

Registration Decision: Lift Off Levin Charitable Trust (LIF36643)

The facts

1. Lift Off Levin Charitable Trust (the Applicant) was incorporated as a board under the *Charitable Trusts Act 1957* on 26 February 2010. The Applicant applied for registration as a charitable entity with the Charities Commission (the Commission) on 28 February 2010.

2. The Applicant's purposes are set out in clause 2 of its trust deed:

(2) OBJECTS OF THE TRUST ARE:

To foster and promote public understanding of our shared natural environment.

To plan, organise and facilitate all the affairs of The Trust which include advancing educational matters beneficial to the community on accessing and caring for the environment; accident prevention; public safety and flight.

To gather and disseminate information about participation in Recreational and Leisure activities such as Hot Air Ballooning.

To facilitate the care, custody or retention of Archival material and Oral Histories related to Hot Air Ballooning in the Horowhenua region.

3. The Commission analysed the application and on 5 March 2010 sent the Applicant a letter requesting further information about its activities and the relationship between the Applicant, The Levin Hot Air Balloon Society Incorporated, and The Lift Off Levin ballooning festival.

4. The Applicant responded on 31 March 2010 submitting:

***Lift Off Levin Charitable Trust** has been established as a stand alone entity strictly for Charitable purposes as detailed in our application for Charitable status.*

The Trust is a newly formed body designed to actively pursue various Fundraising activities.

You will note there is provision to build the Trust Board membership and that is definitely our intention.

*The **Levin Hot Air Balloon Society Incorporated** was established at the end of 2006 and became Incorporated on 30th January 2007. The Society had been told it was not an appropriate body to become a Registered Charity because "Sport is not considered as a Charitable purpose". It is understood this issue came to a head when our usual major funder could not continue their financial undertaking of the Annual Easter Hot Air Balloon event. This problem had been discussed with our local Member Of Parliament Hon Nathan Guy and*

your own Minister Hon Tariana Turia who has communicated with Mr Guy.

Because the Society was not a Registered Charity, concerned citizens undertook to save the event and recommended a separate, stand alone Charitable Trust be formed.

*You are aware the Trust Deed for **Lift Of Levin Charitable Trust** states clearly what the Trust will be engaged in. Specifically the main orientation of the Trust is for what may be referred to generically as Educational purposes. The Lift Off Levin Charitable Trust is a new entity which aims to:-*

- 1. foster and promote public understanding of our shared environment;*
- 2. gather and disseminate information about participation in Recreation and Leisure activities such as Hot Air Ballooning;*
- 3. facilitate the care, custody or retention of Archival material and Oral Histories related to Hot Air Ballooning in the Horowhenua region;*
- 4. solicit donations, grants, subscriptions or bequests and establish manage or administer an independent fund of money for Charitable purposes within New Zealand;*
- 5. establish and maintain a membership subscription or donors list;*
- 6. peruse and maintain Charities Commission Registration under the Charities Act 2005;*
- 7. uphold and comply with all reporting and other requirements of 'not for profit' public entities operating as approved Charitable entities in New Zealand;*
- 8. purchase, procure, acquire, manage and maintain any equipment, property or resources required by the Trust;*
- 9. devise and implement marketing, promotional, public relations, public awareness and educational campaigns in relation to all activities associated with **Lift Off Levin Charitable Trust**.*

*The preceding objectives indicate what we **propose** doing. As a new entity there is no historic information which can be submitted. We have incorporated as a Trust Board under the Charitable Trusts Act 1957 and now will simply be getting on with the job of Fundraising to advance our cause.*

*It is important to make clear that the Levin Hot Air Balloon event (**now with free entry**) is administered by its parent **Levin Hot Air Balloon Society Incorporated** which does not have Charitable Status. Our role and function is much broader than that of the Society. We are here to raise funds and apply them in a non- profit environment for the purposes agreed by the Trust, not the Society.*

You will appreciate how complex the Fundraising environment is and how it is imperative to ensure credible marketing and accountability. The Trustees are simply consensus citizens voluntarily doing their best to ensure longevity of access to, education and enjoyment of, Hot Air Ballooning. It is also interesting to note that a student of Horowhenua College in Levin . . . is undertaking an educational project on the event, including the science and logistics of hot air ballooning and will be involved in the event this coming Easter.

