

Registration Decision: Focus Paihia Community Charitable Trust (FOC41117)

The facts

1. Focus Paihia Community Charitable Trust (“the Applicant”) applied to the Charities Commission (“the Commission”) for registration as a charitable entity on 28 April 2011. The Applicant was incorporated as a board under the *Charitable Trusts Act 1957* on 29 July 2010.
2. The Applicant’s current objects are set out in clause 4 of the trust deed received by the Commission on 28 April 2011:

4.1 *The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes*

4.1.1 *To create, develop, maintain and promote opportunities for the economic well being in the Paihia Community and its surrounds.*

- a. *Establishing, operating and promoting community owned, sustainable businesses that create employment for the local people and generate profits to be used for community development projects.*
- b. *Offering support in the way of knowledge, direction and other non financial assistance to commercial ventures in Paihia that will benefit the people of Paihia.*
- c. *Developing, sustaining and promoting Paihia as a destination for the local community, tourists and others whose visits will benefit the local economy and thus the people of Paihia.*
- d. *To establish operate and own real property to further the Trust’s purposes.*

4.1.2 *To promote the social and cultural development of the Paihia community by*

- a. *Establishing or supporting the establishment of programmes, projects and events which aim to improve the education, health, and well-being and community spirit of the people of Paihia.*
- b. *Promoting the history of Paihia and its surrounds as the birthplace of the Nation and promote a cultural understanding of our Nation for visitors and residents.*

4.1.3 *To enhance, develop and maintain Paihia’s physical environment while at the same time providing local employment opportunities by*

- a. *Implementing or supporting projects that will generate community pride by making Paihia an attractive place to visit, live, work and play.*

b. *Protecting and enhancing the environment.*

4.2 Means of achieving purposes: *The Trustees will, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees, undertake such activities and enterprises to further the charitable purposes of the Trust as the Trustees decide.*

3. The Commission analysed the application, and on 7 July 2011 sent the Applicant a notice that may lead to decline on the basis that its purposes and activities were not exclusively charitable.

4. On 8 August 2011, the Commission received a proposed rules amendment to the objects clause:

4.1 *The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes to relieve poverty and decrease unemployment in the Paihia Community and its surrounds*

4.1.1 *To engage in the promotion of the Paihia Community and its surrounds to increase economic growth and job opportunities and to reduce the incidence of poverty through the provision of employment opportunities*

a. *Establishing, operating and promoting community owned, sustainable projects that create employment for the local people and generate profits to be used for community development projects.*

b. *Offering support education guidance and training to up-skill the community in the way of knowledge, direction and other non financial assistance to community ventures in Paihia to decrease unemployment.*

c. *Improving communication within the Paihia community and its surrounds*

d. *To establish operate and own real property to further the Trust's purposes.*

4.1.2 *To promote the social and cultural development of the Paihia Community and its surrounds by*

a. *Making gifts in or towards establishing or supporting programs, projects and events which aim to improve the education, health, and well-being of the people of Paihia Community and its surrounds*

b. *Providing opportunities top the people organisations and groups in the Paihia community and its surrounds to enjoy the history of Paihia and its surrounds as the birthplace of the Nation and promote a cultural understanding of our Nation.*

4.1.3 *To enhance, develop and maintain Paihia's physical environment while at the same time providing local employment opportunities to decrease unemployment and relieve poverty by*

a. *Implementing or supporting projects that will generate community pride by making Paihia an attractive place to, live and work.*

- b. *Protecting and enhancing the environment by making grants to preserve indigenous flora and fauna*
- c. *Preserving and celebrating items of cultural and historical significance by making grants to preserve the same.*

4.2 **Means of achieving purposes:** *The Trustees will, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees, undertake such activities and enterprises to further the charitable purposes of the Trust as the Trustees decide.*

5. The Commission analysed the proposed amendments and on 12 October 2011 sent the Applicant a second notice that may lead to a decline letter on the basis that the purposes and activities were still not exclusively charitable.

