

Registration decision: Central Festival Trust Board (CEN34911)

The facts

1. The Central Festival Trust (the Applicant) was created by a deed of trust dated 28 August 2009. The trustees of the Central Festival Trust incorporated as a board under the *Charitable Trusts Act 1957* on 9 November 2009 under the name "Central Festival Trust Board"
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity on 2 September 2009.
3. Clause A of the Background and clause 2 of the Applicant's trust deed states the original purposes of the Trust:

A The Settlor wishes to constitute a Trust for the following purposes:-

A1 Any charitable purposes within the Manawatu and neighbouring communities.

A2 To create a fund to be used for:

A2.1 The running of a festival for the Manawatu and neighbouring communities to participate and celebrate events in September and October 2011 during the 2011 Rugby World Cup;

A2.2 Leveraging opportunities for the Manawatu and neighbouring communities arising from the 2011 Rugby World Cup;

A2.3 Providing a vehicle to promote and enhance pride in the Manawatu and neighbouring communities;

A2.4 Providing during the 2011 Rugby World Cup and thereafter a positive profile and awareness of the Manawatu and neighbouring communities, within New Zealand and to international audiences;

A2.5 The promotion of wellbeing of residents residing within the Manawatu and neighbouring communities;

and to accept gifts and grants of whatever description. Provided that any private benefit conferred on any individual is incidental to the above purposes.

2. **DECLARATION OF TRUST**

2.1 The Trustees will hold the Trust Fund on trust in perpetuity for the benefit of the residents of the Manawatu and neighbouring communities to the extent that this is a charitable purpose under the laws from time to time applying in New Zealand.

2.2 Without limiting clause 2.1 the objectives of this Trust are set out in Background A.

4. On 11 September 2009, the Commission sent the Applicant a notice that may lead to decline on the basis that the purposes did not constitute charitable purposes.

5. On 11 November 2009, the Applicant's solicitor responded to the notice stating that the Applicant's purposes had been amended as follows:

3. The trustees hereby vary the Deed establishing Central Festival Trust as follows:

(a) By deleting Background A1 and replacing it with "*The charitable purpose of promoting the Manawatu region.*"

(b) By deleting Background A2 in its entirety.

(c) By deleting clause 2.1 of the Deed and replacing it with the following "*The trustees will hold the trust fund on trust in perpetuity for the purpose of promoting the Manawatu region to the extent that this is a charitable purpose under the laws from time to time applying in New Zealand.*"

(d) By deleting clause 2.2 of the Deed.

6. On 18 November 2009, the Commission sent the Applicant a second notice that may lead to decline on the basis that the amended purposes were not charitable. In relation to the Applicant's purposes the Commission cited:

- *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132
- *Hadaway v Hadaway* [1955] 1 WLR 16 (PC).
- *Commissioners of Inland Revenue v White* (1980 55 TC 651).
- *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) 69 TC 231; STC 1218
- *Travel Just v Canada (Revenue Agency)* (2006) FCA 343; [2007] 1 CTC 294.

7. The Applicant's solicitor responded on 23 February 2010, submitting that the Applicant's purposes could be distinguished from those in the *Oldham* case. This was because the purposes of Oldham Training and

Enterprise Council “expressly included the promotion and development of existing business and establishment of new businesses and the provision of support services and advice to and for local businesses” and “there is no equivalent specific object in the CFTB Deed”.

The issue

8. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005*. 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 purposes

9. Under section 13(1)(a) of the Charities Act a trust qualifies for registration if it is 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.¹ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
11. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose.
12. 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.*

The Commission’s analysis

13. The Commission considers that the Trust’s amended purposes set out in Background A1 and clause 2.1 are not directed at the relief of poverty or the advancement of religion. These purposes have therefore been considered in relation to advancement of education and “any other

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

matter beneficial to the community". First, however, the Commission has considered the effect of the final words in clause 2.1.

Effect of words purporting to limit purpose

14. Background A and clause 2.1 state:

"A The settlor wishes to constitute a Trust for the following purposes:-

A1 **The charitable purpose of promoting the Manawatu region.**

...

2.1 **The trustees will hold the trust fund on trust in perpetuity for the purpose of promoting the Manawatu region to the extent that this is a charitable purpose under the laws from time to time applying in New Zealand.**" [Emphasis added]

15. Specific and implied charitable limitations were considered in *Canterbury Development Corporation v Charities Commission and Commissioners of Inland Revenue v Oldham Training and Enterprise Council*.

16. In *Canterbury Development Corporation* the High Court considered the effect of the following words in the Appellant's constitution:

"The capacity of the Company will at all times be limited to carrying on or undertaking any business or activity, the doing of any act, or the entering into of any transaction to the extent that the same are undertaken for the following charitable purposes . . .

