

## Registration decision: Auckland Water Polo Academy & Educational Trust

### The facts

1. Auckland Water Polo Academy & Educational Trust ("the Applicant") applied to the Charities Commission ("the Commission") for registration as a charitable entity on 14 April 2011. The Applicant was incorporated as a board under the *Charitable Trusts Act 1957* on 23 February 2011.
2. Clause 3 of the Applicant's original rules document sets out the purposes of the Applicant as:

*The purpose of the Trust will be to educate and train water polo players, coaches and umpires, regarding progression to national and international level. In particular the Trust will:*

- 3.1 *provide individual (athlete centric) and group education and training;*
  - 3.2 *offer advice, assistance and guidance;*
  - 3.3 *provide a player advocacy service;*
  - 3.4 *provide introductions and advice for players wishing to conform to the USA universities training and recruitment programs;*
  - 3.5 *offer parental guidance and education; and*
  - 3.6 *provide other support and assistance consistent with this charitable purpose.*
3. The application was analysed and on 23 May 2011, the Commission sent a letter requesting further information regarding the activities of the Applicant.
  4. On 26 May 2011, the Applicant sent a response providing further information:

*Some detail covering the background behind the development of the trust and more information about its intended activities is included in an addendum to this letter.*

*You have also requested specific further information.*

1. ***How many players will be selected each year for development?*** *We do not intend to implement a player selection process. We expect, given what we know about the current state of the sport and players involved, that our student numbers will be in the vicinity of 50 or so within the first year of operation.*

2. **What are the selection criteria for selecting the players?** As stated above there will not be a selection process, the academy will provide education and guidance to players/ coaches & umpires who are keen to progress rapidly towards their desired goals.
3. **What range of abilities and ages will the selected players be taken from?** Players from age 11 through to age 18. Coaches of all ages. Umpires of all ages. The trust will also recruit potential new players from the wider community and encourage participation in the sport of water polo.
4. **What services will the Trust provide under clause 3.3?** The trust will represent its students and graduates and provide guidance towards representative and national team selection. The trust believes a good education provider should represent (advocate) on behalf of its graduates.
5. **What services will the Trust provide under clause 3.4?** Several USA universities have strong water polo programs; the trustees have connections with some of these universities and can educate NZ based players wishing to follow that path.

**Addendum:**

AUCKLAND WATER POLO ACADEMY & EDUCATIONAL TRUST Inc.  
(A.W.P.A.E.T.Inc)

*An incorporated charitable trust set up to distribute proceeds back into the sport.*

Trust Principle: "**Developing world class water polo in NZ through expert education.**"

**Background:**

The popularity of water polo and player participation in the sport has grown rapidly over the last 10 years. According to NZ Water Polo Inc figures, player registrations (including "Flippa Ball," a lead in series to Water Polo) have swelled from 7,909 (2001) to 18,550 (2010.) The current situation is that in most cases players are introduced to the sport at school and then join a traditional water polo club for further game time and training. New Zealand is rapidly falling behind the rest of the world in its development of young players and coaches to elite level water polo mainly because many of the clubs can no longer cope with the increasing numbers of players now active in the sport. None of the traditional clubs currently are able to offer athlete centric (one on one) education and training and parents are left to advocate on behalf of and manage their own children. Because of the escalating player numbers, clubs have needed to assign young (often unqualified) coaches to even advanced level teams.

***The Academy (A.W.P.A.E.T Inc):***

*Trustees Grant McAneaney and John Scott have identified an urgent need to educate young water polo players, coaches and umpires in NZ in order to facilitate their rapid progress to national and international level. The trusts principle is based on **education** primarily, whilst obviously working within a sporting environment. The development of the trust was dependent on the retention of an expert in this field. Trustee Grant McAneaney is uniquely committed to the trusts principle. Grant is the most qualified and suitable person in NZ to establish this charitable trust that will benefit the community and the sport. His credibility and credentials are unrivalled within the water polo community in NZ.*

