

**Registration decision: Omiha Welfare and Recreational Society
Incorporated (OMI42237)**

The facts

1. The Omiha Welfare and Recreational Society Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 19 October 1933.
2. The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 29 August 2011.
3. Clause 3 of the Applicant's rules document sets out the purposes of the Applicant as follows:

3 The objects of the Society shall be:

- (a) *to provide healthy amusement and recreation for the Rocky Bay community by the holding of entertainments, sports meetings and functions of a similar nature for the benefit of the community or for charitable, philanthropic or patriotic objects.*
 - (b) *to prevent the spoliation of native forests, trees, ferns and other fauna growing on the public reserves within the district and to protect the beaches and foreshores from spoliation by the removal of sand shingle and shells and generally to assist in protecting the natural beauties of the district and preventing the creation of nuisance by the deposit of rubbish and otherwise.*
 - (c) *generally to improve the condition of the district and to do all such things as are necessary to promote the welfare of Rocky Bay and its community.*
 - (d) *to acquire, hold, borrow, lend, mortgage, lease, hire, sell, give or otherwise deal with any real or personal property in any manner whatsoever for the purposes of carrying out the objects of the Society.*
4. On 29 November 2011 the Commission received a letter which provided the following information regarding the Applicant's activities:

The OWRS owns land donated to it (Valley Road Tennis courts in 1932) and buildings and land purchased by the OWRS (the hall and land in Glen Brook Road) and maintains & operates them for the wellbeing of not only its own membership, but of all members of the public with first priority being given to the residents of the Omiha/Rocky Bay area.

- A) *Relief from poverty: Being run by volunteers on a shoestring we are not in the business of giving financial assistance to individuals however:*

1. *All our functions and activities are either free or very low cost admission e.g. our quiz nights cost \$15 entry which includes a two course meal and entertainment*
2. *If individuals or families are experiencing difficulties we facilitate assistance e.g. when a family was left destitute by a house fire we empowered the community to offer replacement accommodation, food, clothing, belongings and assistance in recovery*
3. *One afternoon each week we run an open 'market' to which people bring items (from fruit and veges to crockery and books) for exchange or sale at very low prices and have 'one off' cheap massage, haircut or other services.*
4. *We also buy rat bait in bulk and sell it at cost in smaller amounts (the area is designated "bush residential").*

B) Education:

1. *Over the past 12 months we have called for, organised and provided a venue for the sharing of information of value to individuals and the community e.g. i) civil defence, central & local government plans and 'meet the candidates or MPs' political meetings.*
2. *We have also called for, organised and provided a venue for the sharing of information by community environmental organisations such as Forest & Bird and the Waiheke Waste Trust*
3. *We run a free lending library/book exchange.*
4. *We meet people's cultural needs by having local photographic and art displays in the hall as well as live theatre and musical performances.*
5. *All sorts of free problem solving and information/skill sharing occurs during our Thursday get-togethers from sewing instruction, to crop growing, and from stain removal to computer skills.*

C) Religion:

Other than weddings and funeral gatherings, no organisation has sought to use the hall for religious purposes recently. However it has in the past been used for church services and religious education.

D) Community benefit:

Rocky Bay is 3-5km from the nearest shop or service. Like all isolated societies we have a firm sense of our independent identity. In every way the OWRS and its hall is the hub of our community and district. We believe that strong communities help make happy individuals with more love and joy and less anti-social behaviour.

Our Society's principal aim is to foster such a sense of belonging and caring.

- 1. We attempt to communicate on a personal basis with new arrivals in our community. We also offer contact and comfort to those who have experienced a recent bereavement. When notified of a local death the flag outside our hall is flown at half mast until the funeral takes place. These may seem trivial items to mention but they emphasise the cohesive role our organisation tries to play within our community.*
- 2. We communicate with the local community through our free newsletter delivered monthly to every household in our village to our rural community's catchment area. This provides the opportunity for the community to keep in touch with all local issues as well as advertising upcoming events at the hall.*
- 3. For their social needs we run free gatherings on Thursday afternoons with tea/coffee and home-made baking with a small 'market' attached, Friday evenings 'happy hour' for commuters as well as the dances, quiz nights and annual children's Christmas party and support the boating club's regatta day.*
- 4. The hall is also frequently hired at low cost for private functions such as birthdays, weddings and anniversaries.*
- 5. For mothers and children a children's playgroup meets weekly in the hall. The equipment for this group is stored in the hall.*
- 6. For members' physical well-being we i) maintain a freely available tennis court for fine weather ii) run monthly dances, iii) have tutors running classes in Chi Kung.*
- 7. Our Society's objects have a strong environmental aspect. We attempt to preserve the local flora and are actively involved in preserving our environment. A number of our members are involved with planting, weed eradication and dotterel protection in the adjacent Whakanewha Regional Park.*
- 8. The OWRS has been involved with issues concerning the local environment since the 1930s when removal of shingle from the beaches was of major concern. 15 years ago the OWRS raised \$38000 to purchase a block of land now known as Crosby Reserve. Our organisation raised the funds, purchased the land, then gifted it to the Auckland Regional Council/Auckland City Council.*
- 9. We also provide a free venue for and often work in association with other local organisations such as the Rocky Bay Cruising Club and the local branch of Forest and Bird on local issues.*
- 10. Linked to our environmental focus is our monitoring of general community infrastructure concerns. We provide a conduit to the council/local board concerning issues such as drainage, erosion, flooding, tree planting and road maintenance.*

11. Above all, having frequent opportunities to meet one's neighbours and getting to know them creates a bond between residents of 'The Bay' which leads to a community where people greet each other in passing and help out when needed.

5. The Commission analysed the application and on 9 January 2012 sent the Applicant a notice that may lead to a decline, advising that the Commission did not consider the purposes at clauses 3(a) and 3(c) of the Applicant's governing document to be charitable.
6. On 3 February 2012, the Applicant sought an extension to the deadline for responding to the notice that may lead to a decline. The Commission granted the extension.
7. On 5 March 2012, the Applicant responded to the notice that may lead to a decline, stating:

I wish to take issue with a number of points raised in your judgment. I will address these issues in the sequence in which they are presented in your letter.

Charitable purpose.

Under section 13(1)(b)(i) our society will qualify if 'it is established and maintained exclusively for charitable purposes.'

Under section 5(1) of the Charities Act 2005 it states ... 'charitable purpose includes every charitable purpose.....or any other matter beneficial to the community.'

It is on the grounds that ALL our purposes are 'beneficial to the community' and that any purposes deemed by the Charities Commission to be non-charitable are either an error in the Commission's judgment or should be deemed ancillary to the charitable purpose of being 'beneficial to the community.'

If under section 5(1) of the Charities Act 2005 'a society providing 'matters beneficial to the community' is deemed to be charitable, I find it hard to perceive that our society's purposes are not beneficial.

- a) *'to provide healthy amusement and recreation for the Rocky Bay community by the holding of entertainments, sports meetings and functions of a similar nature for the benefit of the community or for charitable, philanthropic or patriotic objects.' This object states that our purpose is purely for the benefit of the community. The term 'patriotic' has been retained from our Society's original object when formed in 1932. Although the term may be deemed to be archaic it is important that our Society respects the original objects of our forebears. Its modern synonym would be 'lawful', 'respectful', 'law-abiding', 'having pride in our part of New Zealand society.'*
- b) *'To prevent the spoliation of native forests, trees, ferns, and other flora growing on the public reserves within the district.' The Charities Commission has not objected to this so I*

assume it meets your requirements of being 'beneficial to the community.'