You have concerns under Section 18(3)(a) of the Charities Act 2005:-

- (i) **the activities** of the entity at the time the application was made - have been to attempt to secure funding for an event scheduled at Levin (with free entry). To date this was limited to our meetings and decision-making processes towards Establishment and Registration.
- (ii) the **proposed activities** of the entity – are obviously to devise fundraising campaigns and strategies to ensure public access and enjoyment of events such as the annual Hot Air Balloon Fiesta at Levin.
- (iii) any **other information** that it considers relevant – matters which may be relevant to the granting of Charitable status must surely be the common public good. We respectfully submit our best intention to uphold and promote the Charitable purposes for which the Trust is formed.

As regards the **Levin Hot Air Balloon Society Incorporated** you will know that the Governance and Operational business of the Society are its own affair. The event which you refer to as the Lift Off Levin ballooning festival is a valuable public event which we support. It is our earnest desire in future to see continuation of this event with maximum public engagement.

5. The Commission considered the information provided by the Applicant and on 12 April 2010 sent the Applicant a notice that may lead to a decline on the basis that the Applicant's purposes and activities were not exclusively charitable.
6. The Applicant responded on 28 June 2010, submitting:

HISTORY

The event, run by the Levin Hot Air Balloon Society Inc, has been operating for six years now and has grown in size and importance each year. It has developed into the second largest community Balloon event in New Zealand and competes with the Waikato Balloon event for its premier status. "Seed funding" for the inaugural event was from the Horowhenua District Council who could see the benefits the event would offer the community and have supported the event every year since through their Marketing Grants applications (have been successful with applications in the vicinity of \$1-3k towards marketing).

The aim of the event has never been to make a profit, rather to cover its costs and distribute any surplus to charitable purposes within the community. There is an annual membership fee through the Incorporated Society like any other enthusiastic group of amateurs. This small amount of income allows administrative operational costs to be met (ie Annual General Meetings, Publishing Public Notices etc). The Committee members meet monthly donating considerable time, support and expertise throughout the year with NO financial reward or recompense of any kind.

The organisation will carry on its activities for charitable purposes and not for the private pecuniary gain/profit of any individual. ...

Charitable Purposes

...

(i) **Benefits to the Relief of Poverty** – *The Horowhenua is widely known to be a region of lower than average Socio-economic demographic with disproportionately high numbers of low decile ratings, beneficiaries and elderly. ...*

(ii) *While our event does not “hand out money” to individuals effected by this level of poverty, it does offer such individuals the opportunity to join everyone else for a five day event that is interesting, and family/community orientated at no cost. They don’t have to “stay at home” because they are unable to afford an outing along with family and friends. We consider this to be charitable. Another very important aspect to this event is the amount of pride it engenders in the local community.*

(iii) **Benefits in the Advancement of Education**

(a) Involving schools in the event has always been, and will continue to be, an important focus of the event. Schools are notified of the event at the beginning of the year and are invited to include Ballooning, aviation, and lighter than air flight in their curriculum, with the finale being a visit to the schools by a balloonist with their balloon for educational and practical demonstration of the balloon. This also includes safety aspects, a learning experience in the fields of aviation and aviation history, physics (the reaction and dynamic of hot air) and of course art because one of the ways the schools thank the balloonists is with the kids doing pictures of the balloons. Feedback highlights the importance of children’s minds being opened.

Separately from this, schools at various age levels are invited to participate in “balloon art” competitions with the artwork on display in our local Mall. Many schools take up the invitation in some form. Involvement is at all levels from preschool and primary school to Secondary schools level.

This year the event also ‘adopted’ a local high school student who is doing a project during the year on lighter than air flight, providing her with many learning opportunities along the way – she will also be presenting her project to the event committee once completed. This will be included on the event website and available to all. It also gives children the opportunity to get close involvement in an aviation activity and allows them to see that some very young people use ballooning as an entry point to the aviation industry. It shows them what is possible. We consider that opening the minds of the young as to the opportunities of their future is “educational rather than merely the increase of knowledge”. This can therefore be considered charitable and in our view

negates the applying of the Shaw case reference in your advices.

(b) The event also provides opportunities for schools to raise funds from parking and allows local fundraisers to engage in activities to raise their own funds at the Night Glow and ask nothing in return. Included this year, the event allowed a student to raise funds to help an upcoming international exchange educational programme to France.

(c) At present there is no national standard for recreational balloon flying (Commercial operators do need to hold a commercial balloon license) and therefore no training facilities for young/new pilots exist. The avenues that help to advance amateur balloonists with education and practical activities are extremely limited. The only way students can learn to fly is by “buddying up” with an experienced pilot for training. Events like ours offer this opportunity to such young pilots.

This year we held a training session, available to all, run by one of New Zealand’s most experienced and respected pilots. This session was very well received by novice and experienced pilots alike. It is our intention to make these training sessions a part of our annual event and prepare formal tuition sessions, the content of which sourced by the public via the website. Again, as there is currently no formal training facility available, the training offered by our event, at no cost to participants, is considered educational and charitable.

