

Registration Decision: Pirongia Tourism Association

The facts

1. Pirongia Tourism Association Incorporated (“the Applicant”) was incorporated under the *Incorporated Societies Act 1908* on 7 September 2006.
2. The Applicant made a complete application for registration as a charitable entity to the Charities Commission (“the Commission”) on 22 June 2009.
3. The Applicant’s purposes are stated in clause 3 of its constitution:

3 Objects:

- a) *The objects for which the society is formed are to promote tourism to and within the Pirongia, Ngutunui, Paterangi and Te Pahu areas and to encourage development of appropriate attractions, facilities and services for visitors*
- b) *To foster and promote tourism businesses and enterprises within the region*
- c) *To foster and promote the region of Pirongia as a tourism destination*
- d) *To foster and promote the education of the tangata whenua in relation to the operation and servicing of the Maori and European tourism industry*
- e) *To develop and manage quality control and standards of service within the tourism industry of the Pirongia region*
- f) *To establish and operate quality control and standards of service in relation to the environment, flora, fauna and waahi tapu sites of the rohe*
- g) *To foster and promote to manuhiri (visitors) to Aotearoa, New Zealand an understanding of our natural and historic resources and the benefits of the conservation of these resources*
- h) *To act as the official body in the association or negotiations of matters in relation to tourism between the Pirongia and Government and local Government Agencies*
- i) *To act as the official body for the community in relation to tourism in any association or negotiations with any non government organisations*
- j) *To act as the official body for Pirongia Tourism in relation to any association or negotiations with any organisations or commercial enterprises of the tourism industry*
- k) *To raise money for the purposes of the Society by any means whatever of a legal nature. Any income, benefit or advantage must be used to advance the charitable purposes of the organisation.*
- l) *To purchase, acquire, lease, exchange, hire or otherwise deal in real and personal property of any tenure or description and any estate or interest therein and any rights over or connected therewith and to construct*
- m) *To adopt from time to time, any additional objects relative to, and in the interests of members of the society*
- n) *To borrow or raise money or secure the payment of money owing or the satisfaction or performance of any obligations or liability incurred*

or undertaken by the society and to include employment of agencies, officers and contractors in such manner as the management committee may think fit. Any payments made to a members of the organisation, or person associated with a member, must be for goods or services that advance the charitable purpose and must be reasonable and relative to payments that would be made between unrelated parties

- o) To undertake and execute any trust or agency business, which may seem directly or indirectly conducive to any objects of the Society*
- p) To do all such lawful acts and things that are incidental or conducive to attainment of the above objects*

4. The Commission analysed the application and on 26 June 2009, sent a notice that may lead to decline to the Applicant on the basis that the purposes set out in clauses 3(a) to 3(j) were not charitable purposes.

5. The Applicant responded by letter dated 26 August 2009, submitting that:

“In terms of Section 5(1) of the Charities Act 2005, we consider that the activities which our association has undertaken are charitable because they relate to the relief of poverty, the advancement of education and the benefit of our wider community.

Although we have a number of objects, we maintain that all of our objects (a) to (g) are charitable in nature because they are directed at developing and enhancing our community of interest and we undertake them on an unpaid and not for profit basis. Objects (h) to (p) are ancillary to our main purposes.

1.1. Relief of poverty

The ‘relief of poverty’ is not the same as preventing poverty, and indirect means of relieving poverty have been recognised at law when determining charitable purposes. Our association seeks to relieve poverty indirectly through our objects (a) to (g) because the tourism operations and businesses which make up the overwhelming majority of our members are scarcely commercial enterprises. A number of our members are craft people and artists, and we note that the Statute of Elizabeth 1601 lists the supportation, aid and help of young tradesmen and handicraftsmen as a charitable purpose. We see our role as encouraging co-operation, skill building and group promotional initiatives as a way of developing our grass-roots tourist attractions to eventually become capable of providing local employment opportunities. Community development is therefore an underlying theme to our activities, although not expressly included in our objects.

