

## Registration decision: Nga Uri O Wharetakahia Waaka Whanau Land Trust (NGA42808)

### Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of Nga Uri O Wharetakahia Waaka Whanau Land Trust (**the Trust**).<sup>1</sup> The Board has determined that the Trust is not qualified to be registered as a charitable entity under the *Charities Act 2005* (**the Act**) because its purposes are not exclusively charitable.<sup>2</sup> Further, the Board is not satisfied that the Trust's purposes confer benefit on a sufficient section of the public.
2. The Board's reasons for its decision are set out as follows:
  - A. Background
  - B. Legal framework for registration
  - C. Analysis of the Trust's qualification for registration
    - C.1 Purposes in sections 214(3) and 218 of *Te Ture Whenua Maori Act 1993*
    - C.2 The public benefit requirement
  - D. Determination

### A. Background

3. The applicant Trust was constituted by order of the Maori Land Court pursuant to sections 214 and 219 of *Te Ture Whenua Maori Act 1993* (**TTWM Act**) dated 6 April 2011. The Trust's purposes are set out at Schedule B to the court order:

*To hold and administer the lands, money and other assets of the Trust to the best advantage of and in the best interests of the Trust and its beneficiaries and to apply the income derived therefrom, after payment thereout of the normal and allowable costs and expenses of administration of the trust and other application of such funds for the furtherance of the aims and objects of the Trust, for the purposes of: -*

- (i) *Promoting the health, social, cultural and economic welfare, education and vocational training and general advancement of the beneficiaries.*
- (ii) *Any Maori Community purpose as defined in section 218 of Te Ture Whenua Maori Act 1993.*

4. The purpose stated at (i) adopts the purpose at section 214(3) of the TTWM Act.<sup>3</sup>

<sup>1</sup> The decision is made under section 19 of the *Charities Act 2005*.

<sup>2</sup> The essential requirement for registration is set out in section 13 of the *Charities Act 2005*.

<sup>3</sup> Section 214(3) of the TTWM Act provides that where the Maori Land Court constitutes a whanau trust under section 214 of the Act, assets and income of the trust "shall be applied for the purposes of promoting the health, social, cultural and economic welfare, education and vocational training, and general advancement in life of the descendants of any tipuna (whether living or dead) named in the order".

5. Schedule A of the Court order states that the beneficiaries of the Trust are:

*... the descendants of Wharetakahia (Piwiri) Waaka PROVIDED THAT where the terms of the trust provide for distributions for Maori Community purposes the beneficiaries in respect of such distributions shall be the beneficial owners of the land interests immediately prior to this order and their descendants.*

6. On 25 October 2011, the Trust applied for registration under the Act.
7. On 12 July 2012, DIA-Charities wrote to the Trust requesting information about the beneficiaries of the Trust. On 8 August 2012 the applicant responded that the number of uri of Wharetakahia Waaka is "20+ however this is not all, there are others and there will be others to come in the near future." The trustees also advised that "while the whanau land is private, the whanau authority charitable services are for the whole rural and urban Tuhoe community and then the wider community Maori and non-Maori."
8. On 10 August 2012, DIA-Charities wrote to the Trust to formally notify that the application for registration may be declined for two reasons: **First**, that the Trust purposes (being the purposes set out in section 214(3) and 218 of the TTWM Act) are not exclusively charitable; and **second** that the class of potential beneficiaries is not sufficiently open to meet the public benefit test.
9. The Trust responded to the notice on 10 September 2012. The Trust submitted that its purposes are exclusively charitable. Specifically, the trustees stated that, having regard to the principles stated in the preamble of the TTWM Act, they are satisfied that the Trust purposes are charitable purposes of the kind referred to in section 5 of the Act. Further, that they have a "clear expectation of participating as equals ... in providing a charitable service to relieve the poverty of housing and distress in the Ruatoki Community and surrounding districts" and should achieve charitable status "in line with our charitable Tuhoe housing schemes and Marae."

