

**Registration decision: Northern Region Equestrian Trust
(NOR44300)**

Executive Summary

1. The Charities Registration Board (the Board) has determined to decline the application for registration of the Northern Region Equestrian Trust (the Applicant) under the *Charities Act 2005* (the Act).¹ The Board considers that the Applicant is not established for exclusively charitable purposes, as required by section 13(1) of the Act.
2. The promotion of sports is not in itself a charitable purpose, but it may be a charitable purpose to promote sports as a means to advance charitable purposes. The Board considers that the Applicant's purpose is to promote equestrian sports as an end in itself, and not as a means to advance valid charitable purposes. As such, the Applicant's purpose lies outside the scope of charity articulated by the courts in decisions binding on this Board, and recognised in section 5(2A) of the Act. As a step in reaching our decision, we have also determined that it is not a purpose of the Applicant to provide a recreational facility in the interests of social welfare within the meaning of section 61A of the *Charitable Trusts Act 1957*. This is because the provision of an equestrian facility for internationally-rated events does not meet the social welfare requirement of that section.
3. The Board's reasons for decision appear below, organised under the following headings:
 - A. Background
 - B. Legal framework for registration decision
 - C. Provision of recreational facilities and charity
 - D. Promotion of sport and charity
 - E. Applicant's purpose to provide a facility
 - F. Applicant's purpose to promote equestrian sport
 - G. Section 5(3) of the Act
 - H. Determination

A. Background

4. The Applicant was established by declaration of trust dated 10 November 2011, and was incorporated under the *Charitable Trusts Act 1957* on 15 May 2012.
5. The Applicant's purposes are set out at point 2 of Appendix A to the declaration of trust:

¹ This decision is made under section 19 of the Act.

The objects or purposes for which the Trust is established are the following purposes beneficial to the community:

- 2.1 To provide equestrian and recreational facilities for people living in the Auckland region;*
 - 2.2 To acquire, manage and operate land and the improvements thereon for the better performance of the community objects set out in clause 2.1;*
 - 2.3 To raise funds for the lawful means of, and apply the same for the objects of the Trust;*
 - 2.4 To run events for the better utilisation of the facilities referred to in clause 2.1;*
 - 2.5 To do any act or thing incidental or conducive to the attainment of any of the above objects.*
6. The appointing bodies for the Applicant are listed in the second schedule to the declaration of Trust. The original appointing bodies are three bodies affiliated to Equestrian Sport New Zealand (Show Jumping Waitemata; Show Hunter Waitemata; ESNZ Endurance); Waitemata Riding Club Incorporated; Waitemata Hunt Incorporated; New Zealand Horse Recreation Incorporated. Additional appointing bodies are: Equestrian Sport New Zealand, "a society to be incorporated representing eventing riders that regularly use the Woodhill Sands Equestrian Centre"; Dressage Waitemata a body affiliated to Equestrian Sport New Zealand; and such others as shall be appointed pursuant to clause 77 of the deed. Clause 77 provides for additional bodies "so long as the principal object of such appointing bodies is the fostering and administration of a regional discipline or code involved in equestrian sport".
7. The Applicant submitted an application for registration under the *Charities Act 2005* on 16 May 2012.
8. On 30 July 2012, Charities Services wrote to the Applicant to seek information about the Applicant's current and proposed activities.²
9. The Applicant's solicitor provided a response to this information request on 29 August 2012, stating that "the strategic ambition of the Trust is to secure long term regional equestrian facilities for Auckland" and that as a step to that end "negotiating with Auckland City for the acquisition of a privately owned sport horse facility known as Woodhill Sands situated in the Northwest of Auckland." The letter noted that the Applicant has also supported the creation of bridle trails or bridleways throughout the North and North Western part of Auckland city. The letter included a copy of a brochure on the Woodhill Sands put together by the Trust as part of its negotiations with Auckland City (**the Brochure**).

² Under section 18(3)(a) of the Act.