*(iv) **Benefits to Religion** – While the event does not specifically target religious groups (or single out any individual group or demographic) the event over its five days is available to everyone. Any and every “group” has the same opportunities as each other in the way they can use/participate in the event.*

*(v) **Benefits to the community** – A very important aspect to this event is the amount of pride it engenders in the local community, recognised as having a lower socio-economic demographic. It enables people/families in this demographic to join in with everyone else and to be involved.*

In reference to the “free” nature of the event, it must be noted that the event is enjoyed by thousands throughout the entire district (around 30,000) who don’t even have to leave their back yards, and this is obvious to the balloonists and their passengers who see the smiling faces below and respond to the people waving. It “LIFTS THE SPIRIT” of the entire region. At this year’s Night Glow event a ‘show of hands’ survey was done on how many attending were from out of town, with the result being approximately one third of the estimated 12,000 present were visitors to the region.

The organisers of the event and the unpaid contractor, who manages the balloonists and the flying events, use every opportunity to employ local organisations (some registered with the Charities Commission) to ensure that as much as possible of the event includes providing opportunities for local charities and community organisations to further their activities. ...

This engagement gives them a means of receiving additional funding for their own activity which helps them in their struggle to survive – this is a charitable activity. The Night Glow attempts to be as “user friendly” as possible for all demographics. Special parking facilities are available for the disabled, family picnic areas provided, etc.

- (vi) *Expenditure – There are a number of organisations that are paid for their services. These include the provider of temporary electrical supplies at the Night Glow, significant marketing through print and broadcast media, traffic control, venue hire, ambulance on standby, etc. An event catering to thousands of people will always have operational costs to meet. Again it must be stressed that no single individual associated with the Trust or the Incorporated Society receives any financial reward. Pilots receive a sum of money that goes part way to meeting their own individual expenses. A balloon costs around \$300 per hour to operate. Our event schedules 8 flights which would last around an hour. The reimbursement the pilots receive would cover around 40% of the flying costs alone. Their additional costs of travel, accommodation, insurance, etc, are met by themselves. Once again a charitable gesture.*

The event contractor only receives expenses reimbursements. These expenses include a Flight Directors fee, a requirement of the Civil Aviation Authority, filing costs of the Event License with the CAA, event insurance, phone and travel costs.

General

The purposes outlined in clauses 2.1 and 2.3 of the Trust Deed ... relate to fostering and promoting public understanding of our shared natural environment and gathering and disseminating information about participation in Recreational and Leisure activities such as Hot Air Ballooning. As Balloons have limited means of steerage, selection of landing sites is usually of a random nature. A Balloon is permitted to land wherever deemed necessary, but if on private land, the consent of the land owner must be obtained to remain once landed and to access the property to “retrieve” the balloon. If such permission is not granted by the land owner, then balloon must “fly on”.

Ongoing and daily briefing sessions are held to educate the public and pilots of the consideration of any landing sites with regard to the preservation of any flora and/or fauna, respect of private property, respect of traffic movement, respect of the privacy of the public,

accident prevention, public safety, etc. If a contemplation test was applied to this matter, it could be intimated that this clause allows for advertising or promotional material however it is not, and will never be the intent of the Trust to breach any intent of the Act.

The purpose outlined in clause 2.4 indicates that archival material and oral histories will be maintained. This material will be available to all via the web site and by any other means that the trust deems appropriate to manage on an ongoing basis. Until all the background requirements of Charities Commission are met it be irresponsible of us to detail the educational and archival opportunities the Trust will be offering on the web site at this stage, however it is the intention of the Trust to develop these areas of responsibility as soon as our application is approved and we have a clear way forward.

Conclusion

We are mindful of Section 18(3)(a) of the Act that states that in considering an application the Commission must have regard to (i) the activities of the entity at the time of the application and (ii) the proposed activities of the entity, we hope that in light of the above detailing of the significant benefits to our underprivileged region and the educational opportunities afforded our local schools, students and the training offered to emerging pilots, both at present and in the future, this event engages many people at no cost. We strongly believe that our activities are strictly charitable and show benefits to the community that are quite substantial

7. The Applicant also attached the following appendices:
 - Appendix A – Lift Off Levin Charitable Trust Structure/Flow Chart
 - Appendix B – Who benefits
 - Appendix C-1 - QuickStats About Horowhenua District
 - Appendix C-2 – Horowhenua Territorial Authority data – Social Report 2009
 - Appendix D – Deed of Trust

The issues

8. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (the Act).
9. In this case, the key issue for consideration is whether the Applicant is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes as required by section 13(1)(a) of the Act. The question is whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act.

