

## Registration Decision: Bayswater Community Committee Incorporated

### The facts

1. Bayswater Community Committee Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 23 July 2009.
2. The entity applied to the Charities Commission ("the Commission") for registration as a charitable entity under the *Charities Act 2005* ("the Act") on 14 April 2010.
3. Clause 3 of the constitution supplied by the Applicant contained the following purposes:

### 3. OBJECTS

*The objectives of the Community Committee shall be:*

- a) To actively work to protect and improve the unique environment and lifestyle of the Bayswater peninsula.*
- b) To consider all matters affecting the community.*
- c) To co-ordinate and express to the local authority and central government agencies governing the Bayswater area or any other appropriate organisation or authority the views of the community on any matter concerning the area that it represents.*
- d) To take such action in the interest of the community with respect to any matter as is appropriate, financially viable, expedient and practicable.*
- e) To encourage, undertake, and co-ordinate activities for the general well-being of the residents and ratepayers of the community.*
- f) To perform such functions and exercise such powers as may from time to time be delegated to it by the governing local authority.*
- g) To encourage community participation in the provision of community activities and amenities.*
- h) To foster a sense of community pride.*
- i) To promote and foster a friendly; safe and caring community.*
- j) To provide a forum for the open discussion of all matters of local public interest and to promote the principles of good government.*
- k) To be a non-party-political and non-sectarian avenue for participation in community affairs.*
- l) To consult and work with, where practicable, the governing local authority on matters directly affecting its area and to make recommendations and submissions to that authority.*

4. The Applicant's constitution also contained the following provisions:

**4. MEMBERSHIP**

- a) *The membership of the Bayswater Community Committee shall consist of all persons living and/or working within the community as described in paragraph 2 [which defines the geographic area covered by the Committee's activities].*
- b) *No payment shall be required for membership.*
- c) *Every member shall be entitled to vote at all general meetings of the Community Committee.*

**9. ALTERATION OF RULES**

*These rules may be altered, added to or rescinded at a general meeting of the Community Committee for which at least 14 days' notice has been given as outlined in rules 8(i). Such notice shall contain the proposed amendments. Provided always that such alteration, addition or rescission shall be valid, if and only if, it does not affect or detract from the exclusively charitable nature of the Community Committee.*

5. On 19 April 2010, the Commission sent a letter to the Applicant requesting more information about the activities of the Applicant pursuant to section 18(3)(a) of the Act in order to assess the Applicant's application in relation to charitable purpose.
6. The Commission received no response to this letter.
7. On 4 August 2010, the Commission sent a notice that may lead to decline to the Applicant on the basis that the purposes set out in clauses 3 a) b) and d) - f) of the Applicant's constitution were not restricted to charitable purposes. The Commission considered the purpose in clause 3 c) to be a political purpose and therefore not charitable. The notice did not refer to the purposes in clauses 3 g) – l) of the Applicant's constitution.
8. On 30 September 2010, the Applicant responded to the notice, submitting that:

*...the intention and activities of the committee are carried out fully on a charitable basis.*

*We object to the Commission interpreting and considering rules 3 c) to be a statement of political purpose. The intention of the rule and committee governed by it, is merely for the committee to act as a conduit conveying the interests and views of the residents of the Bayswater Peninsula to the governing body's thereof e.g. local council. The committee does not lobby for nor support any particular factions within the community and does not advocate any political standpoint. ...*

*I would also like to draw your attention to the wording of rule 9) that refers again to the intended and actual charitable nature of the committee.*

## **The issue**

9. The issue that the Commission has to consider is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act. In particular, whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act, and if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

## **The law on charitable purposes**

10. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual.
11. 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.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to:
- (i) *the activities of the entity at the time at which the application was made;*  
*and*
  - (ii) *the proposed activities of the entity; and*
  - (iii) *any other information that it considers is relevant.*

## **Political Purposes**

14. 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>2</sup>
15. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*.<sup>3</sup>

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

<sup>2</sup> *Re Wilkinson* [1941] NZLR 1065, 1077.