## B. Legal framework for registration

10. Section 13 of the Act sets out the essential requirements for registration. 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.
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>4</sup>
12. A trust for charitable purposes will be void for uncertainty if it is not for *exclusively* charitable purposes:<sup>5</sup>

*...[A] requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.*

13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.<sup>6</sup> Determining whether a purpose is ancillary requires both a quantitative and qualitative assessment.<sup>7</sup>
14. In considering an application for registration, section 18(3)(a) of the Act requires consideration of the entity's activities at the time the application was made, the entity's proposed activities, and any other relevant information. The courts take activities into consideration in determining whether an entity is established for charitable purposes and confers sufficient public benefit.<sup>8</sup>

<sup>4</sup> Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 at [30]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23].

<sup>5</sup> *McGovern v Attorney-General* [1982] 1 Ch. 321, 341. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691. See also the assumption evident in the provision at section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purposes.

<sup>6</sup> Section 5(4) of the Act defines 'ancillary purpose'.

<sup>7</sup> *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* HC Wellington CIV-2009-485-2633, 23 September 2010 at [49]-[52], see also *Re New Zealand Computer Society Inc* HC WN CIV-2010285-924, 28 February 2011 at [16], *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [44].

<sup>8</sup> *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 at [57] - [67]; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633, 23 September 2010 at [59], [71]; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924, 28 February 2011 at [60] and [68]; *Greenpeace of New Zealand Incorporated* HC WN CIV 210-485-829 6 May 2011 at [75]. See to same

15. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document which purports to limit its objects to charitable purposes will not be determinative.<sup>9</sup>

## **C. Analysis of the Trust's qualification for registration**

### **C.1 Purposes of the Trust are not exclusively charitable**

16. The Trust is constituted for the purposes set out in sections 214(3) and 218 of TTWM Act. For the reasons set out below, we consider that those purposes are not exclusively charitable purposes under the Act.<sup>10</sup> Further, we are not satisfied that the non-charitable purposes of the Trust are ancillary to valid charitable purposes.<sup>11</sup>

#### **C.1.1 Trust purposes are not exclusively charitable**

17. In our view, the purposes set out in sections 214(3) and 218 of the TTWM Act are not exclusively charitable at general law, nor is it intended that a whanau trust constituted under section 214 of that Act with those purposes should be recognised to have purposes that are charitable in law. In reaching this conclusion we have considered:

- (a) The general law definition of charitable purpose;
- (b) The provisions of the TTWM Act; and
- (c) The provisions of the Act.

#### **(a) General law definition of charitable purpose**

18. The purposes stated at sections 214(3) and 218 of the TTWM Act are not exclusively charitable within the established general law definition of charitable purpose.
19. The purpose stated at section 214(3) of the TTWM Act is to promote the health, social, cultural and economic welfare, education and vocational training, and general advancement in life of the descendants of any named tipuna. A purpose to promote "social welfare", "economic welfare" or "general advancement in life" of a class of persons would not generally be regarded as a charitable purpose in law.<sup>12</sup> Further, depending on the circumstances of the case, the purpose may not provide sufficient public benefit to qualify as charitable in law.<sup>13</sup>

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effect: *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Institution of Mechanical Engineers v. Cane*, [1961] A.C. 696 (HL) at 723; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at [194]; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70].

<sup>9</sup> *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010, at [56].

<sup>10</sup> Section C.1.1, paras 17 – 31 below.

<sup>11</sup> Section C.1.2, paras 32 - 33 below.

<sup>12</sup> See e.g. *Attorney-General (Bahamas) v Royal Trust Co.* [1986] 3 All ER 423 at 426.

<sup>13</sup> See discussion at section C.2 below.