1.2. Advancement of Education

Our association fosters building skills and expertise from a tourism perspective for our members and local operators. The wider community is also able to participate in our educational activities. We believe that by assisting the development of high service standards and practices which will ensure delivery of quality experiences for visitors, our members are more likely to be successful in the long term. As we are a rural community, acquiring these skills and expertise is often not easy, particularly as most of our members are already fully committed time-

wise and do not have the financial resources to meet the costs on their own.

1.3. Community Benefit

We believe that our activities provide benefits to our community which extend beyond tourism or business promotion. We note that in British Law, the existence of public benefit is not a stringent test, and that the public can be held to be a class of beneficiaries when assessing charitable purposes. There is also no clear guidance on whether quantitative or qualitative judgements are to be used as a measure of benefit. According to British Law, the promotion of rural development and 'community' building may all be considered as charitable purposes. In particular, repair of public amenities is listed in the preamble to the Statute of Elizabeth 1601 and this is an area where we have been active. We are of the opinion that our activities have brought qualitative benefits both to our members and the wider community. In our case, community is both one of interest, ie businesses and one of locality or geography.

Not all business owners in our area belong to our association, so any benefits we bring to our area are not limited to our members, but extend to other businesses and residents.

. . . We provide the following examples of our actual activities.

- 2.1. Rural tourism workshop . . .*
- 2.2. Key note speakers . . .*
- 2.3. Pirongia Trails Brochure . . .*
- 2.4. Pirongia Main Street Planting . . .*
- 2.5. Pirongia Website . . .*
- 2.6. Public Toilets Beautification Project.”*

6. The Commission analysed this information and on 17 September 2009 sent the Applicant a second notice that may lead to a decline on the basis that the purposes set out in clause 3 were not exclusively charitable.
7. The Applicant responded in a letter dated 23 October 2009 requesting clarification of which purposes the Commission considered to be charitable and submitting that:

“Your reply goes on to state that the educational element is able to be ignored in assessing charitable status because of the interpretation you have made on the purposes behind the educational activities. We consider that interpretation of the purposes of education goes beyond the spirit of the Charities Act. . . .

As the public, both residents and visitors, directly benefits from our projects to beautify Pirongia’s main street with planting and to redevelop the public toilets, we are surprised that you have determined that any benefits conferred on the community are too remote to render the purposes charitable. Furthermore, despite British Law holding that benefit to the community is not a stringent test, that simply a benefit of some form is sufficient to determine charitable purpose, the Commission has used as reasons to deny charitable purpose general statistics of income levels and unemployment rates applicable to our

area. We do not consider this an appropriate test in determining whether there is a community benefit..”

8. On 11 November 2009, the Commission sent a letter clarifying that it considered clauses 3(a) to 3(f) are not charitable purposes, clause 3(g) may be charitable under the advancement of education and clauses 3(h) to 3(p) are ancillary objects or powers.
9. On 4 May 2010, the Applicant confirmed by email that it would not be making any further submissions and requested that the Commission consider the submissions that it had already made regarding registration, and advise them in due course of the Commission’s decision.

The issue

10. The Commission must consider 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 established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act. In particular,
 - whether the Applicant’s purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
 - whether the Applicant will provide a public benefit.

The law on charitable purpose

11. Under section 13(1)(b) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
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. 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.
13. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose.
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*

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

- (ii) *the proposed activities of the entity; and*
- (iii) *any other information that it considers is relevant.*

Commission's analysis

15. The Commission considers that the Applicant's purpose set out in clause 3(g) may be charitable under the advancement of education. The Commission considers that the purposes set out in clauses 3(h) to 3(n) are ancillary purposes or powers.
16. The remaining purposes, set out in clauses 3(a) to 3(f), do not indicate an intention to advance religion. Accordingly, the Commission has considered these purposes under the "relief of poverty", "the advancement of education" and "any other matter beneficial to the community".