<sup>3</sup> [1917] AC 406.

*... 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.*<sup>4</sup>

16. In New Zealand, the *Bowman* case has been applied by the High Court in *Re Wilkinson (deceased)*,<sup>5</sup> when deciding the charitable status of the League of Nations Union of New Zealand, and in *Knowles v Commissioner of Stamp Duties*,<sup>6</sup> when deciding whether a temperance organisation was charitable.
17. The New Zealand Court of Appeal has also applied *Bowman* in *Molloy v Commissioner of Inland Revenue*,<sup>7</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.
18. In the United Kingdom, the *Bowman* case has been applied in *National Anti-Vivisection Society v Inland Revenue Commissioners*<sup>8</sup> and in *McGovern v Attorney-General*,<sup>9</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:
  - (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>10</sup>

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<sup>4</sup> [1917] AC 406, 442 per Lord Parker of Waddington.

<sup>5</sup> [1941] NZLR 1065.

<sup>6</sup> [1945] NZLR 522.

<sup>7</sup> [1981] 1 NZLR 688.

<sup>8</sup> [1948] AC 31.

<sup>9</sup> [1982] 1 Ch 321.

<sup>10</sup> [1982] 1 Ch 321, 340.

19. 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>11</sup>

20. 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>12</sup>

21. In New Zealand in *Re Collier (deceased)*,<sup>13</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.

22. In coming to this conclusion, Hammond J criticised other decisions holding that political purposes were not charitable, 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 to say that 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>14</sup>

23. 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>15</sup>

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<sup>11</sup> Ibid at 336-337.

<sup>12</sup> Ibid at 343.

<sup>13</sup> [1998] 1 NZLR 81.

<sup>14</sup> *Re Collier (deceased)* [1998] 1 NZLR 81, 90.

<sup>15</sup> Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd ed. (London: Butterworths, 1999) at 178.

24. In *Scarborough Community Legal Services v Her Majesty the Queen*,<sup>16</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.
25. In *Notre Dame de Grace Neighbourhood Association v Revenu Canada, Taxation Section*,<sup>17</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.
26. Finally, the Federal Court of Australia has recently held that an entity whose purposes and activities were aimed at influencing government to ensure foreign aid was delivered in a particular manner, did not have exclusively charitable purposes because of its political purposes.<sup>18</sup> In reaching its decision the court stated:

*Aid/Watch's attempt to persuade the government (however indirectly) to its point of view necessarily involves criticism of, and an attempt to bring about change in, government activities and, in some cases, government policy. There can be little doubt that this is political activity and that behind this activity is a political purpose. Moreover the activity is Aid/Watch's main activity and the political purpose is its main purpose.*<sup>19</sup> ...

*We accept that, at one level Aid/Watch's efforts, are not in conflict with government policy. There was no suggestion that government is not concerned to deliver aid efficiently or with due regard to environmental concerns. Aid/Watch's concern however, is that the delivery of aid should conform to its view of the best way to achieve these objects. It does not take into account that government and its agencies inevitably have to make choices in determining where, how and how much aid is to be delivered.*

*Undoubtedly some of these choices will involve factors with which Aid/Watch is concerned. Others, however, will involve domestic and foreign political considerations that do not concern Aid/Watch. Some of these factors may have very little to do with foreign aid or the manner of its delivery.*<sup>20</sup>

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<sup>16</sup> [1985] 1 CTC 98,85 DTC 5102, (FCA).

<sup>17</sup> [1988] 2 CTC 14,88 DTC 6279, (FCA).

<sup>18</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128.

<sup>19</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128 at para 37.

<sup>20</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128 at para 41.

## Commission's analysis

27. The Commission considers that the Applicant's purposes set out in clauses 3 h), i) and k) are aspirational statements and not assessable purposes. The Commission considers that the purposes in clauses 3 a) - f) do not indicate an intention to relieve poverty or advance religion or education. These purposes have therefore been considered in relation to "any other matter beneficial to the community".