20. Turning to the purposes stated at section 218 of the TTWM Act, we consider that these purposes are not exclusively charitable in law. Section 218 of TTWM Act states:

- (1) *Where any income of a trust constituted under this Part is to be applied for Maori community purposes, the trustees may provide money for the benefit or advancement of any specified beneficiary, any class or classes of beneficiaries, or the interests of any hapu associated with any land belonging to the trust, and its members, whether directly or indirectly.*
- (2) *Without limiting the generality of subsection (1), in any such case the trustees may from time to time, subject to the terms of the trust order, apply money towards all or any of the following purposes:*
  - (a) *the promotion of health—*
    - (i) *by installing or making grants or loans towards the cost of installing water supplies, sanitation works, and drainage in Maori settlements; or*
    - (ii) *by promoting, carrying out, or subsidising housing schemes, or by making grants or loans for any such schemes; or*
    - (iii) *by providing, subsidising, or making grants for medical, nursing, or dental services:*
  - (b) *the promotion of social, cultural, and economic welfare—*
    - (i) *by making grants or loans for the relief of poverty or distress; or*
    - (ii) *by developing, subsidising, or making grants or loans for farming or other industries; or*
    - (iii) *by making grants or loans towards the cost of the construction, establishment, management, maintenance, repair, or improvement of Maori meeting houses, halls, churches and church halls, kohanga reo, villages, marae, or cemeteries; or*
    - (iv) *by establishing, maintaining, and equipping hostels for the purpose of providing either permanent or temporary accommodation; or*
    - (v) *by making grants or loans towards the establishment of recreational centres for the common use of any Maori community and for such other uses as the trustees think fit; or*
    - (vi) *by promoting, carrying out, or subsidising roading schemes, power schemes, or such other schemes as the trustees think fit, or by making grants or loans for any such schemes; or*
    - (vii) *by purchasing, acquiring, holding, selling, disposing of, or otherwise turning to account shares in any body corporate that has as one of its principal objects the economic or social advancement of Maori, or the development of land; or*
    - (viii) *by the promotion of schemes to encourage the practice of Maori arts and crafts, the study of Maori lore and history, and the speaking of the Maori language:*
  - (c) *the promotion of education and vocational training—*
    - (i) *by assisting in the establishment, equipping, managing, and conducting of schools and other educational or training institutions, including kohanga reo, by making grants of money, equipment, or material to schools and other educational or training institutions, including kohanga reo; or by making grants to the Maori Education Foundation established by the Maori Education Foundation Act 1961, or to any other funds established or bodies formed for the promotion of the education of Maori or for assisting Maori to obtain training or practical experience necessary or desirable for any trade or occupation; or*
    - (ii) *by providing scholarships, exhibitions, bursaries, or other methods of enabling individuals to secure the benefits of education or training, or by making grants to Education Boards or other educational bodies for scholarships, exhibitions, or bursaries; or*
    - (iii) *by providing books, clothing, or other equipment for the holders of scholarships or other individuals, or by making grants generally for the purpose of assisting the parents or guardians of children to provide for their education or training for any employment or occupation; or*
    - (iv) *by providing, maintaining, or contributing towards the cost of residential accommodation for children in relation to their education or training:*

(d) such other or additional purposes as the trustees with the approval of the court from time to time determine.

(3) Nothing in this section shall prevent the trustees from applying money for the general benefit of a group or class of persons, notwithstanding that the group or class of persons includes persons other than beneficiaries; but no grant or loan shall be made to any individual for that individual's exclusive benefit unless that individual is a beneficiary or a descendant of a beneficiary.

21. Some of the purposes stated at section 218 accord with established charitable purposes. However, we consider that the purposes stated at section 218 are not *exclusively* charitable. Aspects of section 218 that travel outside the scope of charitable purposes in law are:

- Section 218(2)(a)(ii) states a purpose (to promote health by promoting or subsidising housing schemes or making grants or loans for the same) that is not exclusively charitable in law.<sup>14</sup>
- Section 218(b)(ii) and (vii) state purposes (promotion of welfare by developing farming and other industries, promotion of welfare by investing in corporations that have an objective to promote the economic or social advancement of Maori or the development of land) that are not exclusively charitable in law.<sup>15</sup>
- Section 218(b)(iv) states a purpose (promotion of welfare by establishing, maintaining and equipping hostels) that is not exclusively charitable unless coupled with another purpose (e.g. relieving poverty).<sup>16</sup>

22. The authorities recognise that broadly expressed purposes to promote social and economic welfare may be characterised as charitable if there is a defined beneficiary class, and there is evidence that the class is one in charitable need of assistance.<sup>17</sup> We consider that this principle of interpretation may apply to some trusts established under Part 12 of the TTWM Act that adopt the purposes stated in section 214(3) and 218 of the TTWM Act. However, we do not consider that this inference will be justified for all trusts established under Part 12 of the TTWM Act. Nor is there any information before us that would justify drawing this inference in this case.