- c) *Generally improve the condition of the district and do other such things as are necessary to promote the welfare of Rocky Bay and its community. Surely once again this object meets the requirement of 'being beneficial to the community.'*

The Commission (your letter of 9 Jan 2012) deems that these three objects are not exclusively for charitable purposes. Our Society would argue that all are 'beneficial to the community' and therefore have charitable purposes.

Your letter 9 Jan 2012 states that a number of the events that OWRS organises are not deemed to be charitable. I would state that most 'charitable organisations' perform some functions that are not specifically charitable. I would argue that all the activities that the OWRS organises have aspects that are beneficial to the community.

Your letter argues that social and entertainment activities are deemed to be not charitable. To equate/compare our society's fundraising socials with the Royal Choral Society applying for charitable status seems to me somewhat farcical. Our objective in organising these events is for the benefit of the community. Our funds go to maintaining our hall as the social hub of our community and to maintain the local tennis courts for the community's benefit which we have done since 1932.

Inland Revenue vs Baddeley argued that social activities which do not necessarily provide social benefit. Perhaps the City of Glasgow in 1955 was different to Rocky Bay, Waiheke Island in 2012. I would argue that social activities are what bring individuals and communities together. It is the building of social capital that unites communities in the 21st century, is of benefit to the community, and is therefore of charitable purpose.

Williams Trustees vs Inland Revenue Commissioners (Wales 1947) it was argued that the package offered by the Williams Trustees was very similar to an 'ordinary social club.' I would argue that gatherings that bring together the community in the 21st century are beneficial to the social interactions of that community and hence are consistently 'beneficial to that community.'

Travis Trust vs Charities Commission argued that sport, leisure and entertainment for its own sake is not charitable. I can accept that if you considered these three things in isolation from their community base it could be so. However, if the entertainment brings the community together, if leisure activities bring the community together, if the sporting facility which the OWRS maintains is provided for the community's benefit, then these three activities can be deemed charitable.

The 'underlying, deeper purpose' of the OWRS running entertainment, sport and leisure activities is indeed charitable. All are established for the benefit of our community.

Your letter (9 Jan 2012) states that the OWRS providing free facilities to the local Rocky Bay Memorial Cruising Club is not charitable. Is the

Commission's argument that it is charitable for us to offer free facilities to the local branch of Forest and Bird but is not charitable to offer free services to the local Cruising Club. Has the benefit to the community suddenly evaporated because the Cruising Club may not have exclusively charitable objectives. Taking your argument a step further, would it then be not charitable to offer our facility to a group who are victims of domestic violence, or to a local playgroup because they have no officially stated charitable objectives.

Provision of a newsletter. Our monthly newsletter is criticised/condemned unseen as it 'may not qualify as an advancement of education.' I will not attempt to convince you that communicating with our total community is an advancement of their education, but it is nevertheless of 'benefit to the community.' It keeps them informed (not necessarily 'educated') about a range of events within their community.

Market. Our Thursday gathering is where the community comes together to relax with a cup of tea/coffee and meet up with other members of our community. There is some fresh produce available and a recycling stall but it is not a 'market.' It has been realistically called a 'drop in centre for adults', though mothers and toddlers are often there. There is no concept of business and economic development in our weekly Thursday gathering. Its sole purpose is to bring the community together. To label it as a 'market' and to ignore the social aspect of the gathering is inappropriate, and seems like an intentional misinterpretation of the original OWRS submission.

Your letter dated 9 Jan 2012 states that the OWRS has two options: to amend the application OR to withdraw the application. I appreciate I have done neither. I believe that you have overlooked the benefit of the OWRS to our community, you have to a large extent ignored the charitable 'benefit to the community' which our Society provides and I therefore request that you review your decision.

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 issues for consideration are whether the Applicant is a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) 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)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.

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 or religion, or any other matter beneficial to the community.
11. In addition, to be charitable at law, a purpose must also be for the public benefit.¹ This means that the purpose must be directed to benefit the public or a sufficient section of the public.
12. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes.²
13. 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.
14. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution if the non-charitable purpose is:
 - (a) *ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and*
 - (b) *not an independent purpose of the trust, society or institution.*
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. Courts have also held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.³

Charities Commission's analysis

17. The Commission has analysed the purposes set out in clause 3 of the Applicant's rules document and the information supplied by the Applicant regarding its activities.

¹ *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at para 32.

² See *McGovern v Attorney General* [1982] 1 Ch. 321 at 341; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, 691.

³ See *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 para 194; *Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55 at para 70; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

18. The Commission considers that the purpose at clause 3(b) of the Applicant's rules document is charitable, as it provides benefit to the community through promoting the protection of the environment.
19. The Commission considers that clause 3(d) of the rules document is a power and not a purpose of the Applicant.
20. The Commission does not consider that the purposes at clauses 3(a) and 3(c) of the Applicant's rules document indicate an intention to relieve poverty, or advance religion or education. The Applicant has provided supporting information which confirms that relieving poverty and advancing religion are not among its main activities.
21. Although the Applicant has provided information to show that some educational activities have been undertaken, education does not appear to be a primary purpose. The Commission notes that no reference is made to education in the Applicant's purpose clauses. Accordingly, the purposes and activities have been assessed under "any other matter beneficial to the community". Firstly, however, it is necessary to consider the effect of the wording in the rules document.

Effect of clauses purporting to limit purposes

22. Clause 4(b) of the Applicant's rules document states:

Any income, benefit or advantage received by the Society must be used to advance the charitable purposes of the organisation as defined in clause 3 above.

23. In *Commissioner of Inland Revenue v White*,⁴ 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.*⁵

24. Finally, in *Canterbury Development Corporation v Charities Commission*,⁶ Young J wrote "the mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable

⁴ (1980) 55 TC 651.

⁵ (1980) 55 TC 651, 653.

⁶ HC WN CIV 2009-485-2133 [18 March 2010].

although such a declaration is relevant in assessing whether they are.”⁷ 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.”⁸ In that case, he concluded that they did not support a charitable purpose.

25. For these reasons, the Commission does not consider that the inclusion of the wording in the above clause provides conclusive evidence that the Applicant’s purposes are in fact exclusively charitable.⁹

Other matters beneficial to the community

26. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must provide benefit to a sufficient section of 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):¹⁰
- 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

Sufficient section of the community

27. The Commission notes that clauses 3(a) and 3(c) of the Applicant’s rules document provide that its objects are intended to benefit Rocky Bay and its community.
28. The Commission considers that the Rocky Bay community is a sufficient section of the community for the Applicant’s purposes to be of public benefit, as long as they are of a charitable nature.

⁷ Ibid, para 56.

⁸ Ibid, para 56.

⁹ See also *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405, 408.

¹⁰ *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157; *Re Tennant* [1996] 2 NZLR 633 at 638.

¹¹ 43 Elizabeth I c. 4.

Are the purposes of a charitable nature?

29. Not all organisations with purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. In *Queenstown Lakes Community Housing Trust* MacKenzie J stated:

Not every purpose beneficial to the community will be charitable under this head. Lord Simons in Williams Trustees v Inland Revenue Commissioners, noted two propositions which must be borne in mind. The first is that the purpose must be within the spirit and intendment of the preamble to the Statute of Elizabeth I. The second is that Lord Macnaghten's fourfold classification in Pemsel's case must be read subject to the qualifications that it does not mean that every object of public general utility must necessarily be charity. He concluded that the purpose must be both for the benefit of the community and beneficial in a way which the law regards as charitable. The somewhat circular requirement that to be charitable, a purpose must be beneficial in a way which the law regards as charitable, reflects and restates the requirement that the purpose must be within the spirit and intendment of the preamble.¹²

30. In *Travis Trust v Charities Commission*, Joseph Williams J noted:

...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.¹³

31. 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.

