

Deregistration decision: Lyttelton Information and Resource Centre Trust

The facts

1. The Lyttelton Information and Resource Centre Trust (the Trust) was incorporated as a board under the *Charitable Trusts Act 1957* on 30 April 1996. The Trust applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 30 September 2007.
2. The Trust's purposes are set out in clause 3 of its Trust Deed:

"The purpose of the Trust will be to provide quality information to both the local community and visitors to the Lyttelton Harbour area

More specifically to;

 - (i) *Promote the cultural, historic, leisure and commercial activities of the Lyttelton Harbour communities within it; and*
 - (ii) *Manage the Lyttelton Information Centre in a professional manner with a combination of paid and volunteer staff.*
 - (iii) *Carry on any other activities consistent with the charitable purposes of the trust."*
3. The Trust was registered as a charitable entity on 16 April 2008. In making the decision to approve registration, the Commission concluded that the Trust advanced education by promoting cultural and historic information to the public and by promoting public recreation and facilities under the fourth head of charity (any other matter beneficial to the community). However, the Commission held some concerns regarding the promotion of leisure and commercial activities. For this reason, the Trust was registered but identified for subsequent review.
4. Subsequent to the Trust's registration, the Commission was made aware of the court's decision in *Travel Just v Canada Revenue Agency*.¹ The Commission then undertook a review of registered entities that operated information centres catering for tourists.
5. After a reassessment of the Trust's purposes and the grounds for registration, the Commission reached a preliminary view that not all of the Trust's purposes were likely to amount to advancing education or the provision of public recreation facilities.
6. On 21 July 2009, the Commission sent the Trust a notice of intention to remove from the register on the basis that providing information services to tourists was not of sufficient educative value to advance education in the charitable sense, and that the promotion of commercial activities was not of sufficient benefit to the public to meet the public benefit requirements for registration.

¹ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

7. On 6 August 2009, the Trust responded to the notice by email making the following submissions:

- *"... the commercial side of our operation is very small. ... We earn very little money from commercial activities. It really is secondary to our overall function of providing general information for any local or visitor who happens to visit us."*
- *"Any money the centre makes is put back into this community either in the form of wages for locals or information improvement. For example, we have just created three walking quiz's for families so they can enjoy Lyttelton on foot, the website etc."*
- *"We may not teach courses but we train our volunteers to use computers, be customer friendly etc. We also host education courses in our community room. Flax weaving will be hosted here next term. We are a base for the Lyttelton Harbour Community Education programme where locals can register for courses."*
- *"You feel our benefit to the community is negligible taking the view that we are primarily assisting business ... This would be about ¼ of our actual activity."*
- *"Our main role is to improve wellbeing. Whether this is encouraging someone to go on a local walk, make contact with a local organisation or just act as a waiting area for Cruise ships or ferry passengers."*

8. The Trust also listed many of its achievements and activities. The lists of benefits to the community that are of most relevance to the Trust's continued qualification for registration as a charity are those under the sub-headings "Social" and "Economic".

"Social

- *We encourage local people to participate in community activities*
- *Provide services for local community groups i.e Festival Committee*
- *Incorporate volunteers into its operations either via the board or front line staff*
- *Give free information to newcomers/travellers/existing residents*
- *Promote items of historic and cultural significance*
- *Preserve the historic fabric of the township. The current application to the Historic Places Trust to register the township as an historic area is vital to retain the character of the township*
- *Create community service directories for the local area*
- *The visitor centre is often used by community groups as a booking point for local fundraisers*
- *A friendly face will always speak to people if the drop in*
- *Waiting area. We have a seating area where many locals pop in. Some talk after visiting the medical centre, others are waiting for the Diamond Harbour Ferry, some just want a warm space to eat their lunch*
- *Community development/well being relies on information. We are a major distribution point for this in Lyttelton and Diamond Harbour*
- *We offer a community meeting space*

- We host a community based exhibition space. Each month a local artist can exhibit for free
- Great networking opportunities for local tourism operators.”

“Economic

- Provides part time employment for three local staff on weekends and public holidays
- Promotes the region for tourism
- Assists during the cruise ship season, encouraging passengers to visit the township and greater Canterbury
- Sells promotional material for the area
- Trains local people in the tourism/hospitality industry
- Supports local business
- A community business generating funds to re-invest in this community
- Plays an active role in township festivals that has positive spin off for local business
- Co-ordinates the production of a business directory”

9. The “Home” page of the trust’s website² states:

*“A Community & Visitor Information Centre
Welcome to Lyttelton, Christchurch, New Zealand. We take pride in our friendly hospitable nature and aspire to create a sustainable visitor destination. Lyttelton Harbour is a place of new ideas, wellbeing and strong community spirit. Our centre reflects this distinct character.*

Visit Lyttelton Harbour

It is our pleasure to tell you how great the harbour is, and about activities, attractions, accommodation and upcoming events. The most popular activities are walking, boat trips, the Timeball, and of course our cafes & restaurants. Lyttelton is famous for night entertainment too, with several theatres and quirky bars.

