

Registration decision: Venture Taranaki Trust

The facts

1. The trustees of Venture Taranaki Trust (the Applicant) were incorporated as a board under the Charitable Trusts Act 1957 on 4 September 1998.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 29 October 2007.
3. Clause 4.1.2 of the Applicant's Trust Deed states that the Trust Fund shall be held upon trust to be applied as the trustees "may in their absolute discretion think fit for all or any one of the Charitable Purposes".
4. "Charitable Purposes" are defined in clause 1.1 of the Trust Deed as follows:

"Charitable Purposes" means purposes which are intended to promote, prosper and develop a dynamic and innovative economy in the Taranaki Area for the benefit of the community resident in the Taranaki Area and without limitation to the above includes each of the following purposes:

- (a) *Encouraging and assisting in the establishment and development of sustainable new and existing businesses in the Taranaki Area;*
- (b) *Promoting new investments, tourism and developing viable employment opportunities within the Taranaki Area;*
- (c) *Working with local, regional and central government, and other providers of services within the Taranaki Area, to ensure that services and facilities in the Taranaki Area will enhance economic growth;*
- (d) *Working with local and regional government to develop a sophisticated marketing initiative designed to retain and attract larger businesses and investment capital and visitors and events to the Taranaki Area;*
- (e) *Acquiring, updating and monitoring a database containing information on businesses and investment opportunities in the Taranaki Area;*
- (f) *Identifying the requirements of businesses in the Taranaki Area to assist in achieving the foregoing objects and ensuring those requirements are met or exceeded;*
- (g) *Co-operating with any other person or persons, body, service, institution, company, corporation, club, society, statutory body or government department in order to promote, achieve, support or maintain any of the foregoing activities;.*
- (h) *Publishing books, manuscripts, journals, bulletins, circulars, newsletters or any other publications in order to promote, support or maintain any of the foregoing activities;.*
- (i) *Doing such other lawful acts and things as are incidental to or conducive to the attainment of the foregoing objects;*

PROVIDED HOWEVER that if by reason of any alteration in the law relating to income tax it is at any time necessary to amend such purposes in order to preserve the right to exemption from income tax of the kind referred to in sections CB4(1)(c) and CB4(1)(e) of the Income Tax Act 1994 such purposes shall thereupon be deemed to be amended to the extent necessary."

5. The Commission analysed the application for registration and on 30 September 2008, sent the Applicant a letter advising that its application may be declined on the basis that the Trust was established for the purpose of generic economic growth and not directed at any identifiable need.
6. The Applicant responded in a letter dated 4 November 2008, submitting that the Trust is established and maintained exclusively for charitable purposes, being matters beneficial to the community. The Applicant stated that its overarching purpose is to "develop a dynamic and innovative economy in the Taranaki area for the benefit of the community resident in the Taranaki area" and its activities are directed towards achieving this purpose.
7. The Applicant advised that the Trust "does not purport to be directed at relieving poverty or economic hardship for those who require financial assistance, although relief of economic hardship may be antecedent to its purposes. The Trust's activities are directed "towards economic development for the whole Taranaki community, which improves life for all residents".

The issues

8. 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 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. 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

9. 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.
10. 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 aimed at benefitting the public or a sufficient section of the public.¹ A purpose to confer private benefit will not qualify as charitable at law.

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

11. 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 Statute of Charitable Uses 1601 (Statute of Elizabeth).²
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, 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; ...”
14. In order to be a valid trust at law, a trust that is for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the Charitable Trusts Act 1957 will operate to ‘save’ trusts that have charitable and “non-charitable and invalid” purposes. In such a case, the law directs that the trust is to be interpreted and given effect to as if the invalid and non-charitable purposes did not apply.
15. The Courts have held that there must be a substantial charitable content or character for section 61B of the Charitable Trusts Act 1957 to apply.³