10. On 13 September 2012, Charities Services notified the Applicant that its application may be declined on the ground that the Applicant was not established for exclusively charitable purposes as required by the Act.³ Specifically, the letter gave notice of the view that the Applicant's purpose was to provide an equestrian facility to promote equestrian sports, including at an elite level, and that this purpose was a non-charitable purpose to promote sport otherwise than as a means to advance charitable purposes; and that the Applicant's provision of the equestrian facility was not a charitable purpose within section 61A of the *Charitable Trusts Act 1957* (**section 61A**).
11. The Applicant's solicitor responded by letter dated 2 October 2012. The Applicant submitted that the notice was based on the premise that a principal purpose of the Applicant was to provide a facility to host national and international equestrian events, whereas this is an ancillary purpose of the Applicant. The letter submitted:
- the main focus of the Applicant is to "provide a community facility encouraging all types of equestrian activity from Pony Clubs through to elite riders", and that this constitutes a purpose to provide facilities for recreational use by the public;
 - the Applicant's provision of the equestrian facility is in the interests of social welfare, by reference to significant community demand for equestrian past-times as a recreation that improves the conditions of the life of the participants;
 - the Applicant's purpose in providing the facility is to promote public participation in equestrian sports as a means to promote public health and advancing education.
12. In support of this last point, the Applicant submitted:
- It is time that organisations such as yours led the way in acknowledging the part that organised sports plays in the wellbeing of society and accept organised amateur sport as being intrinsically charitable. When the Statute of Elizabeth was created, organised sport didn't exist, and it is time that the Government of New Zealand in the 21st century, as represented by your good selves, recognised amateur sport and the provision of facilities for it as being charitable – almost without question.*

B. Legal framework for registration

13. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(a) of the Act, a trust qualifies for registration if it is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes. This criterion is not met unless the income is derived for exclusively charitable purposes.⁴

³ Under section 18(3)(c) of the Act.

⁴ See *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 at 794-796; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 ("*Molloy*") at 691. See also the assumption evident in the provision at section 5(3) and (4) of the Act, that a

14. 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 or religion, or any other matter beneficial to the community". This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.⁵
15. To be charitable at law a purpose must be for the public benefit.⁶ Public benefit must be expressly shown where the claimed purpose is benefit to the community.⁷ Further, in every case, the direct benefit of the entity's purposes must flow to the public or a sufficient sector of the public.⁸ Any private benefits arising from an entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.⁹
16. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a

trust will not be disqualified from registration because it has *ancillary* non-charitable purpose.

⁵ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 ("*Greenpeace, CA*") at [42]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 ("*Education New Zealand Trust*") at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] ("*Draco*") at [11].

⁶ Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 ("*Accountants*") at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 ("*Latimer, CA*") at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) ("*Travis Trust*") at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 ("*Queenstown Lakes*") at [30]; *Education New Zealand Trust* at [23].

⁷ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].

⁸ See discussion in *Latimer, CA* at [32] - [37]. The courts have held that the downstream benefits of an entity's activities do not serve to characterize the purpose of the entity: see *Accountants* at 153 (the "generalised concept of benefit" identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients' interests is too "nebulous and remote" to characterise the purpose of the fund); *Travis Trust* at [30] - [35] (holding that where the express purpose was to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes", the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] - [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the "hope and belief" that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose).

⁹ See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 ("*Professional Engineers*") at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] ("*Computer Society*") at [42]; *Education New Zealand Trust* at [23]; *Queenstown Lakes* at [68] - [76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218 ("*Oldham*"); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

charitable purpose. Pursuant to section 5(4) of the Act, a non-charitable purpose is ancillary if the non-charitable purpose is:

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and
- (b) not an independent purpose of the trust, society or institution.

17. It is clear that determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.¹⁰ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.¹¹

Relevance of entity's activities in registration decision-making

18. Section 18(3)(a)(i) and (ii) of the Act provide that the activities of an applicant entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.¹² The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹³ Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established.¹⁴ This focus is justified in the broader scheme of the Act¹⁵ and the fiscal consequences of registration under the Act.¹⁶
19. Activities are not to be elevated to purposes,¹⁷ but reference to activities may assist, for example, to make a finding about:

¹⁰ For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

¹¹ The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] ("*Greenpeace, HC*") at [68]; *Computer Society* at [16]; *Education New Zealand Trust* at [43]-[44]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) ("*Grand Lodge*") at [49]-[51]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

¹² See also section 50(2)(a) of the Act.

¹³ *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68]; *Greenpeace HC* at [75].

