

# Registration Decision for Waihi Beach Community Events and Promotions Association Incorporated (WAI24788)

## The facts

1. Waihi Beach Community Events and Promotions Association Incorporated ("the Applicant") was incorporated on 24 August 2006 under the *Incorporated Societies Act 1908*. The Applicant applied for registration with the Charities Commission ("the Commission") on 13 June 2008.
2. The Applicant's main purposes are as follows:
  2. **OBJECTS** the objects for which the Association is established are:
    - (a) *To foster community projects within the Waihi Beach Ward.*
    - (b) *To foster and develop community and group and environmental activity within the Waihi Beach Ward.*
    - (c) *To purchase, take upon lease, hire or otherwise acquire and hold real and personal property rights and privileges which the Society may think necessary or convenient to the attainment of any of the foregoing objects.*
    - (d) *To sell, lease mortgage, charge or otherwise dispose of any property of the association and to grant such rights and privileges thereover in such a manner, as the Association may from time to time think necessary and proper.*
    - (e) *To borrow monies by way of bank overdraft or otherwise in such a manner and give security over all of any necessary property of the Association, as the Association shall think necessary and proper, and in particular by the issue of debentures charged on all or any of the property of the Association as approved by any AGM or Special General meeting.*
    - (f) *To invest the funds of the Association upon such securities and in a manner as is authorised by the Rules.*
    - (g) *To do all the things such as are incidental or conducive to the attainment of the above objects.*
3. The Commission analysed the application and on 12 November 2008 sent the Applicant a section 18 letter asking for further information about the Applicant's activities and how these activities would provide a benefit to the community.
4. No response was received from the Applicant. Accordingly, the Commission re-assessed the application and on the 2 June 2009 sent the Applicant a notice that may lead to decline on the basis that the

purposes outlined in clauses 2(a) and 2(b) of their constitution were not exclusively charitable.

5. The Applicant responded on 27 June 2009, submitting that:

- *The association was initially set with funding left over from volunteers putting on:
  - a) a Waihi Beach Arts and Craft Fair to local talent,
  - b) a street Mardi Gras to assist local retailers who had suffered through the upgrade of the village centre.*
- *The funds then supported the setting up of a local Waihi Beach website: <waihibeachinfo.co.nz>;*
- *This website advertises all the local events and promotions like an OP Shop Ball to support the local Community Centre, Lions' Club activities, the local Community Board sharing information on a personal level with the community on all issues arising from how to do submissions to Draft Concept plans for Reserves to what is happening with the Coastal Protection proposed for our Beach;*
- *The website also advises on Community Board meetings and what is on the agenda;*
- *Also there is a list of all the community services and organisations with contact numbers;*
- *The website is mostly self funding and pays a small remuneration to a volunteer to enable it to be kept up to date;*
- *Any funding over and above the maintenance of the website is ploughed back into the community;*
- *To date the Association has paid for signage for the Historic Athenree Homestead and three sets of signage within the Village area for visitors showing various sites and contact numbers for services;*
- *At present the committee is working on providing large Waihi Beach signs to go on the state highway entrances to our beach;*
- *All the committee are volunteers and do not get any remuneration. All funding is spent directly on seeding events within the community and to help pay for various community projects.*

### **The issues**

6 The issue for the Commission to consider is whether the Applicant is a society established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005* ("the Act"). The question is whether the Applicant's purposes fall within the definition of charitable purposes 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 purposes**

7 Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and must not be carried on for the private pecuniary profit of any individual.

8 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 benefiting the public or a sufficient section of the public.

- 9 Section 5(3) of the Act provides that for an entity to have charitable purposes, any non-charitable purpose must be ancillary to a charitable purpose.
- 10 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; ...”*

### **Commission’s analysis**

#### Analysis under the four heads of charity

- 11 The Commission considers that clauses 2(c), 2(d), 2(e) and 2(f) are powers and that clause 2(g) is ancillary. The purposes in clauses 2(a) and 2(b) are not aimed at the relief of poverty or the advancement of religion. The Commission has therefore considered whether these purposes could be held to be charitable under the advancement of education, or under “any other matter beneficial to the community”.