Relevant case law

16. There have been a number of Court decisions relating to the issue of whether purposes are “beneficial to the community”.
17. In *Commissioner of Inland Revenue v Medical Council*,⁴ the Court held that the correct approach was to determine whether the purpose fell within the spirit and intendment of the Preamble to the Statute of Elizabeth. This involved seeking an analogy with purposes mentioned in the Preamble itself or with purposes previously held to be within its spirit and intendment.
18. The Court of Appeal in *Latimer v Commissioner of Inland Revenue*⁵ agreed with the approach in the *Medical Council* case, stating that it was important to be guided by principle rather than a detailed analysis of decisions on particular cases when determining whether purposes fell within the spirit and intendment of the Preamble to the Statute of Elizabeth.

² *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.

³ *Re Beckbessinger* [1993] 2 NZLR 362; *Re Ashton* [1955] NZLR 192 (CA); *Re Howey* [1991] 2 NZLR 16 (CA).

⁴ [1997] 2 NZLR 297.

⁵ [2002] 3 NZLR 147.

19. Not all organisations which 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.”⁶

Charities Commission’s analysis

20. Clause 4.1.2 of the Applicant’s Trust Deed states that the capital and income remaining after payment of fees, costs and disbursements will be applied to the purposes listed under the definition of “charitable purposes” in clause 1.1.

21. The Commission does not consider that listing purposes under a heading of “charitable purposes” provides conclusive evidence that those purposes are actually charitable.

22. The Commission has considered whether the purposes in clauses 1.1(a) to (e) of the Applicant’s Trust Deed are charitable on the basis that they relate to the relief of poverty. However, the Applicant, in its letter dated 4 November 2008, stated:

“the Trust does not purport to be directed at relieving poverty or economic hardship for those who require financial assistance, although relief of economic hardship may be antecedent to its purposes. Its activities are directed towards economic development for the whole Taranaki community, which improves the life for all residents.”

23. In the light of this information, the Commission has concluded that the purposes in clauses 1.1(a) to (e) do not qualify as charitable on the grounds of being for the relief of poverty.

24. The Commission considers that retaining and attracting events to the Taranaki area in the final part of clause 1.1(d) and providing a database in clause 1.1(e) could be charitable as advancing education for the public.

25. The remaining purposes in clauses 1.1(a) to (c) and the first part of clause 1.1(d) have been considered in relation to the fourth head of charity “other matters beneficial to the community”. As earlier noted, in order to be charitable under this head, a purpose must be beneficial to the community and be within the spirit and intendment of the Preamble to the Statute of Elizabeth.

⁶ Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

Beneficial to the community

26. In order to fall within the fourth head, there must be a clear benefit to the community. In terms of purposes falling under the fourth head, the court does not assume or presume its existence as in the case of the other heads of charity – the benefit in issue must be affirmatively proved or clear to the court.⁷
27. The purposes must also be aimed at the public or a section of the public rather than being private purposes. Any private benefits arising from the entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. The entity will not meet the charitable purpose test if its purposes include private benefits that are an end in themselves.⁸
28. The Commission considers that the Applicant's purposes in clauses 1.1(a) to (d) may promote the interests of current and future business owners and commercial tourist operators in the Taranaki region and that these are purposes aimed at providing private benefits. Any benefits conferred on the remainder of the community by such purposes will be too remote. On that basis, these purposes cannot be considered charitable.

Within the spirit and intendment of the preamble

29. The Commission also considers that the Applicant's purposes are not within the spirit and intent of the preamble to the Statute of Elizabeth.
30. Courts have found the following to be charitable under the fourth head:
- 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
31. The Commission considers that there is no analogy between the above purposes and the Applicant's purposes.

⁷ *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350; Gino Dal Pont *Charity Law in Australia and New Zealand*, Oxford University Press, 2000, at 171 and 175.

⁸ *Inland Revenue Commissioners v Oldham Training and Enterprise Council* (1986) STC 1218; *Travel Just v Canada Revenue Agency* 2006 FCA 343, [2007] 1 CTC 294.

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 Centrepoint 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).