6. On 15 February 2012, the Commission received a second proposed rules amendment to the objects clause:

4.1 *The Trustees shall hold the Trust Fund upon trust to pay or apply the income and the capital in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes.*

4.1.1 *To enhance, develop, protect and/or maintain Paihia's physical environment.*

4.1.2 *To create, develop, maintain and promote opportunities for the development of the community of Paihia.*

4.1.3 *To encourage and promote the social and cultural development of the Paihia community.*

4.2 *Means of achieving purposes: The Trustees will undertake such activities to further the charitable purposes of the Trust as the Trustees decide, including the empowerment of other organisations to these ends.*

7. On 27 February 2012, the Commission sent the Applicant a letter requesting the new Strategic Overview mentioned in an email from the Applicant on 15 February 2012.

8. On 8 March 2012, the Applicant supplied to the Commission a Strategic Overview, which includes the following Mission Statement and Key Objectives:

MISSION STATEMENT

To make 'Paihia shine', through:

- *clear leadership and direction by inspiring and uniting our community and celebrating our successes;*
- *facilitating and **influencing future public developments;***
- ***commenting and providing submissions on future developments;***
- *having strong relationships and open communication practices;*
- ***encouraging local sustainable employment opportunities;***

- promoting and maintaining a rich, versatile and sustainable volunteer base; and
- a sustainable charitable entity; while remaining impartial and focused on the bigger picture.

...

KEY OBJECTIVES (3 -5 years)

To increase overall community well-being and **encourage year round employment opportunities for local people**, through:

1. Promoting and developing the Masterplan to uplift Paihia`s current look and feel. One that continues to align with and support community aspirations, while ensuring an exceptional visitor experience.

Aim – to provide an exceptional place for the community to live, work and for people to visit.

2. Encourage significantly higher standards of public facilities and services, while ensuring long term planning & implementation of public infrastructure; to meet anticipated growth, specifically roading, water quality, sewerage and other public amenities.

Aim - to ensure that public facilities meet with demand, are appropriate, affordable and deliver at a sustainable level.

3. Build strong relationships with key organisations and the community; to have influence and the ability to advance Paihia`s interests as a whole.

Aim – to ensure that future development within the Paihia area is appropriate, meets with community aspirations and is affordable for the community.

4. Interact with social groups in Paihia, such as youth, the elderly, the disabled, special interest groups (e.g. history) and people with young children, in order to identify their needs and help to address these.

Aim – to support the well-being of specific groups as well as the community as a whole.

5. **Encourage Business Paihia Inc. to support diverse economic activity, through local businesses for year round benefit, specifically around sustainable employment, training and better business practices for community prosperity.**

Aim – to encourage sustainable businesses that provide good employment opportunities, while uplifting service levels year round.

6. To champion a strong and sustainable volunteer pool, that invigorates team spirit and drives projects as identified by the community.

Aim – to have a strong and passionate group of volunteers that continue to be actively involved in uplifting community well-being, via projects and activities.

7. *Operate a sustainable charitable entity that meets its objectives by involving and inspiring the community.*

Aim – to do what we say we will do.
[Emphasis added]

9. The Strategic Overview also states as Goals:

Encourage Business Paihia Inc (and Council) to appoint a business navigator
Establish and implement ongoing training to up-skill local people, particularly unemployed in hospitality, tourism and retail areas
Support the development of a Bay of Islands 'Marketing group'

10. The Strategic Overview lists Key Organisations as:

- *Business Paihia Inc*
- *Paihia Residents and Ratepayers Association*
- *Paihia Haven of History*
- *Waitangi National Trust*
- *Tourism Development Group*
- *Paihia Primary School*
- *Ngapuhi Iwi*
- *Local Hapu*
- *Neighbouring towns*
- *Central and local government bodies, particularly the Eastern Community Board, Far North District Council and Northland Regional Council*
- *Top Energy*
- *Enterprise Northland*
- *Destination Northland*

11. The Strategic Overview lists Opportunities as:

- *Funding*
- *Tourism*
- *Events Centre*
- *Politicians*
- *Advocacy/a voice*
- *Build stronger relationships, gain better understanding*
- *One voice*
- *Increased communication*
- *Better linking*
- *Better buy-in*

The issues

12. 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

13. 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.
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, 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.¹ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
15. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
16. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution 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. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,² 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.
18. In *Vancouver Society of Immigration and Visible Minority Women v. Minister of National Revenue*,³ Gonthier J states:

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

² [1982] 1 Ch. 321, 341.