**Future Plan/Vision:**

*The trustees' vision is to benefit the community as follows:*

- Provide hourly work for between 5 and 10 coaches / instructors / teachers.*
- Provide education services to between 35 to 50 water polo players.*
- Attract additional young people to the sport of Water Polo.*
- Provide financial assistance to players who are unable to make elite level commitments due to lack of funds.*

*The academy will provide to players, coaches & umpires:*

**Education Services (through classroom and pool sessions)**

- Game tactics*
- Rules*
- Fitness*
- Nutrition*
- Strength*
- Pathways to national representation.*

**Advocacy service offered.**

- Player representation (club, school and national level.)*
- Feeder (introduction) service to the USA universities summer camp / open day programs.*

5. The Commission analysed the further information, and sent the Applicant a notice that may lead to a decline on 10 June 2011 on the basis that the purposes are practically limited to elite sports athletes, and therefore the Applicant does not provide sufficient public benefit.
6. On 13 July 2011, the Applicant informed the Commission that it had amended its trust deed, stating: "we realised our original purposes in clause 3 of our trust deed were too narrow and restrictive sounding." The rules amendment dated 25 June 2011 amended clause 3 to:

*The purpose of the Trust will be to encourage participation in water polo and to educate and train water polo players, coaches and umpires.*

7. A new clause 3.1 was also added:

*3.1 Promote, foster and encourage participation in water polo and other associated disciplines, as a sporting activity to anyone in the community who is interested in and chooses to take advantage of the opportunity offered;*

## **The issues**

8. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* ("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, the issues are:
- (a) whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
  - (b) whether the Applicant provides a public benefit.

## **The law on charitable purposes**

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 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.
11. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,<sup>2</sup> Slade J states:

*The third 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.*

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<sup>1</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.  
<sup>2</sup> [1982] 1 Ch. 321, 341.

12. In *Vancouver Society of Immigration and Visible Minority Women v. Minister of National Revenue*,<sup>3</sup> Gonthier J states:

*The first is the principle of exclusivity. To qualify as charitable, the purposes of an organisation or trust must be exclusively charitable...The primary reason for the exclusivity requirement is, as Slade J. observed in McGovern, supra, at p.340 that if charitable organizations were permitted to pursue a mixture of charitable and non-charitable purposes there could be no certainty that donations to them would be channelled to the pursuit of charitable purposes.*

13. In *Molloy v Commissioner of Inland Revenue*,<sup>4</sup> Somers J states:

*To be charitable in law...an expressed purpose upon its true construction must be limited or confined to charitable purposes only.*

14. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.

#### The law regarding activities

15. 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.*

16. In *Canterbury Development Corporation v Charities Commission*,<sup>5</sup> Ronald Young J states:

*In considering whether the purpose of the CDC is the relief of the unemployed it is appropriate to consider both the terms of the constitution **and the activities** of CDC (s 18(3)).*

### **The Charity Commission for England and Wales' approach to sport**

17. In their guidance for charitable status and sport, the Charity Commission for England and Wales states:

#### ***Open membership***

*14. Open membership is essential if a club is to meet the requirement of public benefit that applies to all charities. A club that operates restrictions in its membership provisions (other than reasonable restrictions that are necessary to enable the club to operate effectively - see paragraphs 15-17 below) could not claim to be encouraging community participation.*

<sup>3</sup> (1999) 169 D.L.R. (4<sup>th</sup>) 34, 58.

<sup>4</sup> [1981] 1 NZLR 688, 691.