### 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 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>21</sup> which are:

- relief of aged, impotent, and poor people
- maintenance of sick and maimed soldiers and mariners
- schools of learning
- 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>22</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.*<sup>23</sup>

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<sup>21</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.

<sup>22</sup> (2009) 24 NZTC 23,273.

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

30. Furthermore, not all organisations which have purposes that benefit the community will be charitable. In *Williams Trustees v Inland Revenue Commissioners*,<sup>24</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 Pemsel [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 Macnaughten 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>25</sup> [Emphasis added]*

The purposes in clauses 3 a), b), d), e) and f)

30. The purposes in clauses 3 a), b), d), e) and f) allow the Applicant to engage in a variety of community activities. There is no restriction in the constitution which operates to limit these activities to those which would be considered charitable at law.
31. The Applicant has not provided any specific examples of activities which are undertaken pursuant to these clauses.
32. Clause 3 e) states a purpose of encouraging, undertaking, and co-ordinating “*activities for the general well-being of the residents and ratepayers of the community.*” While some such community activities may fall under the fourth head of charity, this will not necessarily apply to all activities which may be promoted or provided by the Applicant.
33. In particular, providing purely social or entertainment activities for the benefit of the local community will not a charitable purpose. In *Inland Revenue Commissioners v Baddeley*,<sup>26</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>27</sup> Moreover, in *Travis Trust v Charities Commission*<sup>28</sup> Williams J stated the following:

<sup>24</sup> [1947] AC 447, 455. (Applied by Kennedy J *In re Cumming* [1951] NZLR 498).

<sup>25</sup> [1947] AC 447, 455.

<sup>26</sup> [1955] AC 572.

<sup>27</sup> [1955] AC 572, 600 per Lord Reid.

<sup>28</sup> (2009) 24 NZTC 23,273.

*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.*<sup>29</sup>

34. As indicated in *Williams Trustees v Inland Revenue Commissioners* cited above, not all purposes which benefit a community will be considered charitable.
35. The Commission considers that these stated purposes of the Applicant are too broad to be considered exclusively charitable.

The purpose in clause 3 c)

36. The Commission has considered that the purpose stated in clause 3 c) of the Applicant's constitution:

c) *To co-ordinate and express to the local government and central government agencies governing the Bayswater area or any other appropriate organisation or authority the views of the community on any matter concerning the area that it represents*

37. The Applicant has stated in its letter of 30 September 2010 that it acts as "a conduit conveying the interests and views of the residents of the Bayswater Peninsula to the governing body's thereof e.g. local council".
38. The Applicant has submitted that it "does not lobby for nor support any particular factions within the community and does not advocate any political standpoint".
39. In *Re Collier (deceased)*,<sup>30</sup> the High Court identified three different types of political trust:
  - (i) trusts to change the law;
  - (ii) trusts to support a political party; and
  - (iii) trusts for the perpetual advocacy of a particular point of view or "propaganda" trusts.
40. Accordingly, Hammond J held that propagating a point of view or swaying public opinion on controversial social issues would be considered to be "political" activities and therefore not charitable even when they were not combined with agitating for a change in legislation or government policy.<sup>31</sup>

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<sup>29</sup> (2009) 24 NZTC 23,273 at 23,281, para 53

<sup>30</sup> *Re Collier (deceased)* [1998] 1 NZLR 81.