³ (1999) 169 D.L.R. (4th) 34, 58.

The first is the principle of exclusivity. To qualify as charitable, the purposes of an organisation or trust must be exclusively charitable...The primary reason for the exclusivity requirement is, as Slade J. observed in McGovern, supra, at p.340 that if charitable organizations were permitted to pursue a mixture of charitable and non-charitable purposes there could be no certainty that donations to them would be channelled to the pursuit of charitable purposes.

19. In *Molloy v Commissioner of Inland Revenue*,⁴ Somers J states:

To be charitable in law...an expressed purpose upon its true construction must be limited or confined to charitable purposes only.

20. In addition to being within one of the categories of charitable purpose, to be charitable at law, a purpose must also be for the public benefit.⁵ This means that the purpose must be directed to benefit the public or a sufficient section of the public.

21. In considering an application, section 18(3)(a) of the *Charities Act 2005* 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.*

22. The courts have held that an entity's purposes must be interpreted in the light of its activities.⁶

23. In *Canterbury Development Corporation v Charities Commission*,⁷ Ronald Young J states:

*In considering whether the purpose of the CDC is the relief of the unemployed it is appropriate to consider **both the terms of the constitution and the activities of CDC** (s 18(3)).*

Commission's analysis

Analysis under the four heads of charity

24. The current and proposed purposes in clause 4 are not aimed at the advancement of religion. The Commission has therefore considered whether the purposes could be held to be charitable under the relief of poverty, advancement of education and "other matters beneficial to the community". But first, we deal with the possibility that the wording in the

⁴ [1981] 1 NZLR 688 at 691.

⁵ Accepted as common ground in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195, para [32].

⁶ See *Attorney-General v Ross*, [1986] 1 WLR 252 at 263, *Federal Commissioner of Taxation v Word Investments Ltd*, (2008) 236 CLR 204 at 175, *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194.

⁷ HC WN CIV 2009-485-2133 [18 March 2010] at paragraph 29.

trust deed limits the Applicant's purposes to only those that are charitable.

Effect of clause appearing to limit purposes

25. The Introduction of the Trust Deed states:

The Trustees wish to establish a Trust for the charitable purposes set out in this deed.

26. Clauses 4.1 and 4.2 state:

4.1 *The Trustees shall hold the Trust Fund upon trust to pay or apply the income and the capital in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes.*

...

4.2 *Means of achieving purposes: The Trustees will, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees, undertake such activities and enterprises to further the charitable purposes of the Trust as the Trustees decide.*

27. Clause 8.2 states:

Discretions: Except as otherwise expressly provided by this deed, the Trustees may exercise all the powers and discretions vested in the Trustees by this deed in the absolute and uncontrolled discretion of the Trustees, at such time or times, upon such terms and conditions, and in such manner as the Trustees may decide, provided that it is always applied to further the Trust's charitable purposes.

28. Clause 18 states:

In this deed, unless the context otherwise requires:

"charitable purposes" means every purpose within New Zealand which in accordance with the law of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose beneficial to the community, and shall include any trust established solely and exclusively for charitable purposes.

29. In *McGovern v. Attorney-General*, Slade J considered a similar clause which appeared to restrict the powers of the trustee to objects which were charitable according to the law of the United Kingdom. He concluded that the trusts could not be regarded as charitable and that the proviso to clause 2 could not enable the trusts declared by the deed to escape total invalidity.⁸

30. The Commission does not consider that wording in the above clauses provides conclusive evidence that the purposes are in fact charitable. Before it can register an applicant as a charitable entity, the Commission

⁸ [1982] 1 Ch 321, 343-44, 353.

must be certain that the applicant meets all the essential elements of registration set out in section 13 of the Act.