The law on charitable purposes

10. Under section 13(1)(a) of the Act a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
11. In order to be a valid trust at law, a trust that is for charitable purposes must be exclusively charitable or it will be void for uncertainty.
12. In order for a purpose to be charitable, it must fall within the definition of charitable purpose set out in section 5(1) of the Act. Section 5(1) of the Act states:

“charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.”

13. In addition to being within one of the categories of charitable purpose, to be charitable at law, a purpose must also be for the public benefit¹. This means that the purpose must be directed to benefit the public or a section of the public.
14. Section 5(3) of the Act provides that for an entity to have charitable purposes, any non-charitable purpose must be ancillary to a charitable purpose.
15. In considering an application for registration, 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; ...”*

Charities Commission’s analysis

16. The Applicant’s purposes in clause 2 of its deed of trust are:

To foster and promote public understanding of our shared natural environment

To plan, organise and facilitate all the affairs of The Trust which include advancing educational matters beneficial to the community on accessing and caring for the environment; accident prevention; public safety and flight.

To gather and disseminate information about participation in Recreational and Leisure activities such as Hot Air Ballooning.

To facilitate the care, custody or retention of Archival material and Oral Histories related to Hot Air Ballooning in the Horowhenua region.

¹ Accepted as common ground in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at para [32].

17. The Applicant has submitted that its purposes are charitable under all four heads of charity. These purposes have therefore been considered under the relief of poverty, the advancement of education, the advancement of religion, and “other matters beneficial to the community”.

Relief of poverty

18. In order to relieve poverty a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship and provide relief². To provide “relief”, the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.³
19. In its letter of 28 June 2010 the Applicant submits that the Horowhenua is a region of lower than average socio-economic demographic with disproportionately high numbers of low decile ratings, beneficiaries and elderly. In support of this view, it has provided statistics from Statistics New Zealand showing:
- The unemployment rate in Horowhenua District is 6.3 percent for people aged 15 years and over, compared with 5.1 percent for all of New Zealand
 - The median income in Horowhenua District is \$18,500 (for people aged 15 years and over), compared with a median of \$24,400 for all of New Zealand
20. The Applicant also states
- While our event does not “hand out money” to individuals effected by this level of poverty, it does offer such individuals the opportunity to join everyone else for a five day event that is interesting, and family/community orientated at no cost. They don’t have to “stay at home” because they are unable to afford an outing along with family and friends. We consider this to be charitable.*
21. The Commission does not consider that the Applicant’s purposes show an intention to provide specific relief for people who are poor, in need, aged, or suffering genuine hardship. In addition, the Applicant has not shown how providing free public entry to an event, such as a balloon festival, will relieve any of the community’s needs, such as reducing unemployment or raising the median income of people in the area.
22. The Commission therefore concludes that the Applicant’s purposes are not charitable under the relief of poverty.

² *Re Neal* [1966] 110 S.J. 549; *Re Resch’s Will Trusts* [1969] 1 A.C. 514 PC; *Joseph Rowntree Memorial Trust Housing Association Ltd v Att-Gen* [1983] Ch 159, 174.

³ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch D 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

Advancement of education

23. In order to advance education, a purpose must provide some form of education and ensure that learning is advanced. The modern concept of “education” covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of instruction, training, and practice.⁴
24. In order to advance education, learning must be passed on to others. If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
25. In *Re Shaw (deceased)*,⁵ the Court held that “if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education.”
26. In New Zealand in the case of *Re Collier (deceased)*,⁶ 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 in 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, deceased [1968] VR 390 the testator’s manuscripts were held to be literally of no merit or educational value.⁷*
27. The Commission considers that the fourth purpose outlined in clause 2, “to facilitate the care, custody or retention of Archival material and Oral Histories related to Hot Air Ballooning in the Horowhenua region” is likely to be charitable under the advancement of education. This is because the Applicant has stated that this research material will be made available to the public via a web site or by some other means.
28. In order to determine whether the remaining three purposes in clause 2 are charitable under this head, the Commission has considered the additional information provided by the Applicant about its activities.

⁴ *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

⁵ [1957] 1 WLR 729 at p 738.

⁶ [1998] 1 NZLR 81.

⁷ [1998] 1 NZLR 81, 91-92.

29. In its letter of 31 March 2010 the Applicant stated:

Because the [Levin Hot Air Balloon Society Incorporated] was not a Registered Charity, concerned citizens undertook to save the [Annual Easter Hot Air Balloon] event and recommended a separate, stand alone Charitable Trust be formed.