Recreation and entertainment

32. Clause 3(a) of the Applicant's rules document provides that one of its purposes is:

to provide healthy amusement and recreation for the Rocky Bay community by the holding of entertainments, sports meetings and functions of a similar nature for the benefit of the community or for charitable, philanthropic or patriotic objects.

33. In *Williams Trustees v Inland Revenue Commissioners*, the Court held that a trust intending to promote the moral, social, spiritual and educational welfare of Welsh people in London by a variety of means, including the establishment of a social centre where regular dances and other social activities were held, lacked the requisite charitable character. Lord Normand held:

¹² HC WN CIV-2010-485-1818 [24 June 2011] at para 48.
¹³ (2009) 24 NZTC 23,273 at para 20.

While certain features of the Institute conformed to the idea of charity they were not so dominating nor was the general character of the Institute such, as effectively to distinguish it from an ordinary social club.¹⁴

34. In *Inland Revenue Commissioners v Baddeley*, Lord Reid stated:

It is well settled that the provision of entertainment or amusement is not by itself a charitable purpose; but if the dominant purpose of the trust is charitable in character the fact that recreation is provided as an adjunct to that purpose does not destroy the charitable character of the trust.¹⁵

35. In *Travis Trust v Charities Commission* Joseph Williams J considered the law regarding when sport and leisure activities will be deemed charitable. He stated:

The cases then seem to establish some workable first principles. The first, the class of charitable purposes does indeed evolve over time and the Courts (including those in New Zealand) have shown a willingness to develop new categories of charitable purpose and to develop or extend established ones. 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 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.¹⁶

36. In the letter received on 29 November 2011, the Applicant provided the following information regarding its activities:

...our quiz nights cost \$15 entry which includes a two course meal and entertainment.

...

For their social needs we run free gatherings on Thursday afternoons with tea/coffee and home-made baking with a small 'market' attached, Friday evenings 'happy hour' for commuters as well as the dances, quiz nights and annual Children's Christmas Party and support the boating club's regatta day.

37. The Commission notes that the wording of clause 3(a) is focused on providing entertainment and leisure activities. The information provided by the Applicant regarding its activities shows that it holds a number of regular social events for the Rocky Bay community, some of which occur on a weekly basis.

38. In accordance with the case law cited above, the Commission considers that clause 3(a) is not charitable. Providing social events for the

¹⁴ [1947] AC 447 at 460.

¹⁵ [1955] AC 572 at 600.

¹⁶ (2009) 24 NZTC 23,273 at para 52.

members of a community is not an object of a charitable nature, as such activities are not within the spirit and intendment of the Preamble to the Statute of Elizabeth.

39. The Commission notes that the end of clause 3(a) provides that the purpose is “for the benefit of the community or for charitable, philanthropic or patriotic objects” [Emphasis added].
40. The use of the disjunctive “or” between charitable and non-charitable purposes has been treated by the courts as defining distinct categories.¹⁷ The Commission therefore considers that, firstly, the phrase “or for charitable, philanthropic or patriotic objects” is to be read disjunctively from the preceding part of the clause, and secondly, that “charitable, philanthropic or patriotic objects” are to be read as separate categories.
41. The courts have held that “philanthropic purposes” fall outside the scope of what the law recognises as charitable.¹⁸ The courts have also held that “patriotic purposes” are not limited to charitable purposes.¹⁹

Clause 3(c)

42. Clause 3(c) of the Applicant’s rules document provides that one of its purposes is:

generally to improve the condition of the district and to do all such things as are necessary to promote the welfare of Rocky Bay and its community.

43. In *Re Blyth* a trust that included among its objects “raising the standard of life” was found not to be exclusively charitable, as the phrase was considered too wide and vague to identify the nature of any charity intended.²⁰
44. In *Inland Revenue Commissioners v Baddeley* a trust that included among its objects “the promotion of the social wellbeing of a community” was found not to be exclusively charitable. In his judgment, Viscount Simonds stated:

*The moral, social and physical well-being of the community or any part of it is a laudable object of benevolence and philanthropy, but its ambit is far too wide to include only purposes which the law regards as charitable.*²¹

¹⁷ *Attorney-General v. Adams* (1908) 7 CLR 100 at 113 per Barton J; *Chichester Diocesan Fund & Board of Finance (Inc.) v. Simpson* [1944] AC 341 at 351 per Lord MacMillan.

¹⁸ See *Re Macduff* [1896] 2 Ch 451; *Attorney-General v Adams* (1908) 7 CLR 100 at 122; *Re Eades* [1920] 2 Ch 3553 at 356.

¹⁹ *Attorney-General v National Provincial Bank and Union of England* [1924] AC 262 at 264.

²⁰ 2 Qd R 567 at 583.

²¹ [1955] AC 572 at 589.

45. As noted above, in *Williams Trustees v Inland Revenue Commissioners*, the Court held that a trust intending to promote the moral, social, spiritual and educational welfare of Welsh people in London by a variety of means was not a charitable trust.
46. Furthermore, in *Re Belcher (deceased)*,²² it was held that the expression "the welfare of youth" was too broad to come within the legal concept of charity.
47. In accordance with the case law stated above, the Commission considers that clause 3(c) is non-charitable as it is too broad to be exclusively charitable.

Applicant's submissions

48. In the letter received on 5 March 2012, the applicant stated:

Your letter 9 Jan 2012 states that a number of the events that OWRS organises are not deemed to be charitable. I would state that most 'charitable organisations' perform some functions that are not specifically charitable. I would argue that all the activities that the OWRS organises have aspects that are beneficial to the community.

Your letter argues that social and entertainment activities are deemed to be not charitable. To equate/compare our society's fundraising socials with the Royal Choral Society applying for charitable status seems to me somewhat farcical. Our objective in organising these events is for the benefit of the community. Our funds go to maintaining our hall as the social hub of our community and to maintain the local tennis courts for the community's benefit which we have done since 1932.

Inland Revenue vs Baddeley argued that social activities which do not necessarily provide social benefit. Perhaps the City of Glasgow in 1955 was different to Rocky Bay, Waiheke Island in 2012. I would argue that social activities are what bring individuals and communities together. It is the building of social capital that unites communities in the 21st century, is of benefit to the community, and is therefore of charitable purpose.

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Travis Trust vs Charities Commission argued that sport, leisure and entertainment for its own sake is not charitable. I can accept that if you considered these three things in isolation from their community base it could be so. However, if the entertainment brings the community together, if leisure activities bring the community together, if the sporting

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[1950] VLR 11 at 15.

facility which the OWRS maintains is provided for the community's benefit, then these three activities can be deemed charitable.

The 'underlying, deeper purpose' of the OWRS running entertainment, sport and leisure activities is indeed charitable. All are established for the benefit of our community.

49. In summary, the Applicant submits that providing the entertainment and social activities is beneficial to the community as these activities bring the community together. The Commission accepts that these activities bring the community together.
50. However, in accordance with the case law cited above, the Commission does not consider that bringing a community together by providing its members with entertainment and social events is beneficial to that community in a manner that is charitable at law.
51. The Applicant has also submitted that any non-charitable purposes are ancillary to its charitable purpose of being "beneficial to the community". In the letter received on 5 March 2012, the Applicant stated:

Charitable purpose.