..and Yeah it’s Local!

Lytteltonians come on in. The info-centre is well stocked with community newspapers, a notice board and staffed by locals too. You can pop in to catch up or view an exhibition by a local crafts person/people. We also provide internet, fax and photocopying services as well as a meeting room.”

10. Other parts of the Trust’s website contain the following information:

- The “Community Info” page of the website provides a community diary.³
- The “Visitor Information” page provides guides to accommodation, hotels, cafes and restaurants, tours and transport, and other private businesses servicing the tourist industry. The Trust also takes bookings for these businesses at the Information Centre.
- On the “Cruise Ships” page, the Trust provides cruise ship passengers with information about tourist destinations in Lyttelton.

² <http://directory.lytteltonharbour.info/>

³ <http://community.lytteltonharbour.info/1193/Lyttelton%20Information%20Centre>

- The Trust operates a "Visitors Group" which consists of local operators focused on developing visitor activities and attractions. Monthly meetings visit local businesses including accommodation, venues, transport, new local businesses and attractions in and around Banks Peninsula. Projects include Cruise Ship passenger services, Media hosting, Festival of Walking, Lyttelton Harbour Map and the new 2010 Visitor Discover Lyttelton Guide and directory.
- Under the heading "Our volunteers", the Trust describes itself as:

"The Lyttelton Harbour Information Centre is run by volunteer staff Monday to Friday.

Our aim is to encourage local people from around our harbour to become involved. Some people operate tourism initiatives in the area and that gives them a chance to have good input into visitor outcomes, others are people who are very proud of where they live and just want visitors and locals to experience the area to its fullest. Working at the Information Centre is a fun job.

We all meet really interesting people from all around the world plus get to know each other really well. During the year we have monthly tourism visitation days where we visit activity and accommodation providers from around the harbour. Several social events are also held each year and volunteer effort is celebrated.

All volunteers are part of the local Timebank and this entitles them to receive free services for the volunteer hours they donate at the centre."

The issue

11. The Commission must consider whether the Trust is not, or is no longer, qualified for registration as a charitable entity under section 32(1)(a) of 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.

The law on charitable purposes and deregistration

12. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(a), in the case of 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.
13. 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.⁴ This means that the purpose must be directed to benefiting the public or a sufficient section of the public.

⁴ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

14. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for registration as a charitable entity.
15. Section 31 of the Act provides:
- "(1) An entity is deregistered as a charitable entity if it is removed from the register.*
 - (2) An entity is removed from the register if the Commission registers a notice in the register that –*
 - (a) states that the entity is removed from the register; and*
 - (b) states the date on which the removal is effective.*
 - (3) The entity ceases to be a charitable entity on the date referred to in subsection 2(b). ..."*
16. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
17. When considering whether a registered entity continues to qualify for charitable status, the Commission must consider whether the entity continues to meet the essential requirements for registration set out in section 13 of the Act. Section 50(2) of the Act empowers the Commission, if it considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under the Act, to examine and enquire into matters in connection with charitable entities or persons, including:
- "(a) the activities and proposed activities of the charitable entity or person;*
 - (b) the nature, objects, and purposes of the charitable entity;*
 - (c) the management and administration of the charitable entity;*
 - (d) the results and outcomes achieved by the charitable entity or person;*
 - (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person."*
18. Under section 35(1)(a) of the Act, if an objection to removal of an entity from the register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.

Charities Commission's analysis

19. In order to determine 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, the Commission has considered the Trust's stated purposes, information provided by the Trust in its response to the notice of intention to remove from the register, information on the Trust's website, and the relevant case law.

20. The Commission considers that the Trust's purposes set out in clause 3 of the Trust Deed do not indicate an intention to relieve poverty or advance religion. The purposes have therefore been considered in relation to the advancement of education and other matters beneficial to the community.

Advancement of education

21. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services or promotion of a particular point of view.
22. In *Re Shaw (deceased)*, the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."⁵
23. In *Re Collier (deceased)*, Hammond J set out the test for determining whether the dissemination of information qualifies as charitable under the head of advancement of education in New Zealand:

*"It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value."*⁶

24. In *Travel Just v Canada Revenue Agency*⁷ the court held it was unlikely that producing and disseminating materials providing travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.
25. Based on the cases cited above, the Commission considers that the Trust's purposes in clause 3 are unlikely to amount to advancing education.