<sup>5</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

### **Legitimate restrictions on membership**

15. *As far as is reasonably practical, a CASC [community amateur sports club] will need to provide facilities for all who wish to play. That said, there are some circumstances in which certain restrictions on membership are reasonable and justified.*

16. *We accept that the facilities of some clubs are quite limited and that it is not always possible to accommodate everyone who wishes to become a member, on practical or health and safety grounds for example. In those circumstances, it is perfectly reasonable for a club to establish a waiting list for membership where they are oversubscribed, provided that the next available membership is offered to the person at the top of the waiting list (on a first come, first served basis) and not offered to someone lower down the list on the basis that they are a better player. ...*

### **What sort of sports clubs could not be regarded as charitable?**

35. *Our decision to recognise the promotion of community participation in healthy recreation as a charitable purpose does not mean that all sports bodies can be charitable. Those bodies which have a restricted membership (other than for the reasons set out in paragraphs 15 - 17 above), perhaps for social reasons or because they are concerned with professional or elite sport, for example, or which are not capable of improving physical health and fitness, would not be able to take advantage of our decision.<sup>6</sup>*

## **The New Zealand Charities Commission's approach to sport and recreation bodies**

18. In *Travis Trust v Charities Commission*, Joseph Williams J states:

*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.<sup>7</sup>*

19. The Commission considers that the above case is authority for the proposition that sporting entities can be charitable if they are advancing a charitable purpose. Examples of other charitable purposes that sporting entities may advance include:

- Relieving poverty;
- Advancing education; or
- Providing a purpose otherwise beneficial to the community, such as promoting health by providing opportunity for participation in amateur sports that involve the pursuit of physical fitness or providing community recreational facilities.

<sup>6</sup> <http://www.charity-commission.gov.uk/Publications/rr11.aspx>  
<sup>7</sup> (2009) 24 NZTC 23,273, 23,281.

20. In addition, in order to be charitable, a sporting entity must provide a public benefit. Factors that may count against this include where:
- There are unreasonable or unjustifiable restrictions placed on who may benefit from the activity;
  - Prohibitive costs associated with the activity (including fees and equipment) will exclude the less well off;
  - There is an unreasonable risk of injury or harm associated with the activity which will outweigh any benefit to the public;
  - Providing amusement, entertainment, or social activities for members is a primary purpose.

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

21. The Commission has analysed the purposes set out in clause 3 of the Applicant's amended rules document and the information supplied by the Applicant.
22. The Commission does not consider that the Applicant's purposes and the activities it undertakes indicate an intention to relieve poverty or advance religion. Accordingly, they have been assessed under the advancement of education and "any other matter beneficial to the community". Firstly, however, it is necessary to consider the effect of the wording in clause 9.1 of the Applicant's rules.

#### Effect of clauses purporting to limit purposes

23. Clause 8 of the rules document states:

*In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:*

...

*8.5 to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.*

24. Clause 9.1 of the rules document states "[a]ny income, benefit or advantage will be applied to the charitable purposes of the Trust."
25. Clause 13.1.1 states that no alterations of the trust deed will "detract from the exclusively charitable nature of the Trust".
26. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,<sup>8</sup> Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.<sup>9</sup>

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<sup>8</sup> [1961] NZLR 405, 407-498.

<sup>9</sup> [1932] 2 KB 465.

In that case, the statute there under consideration contained the phrase 'for charitable purposes only', and Lawrence LJ said in the Court of Appeal that "it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes".<sup>10</sup> Hardie Boys J further wrote that:

*... in so holding, Lawrence L.J. makes it clear later in his judgment that he had in mind, not merely the phrase "charitable purposes only", but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*<sup>11</sup>

27. In *Commissioner of Inland Revenue v White*,<sup>12</sup> the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word "charitable" in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*<sup>13</sup>

28. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>14</sup> Young J wrote "the mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are."<sup>15</sup> The judge went on to say, "...in the end, the objects and operation of the organisations either support a charitable purpose or they do not."<sup>16</sup> In that case, he concluded that they did not support a charitable purpose.
29. For these reasons, the Commission does not consider that the inclusion of the words "charitable purposes" in clause 9.1 provides conclusive evidence that the Applicant's purposes are in fact exclusively charitable.

#### Advancement of education

30. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of

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<sup>10</sup> [1931] 2 KB 465, 481.

<sup>11</sup> [1961] NZLR 405, 408.

<sup>12</sup> (1980) 55 TC 651.

<sup>13</sup> (1980) 55 TC 651, 653.

