

## Registration decision: The Huia Fishing Club Incorporated

### The facts

1. The Huia Fishing Club Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 12 June 1992.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 3 June 2008.
3. Clause 2 of the Applicant's Rules provides:
  - "2. The objects for which the club is established are as follows: -
    - (a) To promote and foster the recreational aspects of fishing and boating in the general area of the Manukau Harbour
    - (b) To provide and maintain a clubhouse, launching facilities and other facilities and amenities in connection with fishing and boating.
    - (c) To establish and provide catering, recreational entertainment and social facilities for members and any other category of person approved by the committee and to obtain any requisite license.
    - (d) To take all steps as may be deemed necessary to provide and protect the interest of members of the club.
    - (e) To purchase, take on lease or exchange or hire or otherwise acquire or hold any real or personal property and any rights and privileges which the club or its executive committee shall think necessary or expedient for the purpose of attaining the objects of the club and to sell, exchange, let on bail or lease with or without option of purchase, or in any manner, dispose of such property, rights or privileges as aforesaid.
    - (f) To do all such things as are incidental or conducive to the attainment of the above objects."
4. The dissolution clause in the Applicant's Rules (clause 34) provides:

*"If at any General Meeting a resolution for dissolution of the club shall be passed ... the committee shall thereupon or at such future date as shall be specified in such resolution proceed to realise the property of the club and after discharge of all liabilities shall determine the manner of disposal of the balance of funds in accordance with the resolution to dissolve the club."*
5. The Commission analysed the application for registration and on 9 February 2009, sent the Applicant a notice advising that its application may be declined on the basis that the purposes set out in clause 2 were not charitable purposes according to law, and that the Rules did not provide for surplus assets to be distributed solely for charitable purposes upon winding up.

6. On 15 March 2009, the Applicant responded to the notice stating that it would amend its winding up clause to meet registration requirements. The Applicant also made the following submissions regarding its purposes:

- *"Our Fishing Club is open Fridays and Sundays and of course Saturdays if we are running a community event. We are a family club and hold many events for the young and old, that is beneficial to the community. No community event is at cost to them as our club covers any cost involved."*
- *"The commission is of the view that the main activity appears to be social boating and fishing and does not constitute a cardiovascular activity. We feel it does, as to pull in a large fish as your heart rate is raised. A battle to land a Striped Marlin can take up to three hours of hard fought fishing."*
- *"We organise Adults and Children's fun runs, cricket on the beach for the community, fun day Olympics for all the community. We also have numerous Surf Casting Competitions, which involves a lot of walking on our beautiful West Coast Beaches. We also have a lot of people who fish from Kayak's, this type of fishing gives a very good work out. Fishing is one of the largest sports in the world, as quoted in the dictionary."*

7. The Applicant provided letters of support from Fosters Bay Residents Association Incorporated and Huia Volunteer Fire Brigade, and gave examples of its activities:

- St Patrick's Day Family Event held at the fishing club
- Santa Parade ending at the fishing club, followed by a Children's Christmas party
- Cricket held at the local domain
- Children's fun run
- Adults' and childrens' fishing competitions
- Fund raising for people who are in need of community support
- Pig hunting competitions

8. On 5 May 2009, the Applicant informed the Commission that its dissolution clause had been amended as follows:

*"21.1 When upon the winding up or dissolution of the Club there remain any surplus funds or property after the payment of all debts, the same shall not be distributed among the members of the Club but given or transferred to some other organisation or body having objects similar to the objects of the Club or given to some other charitable organisation or purpose within New Zealand."*

## **The issues**

9. 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:

- (a) 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; and
- (b) whether, in the event of winding up, the Applicant is required to dispose of its surplus assets to charitable purposes.

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

10. Under section 13(1)(b)(i) of the Act, to be registered as a charitable entity, a society or institution must be established and maintained for exclusively charitable purposes.
11. 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.<sup>1</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. In considering an application for registration, 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*
  - (ii) *the proposed activities of the entity; and*
  - (iii) *any other information that it considers is relevant; ...*

### **Charities Commission's analysis**

14. In order to conclude whether an applicant entity has been "established" for charitable purposes, the Commission makes an assessment of the objects clauses set out in the entity's rules. It also has regard to the current and proposed activities of the entity and any other information that it considers relevant.
15. In order to conclude whether an applicant entity will be "maintained" for charitable purposes, the Commission makes an assessment of the clauses relating to wind up or dissolution set out in the entity's rules.

#### Established for charitable purposes?

16. The Commission considers that the purpose set out in clause 2(b) of the Applicant's Rules is charitable under "any other matters beneficial to the

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

community” as it provides public facilities in connection with fishing and boating.