In furtherance of the charitable objects set out in clause 2.1 but not otherwise the Company may pursue the following purposes . . ." [Emphasis added]

17. Ronald Young J held that the mere fact that the corporation's constitution stated that its objects were charitable did not make the corporation charitable."²

18. In *Oldham Training and Enterprise Council* Lightman J held:

" . . . certain of its objects are indisputably charitable. The question raised is whether the remaining objects viewed in this context can and should be construed as subject to the implicit limitation "so far as charitable". There is, of course, no such express limitation. In my judgment on a careful examination of the objects clauses **no such limitation can be implied or **is compatible with the range of benefits** and of the eligible recipients of such benefits which it is the object of Oldham TEC to provide."³ [Emphasis added]**

² High Court, Wellington, 18 March 2010, CIV 2009-485-2133, para 56.
³ (1996) 69 TC 231, 250.

19. The Commission does not consider that the words purporting to limit the Applicant's purposes to charitable purposes in Background A1 and clause 2.1 provide conclusive evidence that the Applicant's specific purposes are in fact charitable. Before it can register an applicant as a charitable entity, the Commission must be certain that the applicant meets all the essential elements of registration set out in section 13 of the Act. In addition, section 18(3)(a) of the Act requires the Commission to have regard to the current and future activities of an applicant for registration.

Advancement of education

20. 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, or the promotion of a particular point of view.⁴
21. 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 instruction, training, and practice.⁵ In order to advance education, learning must be passed on to others.
22. In *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."⁶
23. In *Travel Just v Canada Revenue Agency*⁷, the court held that it was doubtful 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.
24. The Commission considers that "promoting the Manawatu region" would involve the promotion of a particular point of view, and could include advertisements for goods and services, therefore this will not amount to the advancement of education.

⁴ *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

⁵ *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.)

⁶ [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352.)

⁷ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

Other matters beneficial to the community

25. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).⁸
26. 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.⁹
27. 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.*¹⁰
28. The purposes set out in the Statute of Elizabeth are:
- 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.¹¹
29. Courts have found the following purposes to be charitable under “any other matter beneficial to the community”:
- beautification of a locality,¹²
 - preservation of a locality,¹³

⁸ *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.

⁹ *In Re Cumming* [1951] NZLR 498, 501.

⁸ 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.

¹¹ *Charitable Uses Act 1601* 43 *Elizabeth I c. 4*.

¹² *Re Pleasants* (1923) 39 TLR 675.

- maintenance of public parks and gardens,¹⁴
 - improvement of public safety,¹⁵
 - maintenance of public buildings and facilities.¹⁶
30. The Commission considers that the purpose of “promoting the Manawatu region” is not within the spirit and intendment of the purposes set out in the Statute of Elizabeth or analogous to any subsequent cases.

Public or private benefit?

31. The public benefit criterion necessarily requires that any private benefit arising from the Applicant’s activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. There will not be sufficient public benefit if the private benefits are an end in themselves.¹⁷ 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.¹⁸
32. The Applicant has not provided any evidence of a public benefit arising from its purposes therefore the Commission is not satisfied that there is any public benefit.

Conclusion

33. The Commission concludes that Applicant’s purposes in Background A1 and clause 2.1 are not charitable under the advancement of education or “other matters beneficial to the public” and there is insufficient public benefit.

Section 61B of the *Charitable Trusts Act 1957*

34. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to “save” a trust that has both charitable and “non-charitable and invalid” purposes.
35. The first is where the entity’s **stated purposes** include both charitable and non-charitable purposes (in which case the non-charitable purposes

¹³ *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 Centrepont Community Growth Trust* [2000] 2 NZLR 325.

¹⁴ *Morgan v Wellington City Corporation* [1975] 1 NZLR 416 and *Re Bruce* [1918] NZLR 16.

¹⁵ *Inland Revenue Commissioners v Baddeley* [1955] AC 572.

¹⁶ *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).

¹⁷ *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.

¹⁸ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

may be "blue pencilled out"). The second is where the stated purposes are capable of both a charitable and a non-charitable **interpretation** and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).¹⁹

36. In *Re Beckbessinger* Tipping J held:

*"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."*²⁰

37. For the reasons given above, the Commission does not consider that the Applicant's stated purposes are either charitable or capable of a charitable interpretation. There is therefore no evidence of "a substantially charitable mind" with an intention to create a charitable trust, but which was not conveyed by the drafting.

38. On this basis, the Commission therefore concludes that section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

Charities Commission's determination

39 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 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


Barry Hayman
Acting Chief Executive

15/04/10
Date

¹⁹ *Re Beckbessinger* [1993] 2 NZLR 362, 373.
²⁰ *Re Beckbessinger* [1993] 2 NZLR 362, 376.