<sup>14</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>15</sup> HC WN CIV 2009-485-2133 [18 March 2010], para 56.

<sup>16</sup> HC WN CIV 2009-485-2133 [18 March 2010], para 56.



instruction, training, and practice.<sup>17</sup> In order to advance education, learning must be passed on to others.

31. Education does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>18</sup> If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
32. In *Re Shaw (deceased)*,<sup>19</sup> the Court held that if the object were merely the increase of knowledge that is not in itself a charitable object unless it is combined with teaching or education.
33. In New Zealand, in *Re Collier (deceased)*,<sup>20</sup> Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.<sup>21</sup>*

34. In *Re Collier*, the judge held that the bequest in question (for the publication of a book) did not qualify as charitable under the test:

*In my view, the minimal threshold test is not met. There is no educative value, or public utility in the 'book'. Further, it is no more than an attempt to perpetuate a private view held by Mrs Collier.<sup>22</sup>*

35. In *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*,<sup>23</sup> Iacobucci J held that the advancement of education included "information or training that is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge or abilities of the recipients" and "informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end."<sup>24</sup> However, Iacobucci J went on to state:

*[T]he threshold criterion for an educational activity must be some legitimate targeted attempt at educating others whether through formal or informal instruction, training, plans of self-study or otherwise. Simply providing an opportunity for people to educate themselves such as by*

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<sup>17</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>18</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>19</sup> [1957] 1 WLR 729, 738.

<sup>20</sup> [1998] 1 NZLR 81.

<sup>21</sup> [1998] 1 NZLR 81, 91-92.

<sup>22</sup> *Ibid* at p 92.

<sup>23</sup> [1999] 1 SCR 10; (1999) 169 DLR (4<sup>th</sup>) 34.

<sup>24</sup> [1999] 1 SCR 10 at para 169; (1999) 169 DLR (4<sup>th</sup>) 34, 113.

*making available materials with which this might be accomplished but need not be, is not enough.*<sup>25</sup>

36. In *Re Positive Action Against Pornography v Minister of National Revenue*,<sup>26</sup> the Canadian Supreme Court said:

*The organisation's activities consisted largely of presentation to the public of opinion and information about pornography. There was nothing in the record showing either formal training of the mind or the improvement of a useful branch of knowledge as a result of the organisation's activities.*<sup>27</sup>

37. In *Re Draco Foundation (NZ) Charitable Trust*,<sup>28</sup> when considering whether the appellants' website could be considered advancement of education Young J stated:

*... this 'plain language' material' cannot be considered to be for the advancement of education. This material does inform the reader but it is material widely available from a number of sources and does no more than provide the opportunity for a visitor to the site to read it for themselves . . . at best it is the provision of material for self study. The 'reader' can choose whether to access the material or not. This is not for the advancement of education.*<sup>29</sup>

38. The Applicant's purposes in clause 3, as amended, are:

*The purpose of the Trust will be to encourage participation in water polo and to educate and train water polo players, coaches and umpires. In particular the Trust will:*

*[NEW]*

*3.1 Promote, foster and encourage participation in water polo and other associated disciplines, as a sporting activity to anyone in the community who is interested in and chooses to take advantage of the opportunity offered;*

*[ORIGINAL]*

*3.1 provide individual (athlete centric) and group education and training;*

*3.2 offer advice, assistance and guidance;*

*3.3 provide a player advocacy service;*

*3.4 provide introductions and advice for players wishing to conform to the USA universities training and recruitment programs;*

*3.5 offer parental guidance and education; and*

*3.6 provide other support and assistance consistent with this charitable purpose.*

<sup>25</sup> Ibid at para 171; (1999) 169 DLR 94<sup>th</sup>) 34, 114.

<sup>26</sup> 49 D.L.R (4<sup>th</sup>), 74 (HEU).

<sup>27</sup> 49 D.L.R (4<sup>th</sup>), 74 (HEU).

<sup>28</sup> CIV 2010-485-1275.

<sup>29</sup> CIV 2010-485-1275 [42]-[43].

