

**Decision No:**  
**Dated:**

**Registration decision: The Southland Christmas Parade  
Charitable Trust  
(THE42491)**

**The facts**

1. The Southland Christmas Parade Charitable Trust (“the Applicant”) was incorporated as a trust under the *Charitable Trusts Act 1957* on 27 August 1999.
2. The Applicant was registered by the Charities Commission (“the Commission”) on 26 February 2009 with registration backdated to 30 June 2008. On 27 April 2010, the Applicant was removed from the Charities Register for failing to file its 2009 annual return and accompanying financial statements.
3. The Applicant re-applied to the Commission for registration as a charitable entity on 14 September 2011.
4. The Applicant included a covering letter with their application dated 14 September 2011 which states:

*We write to enclose a new Application on behalf of the above named Trust which we now understand has been deemed deregistered for failure to file the annual return in a timely manner.*

*The Board, at the Annual General Meeting, became aware that the annual returns had not been filed in terms of the Commission's reminder letters and the Trustees apologise that this has not occurred and will ensure that annual returns are filed on time in terms of the compliance requirements of Trustees under the Charities Act 2005.*

*We enclose a copy of the 2010/2011 accounts which have been finalised and audited.*

*It will be noted that we are now showing the funds collected on the day of the parade and the charity to which the donated funds have been paid.*

*The Board of Trustees has adopted that approach so that it is clearer in terms of the accounts filed with the Charities Commission.*

*It will be recalled in the past the Westpac Bank used its staff to collect for the named charity of the year that the funds were to go to and made the payment directly. The Cot Death Society was the recipient of the 2010 collection.*

*The purposes of the Trust remain unchanged and approximately 25,000 children, parents and grandparents attend the annual parade and the*

*proceeds from the street collection are forwarded to the named charity. It is the largest such one day annual event in Southland.*

*In order for the parade to be held it is vital that the charitable status is maintained as it allows the corporate funders to be able to obtain a charitable tax exemption.*

*Without the support of the corporates, as well as the community funders, the parade cannot be held.*

*The organisation for this year's parade is now occurring and it is extremely important that the Trust is able to indicate to corporate sponsors that a charitable exemption will be available and held by the Trust.*

*In spite of the Trust's lack of attention in respect of the annual return, we request any urgency that can be given to the Trust's application for re-registration.*

*If you require any further information please do not hesitate to communicate with our office.*

5. Clause 3 of the Applicant's trust deed sets out the purposes of the Applicant as:

**2. OBJECTS**

***The objects of the ANZGCIR shall be:***

- 3.1 *The supply of the physical wants of sick, aged, destitute, poor or helpless persons, or of the expenses of funerals of poor persons*
- 3.2 *The education (physical, mental, technical or social) of the poor or indigent or their children*
- 3.3 *The reformation of offenders, prostitutes, drunkards or drug addicts*
- 3.4 *The employment and care of discharged offenders*
- 3.5 *The provision of religious instruction, either general or denominational*
- 3.6 *The support of libraries, reading rooms, lectures and classes for instruction*
- 3.7 *To provide for the provision of the public recreation facilities in the interest of social welfare*
- 3.8 *Contributions towards losses by fire and other inevitable accidents*
- 3.9 *Encouragement of skill, industry and thrift*
- 3.10 *Rewards for acts of courage and self sacrifice*
- 3.11 *The provision, supply and furtherance of the above objects and any other charitable purposes as approved by the Commissioner of Inland Revenue related to the above objects which the Trustees deem desirable*
- 3.12 *The objects or purposes of this Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable and the powers and purposes of the Board and trusts hereby created shall be restricted accordingly*

6. On 8 February 2012, the Commission sent the Applicant a notice that may lead to a decline on the basis that the purposes were not exclusively charitable because a main purpose of the Applicant is to provide entertainment.