Under section 13(1)(b)(i) our society will qualify if 'it is established and maintained exclusively for charitable purposes.'

Under section 5(1) of the Charities Act 2005 it states ... 'charitable purpose includes every charitable purpose.....or any other matter beneficial to the community.'

It is on the grounds that ALL our purposes are 'beneficial to the community' and that any purposes deemed by the Charities Commission to be non-charitable are either an error in the Commission's judgment or should be deemed ancillary to the charitable purpose of being 'beneficial to the community.'

52. In *Greenpeace of New Zealand Incorporated*, Heath J considered up when a purpose can be considered ancillary:

I agree with Simon France in Re Grand Lodge of Antient Free and Accepted Masons in New Zealand, that both qualitative and quantitative assessment is required to determine whether the non-charitable purpose is "ancillary." In conducting that analysis, it is necessary to evaluate whether the non-charitable purposes are truly incidental or independent.

The use of the phrase "merely ancillary" in s 5(3) suggests the need to distinguish between a purpose that is a necessary incident of the charitable purpose from one which can be seen as an object in its own right – an independent purpose. The words used in s 5(4) of the Act, as examples of a purpose that will be regarded as ancillary, evidence the subservient or incidental nature of the object. That approach accords with the obvious Parliamentary intention that exclusive charitable purposes are required generally for registration to be effected.

*A quantitative assessment is one designed to measure the extent to which one purpose might have a greater or lesser significance than another. That assessment is a question of degree. On the other hand, a qualitative assessment has regard to the particular function in issue. A qualitative assessment helps to determine whether the function is capable of standing alone or is one that is merely incidental to a primary purpose.*²³

53. The Commission does not consider that the social activities provided by the Applicant are ancillary. The Commission notes that some of these activities are provided on a weekly basis. Consequently, they form a significant part of the Applicant's activities, when considered on a quantitative basis.
54. The Commission also considers that the social activities cannot be deemed ancillary on a qualitative basis. They are not an unsought consequence of pursuing a valid charitable object. Clause 3(a) focuses on providing amusement and recreation. The social and entertainment activities are clearly a primary and independent object of the Applicant.

Conclusion

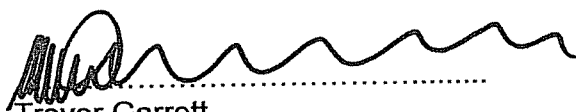
55. The Commission concludes that the Applicant's purposes set out in sub-clauses 3(a) and 3(c) of its rules and its activities are non-charitable for the reasons stated above.

Charities Commission's determination

56. 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 established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act.

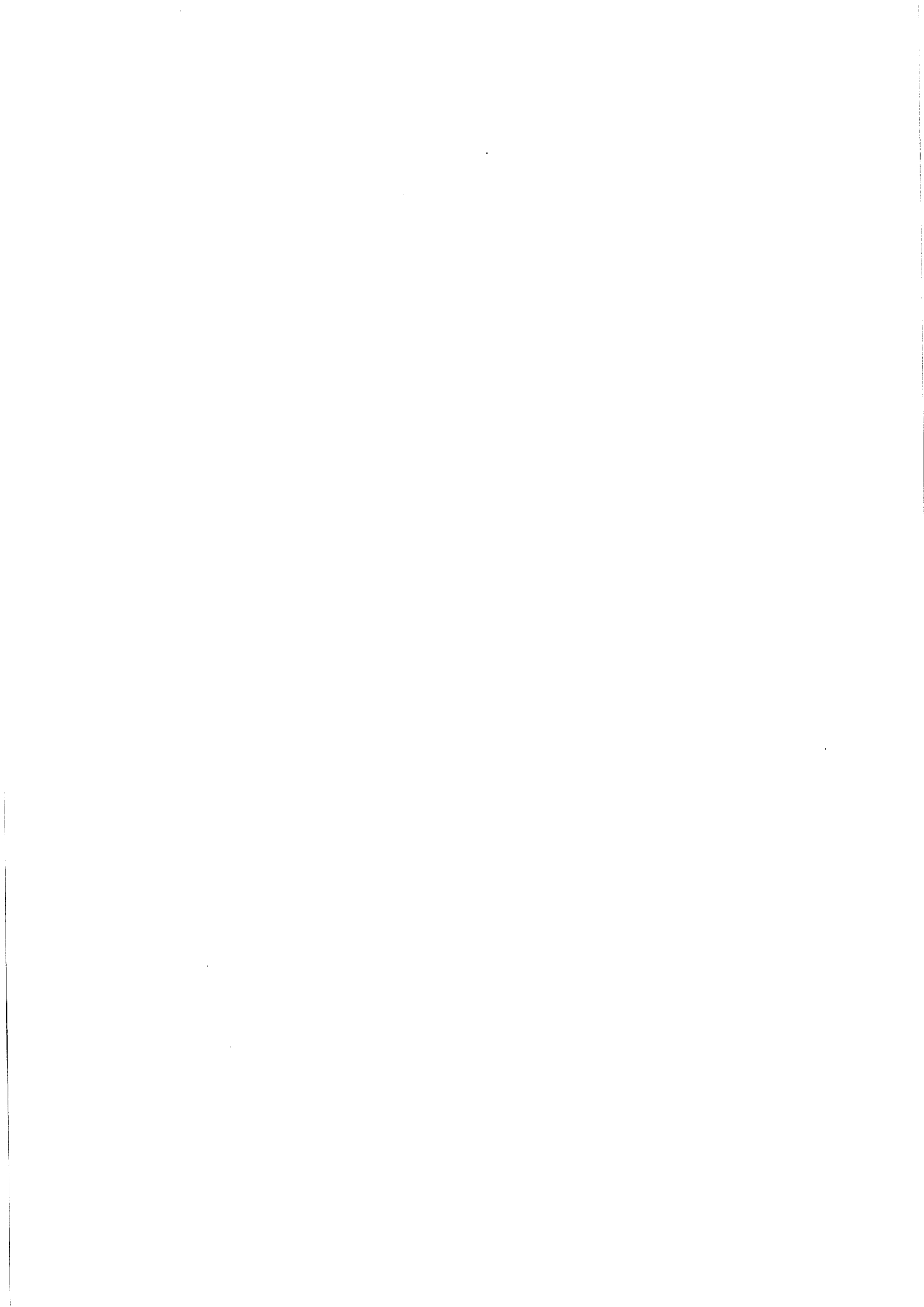
For the above reasons, the Commission declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

5/4/12
Date



[Common Seal]



D. Midlan
Member

FS
29 AUG 2011

D. F. Midlan
Member

S. A. Cattell
Member

OMIHA WELFARE AND RECREATION SOCIETY (INCORPORATED)

RULES

These are alternations to the Rules marked "A" referred to in the annexed ~~Declaration~~ ^{certificate}
of Edwin Thomas Midlane of Auckland, Solicitor made at Auckland this

~~18th~~ day of ~~November~~ 2010 before me:

~~E. Midlane~~

~~A Solicitor of the High Court of New Zealand~~

EDWIN MIDLANE
Solicitor
Auckland

LEGAL CONSULTANTS LIMITED

E T Midlane, LLB

13 Beacon Avenue, Campbells Bay, Auckland

Telephone: 09 479 2184

Mobile: 021 688 316

Email: tedmidlane@xtra.co.nz

THESE RULES RESCIND ALL PREVIOUS RULES

**RULES OF THE
OMIHA WELFARE AND RECREATION SOCIETY (INCORPORATED)**

Incorporated under the Incorporated Societies Act 1908 at Auckland
19th October 1933