39. The Commission considers that the purposes in the original clause 3.1 and some of the purposes in clauses 3.2 and 3.5 may be charitable under advancement of education if there is a balanced and systematic process of instruction, training and practice. As set out in the case law cited above, however, merely increasing an individual's knowledge by providing informal advice or guidance is unlikely to amount to advancing education. Therefore, to the extent that the Applicant provides informal advice or guidance under clauses 3.2 and 3.5, these will not amount to charitable purposes.
40. For the reasons set out in the "Public benefit" section below, the Commission does not consider that education is being advanced for a sufficient section of the public in the original clause 3.1 and clauses 3.2 and 3.5 and therefore these purposes are not charitable.
41. The Commission does not consider that the purposes in clauses 3.3 and 3.4, to "provide a player advocacy service" and to "provide introductions and advice for players wishing to conform to the USA universities training and recruitment programs", are charitable under the advancement of education.

#### Other matters beneficial to the community

42. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and must 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>30</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
  - 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>31</sup>

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<sup>30</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>31</sup> *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

43. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. In particular, courts have found the promotion of public health to be charitable under this head where the benefit is available to a sufficient section of the public.<sup>32</sup>
44. The Commission notes that while there may be some health benefits for the 35 to 50 water polo players who will be assisted by the Applicant, the Applicant has not provided any evidence to show how this will provide health benefits for the wider community. For the reasons set out below, the Commission does not consider that providing assistance to a limited number of elite water polo players will amount to the promotion of public health and therefore this is not a charitable purpose under "other matters beneficial to the community".
45. The purpose in the new clause 3.1 of encouraging participation in water polo and associated disciplines may provide a public health benefit under "other matters beneficial to the public". However this is only part of the Applicant's "Future Plan/Vision" and there is no evidence of how the Applicant intends to achieve this.

#### Public benefit

46. In order to be charitable, the benefits from an Applicant's purposes must be available to a sufficient section of the community. Any private benefits arising from the Applicant's purposes 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>33</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>34</sup>
47. There are two aspects to the public benefit test, that is:
- there must be an identifiable benefit, assessed in the light of modern conditions and
  - the benefit must be to the general public or to a sufficient section of the public.<sup>35</sup>
48. In *Inland Revenue Commissioners v Baddeley*,<sup>36</sup> Viscount Simonds stated:

<sup>32</sup> *McGregor v Commissioner of Stamp Duties* [1942] NZLR 164; *Re Laidlaw Foundation* (1984) 13 DLR (4th) 491.

<sup>33</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>34</sup> *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

<sup>35</sup> See Tudor on Charities, 9<sup>th</sup> edition, London, Sweet & Maxwell, 2003, at 7.

<sup>36</sup> [1955] AC 572, 592.

*Somewhat different considerations arise if the form, which the purporting charity takes, is something of general utility which is nevertheless made available not to the whole public but only to a selected body of the public – an important class of the public it may be. For example, a bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. But confine its use to a selected number of persons, however numerous and important: it is then clearly not a charity. It is not of general public utility: for it does not serve the public purpose which its nature qualifies it to serve.*

49. Hubert Picarda, in *The Law and Practice Relating to Charities*, states:

*There is, as Viscount Simonds pointed out in IRC v Baddeley, a distinction*

*'between a form of relief extended to the whole community yet, by its very nature, advantageous only to the few, and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it'.<sup>37</sup>*

50. As set out in the case law cited above, the Commission has considered whether there are unreasonable or unjustifiable restrictions placed on who may benefit from the activities specified by the Applicant in order to determine whether these will provide a public benefit.