Our role and function is much broader than that of the Society. We are here to raise funds and apply them in a non- profit environment for the purposes agreed by the Trust, not the Society.

... The Trustees are simply consensus citizens voluntarily doing their best to ensure longevity of access to, education and enjoyment of, Hot Air Ballooning. ...

- (i) **the activities** of the entity at the time the application was made - have been to attempt to secure funding for an event scheduled at Levin (with free entry). To date this was limited to our meetings and decision-making processes towards Establishment and Registration.*
- (ii) the **proposed activities** of the entity – are obviously to devise fundraising campaigns and strategies to ensure public access and enjoyment of events such as the annual Hot Air Balloon Fiesta at Levin.*

... The event which you refer to as the Lift Off Levin ballooning festival is a valuable public event which we support. It is our earnest desire in future to see continuation of this event with maximum public engagement.

30. In its letter of 28 June 2010 the Applicant states:

(a) Involving schools in the event has always been, and will continue to be, an important focus of the event. Schools are notified of the event at the beginning of the year and are invited to include Ballooning, aviation, and lighter than air flight in their curriculum, with the finale being a visit to the schools by a balloonist with their balloon for educational and practical demonstration of the balloon. This also includes safety aspects, a learning experience in the fields of aviation and aviation history, physics (the reaction and dynamic of hot air) and of course art because one of the ways the schools thank the balloonists is with the kids doing pictures of the balloons. Feedback highlights the importance of children's minds being opened.

Separately from this, schools at various age levels are invited to participate in "balloon art" competitions with the artwork on display in our local Mall. Many schools take up the invitation in some form. Involvement is at all levels from preschool and primary school to Secondary schools level.

This year the event also 'adopted' a local high school student who is doing a project during the year on lighter than air flight, providing her with many learning opportunities along the way – she will also be presenting her project to the event committee once completed. This will be included on the event website and available to all. It also gives children the opportunity to get close involvement in an aviation activity

and allows them to see that some very young people use ballooning as an entry point to the aviation industry. It shows them what is possible. We consider that opening the minds of the young as to the opportunities of their future is “educational rather than merely the increase of knowledge”. This can therefore be considered charitable and in our view negates the applying of the Shaw case reference in your advices.

(b) The event also provides opportunities for schools to raise funds from parking and allows local fundraisers to engage in activities to raise their own funds at the Night Glow and ask nothing in return. Included this year, the event allowed a student to raise funds to help an upcoming international exchange educational programme to France.

(c) At present there is no national standard for recreational balloon flying (Commercial operators do need to hold a commercial balloon license) and therefore no training facilities for young/new pilots exist. The avenues that help to advance amateur balloonists with education and practical activities are extremely limited. The only way students can learn to fly is by “buddying up” with an experienced pilot for training. Events like ours offer this opportunity to such young pilots.

This year we held a training session, available to all, run by one of New Zealand’s most experienced and respected pilots. This session was very well received by novice and experienced pilots alike. It is our intention to make these training sessions a part of our annual event and prepare formal tuition sessions, the content of which sourced by the public via the website. Again, as there is currently no formal training facility available, the training offered by our event, at no cost to participants, is considered educational and charitable. . . .

The purposes outlined in clauses 2.1 and 2.3 of the Trust Deed ... relate to fostering and promoting public understanding of our shared natural environment and gathering and disseminating information about participation in Recreational and Leisure activities such as Hot Air Ballooning. As Balloons have limited means of steerage, selection of landing sites is usually of a random nature. A Balloon is permitted to land wherever deemed necessary, but if on private land, the consent of the land owner must be obtained to remain once landed and to access the property to “retrieve” the balloon. If such permission is not granted by the land owner, then balloon must “fly on”.

Ongoing and daily briefing sessions are held to educate and the public and pilots of the consideration of any landing sites with regard to the preservation of any flora and/or fauna, respect of private property, respect of traffic movement, respect of the privacy of the public, accident prevention, public safety, etc. If a contemplation test was applied to this matter, it could be intimated that this clause allows for advertising or promotional material however it is not, and will never be the intent of the Trust to breach any intent of the Act.

31. The Commission considers that while the Applicant may be undertaking some educational activities, its stated purposes do not restrict it to charitable purposes which would advance education.

32. In addition, information provided by the Applicant about its activities appears to indicate that its primary purpose is to support events, such as an annual hot air balloon festival, and to “ensure longevity of access to, education and enjoyment of, Hot Air Ballooning”. The Commission considers that any educational aspects of such events will be incidental to providing amusement or entertainment for the general public which are non-charitable purposes.
33. The Commission therefore concludes that the Applicant’s fourth purpose in clause 2 is charitable under the advancement of education, but that the remaining purposes are not charitable under this head.