17. The Commission considers the purpose in clause 2(e) is more appropriately categorised as a power, and the purpose in clause 2(f) is ancillary to the other purposes.
18. The Commission considers that the Applicant’s purposes set out in clauses 2(a), (c) and (d), do not amount to relief of poverty or advancement of education or religion. These purposes have therefore been considered in relation to “any other matter beneficial to the community”.
19. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).<sup>2</sup>
20. In *Travis Trust v Charities Commission*, Williams J made the following comments concerning sports and recreation:

*“In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth. In the areas of sport, the deeper purpose is usually health or education.”<sup>3</sup>*

21. The Commission does not consider that a deeper purpose of clause 2(a), promoting the recreational aspects of fishing and boating in the Manukau Harbour, is education or health. In order to justify a conclusion that such a purpose would promote health, the Commission would require evidence that participation in these activities would provide general health benefits for all those who participated. Although the Commission agrees that walking along the beach to find a spot to cast a line, fishing from a kayak, and the act of pulling in a large fish all expend energy, this is only a small part of what is involved in fishing and boating. The Applicant has not provided any evidence, and the Commission has not found evidence, to justify a conclusion that fishing and boating promotes public health through cardiovascular fitness.

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<sup>2</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society 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.

<sup>3</sup> *Travis Trust v Charities Commission* (High Court, Wellington, 3 December 2008, Joseph Williams J, CIV-2008-485-1689) para 52.

22. The Commission has also considered whether this purpose could be held to be charitable under section 61A of the Charitable Trusts Act 1957. Section 61A states:

**61A Trusts for recreational and similar purposes**

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:*  
*Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.*
- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
- (b) *Either—*
- (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
- (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

23. Boating and fishing could be considered recreational and leisure time occupations. The Commission, however, does not consider that these will meet a need of the community which as a matter of social ethics ought to be met, nor are they provided with the purpose of improving the condition of life for the persons for whom they are primarily intended.

24. The purpose in clause 2(c) is to provide catering, recreational entertainment and social facilities for members. According to the cases of *Royal Choral Society v Commissioners of Inland Revenue*<sup>4</sup> and *Canterbury Orchestra Trust v Smitham*<sup>5</sup>, providing amusement, entertainment, or social activities for members of an entity are not primary purposes which provide a public benefit. Therefore, the Commission does not consider that the purpose in clause 2(c) is charitable.

<sup>4</sup> [1943] 2 All ER 101

<sup>5</sup> [1978] 1 NZLR 787 (CA)

25. The broadly worded purpose set out in clause 2(d), of providing and protecting the interests of members of the club, does not indicate a charitable purpose.

#### Public or private benefit?

26. 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.<sup>6</sup> 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.<sup>7</sup>
27. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*<sup>8</sup>, Lord Atkin said:

*"There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part to the object that it should benefit its members I should think that it would not be established for a charitable purpose only."*<sup>9</sup>

28. The Commission does not consider that the purposes in clauses 2(a), (c) and (d) provide sufficient public benefit.

#### Conclusion

29. The Commission concludes that the purpose set out in clause 2(b) is charitable, but the purposes set out in clauses 2(a), (c) and (d) are non-charitable. The non-charitable purpose in clause (d) may be ancillary, but the non-charitable purposes in clauses 2(a) and (c) are not ancillary to a charitable purpose.

#### Applicant's submissions

30. In its letter of 15 March 2009, the Applicant submitted that fishing "is not the main activity of the club, we fully support the community and help in any way we can". The Applicant also listed donations that it had made.
31. The Commission considers that the donations identified by the Applicant have been made for charitable purposes. In addition, some of the activities organised by the Applicant, such as cricket and fun runs, are likely to promote public health and would therefore be charitable under "other matters beneficial to the community". These examples of community assistance, however, are not reflected in the Applicant's stated purposes.

<sup>6</sup> *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.

<sup>7</sup> *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.

<sup>8</sup> [1928] 1 KB 611.

<sup>9</sup> [1928] 1 KB, 611, 631.

Maintained for charitable purposes

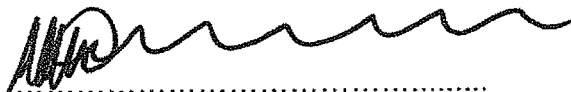
32. In the event of an entity being wound up, its surplus assets will be distributed prior to the entity ceasing to exist. Therefore, the Commission is of the view that distribution of any surplus assets is included in the "maintenance" of that entity for charitable purposes and requires that any surplus assets are directed to charitable purposes.
33. The Commission considers that "some other organisation or body having objects similar to the objects of the Club" set out in the amended clause 21.1 will not restrict distribution to an entity with charitable purposes. This is because the Commission does not consider that the objects of the Applicant are charitable, and so an entity with similar purposes is unlikely to be considered charitable.
34. In addition, even if the Applicant's specific purposes had been considered to be charitable, it could not necessarily be concluded that an entity with similar purposes would also be charitable. "Charitable purpose" has a special meaning in law and while two organisations may have similar purposes, the specific nature of each may render one charitable and the other non-charitable.

**Charities Commission's determination**

35. 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 established and maintained for exclusively charitable purposes, as required by section 13(1)(b)(i) 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

24/8/09

Date