Relief of poverty

31. 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.
32. The law interprets "poverty" broadly so a person does not have to be destitute to qualify as poor.⁹ People who are in need, aged,¹⁰ 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.¹¹ 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.¹²
33. The Applicant's current objects are set out in clause 4 of the trust deed received by the Commission on 28 April 2011:

4.1 *The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes*

4.1.1 *To create, develop, maintain and promote opportunities for the economic well being in the Paihia Community and its surrounds.*

- a. *Establishing, operating and promoting community owned, sustainable businesses that create employment for the local people and generate profits to be used for community development projects.*
- b. *Offering support in the way of knowledge, direction and other non financial assistance to commercial ventures in Paihia that will benefit the people of Paihia.*
- c. *Developing, sustaining and promoting Paihia as a destination for the local community, tourists and others whose visits will benefit the local economy and thus the people of Paihia.*
- d. *To establish operate and own real property to further the Trust's purposes.*

⁹ *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.

¹⁰ *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹¹ *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.

¹² *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.

- 4.1.2 *To promote the social and cultural development of the Paihia community by*
 - a. *Establishing or supporting the establishment of programmes, projects and events which aim to improve the education, health, and well-being and community spirit of the people of Paihia.*
 - b. *Promoting the history of Paihia and its surrounds as the birthplace of the Nation and promote a cultural understanding of our Nation for visitors and residents.*
- 4.1.3 *To enhance, develop and maintain Paihia's physical environment while at the same time providing local employment opportunities by*
 - a. *Implementing or supporting projects that will generate community pride by making Paihia an attractive place to visit, live, work and play.*
 - b. *Protecting and enhancing the environment.*

4.2 **Means of achieving purposes:** *The Trustees will, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees, undertake such activities and enterprises to further the charitable purposes of the Trust as the Trustees decide.*

- 34. Providing employment opportunities to people who are at a particular disadvantage, such as the long-term unemployed, would be considered to be charitable under relief of poverty. However, the Applicant's current purposes do not refer to relief of poverty or assisting the disadvantaged, but refer to "providing local employment opportunities", which would allow the Applicant to assist those who are merely transferring between jobs or industries. It would not be charitable to provide employment opportunities to those already in employment.
- 35. The Strategic Overview contains the Goal, "training to up-skill local people, particularly unemployed in hospitality, tourism and retail areas". However, this is not limited to the unemployed or others who are at a particular disadvantage.
- 36. The Strategic Overview contains the Key Objectives:
 - ...encourage year round employment opportunities for local people...*
 - ...*
 - Encourage Business Paihia Inc. to support diverse economic activity, through local businesses for year round benefit, specifically around sustainable employment, training and better business practices for community prosperity.*
- 37. Again, these are not limited to the disadvantaged. The Strategic Overview does not have a significant focus on relieving poverty or decreasing unemployment, but rather looks at working with business and tourism organisations for the general promotion of the area to increase economic growth and tourism.

38. The general promotion of the area to increase economic growth and tourism could have downstream benefits such as job creation leading to less unemployment.
39. However, courts have expressed a great deal of scepticism about the appropriateness of defining the purpose of a trust by reference to alleged downstream benefits. For example, in *Amateur Youth Soccer Association v Canada (Revenue Agency)*,¹³ Rothstein J held:

*The fact that an activity or purpose happens to have a beneficial by-product is not enough to make it charitable. If every organisation that might have beneficial by-products, regardless of its purposes, were found to be charitable, the definition of charity would be much broader than what has hereto for been recognised in the common law.*¹⁴

40. In relation to the relief of poverty, Ronald Young J in *Canterbury Development Corporation v Charities Commission*¹⁵ held:

*What is illustrated by this analysis is that the purpose of CDC is not relief of poverty through providing those who are unemployed with jobs. It is to improve the general economic wellbeing of the area. In that sense, therefore, CDC's purpose cannot be the relief of poverty. The possibility of helping someone who is unemployed is too remote for it to qualify as the charitable purpose of relief of poverty.*¹⁶

41. The CDC quote above demonstrates the court's reluctance to accept downstream benefits as satisfying the requirements of the relief of poverty head.
42. Accordingly, the Commission does not consider that the purposes in the current or proposed clause 4 are exclusively charitable under the relief of poverty.