Advancement of religion

34. In order to advance religion a purpose must be for the benefit of a religion and ensure a religious faith is passed on to others. The term “religion” includes many different faiths and belief systems. Generally, to be religious there will need to be:
- a belief in a supernatural being, thing, or principle, and
 - an acceptance of conduct in order to give effect to that belief⁸.

35. In its letter of 28 June 2010 the Applicant states:

While the event does not specifically target religious groups (or single out any individual group or demographic) the event over its five days is available to everyone. Any and every “group” has the same opportunities as each other in the way they can use/participate in the event.

36. The Commission does not consider that any of the Applicant’s purposes show an intention to benefit any religion or ensure that a religious faith is passed on to others. In addition, the Applicant has not shown how supporting events, such as an annual hot air balloon festival, will advance religion.
37. The Commission therefore concludes that the Applicant’s purposes are not charitable under the advancement of religion.

Any other matter beneficial to the community

38. 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).⁹

⁸ *Church of the New Faith v Commissioner of Pay-roll Tax* (1983) 154 CLR 120; *Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 695-697.

⁹ *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*

39. The purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth) 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.¹⁰

40. The first two purposes in clause 2 are:

To foster and promote public understanding of our shared natural environment

To plan, organise and facilitate all the affairs of The Trust which include advancing educational matters beneficial to the community on accessing and caring for the environment; accident prevention; public safety and flight.

41. In order to determine whether these two purposes are charitable under “other matters beneficial to the community”, the Commission has considered the relevant case law and the additional information provided by the Applicant about its activities.
42. Courts have found that the protection of the environment can be charitable under the “any other matter beneficial to the community”.¹¹ Earlier, in *Re Verrall*¹² and *Re Bruce*,¹³ courts held that the permanent preservation of places of beauty or historic interest for the nation was a charitable purpose and in *Kaikoura County v Boyd*¹⁴, the court held that the improvement and protection of the Waimangarara river was charitable under this head.

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.

¹⁰ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

¹¹ *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

¹² [1916] 1 Ch 100.

¹³ [1918] NZLR 16; [1918] GLR 26 (CA).

¹⁴ [1949] NZLR 233.

43. Courts have also held the protection of human life to be a charitable purpose.¹⁵

44. In its letter of 28 June 2010 the Applicant stated:

The purposes outlined in clauses 2.1 and 2.3 of the Trust Deed ... relate to fostering and promoting public understanding of our shared natural environment and gathering and disseminating information about participation in Recreational and Leisure activities such as Hot Air Ballooning. As Balloons have limited means of steerage, selection of landing sites is usually of a random nature. A Balloon is permitted to land wherever deemed necessary, but if on private land, the consent of the land owner must be obtained to remain once landed and to access the property to "retrieve" the balloon. If such permission is not granted by the land owner, then balloon must "fly on".

Ongoing and daily briefing sessions are held to educate and the public and pilots of the consideration of any landing sites with regard to the preservation of any flora and/or fauna, respect of private property, respect of traffic movement, respect of the privacy of the public, accident prevention, public safety, etc.

45. From the information provided by the Applicant about its activities, the Commission concludes that protecting the natural environment and protecting human life are not primary purposes of the Applicant. Rather its main purpose is to support events, such as a hot air balloon festival, and its incidental purposes are to minimize the environmental damage that such events will cause and to prevent injuries to people who may be involved in such events. These are not purposes which the courts have held to be charitable.

46. The third purpose in clause 2 is:

To gather and disseminate information about participation in Recreational and Leisure activities such as Hot Air Ballooning.

47. Traditionally, the courts have held that sports, recreation, hospitality and entertainment per se is not charitable¹⁶. Thus in *Williams Trustees v Inland Revenue Commissioners*¹⁷ it was held that a trust to create a centre to promote "the moral, social, spiritual and educational welfare of Welsh people" was not exclusively charitable. In *Royal Choral Society v Inland Revenue Commissioners*¹⁸ it was held that a society formed to promote music merely for the amusement of members is not charitable.

¹⁵ See *Johnston v Swann* (1818) 3 Madd 457; *Thomas v Howell* (1874) LR 18 Eq 198; *Re Richardson* (1887) 56 LJCh 784; *Re David* (1889) 41 ChD 27, CA; *Beaumont v Oliveira* (1869) LR 4 Ch 309.