**(b) TTWM Act does not provide that purposes at section 214(3) and 218 are charitable**

23. We have considered whether the TTWM Act provisions have the effect that a whanau trust constituted under section 214 with the purposes set out in

<sup>14</sup> Compare *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011. See also *Arawa Maori Trust Board v Commissioner of Inland Revenue* [1961] MCD391 at 395-6.

<sup>15</sup> Compare *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010. See also *Arawa Maori Trust Board v Commissioner of Inland Revenue* [1961] MCD391 at 395-6.

<sup>16</sup> Compare *Arawa Maori Trust Board v Commissioner of Inland Revenue* [1961] MCD391 at 395-6.

<sup>17</sup> See observations in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 157 at 209 (Blanchard J), and *Verge v Somerville* [1924] AC 496.

section 214(3) and/or section 218 TTWM Act is to be recognised as having purposes that are charitable in law. For the following reasons, we do not consider that the TTWM Act makes any such provision.

24. We accept that, as the Trust submits, section 2 of the TTWM Act provides that the provisions of the TTWM Act will be interpreted in a manner that best furthers the principles set out in the Preamble. However, we do not consider that the principles set out in the Preamble support an implication that the purposes for which trusts in relation to land may be constituted under Part 12 of the Act are to be recognised as charitable in law.
25. Rather, the principles support an interpretation that furthers the provision of mechanisms for the retention and management of Maori land in which a number of individuals have interests, to prevent the further fragmentation of interests in Maori land. The TTWM Act's provision for the Maori Land Court to give the trustees of trusts constituted under Part 12 of the TTWM Act powers to apply the whole or any part of trust income for the Maori Community purposes defined in section 218<sup>18</sup> further promotes the retention of land in the hands of its owners their whanau and their hapu and to protect wahi tapu, and to facilitate the occupation, development and utilisation of that land for the benefit of its owners, their whanau and their hapu.<sup>19</sup>
26. Further, we consider that a number of features of the TTWM Act are inconsistent with the view that all whanau trusts constituted under Part 12 with the purposes identified in section 214(3) and/or section 218 are to be recognised as having charitable purposes. First, section 245 of TTWM Act confers a specific power on the Maori Land Court as follows:
- (1) *The trustees of any trust to which this Part applies may from time to time apply to the court for an order that they shall stand possessed of any income derived from any specified part of the trust property upon trust for such charitable purposes as may be specified in the order.*
- (2) *The court shall not make an order under subsection (1) unless it is satisfied –*  
*(a) that the beneficiaries of the trust have had sufficient notice of the proposal to apply for the order and sufficient opportunity to discuss and consider it; and*  
*(b) that there is a sufficient degree of support for the proposal among the beneficiaries.*
27. The existence of this specific power under Part 12 of the TTWM Act evidences an understanding that the exercise of the general powers to constitute a trust with the purposes set out at section 214(3) and/or 218<sup>20</sup> will not necessarily result in a trust that has purposes that are charitable in law.

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<sup>18</sup> See sections 212(6) (patea trusts), 214(4) (whanau trusts), 215(6) (ahu whenua trusts), 216(5) (whenua topu trusts).

<sup>19</sup> See Preamble to the TTWM Act.

<sup>20</sup> That is, sections 212(6) (patea trusts), 214(4) (whanau trusts), 215(6) (ahu whenua trusts), 216(5) (whenua topu trusts).

28. Further, we note that section 235 provides that the rule against perpetuities does not apply to trusts under Part 12, a provision that would be superfluous if those trusts were charitable in law.