NAME

1. The name of the Society shall be the "THE OMIHA WELFARE AND RECREATION SOCIETY (INCORPORATED)".
2. It shall be registered under "The Incorporated Societies Act 1908".
3. The objects of the Society shall be:
 - (a) To provide healthy amusement and recreation for ~~its members~~ the Rocky Bay community by the holding of entertainments, sports meetings and functions of a similar nature for the benefit of the ~~residents and ratepayers~~ community or for charitable, philanthropic or patriotic objects.
 - (b) To prevent the spoliation of native forests, trees, ferns and other flora growing on the public reserves within the district and to protect the beaches and foreshores from spoliation by the removal of sand shingle and shells and generally to assist in protecting the natural beauties of the district and preventing the creation of nuisance by the deposit of rubbish and otherwise.
 - (c) Generally to improve the condition of the district and to do all such things as are necessary to promote ~~its~~ the welfare ~~and that of the residents and ratepayers of Rocky Bay and its community.~~
 - (d) To acquire, hold, borrow, lend, mortgage, lease, hire, sell, give or otherwise deal with any real or personal property in any manner whatsoever for the purposes of carrying out the objects of the Society.
4. ~~Self Benefit: The income and the property of the Society, from whatever source derived, shall be applied solely towards the promotion of the objects of the Society and no member shall derive any pecuniary gain from the property of the Society save as provided by Section 5 of "The Incorporated Societies Act 1908".~~
 - (a) Any income, benefit or advantage received by the Society must be used to advance the charitable purposes of the organisation as defined in clause 3 above.
 - (b) No Member of the Society, or anyone associated with a Member, is allowed to take part in, or influence any decision made by the Society in respect of payments to, or on behalf of, the Member or anyone associated with the Member of any income, benefit or advantage.

- (c) No Officer or Member shall receive any form of payment of money, advantage or benefit (including salaries and wages), except as reimbursement for costs, expenses or other financial payment incurred on behalf of the Society, unless the Committee deems that such payment, advantage or benefit is made solely and exclusively for services or goods provided to the Society to achieve the Objects of the Society as defined in clause 3 above, and that these payments are fair and reasonable relative to payments that would be made between unrelated parties.

OFFICE BEARERS

5. The Office Bearers of the Society shall be as follows:

~~Vice Patron~~ Up to three (3) Patrons; President; Vice-President; Secretary and Treasurer all of whom shall be elected at the Annual General Meeting.

COMMITTEE

6. There shall be a Committee which shall be responsible for the management and control of the Society. The Committee shall consist of the President, Vice President, Treasurer, Secretary and up to nine (9) other Members PROVIDED THAT the Committee shall have the power, to be exercised when it ~~things~~ thinks fit, of co-opting other Society Members to serve on the Committee whether or not the Committee has at that particular time a full Committee of elected members. Any members so co-opted by the Committee during the year shall be ex officio non voting members.
7. The Committee shall be elected at the Annual Meeting hereinafter referred to. The Committee shall retire annually and all members retiring shall be eligible for re-election. All Officers and Committee members of the Society must meet the specific criteria of the Charities Commission in respect of eligibility to hold such positions and agree to sign a declaration to that effect.
8. At least ten (10) days prior to the election of any Office Bearer or Committee member the name of the candidate, together with the names of at least two (2) Members who shall propose him or her must be received in writing by the Secretary and shall be posted in some place to be notified from time to time by the Committee ~~but the retiring members of the Committee shall be eligible for re-election without being so proposed provided that they shall have given to the Secretary written notice of their desire to be re-elected, such notice to be with the Secretary prior to the posting of the names of nominees for election as aforesaid.~~
9. If at the Annual General Meeting any vacancy in the Office Bearers is not filled by election or if any such vacancy shall occur after the Annual Meeting the Committee shall have the power to fill such vacancy. Any member elected to fill a vacancy shall remain in office only so long as the vacating member would have remained in office if no vacancy had occurred.
10. The President shall be ~~the Chairman at chair~~ chair all meetings of the Committee and in the event of ~~his-him or her~~ being absent the ~~Committee shall elect one (1) of its members to act as Chairman~~ Vice President shall chair the meeting. A resolution shall be carried by a simple majority of the meeting. In case of an equality of votes, the Chairman shall have an original as well as a casting vote.

11. Seven (7) members personally present shall form a quorum for any meeting of the Committee.
12. The Committee may appoint such sub-committee and such minor Officers as it shall deem necessary.
13. The Committee shall meet at least ten (10) times per a minimum of six (6) meetings a year and shall regulate its own procedures regarding the calling and holding of meetings. Any member of the Committee absenting himself from three (3) consecutive Committee meetings shall, unless leave of absence has been granted, cease to be a Committee member.

THE TREASURER

14. The Treasurer shall receive all monies and deposit the same to the credit of the Society in the bank approved by the Committee. All accounts over the sum of \$20.00 shall be paid by cheque, such cheque to be signed by the Secretary and by the Treasurer and counter signed by one (1) member of the Committee. The Committee may, in the absence of either the Secretary or Treasurer, depute some other members of the Committee to sign in his place or stead. Payment for all accounts over the sum of fifty dollars (\$50.00) shall be made by direct bank debit, automatic bank payment or cheque. All transactions shall be authorised by the signatures of two (2) Office Bearers.
15. All accounts for payment shall be passed by the Committee and the Treasurer shall prepare and submit to the Committee at all meetings of the Committee a detailed statement of the receipts and expenditure covering the period that has elapsed since the last preceding Committee meeting.
16. At the Annual General Meeting in every year the Treasurer shall prepare and lay before such meeting a statement of the income and expenditure of the Society and a balance sheet containing a summary of the Society's property and the liabilities of the Society made to the end of the last preceding financial year, duly audited as hereinafter provided showing the Society's assets and liabilities as at the end of the last preceding financial year, duly audited as hereinafter provided.
17. The accounts of the Society shall be audited by a Public Chartered Accountant, not being a member of the Committee, who whose appointment shall be elected endorsed annually at the Annual General Meeting.

The Auditor shall have power to call for the production of all books, papers, accounts and documents relating to the affairs of the Society. The annual balance sheet and statement of accounts shall be audited by him and if correct certified in writing under his hand before they are submitted to the Annual General Meeting, and the Auditor shall duly conduct an audit of the Society's financial statements, and shall prepare an audit report to be attached to the said financial statements to be submitted to the Annual General Meeting.

SECRETARY

18. The duties of the Secretary shall be to attend all meetings of the Society and of the Committee, take minutes of the proceedings, conduct the correspondence and keep a copy of the same; and generally to act for the Society under the direction of the

Committee. An Honorarium shall ~~may~~ be paid to the Secretary, ~~the any such~~ amount of which is to be determined at each Annual General Meeting.

COMMON SEAL

19. The Society shall have a Common Seal which shall be in the custody of the Secretary and shall be affixed to such documents as the Committee may direct by the authority of the Committee and in the presence of the Secretary and two (2) members of the Committee.

REGISTERED OFFICE

20. The registered office of the Society shall be at the Society's ~~hall premises, the Omiha Memorial Hall, in 2 Glenbrook Road, Rocky Bay, Waiheke Island~~ or at such other place as the Committee may from time to time decide. Due notice of every change of the Registered Office shall be given to the Registrar by the Secretary.