32. The Commission has also considered the cases cited by the Applicant: *Inland Revenue Commissioners v Yorkshire Agricultural Society*¹⁴, *Re Tennant*¹⁵ and *Lysons v Commissioner of Stamp Duties*.¹⁶
33. *Inland Revenue Commissioners v Yorkshire Agricultural Society* is authority for the proposition that the general improvement of agriculture is charitable. However, as with any other potentially charitable purpose, the promotion of agriculture for private profit or benefit will not be charitable. For example in *Hadaway v Hadaway* the Court held:
- "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."*¹⁷
34. *Re Tennant* relates to a rural community and the provision of a creamery. In that case, the Court applied other cases that had held agriculture generally to be charitable such as *Inland Revenue Commissioners v Yorkshire Agricultural Society*. The Court 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 community: a cluster complex of a school, public hall, church and creamery."* [Emphasis added]
35. The Commission acknowledges that, having regard to the above cases and using the principle-based approach referred to in *Medical Council and Latimer*, where economic development purposes are aimed at meeting specific community needs these purposes may be charitable. However, as noted above, this is not the case in relation to the Applicant's purposes.
36. The Commission is of the view that the Applicant's purposes are to benefit private individuals and are not analogous to those considered by the Courts in *Inland Revenue Commissioners v Yorkshire Agricultural Society* and *Re Tennant*.

Benefit to a locality

37. While it is clear from *Re Carter (deceased)*¹⁸ that a trust for the benefit of the people of a defined area *may be* charitable, it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As stated in *The Law and Practice Relating to Charities* "[a]

¹⁴ [1928] 1 KB 611.

¹⁵ [1996] 2 NZLR 633.

¹⁶ [1945] NZLR 738.

¹⁷ [1955] 1 WLR 16 (PC).

¹⁸ (1897) 16 NZLR 431 (CA).

non-charitable purpose will not be rendered charitable by localising the benefits".¹⁹

38. The Applicant referred to *Lysons v Commissioner of Stamp Duties*²⁰ in support of its application. In that case, the Supreme Court held that a gift to a local borough council with no particularly defined purposes was charitable because it was considered to be for the benefit of the inhabitants. The essential distinction however, between that case and the present application, is that in the *Lysons* case no particular purposes were identified.
39. Courts have reasoned that, where no purpose is defined, the fact that the gift is directed to a locality imports the necessary element of public benefit, and therefore a charitable purpose is implicit in the context. Conversely, where a donor actually specifies a purpose, as in the present case, the Court must determine whether or not that purpose is charitable.²¹
40. The Commission concludes that the Applicant's purposes in clause 1.1(e) and the final part of clause 1.1(d) may be charitable, but that the purposes in clauses 1.1(a) to (c) and the first part of clause 1.1(d) are not charitable. These purposes do not amount to "other matters beneficial to the community" and they are not within the spirit and intendment of the preamble to the Statute of Elizabeth.
41. The Commission also concludes that the purposes in clauses 1.1(f) to (i) are not charitable, but that these purposes are ancillary to the purposes in clauses 1.1(a) to (e).

Section 61B

42. The Commission has considered whether section 61B of the Charitable Trusts Act 1957 applies. Section 61B provides that if a trust is substantially charitable but would otherwise be rendered invalid by the presence of some actual or potential non-charitable purpose, the trust will be treated as valid and operate only in relation to the relevant charitable purposes.²² The Commission does not consider that the Applicant has substantially charitable purposes, therefore section 61B of the Charitable Trusts Act 1957 does not operate to validate the trust.

Charities Commission's determination

43. 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

¹⁹ Hubert Picarda, 1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, p 146.
²⁰ [1945] NZLR 738.

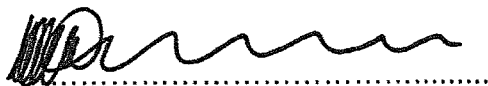
²¹ Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

²² *Re Beckbessinger* [1993] 2 NZLR 362.

section 13(1)(a) 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

26/1/09

Date