7. On 5 March 2012, the Applicant responded to the notice that may lead to a decline, stating:

*We refer to your letter dated 8 February 2012 addressed to Neil Adam of our office.*

*We advise that clause 3 of the Objects of the Trust is based upon the provisions of Section 38 of The Charitable Trusts Act 1957.*

*The Trustees wish to provide as wide a range of Objects as possible so that the Trust can distribute all of the funds which it collects, to as many charities as possible, on an annual basis.*

*Over the lifetime of the Trust it has made grants of over \$30,000 to various charitable organisations in terms of its Objects.*

*Our application is incorrect if it has stated that the Trust allows other organisations to collect through the Parade. The Trust, each year, approaches organisations who collect donations from the public. Those donations are received by the Trust and the trustees choose a charity or charities to receive the benefit of the donations.*

*The Trust has no issue with removing clause 3.8 but would wish to leave the provisions of clause 3.6 as it believes that the provision of suitable reading materials to libraries is an appropriate educational use of the funds should that situation be required in the future.*

*Whilst the Parade is current instrument to source funds for the Trust, that does not mean to say that the Trust will not consider other sources of obtaining income into the future.*

*If the Commission requires, for approval, that the name is changed to some other more suitable name so that there is no confusion that the Parade is not its sole purpose, the Trust would be prepared to consider doing so.*

*The Parade is currently the Trust's main fundraising venture but that does not mean to say that there are not a large number of other educational benefits that lead up to the Parade. That includes the work of approximately 1,000 volunteers prior to the Parade which involves educational activities which includes making floats and the skills acquired by the volunteers in making them. Children are also involved in educational activities such as face painting and the confidence acquired in actually participating in the Parade. There is also the opportunity for a large number of charitable organisations to be able to show to the public the various activities which they carry out and thereby supporting them as well.*

*There have been many instances where the fact that the Parade occurs at all is the only opportunity for less privileged children to be able to participate in Christmas activities.*

*As set out above we believe that the activities of the Trust meet the purposes of clauses 3.1, 3.2, 3.5 and 3.7 and are charitable without considering the actual grants made to charitable organisations in each year from the Trust.*

## The issues

8. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (“the Act”). 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 law on charitable purposes

9. Section 13 of the Act sets out the essential requirements for registration. 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.
10. 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.
11. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,<sup>2</sup> Slade J states:

*The third requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.*
12. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
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.*

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

<sup>2</sup> [1982] 1 Ch. 321, 341. (See also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691.)

14. Courts have also held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.<sup>3</sup>

### **Charities Commission's analysis**

15. The Commission has analysed the purposes set out in clause 3 of the Applicant's rules document, information supplied by the Applicant, and the relevant case law.
16. These purposes and activities have been assessed under relief of poverty, advancement of education, advancement of religion and "other matters beneficial to the community". Firstly, however, it is necessary to consider the effect of clauses 3 and 22.2.

#### Effect of clauses purporting to limit purposes

17. Clause 3 of the trust deed states:

*The Trust fund both capital and income from time to time arising at the Trustees absolute discretion shall be used for the furtherance of the following charitable purposes and objects...*

18. Clause 3.12 states:

*The objects or purposes of this Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable and the powers and purposes of the Board and trusts hereby created shall be restricted accordingly*

19. Clause 22.2 states:

*No such resolution for alteration or rescission of rules shall be valid if it alters the charitable objects and nature of the Board...*

20. In *Commissioner of Inland Revenue v White*,<sup>4</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*

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<sup>3</sup> See *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at 175; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

<sup>4</sup> (1980) 55 TC 651.

*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>5</sup>

21. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>6</sup> Young J wrote “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>7</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>8</sup> In that case, he concluded that they did not support a charitable purpose.
22. For these reasons, the Commission does not consider that the inclusion of the wording in the above clauses provides conclusive evidence that the Applicant’s purposes are in fact exclusively charitable.<sup>9</sup>

### Relief of poverty

23. To be charitable under the relief of poverty, a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship, and it must provide relief.
24. The law interprets “poverty” broadly so a person does not have to be destitute to qualify as poor.<sup>10</sup> People who are in need, aged,<sup>11</sup> or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will include anyone who does not have access to the normal things of life that most people take for granted.<sup>12</sup> 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.<sup>13</sup>
25. Dal Pont states:

*What focusing on 'relief' does achieve is to distinguish objects that clearly relate to charity as understood by the law from those independent*

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<sup>5</sup> (1980) 55 TC 651, 653.

<sup>6</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>7</sup> Ibid, para 56.

<sup>8</sup> Ibid, para 56.

<sup>9</sup> See also *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405, 408.

<sup>10</sup> *Re Bethel* (1971) 17 DLR (3d) 652 (Ont: CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *re Pettit* [1988] 2 NZLR 513.

