

Registration decision: Team New Zealand Limited

The facts

1. Team New Zealand Limited (the Applicant) was incorporated as a company on 6 May 1993.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 15 May 2008.
3. The Applicant's purposes are set out in clause 2.1 of its Constitution:

"2.1 Purpose of Company to be limited: For the purpose of section 16(2) of the Act the Company shall only carry on business on behalf of and for the benefit of the Team New Zealand Trust (a charitable trust created by declaration of trust dated 13 May 1993) and in pursuance of the objects of that trust. All the assets and profits from time to time of the Company and from its operations, activities, winding up or otherwise, shall be held on behalf of and may only be employed for the benefit of the Team New Zealand Trust, and shall not be used in part or whole for the private pecuniary profit of any person."

4. The Commission analysed the application for registration and on 8 January 2009 sent the Applicant a notice that may lead to a decline on the basis that the Commission was not satisfied that The Team New Zealand Trust had charitable purposes and therefore carrying on business on behalf of the Trust was not a charitable purpose. The Applicant was also advised that its Constitution did not contain sufficient provisions to prevent private pecuniary profit.
5. On 17 February 2009, the Applicant's solicitor responded to the notice advising that The Team New Zealand Trust was responding separately in relation to the Commission's concerns that it has non-charitable purposes, and that the Applicant was willing to alter its Constitution to prevent the payment of dividends to non-charitable shareholders.
6. On 1 May 2009, the Registration and Monitoring Committee considered the information provided by the Applicant. The Committee recommended that a letter be sent to the Applicant requesting further information about the Applicant's activities, specifically:
 - further detail in relation to the activities of the company undertaken in furtherance of the object set out in clause 2.1 of the company's constitution;
 - a copy of the company's financial statements for the previous year; and
 - an explanation of the rights and obligations as between Team New Zealand Limited, The Team New Zealand Trust, and the Team New Zealand 2000 Trust.

7. On 2 June 2009, the Applicant responded to the request for further information providing its annual report for the year ended 31 March 2008 and submitting the following:

"The role and activity of TNZL has been to act as the entity by and through which the Trust uses participation by New Zealand and New Zealanders in races, regattas and displays (specifically those connected with the America's Cup, though not limited just to actual Cup challenges and defences) to fulfil the charitable purposes that are set out in clause 5.1 of the Trust declaration." (paragraph 1.3)

"Through its successful example at the very highest, most competitive and demanding levels of competition, TNZL seeks to:

- (a) lift the understanding of as many people as possible of the personal skills required for the safe and successful enjoyment of yachting;*
- (b) encourage people in all aspects of yachting to improve their skills by creating role models; and*
- (c) enhance the environment within which local yacht club activities occur." (paragraph 1.6)*

"... TNZL has contributed to the development of technologies that have rippled through the New Zealand maritime industries and have contributed to the huge reputation they have around the world. ... Those contributions have assisted TNZL to achieve success in competition but they have also invariably been shared with wider interests so that the safety of high performance yachts and sailing equipment is progressively improved as well." (paragraph 1.9)

"... TNZL was established as a corporate entity to hold assets and equipment, employ staff, and conduct business solely for the purposes of the Trust. It was also to separate the trustees of the Trust from liabilities which could arise from some of the activities the company pursues in the Trust's interests. Its constitution was drafted to reflect the same limitations which the Courts have recognised in other cases make a wholly owned company charitable if its shareholding trust is also charitable. ... Its activities are directed towards successful New Zealand competition in the America's Cup and other high performance regattas, solely as a means of the Trust fulfilling its stated charitable objects." (paragraph 1.10)

"TNZL has had no involvement with the Team New Zealand 2000 Trust since it was established in 2001. That trust is a completely separate entity, run by its own trustees, which was established for the special purpose of applying to certain charitable purposes surplus funds distributed to it by the Team New Zealand Trust following TNZL's successful defence of the America's Cup in 2000." (paragraph 3.2)

8. The Commission analysed the Applicant's submissions and on 13 August 2009, sent the Applicant a second notice that may lead to a decline on the basis that its primary purpose is to manage yacht-racing challenges for the America's Cup and other high performance regattas, which the courts have held to be non-charitable.

9. On 25 August 2009, the Applicant's solicitor responded to the notice submitting:
- The Team New Zealand Trust does not have to have exclusively charitable purposes under the Charities Act and if the trust is eligible for registration as a charitable entity, the status of the Applicant would be resolved.
 - The Applicant may undertake a non-charitable business and still be a charitable entity if all of the benefits of its business must be applied to charitable purposes as provided for in its constitution. (Citing *MK Hunt Foundation Ltd v Commissioner of Inland Revenue*,¹ *Calder Construction Co Ltd v Commissioner of Inland Revenue*,² *Commissioner of Inland Revenue v Carey's (Petone and Miramar) Ltd*,³ and *Commissioner of Inland Revenue v NTN Bearing-Saeco (New Zealand) Ltd*.⁴)
 - Even if there is no public benefit from high performance sailing (which the Applicant does not concede) that is irrelevant to a determination of The Team New Zealand Trust's status.
 - The Applicant's participation in high performance regattas is not relevant to a determination of whether it is carrying on business for charitable purposes.

The issues

10. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act and, if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

The law on charitable purpose

11. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained for exclusively 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.⁵ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.

¹ [1961] NZLR 405.

² [1963] NZLR 921.

³ [1963] NZLR 450.

⁴ (1986) 8 NZTC 5,039.

⁵ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

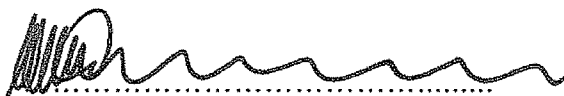
15. The Applicant's purposes set out in clause 2.1 will only be charitable if the purposes of The Team New Zealand Trust are considered to be charitable. As set out in the decision of the Commission relating to the registration application for The Team New Zealand Trust (Decision no: 2010 – 4), the Commission does not consider that the purposes of The Team New Zealand Trust meet registration requirements in relation to section 13(1)(a) of the Act. Therefore, the Commission concludes that the Applicant's purposes will be non-charitable.

Charities Commission's determination

16. 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 society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. The Applicant has non-charitable purposes, and these non-charitable purposes are not ancillary to charitable purposes.

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

11/2/10
Date