Advancement of education

43. 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.¹⁷ In order to advance education, learning must be passed on to others. In addition, it must reach some

¹³ (2007) 287 DLR (4th) 4 (SCC).

¹⁴ (2007) 287 DLR (4th) 4 (SCC) at 22; quoted with approval by Joseph Williams J in *Travis Trust v Charities Commission* HC Wellington CIV-2008-485-1689 3 December 2008 at para 32.

¹⁵ HC WN CIV 2009-485-2133 [18 March 2010].

¹⁶ HC WN CIV 2009-485-2133 [18 March 2010], para 30.

¹⁷ *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.

minimal standard, so that there is some educative value to the material being taught.¹⁸

44. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹⁹ 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.

Education for commercial ventures

45. Clause 4.1.1(b) of the current rules states as a purpose:

Offering support in the way of knowledge, direction and other non financial assistance to commercial ventures in Paihia that will benefit the people of Paihia.

46. The Strategic Overview states as Goals:

*Encourage Business Paihia Inc (and Council) to appoint a business navigator
Establish and implement ongoing training to up-skill local people, particularly unemployed in hospitality, tourism and retail areas
Support the development of a Bay of Islands 'Marketing group'*

47. In *Canterbury Development Corporation v Charities Commission*,²⁰ Justice Ronald Young J stated:

*I do not consider this service [business training] comes within the provision of the enhancement of education as intended by the Act. To be a charitable purpose it must provide this opportunity to a broad section of the public. ... Nor in my view is supporting businesses by providing assistance to their proprietors, in such aspects as financial management or marketing, the support or advancement of education and learning.*²¹

48. In line with the above case law, the Commission does not consider that the education provided by the Applicant to ventures under clause 4.1.1(b) would provide sufficient public benefit, as the primary benefit is to the businesses involved.

Cultural development

49. Clause 4.1.2 of the current rules states as purposes:

To promote the social and cultural development of the Paihia community by
a. *Establishing or supporting the establishment of programmes, projects and events which aim to improve*

¹⁸ *Re Collier (deceased)* [1998] 1 NZLR 81, 91-92.

¹⁹ *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.

²⁰ HC WN CIV 2009-485-2133 [18 March 2010].

²¹ HC WN CIV 2009-485-2133 [18 March 2010], para 33.

the education, health, and well-being and community spirit of the people of Paihia.

- b. *Promoting the history of Paihia and its surrounds as the birthplace of the Nation and promote a cultural understanding of our Nation for visitors and residents.*

50. The Commission considers that clause 4.1.2(b) is likely to be charitable under advancement of education.
51. Clause 4.1.3 of the proposed purposes supplied on 15 February 2012 states, "To encourage and promote the social and cultural development of the Paihia community."
52. Cultural development can be charitable if subjects of educative value are presented to the public in a balanced and systematic process of instruction, training, and practice.
53. Clauses 4.1.2(a) of the current rules and the proposed clause 4.1.3, however, are broadly stated, and could include non-charitable purposes.
54. The Commission considers that there is insufficient evidence to show that the Applicant will be carrying out purposes under these clauses which will advance education in a manner that is exclusively charitable according to the case law cited above.

Other matters beneficial to the community

55. In order for a purposes to qualify as "any other matter beneficial to the community", the purposes must be beneficial to the community and be within the spirit and intendment of the purposes set out in the *Preamble to the Statute of Charitable Uses 1601* (Statute of Elizabeth).²²
56. In *Travis Trust v Charities Commission*,²³ Williams J. noted that:
- ... 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.*
57. Not all organisations that have purposes which benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable.²⁴

Economic development

58. Dal Pont, in *Charity Law in Australia and New Zealand*, wrote:

²² *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

²³ CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J.) at para. 20.

²⁴ In *Re Cumming* [1951] NZLR 498, 501.