<sup>11</sup> *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

<sup>12</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *re Pettit* [1988] 2 NZLR 513 and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

<sup>13</sup> *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.

of a charitable object. **Relief, to this end, is ordinarily not consonant with the provision of amusement**, creature comforts or luxuries. It has been judicially remarked, by way of example, that paying for the admission to dog races for those in poverty, supplying free air travel to the South Pole to the destitute, or contributing 'to the holiday expenses of the workpeople', though directed to the poor, is not directed towards relieving poverty.<sup>14</sup> [Emphasis added]

26. Clause 3.1 states as a purpose:

*The supply of the physical wants of sick, aged, destitute, poor or helpless persons, or of the expenses of funerals of poor persons*

27. In the letter of 5 March 2012, the Applicant states:

*There have been many instances where the fact that the Parade occurs at all is the only opportunity for less privileged children to be able to participate in Christmas activities.*

28. The Commission does not consider that the provision of a parade, or in other words “the provision of amusement”, is directed to *relieving* poverty. Furthermore, the parade is aimed at not only the underprivileged but the whole community.

#### Advancement of education

29. In order for a purpose to advance education, it 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.<sup>15</sup> In order to advance education, learning must be passed on to a broad section of the public.<sup>16</sup>

30. Education does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>17</sup> 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.

31. In the letter of 5 March 2012, the Applicant states:

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<sup>14</sup> Gino Dal Pont, *Law of Charity*, LexisNexis Butterworths, Australia, 2010, pp 163-164.

<sup>15</sup> *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.

<sup>16</sup> See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

<sup>17</sup> *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

*The Parade is currently the Trust's main fundraising venture but that does not mean to say that there are not a large number of other educational benefits that lead up to the Parade. That includes the work of approximately 1,000 volunteers prior to the Parade which involves educational activities which includes making floats and the skills acquired by the volunteers in making them. Children are also involved in educational activities such as face painting and the confidence acquired in actually participating in the Parade.*

32. The Commission accepts that there may be educational benefits arising from preparation for the parade. However, the Commission does not consider that education is a primary focus of the Parade, but rather that these educational benefits are secondary and incidental to the entertainment purpose.

#### Advancement of religion

33. To advance religion, a purpose must be for the benefit of a religion, and the faith must be passed on to others by promoting it, spreading its message or taking positive steps to sustain and increase the religious belief.
34. Not all purposes that relate to religion will “advance religion”. In *Oxford Group v Inland Revenue Commissioners*<sup>18</sup>, Cohen L.J states “I think an institution could be connected with the advancement of religion without being itself an institution for the advancement of religion”.<sup>19</sup>
35. Clause 3.5 states as a purpose, “[t]he provisions of religious instruction, either general or denominational”.
36. However, it does not appear that religious instruction is being carried out through the parade. The financial statements for the year ending 31 March 2011 show depreciation schedules for “Reindeer”, “Santa Float”, “Pirate Float”, “Castle Float”, “Mary Poppins Float”, “Spiderman Float”, “Angel Float”, “Flintstones Float”, and “Birthday Cake Float”. The Commission considers there is insufficient evidence to show that the Applicant is carrying out religious instruction, worship or other religious activities that would advance religion.

#### Other matters beneficial to the community

37. 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 intentment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth).<sup>20</sup>

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<sup>18</sup> [1949] 2 All ER 537.

<sup>19</sup> [1949] 2 All ER 537 at 544

<sup>20</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*

- 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.<sup>21</sup>

*Sufficient section of the community*

38. The Commission notes that clause 3 of the Applicant's rules document provides that its objects are intended to benefit Southland and its community.
39. The Commission considers that the Southland community is a sufficient section of the community for the Applicant's purposes to be of public benefit, as long as they are of a charitable nature.

*Are the purposes of a charitable nature?*

40. Not all organisations with purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. In *Queenstown Lakes Community Housing Trust*, MacKenzie J stated:

*Not every purpose beneficial to the community will be charitable under this head. Lord Simons in Williams Trustees v Inland Revenue Commissioners, noted two propositions which must be borne in mind. The first is that the purpose must be within the spirit and intendment of the preamble to the Statute of Elizabeth I. The second is that Lord Macnaghten's fourfold classification in Pemsel's case must be read subject to the qualifications that it does not mean that every object of public general utility must necessarily be charity. He concluded that the purpose must be both for the benefit of the community and beneficial in a way which the law regards as charitable. The somewhat circular requirement that to be charitable, a purpose must be beneficial in a way which the law regards as charitable, reflects and restates the requirement that the purpose must be within the spirit and intendment of the preamble.<sup>22</sup>*

41. In *Travis Trust v Charities Commission*, Joseph Williams J noted:

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*Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

<sup>21</sup>

<sup>22</sup>

*Charitable Uses Act 1601* 43 Elizabeth I c. 4.  
 HC WN CIV-2010-485-1818 [24 June 2011] at para 48.