#### Advancement of Education

- 12 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, promotion of a particular point of view, or the study of subjects that have no educational value.<sup>2</sup>
- 13 The purposes of the Applicant do not show an intention to advance education. However, in its letter dated 27 June 2009, the Applicant, without mentioning explicitly that some of its activities could be educational, insisted that its website provides information to the public about the different organisations and activities of Waihi Beach. Its website has the following headings: History, Accommodation, Sights & Activities; Arts & Craft; Trades & Services, Events; Maps; Visitor Information; Photos; Surfcam, and Community Info.
- 14 The Commission does not consider that provision of the Applicant’s website is sufficient to amount to advancing education. Providing information to the public will only be charitable if it amounts to providing

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

<sup>2</sup> *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.

some form of education and it ensures that learning is advanced. For example, 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".

- 15 Furthermore, in *Travel Just v Canada Revenue Agency*<sup>3</sup>, the Court doubted that producing and disseminating materials that would provide travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.
- 16 In addition, education does not include advertisement for particular goods or services<sup>4</sup>.
- 17 The Commission considers that while the Applicant's website may contain a range of information, the provision of this information, by itself, is not sufficient to amount to the advancement of education. In addition, the Commission notes that the website appears to contain a range of advertisements for particular goods and services, including accommodation providers, recreational activities such as mini putt and fishing services, restaurant or food providers and other service providers in the region.
- 18 The Commission has therefore concluded that clauses 2(a) and 2(b) of the Applicant's constitution are not charitable under the advancement of education.

#### Other matters beneficial to the community

- 19 In order for a purposes to qualify as "any other matter beneficial to the community", the purposes 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* ("the Statute of Elizabeth").<sup>5</sup>
- 20 The purposes set out in the Statute of Elizabeth are:<sup>6</sup>
  - relief of aged, impotent, and poor people
  - maintenance of sick and maimed soldiers and mariners
  - schools of learning
  - free schools and scholars in universities

<sup>3</sup> 2006 FCA 343 [2007] 1 CTC 294.

<sup>4</sup> *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.

<sup>5</sup> *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

<sup>6</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.

- 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.<sup>7</sup>

21 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. The House of Lords decided this matter in *Williams Trustees v Inland Revenue Commissioners*<sup>8</sup>. In that case, the House of Lords had to decide if a trust was established exclusively for charitable purposes. The House of Lord citing *In Re Macduff*<sup>9</sup> and *Attorney-General v. National Provincial & Union Bank of England*<sup>10</sup> wrote as follows:

*“Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaughten did not mean to say that every object of public general utility must necessarily be a charity. Some may be and some may not be. [...] Lord Macnaghten did not mean that all trust for purposes beneficial to the community are charitable, but that there were certain beneficial trusts which fell within that category: and accordingly to argue that because a trust is for a purposes beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here, it is not enough to say that the trust in question is for public purposes beneficial to the community or for the public welfare: you must also show it to be a charitable trust.”*

22 Grounds for holding that the objects are not beneficial to the public may be found in the facts of the application but also in cases decided by the Court on similar facts. In *Travis Trust v Charities Commission*<sup>11</sup>, Williams J. noted that:

*“... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.”*

23 The Courts have found that purposes benefiting a locality may be charitable under “any other matter beneficial to the community” and the economic development of a community may be charitable when that community is in need.

<sup>7</sup> (43 Eliz I c 4).

<sup>8</sup> [1947] UKHL 1 (21 March 1947), 447 at 455. That case was heavily relied up and quoted by Kennedy J *In re Cumming* [1951] NZLR 498.

<sup>9</sup> [1896] 2 Ch. 451, 466

<sup>10</sup> [1924] A.C. 262, 265

<sup>11</sup> CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J.) at para. 20.