¹⁴ *Greenpeace CA* at [40]. See to the same effect *Institution of Mechanical Engineers v Cane* [1961] AC 696 (HL) at 723; *Guaranty Trust Company of Canada v Minister of National Revenue* [1967] SCR 133 at 144; *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 ("*Word Investments*") at [25] – [26] (Gummow, Hayne, Heydon and Crennan JJ) and [173] – [174] (Kirby J, dissenting); *Cronulla Sutherland Leagues Club Ltd v Commissioner of Taxation* (1990) 23 FCR 82 at 89.

¹⁵ Including the statutory functions at section 10 of the Act, "promote public trust and confidence in the charitable sector" and "encourage and promote the effective use of charitable resources".

¹⁶ Compare *Greenpeace, CA* at [34]. While the statutory criteria for eligibility for fiscal privileges are in tax legislation administered by Inland Revenue, one of the benefits of registration is that it qualifies entities to be eligible for tax exemption on charitable grounds.

¹⁷ *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 ("*Public Trustee*") at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

- the meaning of stated purposes that are capable of more than one interpretation;¹⁸
 - whether the entity is acting for an unstated non-charitable purpose;¹⁹
 - whether the entity's purposes are providing benefit to the public;²⁰
 - whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.²¹
20. Further, it is well established that the charitable status of an association is determined by construing its objects and powers in context as a whole, rather than construing objects and powers individually.²²

Characterisation of an entity's purposes

21. Once an entity's purposes are established as a matter of fact, whether or not they are charitable is a question of law.²³ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
22. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.²⁴ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁵

¹⁸ See *Professional Engineers* at 575 (Tipping J).

¹⁹ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Word Investments* at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²⁰ See for example *Glasgow Police Athletic Association*; *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68].

²¹ See for example *Greenpeace*, CA at [40], [48], and [87] - [92], [99] and [102], [103]. Earlier authorities to the same effect include *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) ("*Molloy*") at 693 and the authorities cited there.

²² Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. For example, in *Travis Trust* at [30] - [35], [58], Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor of a group race known as the Travis Stakes" was not charitable. His Honour rejected a submission that the purpose was to benefit the racing industry. Despite the opening words of the purpose clause, his Honour held that the purpose was to support a single group race. See to the same effect: *Glasgow Police Athletic Association* (where machinery provisions in the association's rules were taken into account to identify the purposes of the Association); *Professional Engineers* (where Tipping J looked to the rules as a whole to resolve the uncertainty in the way in which the primary object was stated).

²³ *Molloy* at 693.

²⁴ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²⁵ *Dal Pont* at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer*, PC at 168 (PC) ("whether the purposes of the trust are charitable does not depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not, what was the settlor's purpose in establishing the trust? But, what are the purposes for which trust money may be applied?"); *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

C. Provision of recreational facilities and charity

23. At general law, the provision of public recreation grounds is a recognised charitable purpose.²⁶ In order to qualify as a charitable purpose to provide a facility for public recreation at general law, the purpose must be to provide for public recreation in a general sense, i.e. to provide a physical facility that is open to the public for a range of recreational uses – typical examples are public parks and playing fields. If an entity has a purpose to provide a facility for a specific activity or class of users, the courts do not characterise the purpose as a purpose to provide for recreation, but rather considers the purpose as one to promote those activities.²⁷
24. Section 61A of the *Charitable Trusts Act 1957* (**section 61A**) provides that it is a charitable purpose to provide facilities “for recreation or other leisure-time occupation ... in the interests of social welfare.” Section 61A(1) is expressed to be “subject to the provisions of this section” and “[p]rovided 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”. Section 61A(2) and (3) read:
- (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*

²⁶ *Grant v Commissioner of Stamp Duties* [1943] NZLR 113; *Morgan v Wellington City Corporation* [1975] 1 NZLR 416.

²⁷ *Re Cumming* [1951] NZLR 498 at 501 (a stated purpose to provide a meeting space for farmers and educational societies was not a general recreational purpose); *Re Chapman* High Court, Napier, CP 89/87, 17 October 1989, at 17, and see discussion of usage of the park at 15 (parkland vested in public ownership by statute, provided under lease to Hawkes Bay Rugby Union for the rugby season on condition it is made available during season to other users; parkland also used for cricket, athletic sports, cycling sports and public functions). See also *D* at 264.

the provision of facilities for those purposes by the organising of any activity.