MEMBERSHIP

21. ~~Membership of the Society shall be restricted to persons living in the Omiha District. For the purposes of these Rules the Omiha District shall be defined as that area from Rangihoua Creek, O'Brien Road (by the Quarry turn-off) along Gordons Road to the end of Kauroa Bay. The new boundary will take in all properties on the seaward side of this line including all those on Te Whau Point and the Stanimiroff subdivision. Any person being a resident or ratepayer of Rocky Bay wishing to become a member shall be proposed in writing by two (2) financial members; such proposal to be in writing and containing the name in full and address of the candidate and be signed by the proposers and the candidate; and then handed to the Secretary together with the appropriate subscription fee. The Committee shall at their next meeting enrol such a person as a member residents or ratepayers of the Omiha District. For the purposes of these Rules the Omiha District shall be defined as that area from Rangihoua Creek, O'Brien Road (by the Quarry turn-off) along Gordons Road to the end of Kauaroa Bay. The new boundary will take in all properties on the seaward side of this line including all those on Te Whau Point and Gordons Road.~~

Any person being a resident or ratepayer of the Omiha District wishing to become a Member shall be proposed in writing by two (2) financial Members, such proposal to contain the name in full and address and occupation of the candidate and be signed by the proposers and the candidate and submitted to the Secretary. Membership will become valid upon payment of the subscription fee.

Notwithstanding the provisions of Rule 21 hereof there shall be a class of Membership of the Society called Associate Members. Associate Members shall be bound by the Rules of the Constitution and shall have all of the rights of Members under the Constitution except they shall have no right to vote on constitutional matters and they should not be eligible for election for any office-bearer ~~Office Bearer~~ position. The number of Associate Members at any one time shall not exceed 20% of the Society's total Membership.

22. Any Member shall be at liberty at any time to voluntarily resign from the Society by written notice to the Committee.
23. Any Member shall have the right to propose another Member for Life Membership of the Society. Life Members shall be elected at the Annual General Meeting and shall

have the same rights as ordinary Members of the Society PROVIDED HOWEVER that Life Members shall be exempted from the payment of the Society's annual subscription.

ANNUAL SUBSCRIPTION

24. The annual subscription shall be fixed at the Annual General Meeting and shall be paid within three (3) calendar months of being so fixed PROVIDED THAT Members who consider the payment of the relevant subscription by the due date a hardship may apply to the Committee for dispensation and the Committee shall have the power to dispense with the amount of the subscription either in full or part and to extend the time for payment.

MEETINGS

25. A General Meeting of Members of the Society, to be called "The Annual General Meeting" shall be held in the month of March or April in each year, on a date to be fixed by the Committee. The President shall be entitled to take the chair at this and all other General Meetings. In his absence the Vice-President shall ~~act as Chairman~~ chair the meeting and failing this the Members shall elect one (1) of the members to be Chairman of their number to chair the meeting.

The method of voting at all meetings, except in such cases in which it is provided by these Rules that a ballot shall take place, shall be by a show of hands. At the Annual General Meeting or a Special General Meeting if the majority of Members present and eligible to vote agree, then a secret ballot shall be held. Each Member shall have one (1) vote. In the case of an equality of votes the Chairman shall have an original as well as a casting vote.

Only Members who are not in arrears with their annual subscription shall be entitled to vote at a meeting or provide consents under Rule 31.

26. The Financial Year of the Society shall commence on the 1st day of March in each year.
27. The Committee may call a Special General Meeting of the Society whenever they deem it necessary to do so and the Secretary, by a requisition signed by at least ten (10) Members stating the objects of such meeting, shall call a Special General Meeting of the Society. Seven (7) days' notice shall be given of such meeting.
28. At any Special General Meeting no business shall be transacted other than that mentioned in the notice calling the meeting.
29. At any General Meeting ten (10) Members shall form a quorum. Should there not be a quorum the meeting shall stand adjourned until the same day in the next week at the same time and place and at such adjourned meeting the Members present shall form a quorum.
30. All meetings of the Society and of the Committee shall be called by written notice of the Secretary such notice to be posted to the Member's or members' last known place of abode address. At least one (1) calendar month prior to an Annual General Meeting all Members shall be advised of the time and place of the meeting and be invited to submit nominations for the positions of Office Bearers and Committee.

PROPERTY

31. Notwithstanding anything contained in these Rules to the contrary the Society shall not have the power to mortgage, lease, sell or otherwise part with possession of any real property owned by the Society except with the written consent of three-quarters of its financial-Members PROVIDED THAT the day to day hireage of the Society's hall for special functions, whether carried on by the Society itself or by other persons, shall be deemed not to be a leasing or a parting with possession and therefore any such hireage shall not require the said written consent AND PROVIDED FURTHER THAT and notwithstanding the provisions of Rule 33 hereof any change to this Rule shall require the written consent of three-quarters of its financial-Members.

The Committee shall not enter into any legal arrangement whatsoever pursuant to this Rule without first consulting the Society's Honorary Solicitor.

RULES

32. Every Member shall, on application, be supplied with one copy of these Rules but no Member shall be absolved from the effect of them on the grounds that he or she has not received a copy of them.
33. Subject to Rule 31 and ~~38~~ hereof no alteration, rescission or addition shall be made to these Rules except at the Annual General Meeting or at a Special General Meeting called for the purpose, any such changes to be first approved by two-thirds of Members present and voting. No Rules shall be valid until approved and registered by the Registrar.
34. The Committee shall have full power from time to time, as it thinks fit, to make, alter or repeal by-laws for the good government of the Society, provided always that no by-law shall be inconsistent with any of the Rules.
35. Should any question arise as to the meaning or application of any of the Rules or by-laws or any amendment thereto or addition thereto or delineation therefrom, the Committee shall have the power to decide same.

ARREARS AND INFRINGEMENTS

36. Any Member who has not paid his or her annual subscription within a period of three (3) calendar months after the last date for payment pursuant to ~~Rule 23~~ Rule 24 hereof shall cease to be a Member of the Society PROVIDED THAT the Committee shall have an absolute discretion to re-enrol any such person as a Member upon a satisfactory reason being provided for any such non payment and upon immediate payment of the subscription.

If the person so ceasing to be a Member is also at that time a ~~Member-member~~ of the Committee then he or she shall, upon ceasing to be a Member, also vacate his or her position on the Committee PROVIDED THAT the Committee shall have an absolute discretion to reinstate any such person as a Committee ~~Member-member~~ upon a satisfactory reason being provided for any such non-payment and upon immediate payment of the subscription.