*... It is not all objects of public utility that are charitable, 'for many things of public utility may be strictly matters of private right, although the public may directly receive a benefit from them. **Nor are essentially economic or commercial objects within the spirit of the Preamble** [Emphasis added].²⁵*

59. Courts have not usually recognised the promotion of business and economic development as charitable. In *IRC v Oldham Training Enterprises*,²⁶ it was held that supporting businesses promoted private interests of individuals and any consequential benefit to the community was found to be too remote to be considered charitable.
60. There is also a number of cases where courts have held that assisting persons carrying on a particular trade or business will not be charitable unless there is a condition that this assistance can only be made for a purpose which is itself charitable.²⁷
61. Economic development of a geographical area was specifically considered by the courts in *Re Tennant*²⁸ and *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation*.²⁹ In both of these cases, economic development was held to be charitable under "other matters beneficial to the community" because essential services were provided and the community was considered to be under a particular disadvantage.
62. The Commission has seen insufficient evidence to show that Paihia is an area which is under a particular disadvantage.

Promotion of tourism

63. Clause 4.1.1(c) of the current purposes states as a purpose:

Developing, sustaining and promoting Paihia as a destination for the local community, tourists and others whose visits will benefit the local economy and thus the people of Paihia.

64. The Strategic Overview, under "Goals", states:

*Establish and implement ongoing training to up-skill local people, particularly unemployed in hospitality, tourism and retail areas
Support the development of a Bay of Islands 'Marketing group'*

⁸ Oxford (UK) Oxford University Press, 2000, at 178 citing *Nightingale v. Goulburn* (1847) 5 Hare 484 at 490 and *Re Davis (deceased)* [1965] WAR 25 at 28.

²⁶ (1996) STC 1218

²⁷ See *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132; *Hadaway v Hadaway* [1955] 1 WLR 16 (PC); and *Commissioners of Inland Revenue v White* [1980] 55 TC 651.

²⁸ [1996] 2 NZLR 633.

²⁹ (2005) FCA 439.

65. In the Strategic Overview, key organisations include Tourism Development Group and Destination Northland, and Key Opportunities include “Tourism”.
66. In *Travel Just v Canada (Revenue Agency)*,³⁰ the court indicated that the promotion of tourism was unlikely to constitute a charitable purpose.
67. The Commission is therefore of the view that clause 4.1.1(c) is not a charitable purpose.

Political purposes

68. The Courts have held that an entity is a political entity if one of its main purposes is:

- (1) seeking to change the law; or
- (2) advocating for the views of, or supporting, a political party; or
- (3) perpetual advocacy of a particular point of view.

69. In *Bowman and the Secular Society*,³¹ the court held that:

...a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is a liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit...

70. In *McGovern v Attorney General*,³² Slade J held that a trust whose main object is to secure the alteration of the law would not be regarded as charitable because the court had no adequate means of judging whether a proposed change in the law would or would not be for the public benefit. He further held that if a principal purpose of the trust was to influence government policy or particular administrative decisions of governmental authorities, it would not be charitable.³³
71. In *Notre Dame de Grace Neighbourhood Association v Revenue Canada, Taxation Section*,³⁴ the tenants association failed to be registered as a charitable organisation because of its political activities. These included writing a letter to fight cutbacks in government funding and campaigns for inter alia the abolition of water tax and against the conversion of rental properties to condominiums.
72. Clause 4.1.1 of the current rules states as a purpose, “To create, develop, maintain and promote opportunities for the economic well being in the Paihia Community and its surrounds.” Clause 4.1.2 of the

³⁰ [2006] FCA 343, [2007] 1 CTC 294

³¹ [1917] AC 406.

³² [1982] Ch 321 at 338-340.

³³ See also *Public Trustee v. Attorney-General*, [1997] 42 NSWLR 600 at 619, *In Re Draco Foundation (NZ) Charitable Trust*, CIV 2010-485-1275 15 February 2011, *Greenpeace of New Zealand Incorporated*, HC WN CIV 2010-485-829 [6 May 2011].

³⁴ [1988] 2 CTC 14,88 DTC 6279, (FCA).

proposed purposes received on 15 February 2012 contains the same purpose.