25. There are four requirements that must be established before an entity will be deemed to be charitable under section 61A of the *Charitable Trusts Act 1957*, namely: (i) the entity must be providing a “facility”; (ii) the facility must be for “recreation or other leisure time occupation”; (iii) the facility must be provided in the interests of “social welfare”; and (iv) the facility must provide a public benefit.
26. In terms of the requirement that the facility be provided “in the interests of social welfare”, section 61A(2) does not provide an exhaustive definition of the term “social welfare” but rather lists the essential elements that must be present if a facility is to meet the requirement of being in the interests of social welfare.²⁸ We consider that in order for a facility to be provided “in the interests of social welfare”:
- the facility 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; *and*
 - the organisation providing the facility must be altruistic in nature.
27. The courts have held that a facility provided for horse-racing is not provided in the interests of social welfare as horse-racing is not an activity conducted with the object of improving the conditions of life of participants.²⁹ As another example, the provision of entertainment or social contact to the general public will not meet a need which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard of living.³⁰ The Board notes that the Charities Commission of England and Wales’ interpretation of a statutory provision in the same terms as section 61A provides:³¹

This involves providing facilities which ought to be provided as a matter of social obligation, because if they are not people's conditions of life will be inadequate. 'Adequacy' for this purpose should be assessed by reference to the reasonable needs of the community as a whole in respect of social contact, mental stimulation and physical exercise.

The following factors might be relevant in considering whether the facilities were ones which ought to be provided as a response to inadequate community provision of this kind:

- any geographical isolation on the part of the community;
- any lack of public transport;
- any lack of local alternative facilities at affordable prices; *and*

²⁸ J Warburton, D Morris and N.F. Riddle, *Tudor on Charities* (9th Edition Sweet & Maxwell, London 2003) and *Commissioner of Valuation v Lugan Borough Council* [1968] NI 104.

²⁹ *In re Hoey* [1994] 2 Qd R 510, followed in *Travis Trust*.

³⁰ See for example Registration Decision: Balloons Over Waikato Charitable Trust, 3 February 2010 published <http://www.charities.govt.nz/the-register/registration-decisions/>.

³¹ Charities Commission for England and Wales, *The Recreational Charities Act 1958* <http://www.charity-commission.gov.uk/Publications/rr4.aspx#a4> [accessed 10 September 2012], at [A15] – [A17].

- *the size of the community and comparisons with facilities available elsewhere.*

What may represent an appropriate level of facilities may of course change over time. We will therefore need to take account of changing social circumstances in considering whether there is a social need for a particular recreational facility.

28. Similarly, New Zealand courts have held that the provision of stadia as a community asset to host a range of sporting and cultural events in the region falls within section 61A.³²
29. Speaking broadly, we consider it would be a unique case in which a facility purpose-fitted to a particular sport (or family of sports) would be shown to be provided in the interests of social welfare within section 61A. We note that the Charities Commission of England and Wales adopts a similar starting point (emphasis added).³³

*In principle the Act can apply to **multi-purpose** sports facilities, such as sports centres or recreation grounds (which can be charitable under other principles of charity law even if the Act does not specifically apply to them). Although such facilities are, of course, used by clubs and teams for playing competitive sport, they are provided for use by the public at large - by people of all ages, of varying degrees of proficiency and of varying states of health. No special equipment is needed (or at least none which cannot be provided through a modest entrance fee). **Such facilities are therefore fairly characterised as ones for healthy recreation rather than ones for the promotion of sport** and are, therefore, facilities provided with the object of improving conditions of life.*

*However, facilities of this kind can be **contrasted with facilities for a single sport**, which are used only for the purpose of playing that particular sport. ... [I]t is more difficult to regard a facility for the playing of a particular sport as one that is provided with the object of improving conditions of life, since it **seems to be concerned essentially with the promotion of the sport in question**. It may also be difficult to accept that the provision of facilities for a single sport meets the social obligation aspect of the social welfare requirement, particularly if they can only be used by people who have acquired a given level of skill.*

Whilst the provision of facilities for a single sport may fall within s.1 of the Act, therefore, we shall always need to examine carefully whether they also meet the social welfare and public benefit requirements. Whether they do so will depend on the facts of the particular case.

³² See for example *Commissioner of Inland Revenue v Wellington Regional Stadium Trust* [2006] 1 NZLR 617 at [73]-[78] (Wellington Regional Stadium Trust, required by legislation to operate "a multi-purpose sporting and cultural venue").