51. In its letter and addendum of 26 May 2011, the Applicant states:

1. ***How many players will be selected each year for development?*** *We do not intend to implement a player selection process. We expect, given what we know about the current state of the sport and players involved, that our student numbers will be in the vicinity of 50 or so within the first year of operation.*
2. ***What are the selection criteria for selecting the players?*** *As stated above there will not be a selection process, the academy will provide education and guidance to players/ coaches & umpires who are keen to progress rapidly towards their desired goals.*
3. ***What range of abilities and ages will the selected players be taken from?*** *Players from age 11 through to age 18. Coaches of all ages. Umpires of all ages. The trust will also recruit potential new players from the wider community and encourage participation in the sport of water polo.*
4. ***What services will the Trust provide under clause 3.3?*** *The trust will represent its students and graduates and provide guidance towards representative and national team selection. The trust believes a good education provider should represent (advocate) on behalf of its graduates.*

<sup>37</sup>

Hubert Picarda, *The Law and Practice Relating to Charities*, 3<sup>rd</sup> Ed., London, Butterworths, 1999 at 21.

5. **What services will the Trust provide under clause 3.4?** Several USA universities have strong water polo programs; the trustees have connections with some of these universities and can educate NZ based players wishing to follow that path.

**Addendum:**

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**Background:**

The popularity of water polo and player participation in the sport has grown rapidly over the last 10 years. According to NZ Water Polo Inc figures, player registrations (including "Flippa Ball," a lead in series to Water Polo) have swelled from 7,909 (2001) to 18,550 (2010.) The current situation is that in most cases players are introduced to the sport at school and then join a traditional water polo club for further game time and training. New Zealand is rapidly falling behind the rest of the world in its development of young players and coaches to elite level water polo mainly because many of the clubs can no longer cope with the increasing numbers of players now active in the sport. None of the traditional clubs currently are able to offer athlete centric (one on one) education and training and parents are left to advocate on behalf of and manage their own children. Because of the escalating player numbers, clubs have needed to assign young (often unqualified) coaches to even advanced level teams.

**The Academy (A.W.P.A.E.T Inc):**

Trustees Grant McAneaney and John Scott have identified an urgent need to educate young water polo players, coaches and umpires in NZ in order to facilitate their rapid progress to national and international level. The trusts principle is based on **education** primarily, whilst obviously working within a sporting environment. The development of the trust was dependent on the retention of an expert in this field. Trustee Grant McAneaney is uniquely committed to the trusts principle. Grant is the most qualified and suitable person in NZ to establish this charitable trust that will benefit the community and the sport. His credibility and credentials are unrivalled within the water polo community in NZ.

**Future Plan/Vision:**

The trustees' vision is to benefit the community as follows:

- Provide hourly work for between 5 and 10 coaches / instructors / teachers.
- Provide education services to between 35 to 50 water polo players.
- Attract additional young people to the sport of Water Polo.
- Provide financial assistance to players who are unable to make elite level commitments due to lack of funds.

The academy will provide to players, coaches & umpires:

Education Services (through classroom and pool sessions)

- *Game tactics*
- *Rules*
- *Fitness*
- *Nutrition*
- *Strength*
- *Pathways to national representation.*

Advocacy service offered.

- *Player representation (club, school and national level.)*
- *Feeder (introduction) service to the USA universities summer camp / open day programs.*

52. The Commission considers that providing the assistance set out above for 35 to 50 water polo players who have the potential to perform at an elite level will amount to a private benefit for these individuals, rather than a public benefit. Participation in such a programme is restricted to a limited number of water polo players based on their skill or ability and it will not be open to anyone who wishes to participate.
53. Although the skills and competencies and the health and fitness of those 35 to 50 water polo players who are selected to participate in the programme are likely to be developed, the Commission considers that this is unlikely to provide sufficient public benefit to be considered charitable.

Conclusion

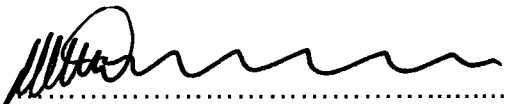
54. The Commission concludes that the Applicant's purposes do not advance education or provide any other matters beneficial to the community. In addition, the Applicant's purposes and activities provide private benefits for a limited number of elite athletes and do not provide sufficient public benefit to be considered charitable.

**Charities Commission's determination**

55. The finding of the Commission is that the Applicant 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.

**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

16/01/11  
Date