73. Clause 4.1.3 of the current rules states as a purpose:

To enhance, develop and maintain Paihia's physical environment while at the same time providing local employment opportunities by
a. *Implementing or supporting projects that will generate community pride by making Paihia an attractive place to visit, live, work and play.*

74. The Strategic Overview, under "Mission Statement", states:

- *facilitating and influencing future public developments;*
- *commenting and providing submissions on future developments;*
- ...
- *encouraging local sustainable employment opportunities;*

75. The Strategic Overview includes as Opportunities "Politicians", "Advocacy/a voice", "One voice", and "Better buy-in".

76. From the Strategic Overview, it appears that the Applicant has political and therefore non-charitable purposes. To be ancillary, a non-charitable purpose must be an incidental and necessary means of furthering a charitable purpose.³⁵ The Commission has seen insufficient evidence to show that the political purposes undertaken by the Applicant are an incidental and necessary means of achieving a charitable purpose.

Community development

77. Clause 4.1.1(a) of the current purposes refers to activities that generate profits for "community development projects". The term "community development projects" is sufficiently broad that any number of non-charitable purposes could be carried out under this clause.

Social development and well-being

78. Clause 4.1.3 of the proposed purposes supplied on 15 February 2012 states, "To encourage and promote the social and cultural development of the Paihia community."

79. In *Inland Revenue Commissioners v Baddeley*,³⁶ the House of Lords held that promotion of social wellbeing in a community was not a charitable purpose. Viscount Simonds stated:

Once more I submit to your Lordships that this trust must fail by reason of its vagueness and generality. The moral, social and physical well-being of the community or any part of it is a laudable object of

³⁵ *Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011], paras 66-69, 74.

³⁶ [1955] AC 572 at 589 per Viscount Simonds, at 613 per Lord Tucker.

*benevolence and philanthropy, but its ambit is far too wide to include only purposes which the law regards as charitable.*³⁷

80. In light of the above case law, clause 4.1.3 is too broadly worded to be exclusively charitable.

Public or private benefit

81. The public benefit criterion necessarily requires that any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.³⁸ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.³⁹

82. In *Commissioners of Inland Revenue v. Oldham Training and Enterprise Council*,⁴⁰ the court decided that the public requirement was not met because:

the existence of these objects, in so far as they confer freedom to provide such private benefits, regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote.

83. Similarly, in *Travel Just v. Canada (Canada Revenue Agency)*,⁴¹ the Canadian Federal Court of Appeal considered that the entity would not meet the requirement of the public benefit test because it would benefit individuals. It wrote at as follows:

*Promoting commercial activity of this kind, with a strong flavor of private benefit, is not a purpose beneficial to the public which would make Travel Just eligible for a subvention from Canadian taxpayers as a charity.*⁴²

84. In *Canterbury Development v Charities Commission*, Ronald Young J held:

The creation of jobs for the unemployed, as opposed to jobs for those who are employed and not in need, is hoped for, but remote and uncertain, result of the way in which CDC approaches its task. The relief of unemployment is certainly not a direct object of purpose of CDC's function. The public benefit is hoped for but ancillary. In the same way the general economic lift for the Canterbury region from CDC's work is the hoped for result of helping individual businesses. It is remote from

³⁷ Ibid, at 589 per Viscount Simonds.

³⁸ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 CTC 294.

³⁹ *Gilmour v Coates* (1949) AC 26;

⁴⁰ (1996) 69 Tax Cases 231.

⁴¹ 2006 FCA 343.

⁴² 2006 FCA 343 at para 9.

*the purpose and operation of CDC. Public benefit is not at the core of CDC's operation.*⁴³

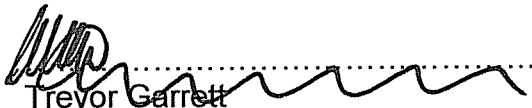
85. The Commission concludes from the above analysis that the current and proposed purposes and the proposed activities of the Applicant provide private benefits for business owners, and that these benefits would not be incidental to any public benefit that may flow from each of the stated purposes.

Charities Commission's determination

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

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

Signed for and on behalf of the Charities Commission


Trevor Garrett
Chief Executive

16 / 4 / 12
Date

⁴³ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] para 67