<sup>31</sup> See also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688; *Positive Action Against Pornography v Minister of National Revenue* (1988) 49 DKR (4<sup>th</sup>) 74; *Re Bushnell (deceased)* [1975] 1 Akk ER 721; *Public Trustee v Attorney-General* (1997) 42 NSWLR 600; *Re Wilkinson (deceased)* [1941] NZLR 1065; *Re Hopkinson (deceased)* [1949] 1 All ER 346; *National Anti-Vivisection Society v Inland Revenue Commissioners*

41. While the Applicant may not support particular political factions or views, the Commission considers that the Applicant is engaged in what the courts have considered to be political purposes.
42. The Commission considers that a main purpose of the entity is to influence the policy-making processes of local authorities, which has been identified by the courts as a political purpose.<sup>32</sup> This political purpose is not carried out in furtherance of any charitable purpose.
43. According to the cases cited above, such a political purpose cannot be considered to provide a public benefit and is therefore not a charitable purpose.
44. The Commission therefore concludes that the purpose in clause 3 c), which allows the Applicant to engage in political advocacy, is not charitable.

#### Public benefit

45. 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>33</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>34</sup>
46. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*,<sup>35</sup> 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>36</sup>

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[1948] AC 31; *Re Cripps (deceased)* [1941] Tas SR 19; *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522

<sup>32</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).

<sup>33</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>34</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>35</sup> [1928] 1 KB 611.

<sup>36</sup> [1928] 1 KB 611, 631.

47. In *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*,<sup>37</sup> 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>38</sup>

48. The Applicant has stated in its letter of 30 September 2010 that it acts as “a conduit conveying the interests and views of the residents of the Bayswater Peninsula...”.
49. Clause 4 a) of the Applicant’s constitution states that membership of the Applicant is made up of those who live and work in a defined geographical area of the Bayswater Peninsula. The constitution has no provision for people living in the area to opt out of membership.
50. The Commission considers that in light the case law cited above, the Applicant in promoting the interests and views of its members does not provide a sufficient public benefit.

#### Applicant’s submissions

51. The Applicant has submitted that the wording of the final sentence in clause 9 of its constitution limits the Applicant to carrying out charitable purposes.
52. While clause 9 relates to amendments to the Applicant’s rules, the Commission has considered whether the clause could so limit the activities of the Applicant.
53. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,<sup>39</sup> Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.<sup>40</sup> In that case, the statute there under consideration contained the phrase ‘for charitable purposes only’, and Lawrence LJ said in the Court of Appeal that “it is not enough that the purposes described in the memorandum

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<sup>37</sup> [1992] 1 NZLR 570.

<sup>38</sup> [1992] 1 NZLR 570, 582.

<sup>39</sup> [1961] NZLR 405, 407.

<sup>40</sup> [1932] 2 KB 465.

should include charitable purposes. The memorandum must be confined to those purposes".<sup>41</sup> Hardie Boys J further wrote that:

*... in so holding, Lawrence L.J. makes it clear in his judgment that he had in mind, not merely the phrase 'charitable purposes only', but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*<sup>42</sup>

54. In *Commissioner of Inland Revenue v White*,<sup>43</sup> the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word "charitable" in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*<sup>44</sup>

55. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>45</sup> Young J wrote that "the mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are".<sup>46</sup> The Judge went on to say, "in the end the objects and operation of the organisations either support a charitable purpose or they do not."<sup>47</sup> Young J concluded that CDC's objects did not support a charitable purpose.

56. The Commission does not consider that the inclusion of clause 9 provides conclusive evidence that the Applicant's specific purposes are in fact exclusively charitable.

## Conclusion

57. The Commission concludes that the purposes of the Applicant in clause 3 are not exclusively charitable according to law. The Commission considers that the purposes in clause 3 a), b), d), e) and f) are too broad to be considered exclusively charitable; and that the purpose in clause 3 c) is a political purpose which is not charitable. The non-charitable purposes are not ancillary to any charitable purpose.

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<sup>41</sup> [1931] 2 KB 465, 481.

<sup>42</sup> [1961] NZLR 405, 408.

<sup>43</sup> (1980) 55 TC 651.

<sup>44</sup> (1980) 55 TC 651, 653.

<sup>45</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>46</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>47</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

**Charity Commission’s determination**

58. 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 established and maintained exclusively for charitable purposes, as required by section 13(1)(b) 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

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Date