Relief of poverty

17. 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 be capable of providing relief.
18. The Applicant has submitted that the "relief of poverty" is not the same as preventing poverty and that indirect means of relieving poverty have been recognised at law when determining charitable purposes. It submits that it seeks to relieve poverty indirectly through its objects in clauses 3(a) to 3(f) because the tourism operations and businesses that make up the majority of members of the organisation are scarcely commercial enterprises. It considers that its activities of encouraging co-operation, skill building and group promotional initiatives are a way of developing its grass-roots tourist attractions to eventually become capable of providing local employment opportunities.
19. The Commission considers that the express purposes outlined in clauses 3(a) to 3(f) do not show an intention to provide services or assistance to help any particular disadvantaged beneficiary group. In addition, the Applicant has not provided any evidence that its activities are aimed at providing benefits for such people.
20. While the Commission acknowledges that it is possible to relieve poverty through indirect means, it does not consider that promoting tourism in the Pirongia area is sufficiently connected to benefiting a disadvantaged group to render it charitable. In *Canterbury Development Corporation v Charities Commission*, it was argued that the work of the Canterbury Development Corporation (CDC) created jobs and therefore benefited the unemployed. However, Young J rejected this argument stating:

"I do not consider the purpose of CDC is to assist the unemployed and thereby relieve poverty. I accept the unemployed could be one of

the ultimate beneficiaries of its work. The aim of the CDC is to assist businesses to prosper (within the criteria of those whom it will help). This in turn, it believes, will contribute to Christchurch and Canterbury's economic wellbeing. As a result jobs may be created and those who are unemployed may obtain some of those jobs

...
*"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"*²

21. The Commission considers that the purposes of the Applicant relate to the promotion of tourism within the Pirongia, Ngutunui, Paterangi and Te Pahu areas. Any benefits to disadvantaged beneficiaries such as the unemployed are too remote to render these purposes charitable under the relief of poverty.
22. In light of the above, the Commission does not consider that the purposes outlined in clauses 3(a) to 3(f) are charitable under the relief of poverty.

Advancement of education

23. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not however include advertisements for particular goods or services, the study of subjects that have no educational value, or the promotion of a particular point of view.³
24. In *Re Shaw (deceased)*⁴, 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.
25. 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."*⁵

² HC WN CIV 2009-485-2133 [18 March 2010] at para 30.

³ *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.

⁴ [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] 1 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).

⁵ [1998] 1 NZLR 81 at 91-92.

26. Furthermore, in *Travel Just v Canada Revenue Agency*⁶, the Canadian Federal Court of Appeal doubted that the dissemination of tourism information would qualify as either publication of research or an educational purpose.
27. The Commission does not consider that the Applicant's purposes as outlined in clauses 3(a) to 3(f) relate to the advancement of education. Rather, these purposes relate to the promotion of tourism in the Pirongia, Ngutunui, Paterangi and Te Pahu areas including promoting tourism businesses and enterprises, promoting Pirongia as a tourism destination, developing and managing quality control and standards of service.
28. Moreover, while the Commission considers that some of the Applicant's activities may advance education, it does not consider that all of the Applicant's activities will advance education. Thus, activities such holding a rural tourism workshop in Pirongia, having key note speakers (experts in rural tourism) at its Annual General Meetings and providing information about the history of the area may advance education. However, the Commission does not consider that providing a promotional brochure about the area or hosting a website including information on services available in the area will advance education.
29. In light of the above, the Commission does not consider that the purposes outlined in clauses 3(a) to 3(f) are charitable under the advancement of education.

Any other matter beneficial to the community

30. 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)⁷ namely:
 - relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning
 - 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

⁶ 2006 FCA 343, [2007] 1 CTC 294.

⁷ *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157; *Re Tennant* [1996] 2 NZLR 633 at 638.