³³ Charities Commission for England and Wales, *The Recreational Charities Act 1958* <http://www.charity-commission.gov.uk/Publications/rr4.aspx#a4> [accessed 10 September 2012] at [A24]-[A26].

D. Promotion of sport and charity

30. In New Zealand law, a purpose to promote sport is not itself a valid charitable purpose, but the promotion of sport as a means to advance a valid charitable purpose or purposes may be charitable. In determining whether an entity's purpose is to promote sports as a means to advance a charitable purpose, the Board considers the entity's stated purposes, and the entity's activities. The Board considers whether the activities are a means to advance charitable purpose or charitable purposes, having regard to their direct (rather than downstream) consequences.
31. The position that sporting purposes lie outside the scope of charity derives from English authorities,³⁴ approved and applied in New Zealand by the High Court.³⁵
32. In *Travis Trust*, the Court explained that a purpose to promote sport may be charitable if the sport is promoted as a means to advance a valid charitable purpose or purposes:³⁶

A trust to promote racing could only be charitable in nature if its deeper purpose was the pursuit of some other objective, either in principle or, in accordance with charities jurisprudence, a charitable purpose in its own right within the spirit and intendment of the Statute of Elizabeth. Thus, if it could have been established that the true intention of the support for this race was the promotion of health, education or perhaps even animal welfare, it might have satisfied the test.

33. The general law position is recognised in section 5(2A) of the Act:

The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.

34. The Board considers that section 5(2A) makes clear that promotion of sports is only charitable *if* it is a means to pursue a charitable purpose. This can be contrasted with a purpose to promote sport as an end in itself, or as a means to advance a mix of purposes that are not exclusively charitable.

³⁴ *Re Nottage* [1895] 2 Ch 649 (CA); *Re Mariette* [1915] 2 Ch 284; *Inland Revenue Commissioners v McMullen* [1981] AC 884.

³⁵ *Travis Trust*.

³⁶ *Travis Trust* at [59].

E. The Applicant's purpose to provide a recreational facility

35. For the reasons that follow, the Board does not consider that the Applicant's purpose is to provide public recreation grounds, or for a purpose within section 61A.
36. First, the Board considers that the Applicant's purpose is to provide an equestrian facility to promote equestrian sports in New Zealand.
37. The Applicant's stated purpose at clause 2.1 includes a purpose to "provide equestrian ... facilities for people living in the Auckland region" (clause 2.1).
38. Moreover, the Board considers that the current and proposed activities of the Applicant and the circumstances of its establishment show that its dominant purpose is to provide the equestrian facility at Woodhill Sands. Specifically, the focus on equestrian facilities is evident in the Applicant's name and the identity of the appointing bodies under the trust deed.³⁷ The Applicant's sole current proposed activity is to support the acquisition of Woodhill Sands Equestrian Centre by Auckland Council in order to "secure long term regional equestrian facilities for Auckland".³⁸ The Applicant has provided documentation showing that the proposal is to establish a governance structure so that Woodhill Sands will be "run as an equestrian facility for all of the sport horse disciplines". The Applicant's purpose is to provide an equestrian facility with the capacity to meet regional, national and international event requirements. The Applicant has provided information showing that:

The objective is to enhance the current positioning of Woodhill Sands as the Premier Equestrian Sports Events Centre in Auckland Region and New Zealand towards achieving a reputation such as the Sydney Equestrian Centre ...

Woodhill Sands is currently operating at about 50% of total capacity and plans to expand its Event Calendar to include International Riders and Horses in several competitions ...

Completion of an Indoor Equestrian Arena will add 12 more Events to a Winter Events program.

ESNZ and all rider groups are keen to see Woodhill Sands Equestrian Centre's future secured in public ownership with an upgrade to an Indoor Arena maintaining a 3 star course rating, plus acquisition of the adjacent land required to complete the venue ...

Stage 1: Indoor Arena and Grandstand

The top level Show Jumping riders see great benefit in creating an indoor arena, to host the final round of the FEI World Cup show jumping series ... The Dressage competitors would be capable of

³⁷ See Second Schedule of the Trust deed, and clause 77(further appointing bodies may be added "so long as the principal object of such appointing bodies is the fostering and administration of a regional discipline or code involved in equestrian sport").