¹⁶ See *Inland Revenue Commissioners v Baddeley* [1955] AC 572, *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273.

¹⁷ [1947] AC 447

¹⁸ [1943] 2 All ER 101 at 106-107 per Lord Greene MR

48. In New Zealand the most recent case to consider sports, recreation and entertainment was *Travis Trust v Charities Commission*.¹⁹ In this case, after looking at the case law on sports and leisure time activities, Joseph Williams J states:

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. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth.

49. Accordingly, sporting, recreational or entertainment activities may be charitable where they are advancing another charitable purpose such as the advancement of education or the promotion of health.
50. The Commission does not consider that gathering and disseminating information about participation in recreational and leisure activities shows evidence of a deeper charitable purpose.
51. In its letter of 28 June 2010, in relation to its activities, the Applicant has submitted that a balloon festival will engender pride in the local community and:

the event is enjoyed by thousands throughout the entire district (around 30,000) who don't even have to leave their back yards, and this is obvious to the balloonists and their passengers who see the smiling faces below and respond to the people waving. It "LIFTS THE SPIRIT" of the entire region.

52. The Commission does not consider that the above statement provides sufficient evidence of a community benefit. It does not show how a balloon festival is analogous to any of the community benefits set out in the Statute of Elizabeth or how it is analogous to purposes held to be charitable under this head by the courts.
53. The Commission notes that while gifts in general terms for the inhabitants of a defined area may be charitable,²⁰ it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As set out in *The Law and Practice Relating to Charities* "A non-charitable purpose will not be rendered charitable by localising the benefits".²¹
54. Courts have reasoned that, where no purpose is expressly referred to, the fact that the gift is directed to a locality imports the necessary element of public benefit, and therefore a charitable purpose is implicit in

¹⁹ (2009) 24 NZTC 23,273, 23,281.

²⁰ *Re Carter (deceased)* (1897) 16 NZLR 431 (CA).

²¹ *Hubert Picarda*, 1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, p 146.

the context. Conversely, where a donor actually specifies a purpose, the court must determine whether or not that purpose is charitable.²²

55. The Commission considers that in this case the provision of events, such as a hot air balloon festival, is not analogous to any purposes aimed at benefiting a locality generally and therefore this is not charitable under the fourth head.

Section 61A of the *Charitable Trusts Act 1957*

56. The Commission has considered whether the hot air balloon festival are charitable under section 61A of the *Charitable Trusts Act 1957*. Section 61A states:

61A Trusts for recreational and similar purposes

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:
Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.*
- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
- (b) *Either—*
- (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
- (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

57. Section 61A closely follows section 1 of the United Kingdom *Recreational Charities Act 1958*, section 1 of the *Recreational Charities Act (Northern Ireland) 1958*, and section 103 of the Australian *Trusts Act 1973*.

58. Case law from these jurisdictions indicates that the term “social welfare” must be considered as well as the qualification of this term in the

²² Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

equivalent to section 61A(2) of the Act. Thus, in *Commissioner of Valuation v Lurgan Borough Council*²³, Lord McVeigh assessed whether a swimming pool was provided in the interests of “social welfare” before proceeding to consider whether the facility satisfied the further tests in the equivalent to section 61A(2).²⁴

59. More recently, in *Re Samford Hall Trust*²⁵, Macrossan CJ first declared himself persuaded that the facilities were provided in the interests of social welfare, then went on to consider the equivalent to section 61A(2).²⁶

60. In *National Deposit Friendly Society Trustees v Skegness Urban District Council*, when considering what was meant by the term “social welfare”, Lord MacDermott stated:

*... though I am not sure that this expression has as yet gained a settled primary sense, I would hesitate to regard it as synonymous with ‘social well being’. That phrase may be employed to describe a state of comfort and plenty, but ‘social welfare’ seems to me to savour at present anyway, **more of those needs of the community which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard***²⁷ [Emphasis added].

61. Lord MacDermott then stated:

In In re Cranston, Webb v Oldfield [1898] 1 IR 431, 446, Fitzgibbon LJ said this: ‘The essential attributes of a legal charity are, in my opinion, that it shall be unselfish - i.e., for the benefit of other persons than the donor – that it shall be public, ie that those to be benefited shall form a class worthy, in numbers or importance, of consideration as a public object of generosity, and that it shall be philanthropic or benevolent – i.e., dictated by a desire to do good’

*...
The principle as I understand it, is that a valid charity must be substantially altruistic and benevolent in its purposes*²⁸

62. In light of the above, the Commission considers that in order to be “in the interests of social welfare” as set out in section 61A(1) of the Charitable Trusts Act, the purpose must meet a need of the community which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard of living. In addition the organisation must be altruistic in nature.