- 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.

31. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

*“ . . . 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 indirectly receive a benefit from them.’ Nor are essentially economic or commercial objects within the spirit of the Preamble.”*⁸

32. Courts have found the following purposes to be charitable under the “any other matter beneficial to the community”:

- beautification of a locality,⁹
- preservation of a locality,¹⁰
- maintenance of public parks and gardens,¹¹
- improvement of public safety,¹²
- maintenance of public buildings and facilities.¹³

33. Courts have also held the promotion of industry to be charitable under “any other matter beneficial to the community”, in some circumstances.

34. The case of *Re Tennant* related to a rural community and the provision of a creamery. In that case, the court applied other cases which had held agriculture generally to be charitable such as *Inland Revenue Commissioners v Yorkshire Agricultural Society*¹⁴ and *Waitemata County v Commissioner of Inland Revenue*¹⁵. Hammond J stated:

*“Obviously each case will turn on its own facts. I would not be prepared to say that there may not be cases which would fall on the other side of the line because of private profit making of some kind. But here the settlor was attempting to achieve for a **small new rural community** what would then have been central to the life of that*

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

⁹ *Re Pleasants* (1923) 39 TLR 675.

¹⁰ *Re Verrall* [1916] 1 Ch 100; *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705; and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

¹¹ *Morgan v Wellington City Corporation* [1975] 1 NZLR 416 and *Re Bruce* [1918] NZLR 16.

¹² *Inland Revenue Commissioners v Baddeley* [1955] AC 572.

¹³ *Kjar v Mayor of Masterton* [1930] GLR 303; *Re Chapman* (High Court, Napier, CP89/87, 17 October 1989, Greig J); and *Guild v Inland Revenue Commissioners* [1992] 2 All ER 10 (HL).

¹⁴ [1928] 1 KB 611.

¹⁵ [1971] NZLR 151.

community: a cluster complex of a school, public hall, church and creamery.”¹⁶ [Emphasis added]

35. In *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation*, the Australian Federal Court of Appeal decided that the entity was charitable because it was created to provide internet and communications infrastructure for Tasmania, a particularly economically disadvantaged area. Heeney J wrote:

“As has been seen, the genesis of TECC was the provision of large amounts of Federal funding to assist “regional, rural and remote communities” a current euphemism for whose parts of Australia which are economically disadvantaged or, put more bluntly, poor, compared with the rest of the nation [...] Tasmania is a particular case in point. The combination of small population and long distances from markets and raw materials meant that conventional manufacturing industry was always to be at a disadvantage.”¹⁷

36. In *Canterbury Development Corporation v Charities Commission*, in discussing whether economic development can fall within the “spirit and intendment of the Statue of Elizabeth”, Ronald Young J states:

“What must be kept in mind is that the charitable purpose of benefit to the community is a community benefit to assuage need. In cases such as Re Tennant [1996] 2 NZLR 633 and Tasmanian Electronic Commerce Centre v Commissioner of Taxation [2005] FCA 439 focus is on providing community benefit where an identified need is established. Save for advancement of religion all charitable purpose can be seen as meeting a need.”¹⁸

37. While Pirongia is a small rural community, the Commission does not consider that the Applicant’s purposes are analogous to the purposes considered in the above cases. The Applicant has not provided sufficient evidence to show that tourism is central to the community or that Pirongia is an area in need or an area suffering from economic disadvantage.

38. In light of the above, the Commission considers that the Applicant’s purposes in clauses 3(a) to 3(f) are not within the spirit and intendment of the Statute of Elizabeth.

Public or private benefit?

39. 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.¹⁹ In addition, proof that public benefit will necessarily flow

¹⁶ [1996] 2 NZLR 633 at 640.

¹⁷ [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26, para 59-60.

¹⁸ HC WN CIV 2009-485-2133 [18 March 2010] at para 42.