29. Finally, the trusts established under Part 12 of TTWM Act are not intended to sever the individual beneficiaries' relationship with the land or interests in the land in question,<sup>21</sup> whereas under the law of charities, beneficiaries have no direct or identifiable interest in the assets of a charitable trust.

**(c) The Act does not provide that purposes set out in sections 214(3) and 218 of TTWM Act are charitable for the purposes of registration**

30. Section 5(1) of the Act states that for the purposes of the Act, "charitable purposes" means charitable purposes recognised in general law,<sup>22</sup> unless the context requires otherwise. We have considered whether there are any contextual indications in the Act that a trust established under Part 12 of the TTWM Act with the purposes set out in sections 214(3) and 218 of the TTWM Act is to be recognised as having charitable purposes under the Act. There is no express provision to this effect. Further, we consider that the express provisions of the Act do not support an implication to that effect. Sections 5(2)(b)<sup>23</sup> and 13(2)<sup>24</sup> of the Act provide that certain purposes are to be recognised as charitable under the Act. These sections do not include the purposes set out in section 214(3) and 218 of the TTWM Act. In light of this, we do not consider that there is an implied intention in the Act to recognise as charitable, any purposes that are not recognised as charitable in general law that are not covered by sections 5(2)(b) and 13(2). For purposes other than those mentioned in sections 5(2)(b) and 13(2), the Act adopts the general law definition of charitable purpose.

31. Accordingly, we conclude that the Trust's purposes (being the purposes set out in section 214(3) and section 218 of the TTWM Act) are not exclusively charitable purposes under the Act.

**C.1.2 Independent purposes of the Trust**

32. Section 5(3) of the Act provides that an entity may qualify for registration if it has a non-charitable purpose that is ancillary to valid charitable purposes of the entity. The Trust has not provided us with information to show that its non-charitable purposes are ancillary to its charitable purposes. As the

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<sup>21</sup> See sections 214(5), 215(5), 215(8), 216(7), 218(1) and 241.

<sup>22</sup> This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law. See generally *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

<sup>23</sup> Section 5(2)(b) makes provision for charitable purposes of marae on land that is a Maori reservation referred to in TTWM Act.

<sup>24</sup> In stating the essential requirements for registration, section 13 of the Act provides at section 13(2) for certain circumstances in which the trustees of the trust must be treated as being one that qualifies for registration under section 13(1)(a), including where income is deemed to be income derived by trustees in trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955. The circumstances listed in section 13(2) do not include the circumstance where the entity has been established under Part 12 of the TTWM Act and/or has Maori Community purposes set out in section 218 of the TTWM Act.



Trust instrument simply adopts the wording from section 214(3) and 218 of the TTWM Act, we consider that all the purposes are given equal prominence and are capable of being independent purposes and ends in themselves.

33. Accordingly, we are not satisfied that the non-charitable purposes of the Trust are *ancillary* to charitable purposes within the meaning of section 5(3) of the Act. The Trust therefore does not meet the registration requirement under section 13(1)(a) of the Act.

## C.2 Public benefit requirement

34. Even if the Trust's purposes were exclusively charitable, the Trust could not qualify for registration unless its purposes conferred a sufficient public benefit.<sup>25</sup> For the reasons that follow, we are not satisfied that the Trust's purposes are directed to benefiting a sufficient section of the public to qualify as charitable in law.
35. As noted above, the order of the Maori Land Court constituting the Trust states that the beneficiaries of the Trust shall be "the descendants of Wharetakahia (Piwiki) Waaka provided that the beneficiaries of distributions for Maori Community purposes under the Trust shall be the beneficial owners of the land interests immediately prior to this order and their descendants." Schedule A to the order identifies two current owners of the land interests, Tiare Waaka-Timoti and Cecelia Eunice Waaka, who are the children of Wharetakahia Waaka and were named by the Maori Land Court as successors in equal share to Wharetakahia Waaka's land interests upon intestacy of Wharetakahia Waaka. The Trust has informed us that the descendants of Wharetakahia Waaka, who passed on 5 December 2004, number around 20 people.
36. As stated above, some of the Trust purposes are charitable and confer benefits that are recognised in charities law. However, as noted above, the public benefit requirement means that, in addition to conferring an identifiable charitable benefit, the class of persons eligible to benefit from an entity's purposes must constitute the public or a sufficient section of it.<sup>26</sup>
37. In assessing whether the beneficiaries constitute the public or a sufficient section of it, we consider that the following factors are relevant:<sup>27</sup>
- the nature of the entity;
  - the activities it undertakes;
  - the potential beneficiary class;
  - the relationship between the beneficiaries;
  - the number of potential beneficiaries;
  - whether the entity is "substantially altruistic" in nature;