³⁸ Applicant's letter dated 27 August 2012, para 4.

hosting FEI challenges and Trans-Tasman events. An indoor arena would transform the venue hosting 4000 spectators seated with a degree of comfort to International standard also allowing for diversification of the venue into non equestrian events.

Stage 2: Purchase Additional 20 Hectares

The additional 20 hectare block to the North which is currently leased would give the property the guaranteed size for spectator all weather parking and competition overflow capacity ...

Stage 3: Create a world renowned spectacular bridle trail from Woodhill Sands into Woodhill Forest and onto Muriwai Beach

The 24 hectares to the West of the venue provides a short distance access to the Woodhill Forest enabling great trekking and the ability to host further FEI Endurance events and high performance training that would attract International Riders ...

The biggest risk for the equestrian industry in Auckland and New Zealand is that Woodhill Sands Equestrian Centre is not secured by Auckland Council into public ownership for the future of the sport and the Auckland region, but is sold off for purposes other than equestrian use.

... It would be very difficult for any other equestrian venue in New Zealand to build up 60-80 equestrian events per annum.

It is recommended that Woodhill Sands can continue as the leading Auckland Regional Equestrian Centre and develop as one of the major National Equestrian Event Centres for Equestrian Sports in New Zealand if the venue continues to be developed and grown to the potential of the current site and adjacent land.

... The proposed cost of initial acquisition and proposed future development ... is a high value, relatively lower cost solution for the sport in Auckland ...

Woodhill Sands can develop into a national and world class equestrian venue as a home to New Zealand's future Olympians with Auckland Council support and investment.

39. Information provided by the Applicant is that capital costs of \$15 million for the required equestrian facility improvements were identified in 2009.
40. Viewed holistically, the dominant purpose of the Applicant is to provide an equestrian facility to promote the interests of the sport horse disciplines and codes affiliated with Equestrian Sports New Zealand.
41. Secondly, the Board does not consider that the Applicant's purpose to provide the equestrian facility at Woodhill Sands is a purpose to provide public recreation grounds.³⁹ The Applicant has provided information to show that the facility will be developed as one that is purpose built for equestrian sports training and events, and that the primary users will be

³⁹ The Board notes that the Applicant's provision of bridle-pathways throughout the North and North Western part of Auckland City may advance a charitable purpose to provide public recreation grounds.

members of clubs affiliated with Equestrian Sports New Zealand. The Board notes that the facility will be available for occasional non-equestrian events such as the tough guy challenge and school cross-country running events; and mountain biking/BMX, orienteering, and polo/polo Crosse “are potential developments under consideration”.⁴⁰ Nevertheless, the overriding focus is on securing and developing a facility capable of supporting equestrian sports in New Zealand by securing a facility with “the best quality surfaces for equestrian sports in New Zealand” and providing the “safe, reliable, durable consistency of footing for horse and rider which is a requirement for high performance equestrian sports”, positioned to host internationally-rated competitions. This is not analogous to the provision of public recreation grounds.

42. Thirdly, the Board considers that the Applicant’s purpose to provide the equestrian facility at Woodhill Sands is not a charitable purpose within section 61A. As noted above, the courts have held that the provision of multi-purpose stadia to host a range of sporting and cultural events is a charitable purpose within section 61A. Such stadia can be contrasted with facilities for a single sport (or family of sports). The Charities Commission of England and Wales has noted that the provision of such a facility is more likely to be seen as promoting the sport itself. The promotion of a specific sport may not fall within the social obligation aspect of the social welfare requirement in section 61A. In this case, we consider that the Applicant’s purpose to provide a significant equestrian facility does not meet a need that should be met as a matter of social obligation. The Applicant’s proposals for the acquisition and operation of the facility at Woodhill Sands will secure a facility for equestrian users at all levels from grass-roots to elite, and attract significant national and international equestrian events, and there are likely additional economic benefits to the region from the tourism generated, and horse auctions to be held at the facility. While we recognise this benefit to equestrian sports and the regional economy, we do not consider that this benefit supports an inference that the provision of the facility meets 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.