¹⁹ *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.

from each of the stated purposes is required, not merely a belief that it will or may occur.²⁰

40. The Courts have found the promotion of industry to be charitable under the fourth head only when it is for public benefit and not for the benefit of private individuals. The private benefit referred to in these authorities, is not private benefit to people connected with the organisation but rather a private benefit from the organisation carrying out its purposes.

41. Thus, in *Inland Revenue Commissioners v Yorkshire Agricultural Society*²¹ the improvement of agriculture was held to be charitable where it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit will not be charitable.

42. In *Crystal Palace Trustees v Minister of Town and Country Planning* a body of trustees was entrusted with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art. Danckwerts J stated:

*“it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees”.*²²

43. In *Hadaway v Hadaway* the Privy Council held that assisting persons carrying on a particular trade or business or profession would 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 the court held that any eventual benefit to the community was too remote:

*“The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative.”*²³

44. In *Commissioners of Inland Revenue v White and Others and Attorney General* it was held that entity's purpose to “promote any charitable purpose which will encourage the exercise and maintain the standards of

²⁰ *Gilmour v Coates* (1949) AC 26; see also Dal Pont, *Charity Law in Australia and New Zealand*, Oxford University Press, 2000 at 175 where he wrote:

Whether the relevant criterion is defined as public benefit or beneficial to the community, the court does not assume or presume its existence as in the case of the other head of charity – the benefit in issue must be affirmatively proved or clear to the court. In other words, the word “beneficial” requires independent examination after the purposes and the beneficiaries have been ascertained.

²¹ [1928] 1 KB 611.

²² [1951] 1 Ch 132 at 142.

²³ [1955] 1 WLR 16 at 20 (PC).

crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest of the public therein” was charitable. However, in that case, Fox J states:

*“The three cases which I have last mentioned seem to me to establish that the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interest of those engaged in the manufacture and sale of their particular products. ... The charitable nature of the object of promoting a particular industry depends upon the existence of a benefit to the public from the promotion of the object”*²⁴ [Emphasis added].

45. In *Commissioners of Inland Revenue v. Oldham Training and Enterprise Council*, the Court held:

*“[T]he second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, on any fair reading must extend to enabling Oldham TEC to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them [...] Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But 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”*²⁵ [Emphasis added].

46. In *Commissioner of Taxation v Triton Foundation*,²⁶ the Federal Court of Australia held that a foundation set up to assist inventors provided sufficient public benefit. In reaching this conclusion, the court noted that the foundation’s purposes were particularly directed at young people, but were also available to “any member of the community who had the desire or inclination to use them”, and a number of the resulting inventions had been of benefit to the community.

47. In *Travel Just v Canada (Revenue Agency)*, the Canadian Federal Court of Appeal considered a case relating to entity whose purposes were the creating of model tourism development projects and the production and dissemination of tourism information. The Court found that promoting commercial activity with a strong flavour of private benefit was not a purpose beneficial to the public and expressed doubt that the dissemination of information described in the second object would qualify as either publication of research or an educational purpose. It wrote at paragraph 9 as follows:

²⁴ (1980) 55 TC 651 at 659.

²⁵ (1996) 69 Tax Cases 231 at 251.

²⁶ (2005) 147 FCR 362.

“In addition, the creation and development of model tourism development projects with the characteristics described above could include the financing and operation of luxury holiday resorts in developing countries. 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.”²⁷

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

*“The important point in this case is that CDC’s assistance to business is not collateral to its purposes but central to it. The purposes of CDC’s assistance to business is, as the constitution identifies, and the operation confirms, to make the businesses more profitable. CDC believes this assistance will, in turn, result in benefit to the Canterbury community. The **central focus however remains on increasing the profitability of businesses not public benefit.**”²⁸ [emphasis added]*

...
*“Any public benefit therefore from CDC’s purpose and operation’s is in my view too remote to establish CDC as a charity. Public purpose is not the primary purpose of CDC’s objects or operation. Its primary purpose is the assistance of individual businesses. 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 the purpose and operation of CDC.** Public benefit is not the core of CDC’s operation.”²⁹ [Emphasis added]*

49. The Commission considers that the primary beneficiaries of the Applicant’s purposes outlined in clause 3(a) to 3(f) will be private tourism operators in the Pirongia region. Any benefits conferred on the remainder of the community from such purposes are too remote to render the purposes charitable.