*...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>*

42. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances.

#### *Stated purposes*

43. The Applicant's purposes come from the wording in section 38 of the *Charitable Trusts Act 1957*.
44. In *Doug Ruawai Trust*,<sup>24</sup> McGechan J wrote that section 38 has taken into account the general law relating to charitable purpose but has also added specified categories that are not charitable at common law. He cited athletic sports and other purposes, whether or not they are beneficial to the community or a section of the community. He also cited contributions to loss by fire and rewards for acts of courage as potentially having major emphasis on individual losses or individual valour and that these purposes are therefore not necessarily purposes beneficial to the community or a section of the community.
45. Consequently, the Commission does not consider that clauses 3.8 and 3.10 constitute charitable purposes.

#### *Activities*

46. It appears the only activity of the Applicant is to run the Christmas parade.
47. Courts have held that sporting, entertainment and social activities are not charitable in their own right. In the first case interpreting the *Charities Act 2005 (Travis Trust v Charities Commission (2009) 24 NZTC 23,273)*, Williams J. made the following comments concerning sport, leisure and entertainment:

*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. In the*

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

<sup>24</sup> CP NO 285/86, 25 November 1987, per McGechan J at p14.

*areas of sport, the deeper purpose is usually health or education.*<sup>25</sup>

48. The Commission considers that the main purpose of the Applicant is to provide entertainment activities, and that any link to any underlying, deeper purpose that may be charitable is too tenuous to be recognised in this case.

#### Applicant's submissions

##### *Fundraising*

49. In the covering letter of 14 September 2011, it was stated:

*The purposes of the Trust remain unchanged and approximately 25,000 children, parents and grandparents attend the annual parade and the proceeds from the street collection are forwarded to the named charity. It is the largest such one day annual event in Southland.*

*In order for the parade to be held it is vital that the charitable status is maintained as it allows the corporate funders to be able to obtain a charitable tax exemption.*

50. In the letter of 5 March 2012, the Applicant states:

*Over the lifetime of the Trust it has made grants of over \$30,000 to various charitable organisations in terms of its Objects.... The Trust, each year, approaches organisations who collect donations from the public. Those donations are received by the Trust and the trustees choose a charity or charities to receive the benefit of the donations.*

...

*Whilst the Parade is current instrument to source funds for the Trust, that does not mean to say that the Trust will not consider other sources of obtaining income into the future.*

51. The Applicant was established in 1994. The Applicant's financial statement for the year ended 31 March 2011 shows total expenses of \$59,917 and donations of \$3,338. In 2010 the ratio was \$60,306 to \$2,353, and in 2009 \$54,521 to \$2,782.<sup>26</sup> During the same years the Applicant received \$33,638 (2011), \$30,853 (2010) and \$26,311 (2009) in donations and grants.
52. The Commission considers that this level of fundraising indicates that fundraising is a minor activity, and the parade itself is an independent purpose of the Applicant.

##### *Activities of charities at the parade*

53. In the letter of 5 March 2012, the Applicant states:

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<sup>25</sup> (2009) 24 NZTC 23,273, 23,281.

<sup>26</sup> See financial statement for Southland Group NZ Riding for the Disabled Association Incorporated (CC38931) for year ending 31 December 2008, at Note 2.

*There is also the opportunity for a large number of charitable organisations to be able to show to the public the various activities which they carry out and thereby supporting them as well.*

54. The Commission does not consider that there is a sufficient connection between the provision of the parade and any activities of charities that attend the parade to allow the Applicant to qualify as charitable at law.

### Conclusion

55. The Commission considers that the Applicant's purposes set out in clause 3 and its activities are non-charitable for the reasons set out above.

### Section 61B of the Charitable Trusts Act 1957

56. 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.

57. 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).<sup>27</sup>

58. 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, s 61B 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.*<sup>28</sup>

59. The Commission has analysed the wording of the Trust's purposes, surrounding context, and activities (as directed by section 18(3)(a) 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.

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<sup>27</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 373.

<sup>28</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 376.

60. On this basis, the Commission considers that the Trust's purposes are not substantially charitable and therefore section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

**Charities Commission's determination**

61. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it 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