### *Benefit to a locality*

- 24 Gifts in general terms for the inhabitants of a defined area may be charitable.<sup>12</sup> However, it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As set out in *The Law and Practice Relating to Charities* "A non-charitable purpose will not be rendered charitable by localising the benefits".<sup>13</sup>
- 25 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, the court must determine whether or not that purpose is charitable.<sup>14</sup>
- 26 The Applicant has specified their purposes to be "to foster community projects" and "to foster and develop community and group and environmental activity" within the Waihi Beach Ward. The Applicant does this through the provision of a community website and other community projects such as the provision of public signs. While the Commission considers that the provision of public signs may be charitable under "any other matter beneficial to the community", the Commission does not consider that the Applicant's purposes are analogous to purposes aimed at benefiting a locality generally. The Applicant's purposes are very broad and allow for a range of projects or activities that do not necessarily have to be charitable or benefit the inhabitants of the Waihi Beach Ward.

### *Economic Development*

23. The Applicant's purposes are broad enough to include projects or activities that are intended to promote the economic development of the Waihi Beach Ward. Thus, the Applicant's website includes a range of information on the businesses in the Waihi Beach Ward. Dal Pont, in *Charity Law in Australia and New Zealand*, wrote:

*... 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 directly receive a benefit from them. **Nor are essentially economic or commercial objects within the spirit of the Preamble** [Emphasis added].<sup>15</sup>*

<sup>12</sup> *Re Carter (deceased)* (1897) 16 NZLR 431 (CA).

<sup>13</sup> Hubert Picarda, 1999, 3<sup>rd</sup> edition, Butterworths, London, Dublin & Edinburgh, p 146.

<sup>14</sup> Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

<sup>15</sup> Oxford (UK) Oxford University Press, 2000, at 178 citing *Nightingale v. Goulburn* (1847) 5 Hare 484 at 490 and *Re Davis (deceased)* [1965] WAR 25 at 28.

25. Moreover, the Courts have held the economic development of a community to be charitable under "other matters beneficial to the community", but only where that region has a particular need.<sup>16</sup>
26. The case of *Re Tennant*<sup>17</sup> 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*<sup>18</sup> and *Waitemata County v Commissioner of Inland Revenue*<sup>19</sup>, 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 community: a cluster complex of a school, public hall, church and creamery."<sup>20</sup>*  
[Emphasis added]

27. In *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation*<sup>21</sup>, 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.*

28. The Applicant has not shown that the Wahi Beach Ward is economically disadvantaged compared to the rest of New Zealand. Moreover, the Commission considers that the application does not fall into the same categories as those described in *Tennant* and *Tasmanian* cases, that is, small rural communities with few attractions and limited economic development capabilities other than with tourism. Accordingly, the Commission does not consider that the Applicant's purposes are charitable as promoting the economic development of the Waihi Beach Ward.

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<sup>16</sup> *Re Tennant* [1996] 2 NZLR 633; *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation* [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26.

<sup>17</sup> [1996] 2 NZLR 633

<sup>18</sup> [1928] 1 KB 611.

<sup>19</sup> [1971] NZLR 151

<sup>20</sup> [1996] 2 NZLR 633, 640

<sup>21</sup> [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26, para. 59-60.

29. In light of the above, the Commission has concluded that clauses 2(a) and 2(b) of the Applicant's constitution are not charitable under "any other matter beneficial to the community".

### **Conclusion**

- 27 The Commission concludes that the Applicant's purposes outlined in clauses 2(a) and 2(b) of their constitution are too broad to be exclusively charitable under the "advancement of education" or "any other matter beneficial to the community". These purposes would allow the Applicant to be involved in both charitable and non-charitable activities. Moreover, the Commission concludes that the Applicant's activities are not exclusively charitable. While the provision of public signs may be charitable, the provision of the Applicant's website does not come under any of the heads of charity.

### **Charity Commission's determination**

30. 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 exclusively for charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005*.

**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

23/12/09

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Date