Applicant’s submissions

50. The Applicant has submitted that a number of its members are crafts people and artists and that the Statute of Elizabeth lists the “supportation, aid and help of young tradesmen and handicraftsmen” as a charitable purpose.
51. The Commission agrees that the supportation, aid and help of young tradesmen and handicraftsmen may be a charitable purpose. However, the Applicant’s purposes are not aimed at supporting crafts people and artists but rather are aimed at the promotion of tourism in the Pirongia

²⁷ 2006 FCA 343 [2007] 1 C.T.C 294, 2007 D.T.C. 5012 (Eng.) 354 N.R. 360.

²⁸ HC WN CIV 2009-485-2133 [18 March 2010] at para 60.

²⁹ HC WN CIV 2009-485-2133 [18 March 2010] at para 67.

region. For the reasons outlined above, the Commission is of the view that the promotion of tourism is not charitable.

52. The Applicant has also submitted that the repair of public amenities is listed in the preamble to the Statute of Elizabeth and that this is an area where it has been active.
53. The Commission considers that the repair of public amenities is charitable and that some of the Applicant's activities may be charitable under this category including the Pirongia main street planting and the public toilets beautification project. However, the Commission does not consider that the Applicant's purposes or activities are limited to the repair of public amenities and therefore considers that this is not sufficient to render the Applicant exclusively charitable.
54. The Applicant has submitted that British Law holds that benefit to the community is not a stringent test, that simply a benefit of some form is sufficient to determine charitable purpose.
55. In *Travis Trust v Charities Commission*, the first case to interpret the *Charities Act 2005*, Joseph Williams J states:

"But as Lord Bramwell said in the same case [Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531] "certainly every benevolent purpose is not charitable". So in a deft circumlocution of legal logic, we are required in considering what is beneficial to the community under the last of the Pemsel heads to look back to the "spirit and intendment" of the preamble to the Statute of Elizabeth to assist in dividing between those purposes that are both beneficial and charitable and those that are beneficial but not charitable. To make the division, regard must be had to the particular words of the preamble and, it as now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy."³⁰

56. In *Canterbury Development v Charities Commission*, Ronald Young J states:

"It is common ground that the appellant must pass two tests before they can be registered under this head as a charity. I agree with the respondent's identification of the two stage test as:

Consisting firstly of falling within the spirit and intendment of the Statute of Elizabeth (often called the analogy test) and secondly meeting the public benefit requirement."³¹

57. In light of the above, the Commission considers that the correct test as to whether a purpose comes under "any other matter beneficial to the community", is that the purpose must be both beneficial to the community

³⁰ CIV-2008-485-1689, High Court, Wellington, 3 December 2008 (Joseph Williams J.) at para 20.

³¹ HC WN CIV 2009-485-2133 [18 March 2010] at para 40.

and within the spirit and intendment of the purposes set out in the Statute of Elizabeth.³² For the reasons outlined above, the Commission does not consider that the purposes outlined in clauses 3(a) to 3(f) meet this test.

Conclusion

58. The Commission concludes that the Applicant's purpose in clause 3(g) may be charitable but that the purposes in clauses 3(a) to 3(f) are non-charitable. The non-charitable purposes are not ancillary to the charitable purpose.

Commission's determination

59. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b) 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

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Date

³² See also *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Auckland Harbour Board v IRC* [1959] NZLR 204; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157; *Re Tennant* [1996] 2 NZLR 633 at 638.