63. The Commission considers that the provision of a hot air balloon festival may be a recreational or leisure time occupation. However, the Commission has been unable to identify that the activities involved in the hot air balloon festival are meeting any particular need of the community

²³ [1968] N.I., 104.

²⁴ Section 1(2) of the *Recreational Charities Act (Northern Ireland) 1958*.

²⁵ [1995] 1 Qd. R.60.

²⁶ Section 103(3) of the *Australian Trusts Act 1973*.

²⁷ [1959] AC, 293, 314.

²⁸ [1959] AC, 293, 315.

which as a matter of social ethics ought to be met nor are they provided with the purpose of improving the conditions of life for the persons for whom they are primarily intended.

64. Accordingly, the Commission does not consider that the hot air balloon festival is charitable under section 61A of the Charitable Trusts Act 1957.

Applicant's submissions

65. In its letter of 31 March 2010 the Applicant states that it is separate from the Levin Hot Air Balloon Society Incorporated:

*The **Levin Hot Air Balloon Society Incorporated** was established at the end of 2006 and became Incorporated on 30th January 2007. The Society had been told it was not an appropriate body to become a Registered Charity because "Sport is not considered as a Charitable purpose". It is understood this issue came to a head when our usual major funder could not continue their financial undertaking of the Annual Easter Hot Air Balloon event. . . .*

*It is important to make clear that the Levin Hot Air Balloon event (**now with free entry**) is administered by its parent **Levin Hot Air Balloon Society Incorporated** which does not have Charitable Status. Our role and function is much broader than that of the Society. We are here to raise funds and apply them in a non- profit environment for the purposes agreed by the Trust, not the Society. . . .*

*As regards the **Levin Hot Air Balloon Society Incorporated** you will know that the Governance and Operational business of the Society are its own affair.*

66. The Commission acknowledges that the Applicant is a separate entity from the Levin Hot Air Balloon Society Incorporated. It notes, however, that information provided by the Applicant indicates that support for the Annual Easter Hot Air Balloon event, which has been organised by the Levin Hot Air Balloon Society Incorporated for several years, forms a significant part of the Applicant's activities.

67. In addition the Applicant's website states:

As an organisation that seeks funding to run our event we, like so many other societies and clubs, must now have charitable status to be eligible for funding from the gaming and other trusts that provide support to many organisations and events. With this in mind, the Horowhenua Balloon Society has been put into recess and a new entity, the Lift Off Levin Charitable Trust, has been formed and is currently awaiting the approval of the Charities Commission to be able to access funding to hold a great event in 2010. Until then, the organisation of the event is ticking over in anticipation of this event. More to come soon.²⁹

²⁹

<http://liftofflevin.blogspot.com/>, last accessed on the 14/10/2010

Conclusion

68. For the reasons set out above, the Commission considers that the Applicant's fourth purpose set out in clause 2 may be charitable, but that its remaining three purposes are non-charitable. In addition its primary activities, "to devise fundraising campaigns and strategies to ensure public access and enjoyment of events such as the annual Hot Air Balloon Fiesta at Levin", are non-charitable.

Section 61B of the *Charitable Trusts Act 1957*

69. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to "save" a trust that has both charitable and "non-charitable and invalid" purposes.

70. The first is where the entity's stated purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"). The second is where the stated purposes are capable of both a charitable and a non-charitable interpretation and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).³⁰

71. The Commission considers that the fourth purpose in clause 2 may be charitable, but the first, second, and third purposes in clause 2 and the primary activity of the Applicant are not charitable. If the first, second, and third purposes in clause 2 were "blue-pencilled out", the Applicant would be left with a very limited purpose and would not be able to carry out its main purpose which is to fund events such as a hot air balloon festival. The Team therefore concludes that the Applicant does not have substantially charitable purposes.

72. In *Re Beckbessinger* Tipping J held:

*"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, ... that because a gift might have been applied for charitable purposes, s61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."*³¹

73. The Commission has analysed the wording of the Applicant's purposes, surrounding context, and activities (as directed by section 18 of the Charities Act). The Commission does not consider that these provide evidence of "a substantially charitable mind" with an intention to create a charitable trust, but which was not conveyed by the drafting.

³⁰ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

³¹ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

Accordingly, the Commission does not consider that the purposes indicate an intention to create a substantially charitable trust.

74. On these bases, the Commission considers that the Applicant's purposes are not substantially charitable and therefore section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

Conclusion

75. The Commission concludes that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the *Charities Act 2005*.

Charities Commission's determination

76. 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 trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) 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