images/projects/aklgov/piha%20r&r%20submission%20on%20boards%2015oct%2009.pdf> (last accessed 01 July 2010).

### *Bowling Club access*

*Keith had inquired with WCC as to possibility of sealing. Non-permeable surface not possible under Reserves Management Plan. Keith to contact WCC to find out what semi-permeable surfaces are available*

### *Plan Changes 36*

*Analysis of submissions: 496 supported the submissions....Helen Pearce authorised to draft further submission to comment on the 496 submissions that had the Oratia Farmers Market as its sole focus and were not commenting on other aspects of the Plan....*

#### *Piha carpark sand removal*

*Submission received had been circulated and the WCC proposal was discussed*

*Motion 4: That WCC be informed that the Piha R & R Assn. does not support that the sand removed from the carpark be put back on the beach<sup>51</sup>*

65. The Commission considers that a main purpose of the entity is to influence policy-making processes, which has been identified by the courts as a political purpose.<sup>52</sup> According to the cases cited, such a political purpose cannot be considered to provide a public benefit.

### Applicant's submissions

66. In its letter of 25 June 2010, the Applicant has stated:

*"Clearly the advocacy purpose in clause 2(a) of the Society's Rules is representational and an inevitable consequence of the primary purpose of working for the benefit of the Piha Community at large."*

67. The Charities Commission information sheet "Political activities and registration the *Charities Act 2005*" states:

*"It has always been acceptable to carry out personal and representational advocacy such as assisting a person to obtain a grant, access services, or understand their rights."*

67. The Commission does not consider that promoting and representing the views of the Association's members in clause 2(a) amounts to assisting individuals to gain access to personal benefits and services to which they have entitlements. This therefore does not constitute representational advocacy as recognised by the Commission.

<sup>51</sup> <http://www.piha.org.nz/images/meetings/minutes/2009/2010/2010-0507%20minutes%20r&r%20may%202010.pdf> (last accessed 01 July 2010).

<sup>52</sup> *Scarborough Community Legal Services v Her Majesty the Queen* [1985] 1 CTC 98, 85 DTC 5102, FCA ; *Notre Dame de Grace Neighbourhood Association v Revenue Canada, Taxation Section* [1988] 2 CTC 14,88 DTC 6279 (FCA).

68. In its letter of 25 June 2010, the Applicant stated that, *“The Commission is mistaken in saying the Association’s main purpose is political advocacy.”* However, their purposes and information on their website clearly indicates that political advocacy is an independent purpose of the society and cannot be considered ancillary to any charitable purpose.
69. In its letter of 25 June 2010, the Applicant noted that the Commission has registered another residents and ratepayers association.
70. The Commission takes a case-by case approach to each application for registration as a charitable entity. The Commission considers the specific wording of each Applicant’s rules document, and has regard to the current and future activities of each applicant as requested by section 18(3)(a) of the Act. The fact that the Commission has registered another residents and ratepayers association does not affect the Applicant’s eligibility for registration.

### **Conclusion**

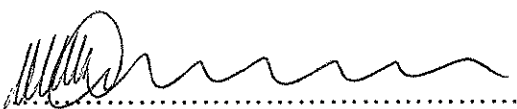
71. The Commission concludes that the purpose in clause 2(b), in relation to protection and enhancement of the ecological and geographical environment of Piha, and the purpose in clause 2(e), in relation to providing postal services, may be charitable. The purposes in clauses 2(a), (c), (e) and 2(b) in relation to protection and enhancement of the social environment of Piha, and clause 2(e) in relation to “other community services” are not exclusively charitable. The non-charitable purposes are not ancillary to the charitable purposes. The purposes in clauses 2(d) and (f) are ancillary.

### **Commission’s determination**

72. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a society or institution established and maintained for exclusively charitable purposes, as required by section 13(1)(b)(i) of the Act.

**For the above reasons, the Commission declines the Applicant’s application for registration as a charitable entity.**

Signed for and on behalf of the Charities Commission



Trevor Garrett  
Chief Executive

24/8/10  
Date