

## **Registration decision: Enterprise North Shore Trust**

### **Facts**

The Applicant is a council controlled organisation under section 6 of the Local Government Act 2002 and is a trust board incorporated under the Charitable Trusts Act 1957. The Trust Deed constituting The Enterprise North Shore Trust, dated 25 February 1993, indicates that its general purposes are to encourage, promote and support the successful establishment and growth of business investment and employment opportunities within North Shore City.

The Applicant's activities include:

- Business facilitation
- Referrals for businesses to education and training providers
- Marketing and promotion of the North Shore
- Participation in or organisation of regional business strategies and projects to enhance economic development within the North Shore.

The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 24 April 2007 on the basis that the Applicant was established for purposes that are beneficial to the community.

The Commission analysed the Applicant's registration application and on 10 August 2007 sent the Applicant a letter advising that: "... your application for registration might be declined ... because the purposes of the Enterprise North Shore Trust do not meet the registration requirements in section 5(1) of the Charities Act 2005".

On 28 August 2007 the Applicant sent the Commission a submission in support of its view that the Applicant is established for charitable purposes.

### **The issues**

The issue that the Commission has to consider 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 Charities Act 2005 (the "Charities Act"), and in particular, with reference to the requirement to provide a benefit to the public.

### **The law on charitable purpose**

Section 5 of the Charities Act defines 'charitable purpose' as including every charitable purpose relating to:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other matter beneficial to the community.

The Commission applies the common law test for charitable purpose to determine whether one or more of these purposes are present.

Under section 5(3) of the Charities Act if an applicant is to be held charitable all of that applicant's purposes must be charitable in nature, or the non-charitable purposes must be ancillary to a charitable purpose.

### **Commission's analysis**

The Applicant's purposes, as set out in the objects clause (clause 3) of its Trust Deed dated 25 February 1993, are as follows:

3. The Trustees are to apply the Trust Fund exclusively for purposes which will encourage, promote and support the successful establishment and growth of business investment and employment opportunities within North Shore City.

To be charitable the Applicant's purposes must fall within one of the four heads of charity. Clearly, the expressed purposes are not concerned with the advancement of religion, nor do the expressed purposes require that the Applicant's activities relieve poverty (by being of benefit to the needy) or advance education. For the Applicant to be considered charitable the purposes of the Applicant must therefore fall under the fourth head of charity – 'any other matter beneficial to the community'.

The fourth head of charity requires that the purposes of the Applicant benefit the public, or an appreciable section of the public, and fall within the spirit and intendment of the preamble to the Charitable Uses Act, 1601: 43 Elizabeth I c. 4. For the purpose to benefit the 'public' or a 'sufficient section of the public' the number of potential beneficiaries in relation to the purpose must not be numerically negligible.

Additionally, a court, and therefore the Commission, can only accept proof of public benefit and not a belief that public benefit will or may occur<sup>1</sup>.

Clause 3 of the Applicant's trust deed requires that the required activities take place 'within North Shore City' but does not expressly state that any public benefit should be conferred as a consequence of those activities. The effect of this is that the Applicant is not charitable unless a requirement for public benefit can be implied by reference to the requirement that the activities take place within the North Shore. To determine whether such an implication can be adopted requires reference to circumstances extrinsic to the Applicant's trust deed, and in particular, to the activities of the Applicant<sup>2</sup>.

The extrinsic evidence made available to the Commission included the Applicant's Statement of Intent for the three years commencing 1 July 2006, in which:

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<sup>1</sup> *Gilmour v Coats* [1949] AC 26

<sup>2</sup> (*Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, 693 and *Royal College of Surgeons of England v National Provincial Bank Limited* [1952] AC 631, 661).

- (a) The Applicant describes itself as “the economic development agency for North Shore City”. Its “vision” is “for a thriving, buoyant and prosperous sustainable economy that provides a high quality of life for the citizens of North Shore City”.
- (b) The Applicant’s objectives are stated as being to:
- Provide leadership, management, support and advocacy for the development and implementation of strategies to create a “vibrant and buoyant North Shore economy”.
  - Promote and support sustainable business growth, innovation, investment and employment opportunities in North Shore City.
  - Support and recognise the City’s commercial enterprises large and small “to [*sic*] establish, flourish and prosper”.
  - Provide market opportunities for “the City”.
- (c) An intention to measure outcomes from the Trust activities is shown but no indication is given as to the criteria for these measurements and in particular, whether they will provide an overarching “public benefit” to the inhabitants or community of the North Shore from the Applicant’s activities.

None of these stated objectives clearly indicates that the Applicant will do more than confer benefits on individual businesses and persons within the North Shore.

Accordingly, it is clear that the purpose of the Applicant is not charitable because it simply requires that the permitted activities occur within the North Shore and does not require a benefit to flow to the North Shore community or any significant part of it.

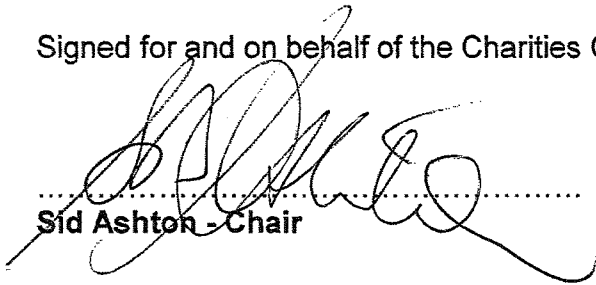
The Commission is not satisfied that the purposes contained in the Applicant’s object clause are charitable under the fourth head of charity, as ‘any other matter beneficial to the community’.

### **Charities Commission’s determination**

The finding of the Charities Commission is that the Applicant has failed to meet an essential requirement for registration 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, pursuant to section 13(1)(a) of the Charities Act 2005, because the objects contained in clause 3 of its trust deed do not provide a public benefit..

**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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**Sid Ashton - Chair**

5 December 2007

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**Date**