F. The Applicant’s purpose to promote equestrian sports

43. For the reasons given above, the Board considers that the Applicant’s purpose is to provide an equestrian facility so as to promote equestrian sports in New Zealand. It remains to consider whether that purpose is a charitable purpose in law. For the reasons given below, the Board considers that the Applicant’s purpose is to promote equestrian sports as an end in itself, and not as a means to advance exclusively charitable purposes. As such, the purpose lies outside the scope of charity recognised in section 5(2A) of the Act.
44. The Applicant’s rules do not make any reference to promotion of equestrian sports as a means to advance charitable purposes. Further, the circumstances of the Applicant’s establishment and its current and

⁴⁰ Brochure provided by Applicant, para 4.1.

proposed activities indicate an intention to foster and promote equestrian sports disciplines. The Applicant's proposals for development of the Woodhill Sands focus on the provision and development of facilities to host regional, national and international rated equestrian events, for the benefit of equestrian sports.

45. The Board notes that the Applicant has provided information showing that the facility will be available for users at all levels of riding ability, from elite riders to "100s of pony club members from North and West of Auckland and Rodney",⁴¹ and that Woodhill Sands is "the only venue in Auckland providing services and facilities for all equestrian disciplines working together from grass roots to gold medals and beginners to champions."⁴² The Board does not consider that it should extrapolate from this a purpose to promote equestrian sports as a means to advance exclusively charitable purposes.
46. The promotion of elite sport and sporting success is not a charitable purpose in New Zealand law, and the information provided by the Applicant shows that it is a clear purpose to secure and develop a venue that will be beneficial to equestrian sports at the elite level in New Zealand.
47. Moreover, the Board is not satisfied that the promotion of equestrian sports at the "grass roots" level would necessarily provide sufficient public benefit due to the high costs associated with horse ownership. Information provided by the Applicant shows that between 6% and 10% of the population in various demographic categories ride,⁴³ and that the supply chain of maintaining a horse is \$10,000 per annum average.⁴⁴
48. For completeness, the Board notes that while the promotion of equestrian sport may well be beneficial to the local economy in Auckland,⁴⁵ the promotion of economic development in Auckland is not a charitable purpose in law.⁴⁶ Further, while the promotion of equestrian events may provide entertainment for spectators, provision of this entertainment to spectators is not a charitable purpose in law.⁴⁷
49. Accordingly, the Board considers that the Applicant's purpose to support equestrian sports in New Zealand is not a charitable purpose in law, as the purpose is to promote equestrian sports as an end in itself and not as a means to advance charitable purposes on the general law test adopted in section 5(2A) of the Act.

⁴¹ Brochure provided by Applicant, para 2.2.

⁴² Brochure provided by the Applicant, para 2.1

⁴³ Brochure provided by the Applicant, para 3.5.

⁴⁴ Brochure provided by the Applicant, para 6.1.

⁴⁵ Brochure provided by the Applicant, paras 6.1 and 6.2.

⁴⁶ See for example the discussion of economic development as a charitable purpose in *CDC*

⁴⁷ *Travis Trust* at [52].

G. Section 5(3) of the Act

50. The Board has considered whether the Applicant's (non-charitable) purposes fall within the savings provision set out in section 5(3) of the Act. We consider that the Applicant's purpose to promote equestrian sports as *an end in itself*, is pervasive and predominant and clearly outside of the savings provision set out in section 5(3) of the Act. The Board recognises that there is some non-equestrian use of the facility, and that future non-equestrian use is also anticipated.⁴⁸ However, for the reasons given above, the Board considers that viewed holistically the Applicant's purpose is to provide a facility for the benefit of equestrian sports in New Zealand.

H. Determination

51. The Board's determination is that the Applicant does not qualify for registration under the Act and the application for registration should be declined. We consider that the Applicant's dominant purpose is to promote equestrian sports as an end in itself by providing a facility capable of hosting internationally-rated equestrian sporting events, and that this purpose is not a charitable purpose in law. Further, the Applicant's non-charitable purpose does not fall within the savings provision set out in section 5(3) of the Act. The non-charitable purpose is not "ancillary, secondary, subordinate, or incidental to a charitable purpose" of the Applicant and it is an "independent purpose of" the Applicant. As such, the Applicant is not established for exclusively charitable purposes and does not meet the requirement for registration under section 13(1)(b) of the Act.

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

Signed for and on behalf of the Board


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Roger Holmes Miller

15th APRIL 2013
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Date

⁴⁸ Brochure provided by Applicant, para 4.1.