37. If any Member shall wilfully infringe any of the Rules or by-laws of the Society, or if any Member shall in the opinion of the Committee be guilty of conduct derogatory or prejudicial to the interests of the Society, it shall be in the power of the Committee,

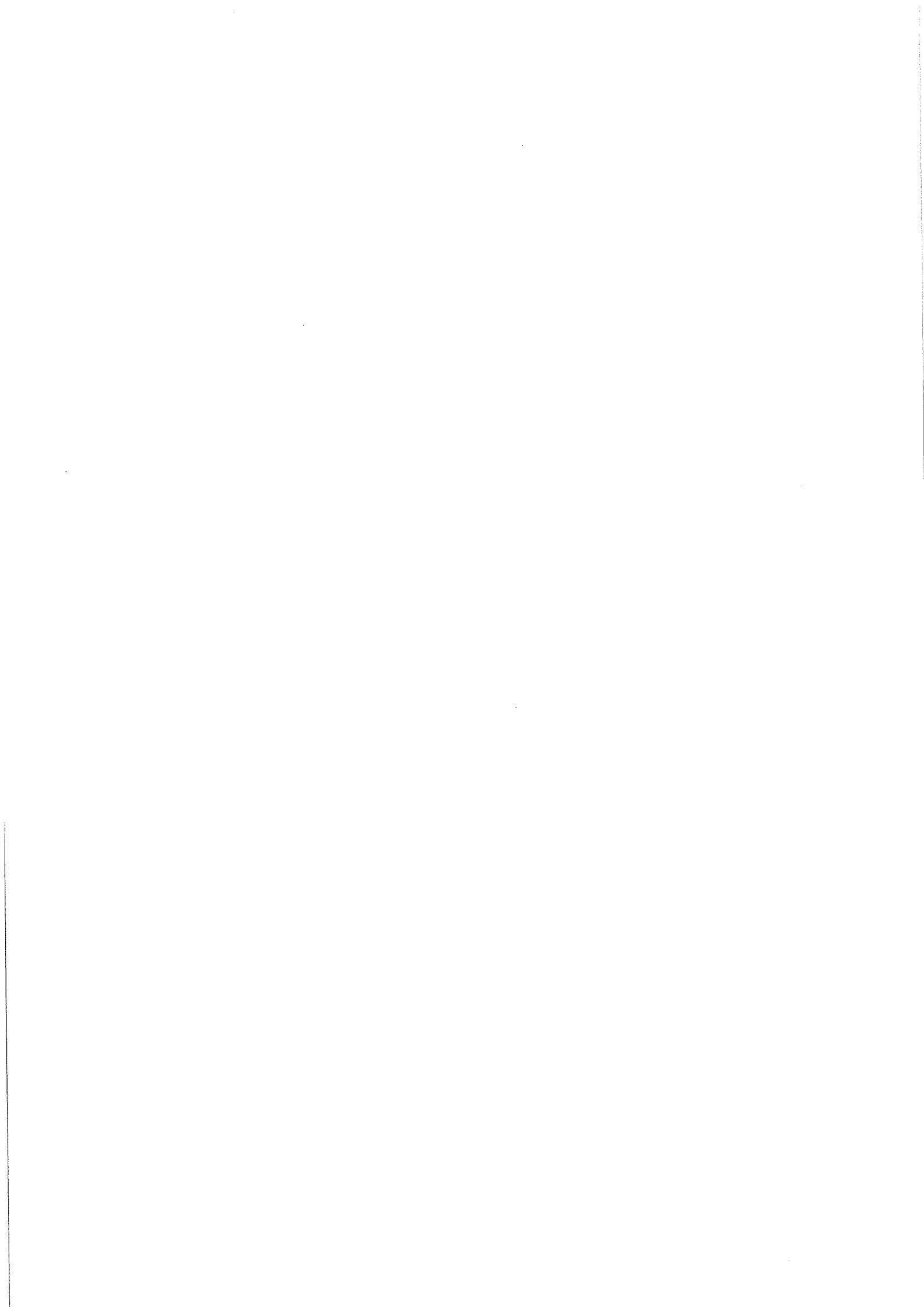
provided a majority of the whole approve, to call upon such Member to explain such conduct. In the event of his or her explanation not being accepted by the Committee then the Member shall be requested to forward his or her resignation and if after being so called upon he or she refuses or neglects to forward his or her written resignation without fourteen (14) days, it shall be the duty of the Committee to call a Special General Meeting of the Society to consider the conduct of such Member. Voting at any such meeting shall be by ballot. If at such meeting a majority of those present vote that such Member be censured, the Committee shall cause a copy of such resolution to be forwarded to that Member. If at such meeting, two-thirds of those present vote for the expulsion of such Member, such Member shall cease to be a Member of the Society. At all times the Member in question shall be given the right to appear before the meeting to explain his or her conduct.

LIQUOR POLICY

~~38. The Society whilst maintaining a general policy of not licensing its premises, empowers the Committee to obtain a Special Licence for two (2) fundraising activities per year provided these Special Licences do not exceed a period of four (4) days per year in total and that any financial profits earned as the result of the operation of any such Special Licence shall come back in full to the Society PROVIDED THAT and notwithstanding the provisions of Rule 33 hereof any change to the Society's liquor policy as set out in this rule must be agreed to by not less than two third of the membership.~~

WINDING UP

~~39.38. In the event of the Society winding up the funds, property and assets of the Society, after payment of all liabilities, must be given or transferred to another organisation that is charitable under New Zealand law and has purposes similar to those of the Society shall be paid or transferred to an organisation with similar objectives to the Society and for the benefit of the community in the Omiha District (as defined in Rule 21 hereof), provided always that no pecuniary benefit shall accrue to any member as a result of any such winding up.~~



LEGAL CONSULTANTS LIMITED

Edwin Thomas Midlane, LL.B
Director

25 November 2011

13 Beacon Avenue, Campbells Bay, Auckland 0630
Telephone: 09 479 2184
Mobile: 021 688 316
Email: tedmidlane@xtra.co.nz

29 NOV 2011

Charities Commission Processing Centre
PO Box 30112
Lower Hutt 5040

Re: Omiha Welfare & Recreation Society Inc – OMI42237

Please find enclosed the document setting out the society's activities.

Yours faithfully
LEGAL CONSULTANTS LIMITED

PP Ted Midlane

Ted Midlane LLB
Lawyer

29 NOV 2011

Submission to the Charities Commission to support the OWRS's application for Charitable Status:

Introduction:

The Omiha Welfare and Recreation Society (OWRS) is a not for profit residents and ratepayers organization first established by residents of the village of Rocky Bay on Waiheke Island in 1932....The Society was incorporated in 1932 and has operated continuously since that time under the guidance and care of a volunteer committee elected from the membership annually. The purpose of the Soc is as per its constitution/rules are to:...

- 1) To provide healthy amusement and recreation for the Rocky Bay Community...
- 2) To prevent the spoliation of of native forests,trees, ferns and other flora...
- 3) To improve the condition of the district and do such things as necessary to promote the welfare of Rocky Bay..
- 4) To acquire, hold, borrow, lend, mortgage, leasefor the purposes of carrying out the objects of the society...(see constitution for complete,accurate,phraseology of the society's objects.).

The OWRS owns land donated to it (Valley Road Tennis courts in 1932) and buildings and land purchased by the OWRS (the hall and land in Glen Brook Road) and maintains & operates them for the well-being of not only its own membership, but of all members of the public with first priority being given to the residents of the Omiha/Rocky Bay area.

A) Relief from poverty: *Being run by volunteers on a shoestring we are not in the business of giving financial assistance to individuals however:*

1. All our functions and activities are either free or very low cost admission e.g. our quiz nights cost \$15 entry which includes a two course meal and entertainment.
2. If individuals or families are experiencing difficulties we facilitate assistance e.g. when a family was left destitute by a house fire we empowered the community to offer replacement accommodation, food, clothing, belongings and assistance in recovery.
3. One afternoon each week we run an open 'market' to which people bring items (*from fruit and veges to crockery and books*) for exchange or sale at very low prices and have 'one off' cheap massage, haircut or other services.
4. We also buy rat bate in bulk and sell it at cost in smaller amounts (the area is designated "bush residential").

