

Registration decision: Canterbury Heritage Building Trust

The facts

1. Canterbury Heritage Building Trust was created by a trust deed dated 16 June 2003. The Trust's Board (the Applicant) applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 20 September 2007.
2. The objects of the Trust are set out in clause 3 of the Trust Deed:

"OBJECTS

3. *Subject to the provisions of clause 9, the Trust Fund shall be applied and used exclusively for charitable purposes. "Charitable purpose" shall have the same meaning as it has in the Income Tax Act 1994 and its amendments or any Act passed in substitution therefore. Without derogating from the above the Trust Fund shall be applied for the maintenance and enhancement of heritage buildings in the City of Christchurch and in particular but without limiting the foregoing:-*

- (a) To provide financial assistance for the maintenance and upkeep of such buildings including any such buildings that may be owned by the Canterbury Club Incorporated*
- (b) To provide reserves for the future maintenance and upkeep of any such buildings*
- (c) To provide such management and control as shall be deemed necessary to achieve the objectives of the trust*

The Trust Fund shall only be used for charitable purposes within New Zealand"

3. The Commission analysed the application and on 15 April 2008 sent the Applicant a letter requesting further information about its activities, including details about the buildings in Christchurch that the fund had been applied to and how often those buildings were open to the public.
4. The Applicant responded to the Commission's request for further information on 29 April 2008. The Applicant advised that although the Trust has existed since 2003, "it has only recently commenced its activities as far as having received donations and expended funds." The Applicant noted that all financial assistance over the last six months has been applied to the exterior renovation of the Canterbury Club's building located on the corner of Cambridge Terrace and Worcester Boulevard. All current funding was being applied to the Canterbury Club project.

5. The Applicant also advised that, other than during Heritage Week, the building is not open to the general public. It is, however, one of the points of interest referred to in the commentary on the tourist tram route.
6. On 27 May 2008, after consideration of the additional information, the Commission sent the Applicant a notice that may lead to a decline on the basis that its activities did not provide sufficient benefit to the public in order to qualify as "any other matter beneficial to the community." The Commission advised that the private benefits for the members of the Canterbury Club outweighed any benefits to the public in being able to enter the building during one week of the year or in viewing the building from the street or a tram.
7. The potential private benefits for the members and owners of the Canterbury Club were identified as:
 - providing financial relief for the members and owners of the club in meeting the council-imposed obligation to maintain their own building, and allowing the club to direct its financial resources to erecting further facilities
 - use of an enhanced building and facilities for members of the club
 - increasing the value of the building which the owners could realise if the building was sold.
8. The Applicant responded in a letter dated 4 June 2008, advising that the Club "was not originally intending to retain the Canterbury Club building in its current form and would have considered demolition and rebuilding." In order to approve a subdivision and sale of part of the Club's land, the Council had required the Club to preserve and maintain the heritage part of the Canterbury Club building and this led to the formation of the Trust. The Applicant submitted that the private benefits for the members and owners of the Club are incidental to the public benefit from maintaining and preserving the building for the public of Christchurch.

The issue

9. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Trust is 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. In particular, whether the Trust's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

10. Section 13(1)(a) of the Act requires that in the case of the trustees of a trust, the 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 for a purpose to be charitable, it must fall within the definition of charitable purpose set out in section 5(1) of the Act and it must provide a public benefit.
12. Section 5(1) of the Act defines "charitable purpose" as including every charitable purpose whether it relates to the relief of poverty, the advancement of education, the advancement of religion or any other matter beneficial to the community.
13. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and analogous to the spirit and intendment of the purposes set out in the Preamble to the Statute of Charitable Uses 1601 (Statute of Elizabeth I). The benefit to the community must be clearly demonstrated.¹ Where an entity is set up to provide or maintain particular facilities for the benefit of the public, restrictions on public access must be reasonable and appropriate in the circumstances.
14. 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; ..."*

Relevant cases

15. In *Re Verrall*² the Court held that promoting the permanent preservation of buildings for the benefit of the nation was a charitable purpose.
16. Similarly in *Re Bruce*³, the Court of Appeal held that the purposes of afforestation, and the making of domains or national parks in New Zealand were charitable. The Court concluded that these objects were required to have an overriding public benefit. In particular, Hosking J considered whether the gift could be used for planting trees on private land. He concluded that the continued management of the plantation could not be assured in those circumstances:

"If the land were sold the buyer might decline to go on with the system, or he might cut down the trees that had grown. It is difficult to conceive by what method of covenant or bargain the successive owners of private land or the land itself could be bound by an obligation to maintain the requisite course of management for the future."

¹ *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 350.

² [1916] 1 Ch 100.

³ [1918] NZLR 16.

Approach of the United Kingdom's Charity Commission

17. The United Kingdom's Charity Commission will only consider organisations set up for preservation purposes to be charitable if they can demonstrate that:
- there is independent expert evidence that the building or site is of sufficient historical or architectural interest
 - the building or site is not used for non-charitable purposes
 - sufficient public access is provided to the building or site
 - any private benefit to individuals is incidental.⁴

Charities Commission's analysis

18. The Commission considers that the Trust does not meet the essential requirements for registration, as set out in section 13(1)(a) of the Act, for a number of reasons.
19. First, the Trust Deed does not require funds from the Trust to be applied to buildings which will be permanently preserved for the nation, as set out in *Re Verrall*.
20. Secondly, the Trust Deed does not require any public benefit to be demonstrated for buildings that are funded by the Trust. In both *Re Verrall* and *Re Bruce* the land was held for clearly identifiable public benefit. In relation to the Canterbury Club building, there is little demonstrated public benefit and public access is limited to one week of the year.
21. Thirdly, where buildings are held in private ownership there is an opportunity for the owners of the buildings to receive a private benefit from the application of the Trust's funds. The owners would benefit from reduced maintenance costs and, upon sale of the building, from any increase in value resulting from enhancements funded by the Trust.
22. While the maintenance and enhancement of heritage buildings is a purpose which could be charitable as "any other matter beneficial to the community", the Commission concludes that, on the basis of the information before it, the Applicant's purposes do not have the required public benefit.

Charities Commission's determination

23. 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 Trust is not of a kind in relation to which an amount of income is

⁴ <http://www.charity-commission.gov.uk/publications/rr9.asp> (accessed 17 June 2008).

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



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Trevor Garrett
Chief Executive

5/8/08

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Date