<sup>25</sup> See authorities at note 4 above.

<sup>26</sup> *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 at [54]-[55].

<sup>27</sup> Compare *Dingle v Turner* [1972] AC 601 at 624. Our approach is consistent with the approach taken by the Charities Commission, see for example *Deregistration Decision: Mokorina Whanau Trust (CC40304)*, D2011-4 (25 May 2011), published at <http://www.charities.govt.nz/the-register/registration-decisions/deregistration/> [accessed 12 November 2012].

- whether the entity provides benefits to its members or to the general public.

38. We note that section 5(2)(a) of the Act provides:

*The purposes of a trust, society or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood.*

39. The effect of section 5(2)(a) is that blood ties are not a barrier to finding that the purposes of a trust satisfy the public benefit requirement where the purposes of the trust would satisfy the public benefit requirement apart from the fact that the beneficiaries are related by blood. It remains relevant to consider the number of beneficiaries and the degree of relationship between them, along with the other factors identified above.<sup>28</sup>
40. Applying the above factors in the current case, we consider that the Trust's purposes do not confer sufficient public benefit to qualify as charitable in law. The Trust has been formed to combine the land interests of a family comprising the descendants of an individual. The number of beneficiaries is around 20 people who are related by blood to one individual. Further, while the trustees have stated that the Trust purposes will benefit the wider Tuhoe community, the stated purposes are not exclusively altruistic.<sup>29</sup> Accordingly, we are not satisfied that the purposes of the Trust confer benefit on a section of the public. As such, we are not satisfied that the public benefit requirement for charitable status is met.

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<sup>28</sup> Section 5(2)(a) adopts the wording that previously appeared as section OB 3B of the *Income Tax Act 1994* (repealed). The Explanatory Note to the bill that introduced section OB 3B of the *Income Tax Act 1994*, the Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Bill, said: "The public benefit requirement will be relaxed so that an organization that meets the "charitable purposes" requirement will not be automatically excluded from the "charitable" income tax exemption simply because its members are connected by blood ties. In determining whether an entity meets the public benefit requirement, other factors must be considered, such as the nature of the entity, the activities it undertakes, the potential beneficiary class, the relationship between the beneficiaries and the number of potential beneficiaries."

<sup>29</sup> We note that the Trust purposes incorporate section 218(1) of TTWM Act, and this allows the trustees to apply income of the Trust for the advancement of the interests of any hapu associated with any land belonging to the trust. We do not consider that this in itself demonstrates sufficient public benefit. Section 218(1) does not *require* the Trust to apply income for the advancement of the interests of any hapu associated with the land belonging to the trust. We also note that hapu do not necessarily constitute a sufficient section of the public, and a case by case assessment taking into consideration the factors outlined above is required.

**D. Determination**

41. The Board's finding is that the Trust has failed to meet an essential requirement for registration as a charitable entity in that it 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 section 13(1)(a) of the Act. Specifically, the Trust's purposes, being the purposes set out at sections 214(3) and 218 of TTWM Act, are not exclusively charitable. Further, we are not satisfied that the purposes confer benefit on a sufficient section of the public to meet the public benefit requirement for charitable status.

**For the above reasons, the Board declines the Trust's application for registration as a charitable entity.**

Signed for and on behalf of the Board

.....  
Roger Holmes Miller

03<sup>rd</sup> NOVEMBER 2012  
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Date