Other matters beneficial to the community

26. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth). The purposes in the Preamble are as follows:
- relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning

⁵ [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352.)

⁶ [1998] 1 NZLR 81, 91-92.

⁷ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

- free schools and scholars in universities
- repair of bridges, ports, havens, causeways, churches, sea banks, and highways
- education and preferment of orphans
- relief, stock or maintenance of houses of correction
- marriage of poor maids
- supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
- relief or redemption of prisoners or captives and
- aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.⁸

27. The Commission considers that some of the activities listed on the Trust's website and in its email of 6 August 2009, such as promoting healthy recreation and providing facilities for community groups, may provide some community benefit and be within the spirit and intendment of the purposes in the Preamble to the Statute of Elizabeth. However, the Trust's stated purposes are not restricted to those that are charitable under this head, and the Trust also undertakes non-charitable activities such as promoting local attractions and supporting local businesses.

Public or private benefit?

28. The public benefit criterion necessarily requires that any private benefits arising from the Trust'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.⁹ 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.¹⁰
29. In *Hadaway v Hadaway*¹¹, the court held that assisting persons carrying on a particular trade or business or profession could not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case, any eventual benefit to the community was considered too remote.

⁸ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Trust v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

⁹ *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.

¹⁰ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹¹ [1955] 1 WLR 16 (PC).

30. In *Crystal Palace Trustees v Minister of Town and Country Planning*¹², the court held that providing a large park and amenities for public education and recreation were charitable purposes because there was no intention to further the interests of individuals engaged in trade or industry or commerce.
31. More recently, in *Inland Revenue Commissioners v Oldham Training and Enterprise Council*¹³, the court held that promoting the interests of individuals engaged in trade, commerce and enterprise and support services for, and advice to, new businesses disqualified the organisation from having charitable status. In the event that there would be any benefit to the public, this would be too remote.
32. Applying the above case law, the Commission considers that some of the Trust's purposes will promote the interests of business owners and commercial tourism operators in the Lyttelton area and that any benefits conferred on the remainder of the community by such purposes will be too remote.

Section 61B of the Charitable Trusts Act 1957

33. In order to be valid at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the Charitable Trusts Act 1957 however, can operate in two situations to "save" a trust that has both charitable and non-charitable (and therefore invalid) purposes.
34. The first is where the entity's stated purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be "blue-pencilled" out). The second is where the stated purposes are capable of both a charitable and a non-charitable interpretation and the primary thrust of the gift is considered to be charitable (in which case the purposes can be deemed to apply only in terms of the charitable interpretation).¹⁴
35. The Commission considers that the Trust's purposes as set out in clause 3 are non-charitable for the reasons stated above. If the purposes in clause 3 were "blue-pencilled out", the Applicant would be left with no specific purposes. The Commission therefore concludes that the Applicant does not have substantially charitable purposes.

¹² [1951] 1 Ch 132.

¹³ [1996] STC 1218.

¹⁴ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

36. In *Re Beckbessinger*¹⁵ Tipping J held:

"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say ... that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."

37. The Commission has analysed the wording of the Trust's purposes, the surrounding context, and activities, and does not consider that these provide evidence of "a substantially charitable mind" with an intention to create a charitable trust, but which was not conveyed by the drafting. The Commission considers that the Trust's purposes do not indicate an intention to create a substantially charitable trust.
38. On these bases, the Commission considers that the Trust's purposes are not substantially charitable and therefore section 61B of the Charitable Trusts Act 1957 cannot operate to validate the Trust.

Conclusion

39. The Commission concludes that the Trust's purposes, set out in clause 3 of the Trust Deed, are not charitable and cannot be saved by section 61B of the Charitable Trusts Act 1957. The Trust has therefore failed to meet an essential requirement for continued registration as a charity in that the Trust is not 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.

Public interest

40. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities will be diminished if entities that do not meet the essential requirements for registration remain on the register.

Charities Commission's determination


41. The Commission determines that the Trust is not, or is no longer, qualified for registration as a charitable entity because it is not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.
42. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Trust's removal from the register and that one ground for removal from the register has been satisfied, that is, the Trust is not qualified for registration as a charitable entity.

¹⁵ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

43. The decision of the Commission is therefore to remove the Trust from the Register, pursuant to section 31 of the Act, with effect from 15 December 2009.

For the above reasons, the Commission determines to deregister the Trust as a charitable entity by removing the Trust from the Register.

Signed for and on behalf of the Charities Commission


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Trevor Garrett
Chief Executive

15/12/09
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Date