B) Education:

- 1) Over the past 12 months we have called for, organised and provided a venue for the sharing of information of value to individuals and the community e.g. i) civil defence, central & local government plans and 'meet the candidates or MPs political meetings.
- 2) We have also called for, organized, and provided a venue for the sharing of information by community environmental organisations such as Forest & Bird and the Waiheke Waste Trust.

- 3) We run a free lending library/book exchange.
- 4) We meet people's cultural needs by having local photographic and art displays in the hall as well as live theatre and musical performances.
- 5) All sorts of free problem solving and information/skill sharing occurs during our Thursday get-togethers from sewing instruction, to crop growing, and from stain removal to computer skills.

C) Religion:

Other than weddings and funeral gatherings, no organization has sought to use the hall for religious purposes recently. However it has in the past been used for church services and religious education.

D) Community benefit: Rocky Bay is 3-5km from the nearest shop or service. Like all isolated societies we have a firm sense of our independent identity. In every way the OWRS and its hall is the hub of our community and district. We believe that strong communities help make happy individuals with more love and joy and less anti-social behaviour. Our Society's principal aim is to foster such a sense of belonging and caring.

1. We attempt to communicate on a personal basis with new arrivals in our community. We also offer contact and comfort to those who are sick or have experienced a recent bereavement. When notified of a local death the flag outside our hall is flown at half mast until the funeral takes place. These may seem trivial items to mention but they emphasise the cohesive role our organization tries to play within our community.
2. We communicate with the local community through our free newsletter delivered monthly to every household in our village and to our rural community's catchment area. This provides the community with the opportunity to keep in touch with all local issues as well as advertising upcoming events at the hall.
3. For their social needs we run free gatherings on Thursday afternoons with tea/coffee and home-made baking with a small 'market' attached, Friday evenings 'happy hour' for commuters as well as the dances, quiz nights, and annual children's Christmas party and support the boating club's regatta day. 4. The hall is also frequently hired at low cost for private functions such as birthdays, weddings and anniversaries.
5. For mothers and children a children's playgroup meets weekly in the hall. *The equipment for this group is stored in the hall.*
6. For members' physical well-being we i) maintain a freely available tennis court for fine weather ii) run monthly dances, iii) have tutors running classes in Chi Kung
7. Our society's objects have a strong environmental aspect. We attempt to preserve the local flora and are actively involved in preserving our environment. A number of our members are

involved with planting, weed eradication and dotterel protection in the adjacent Whakanewha Regional Park.

8. The OWRS has been involved with issues concerning the local environment since the 1930s when removal of shingle from the local beaches was of major concern. 15 years ago the OWRS raised \$38000 to purchase a block of land now known as Crosby Reserve. Our organization raised the funds, purchased the land, then gifted it to the Auckland Regional Council/Auckland City Council.

9. We also provide a free venue for and often work in association with other local organizations such as the Rocky Bay Cruising Club and the local branch of Forest and Bird on local issues.

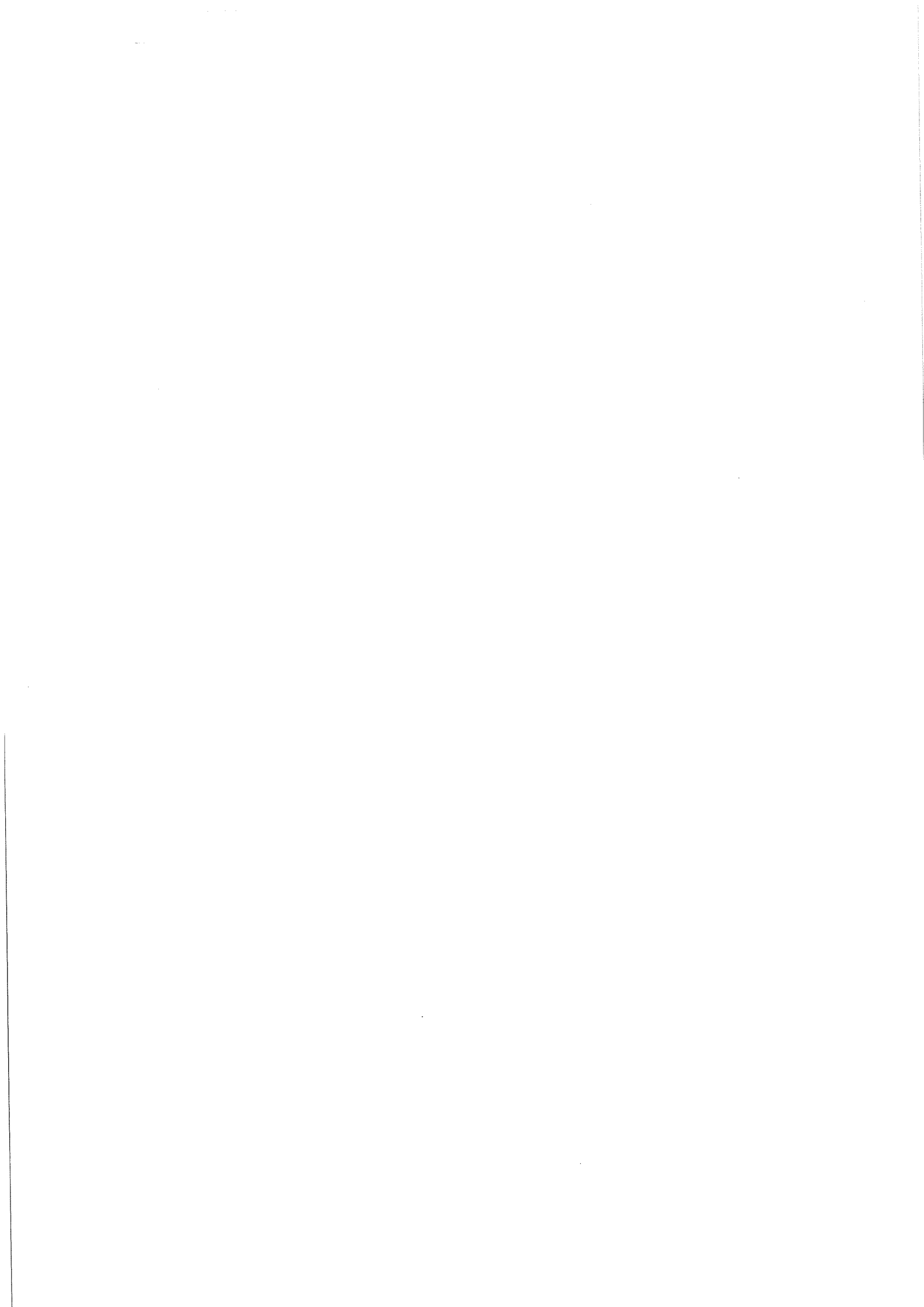
10. Linked to our environmental focus is our monitoring of general community infrastructure concerns. We provide a conduit to the council/local board concerning issues such as drainage, erosion, flooding, tree planting and road maintenance.

11. Above all, having frequent opportunities to meet one's neighbours and getting to know them creates a bond between residents of 'The Bay' which leads to a community where people greet each other in passing and help out when needed.

Dave Malan (President OWRS)

Judith Madarasz (Vice President OWRS)

20 October 2011



Reference number: OMI42237

9 January 2012

www.charities.govt.nz

Ted Midlane
Omiha Welfare And Recreational Society Incorporated
Omiha Memorial Hall 2
Glenbrook Road
Rocky Bay
Waiheke Island
Auckland

Dear Ted Midlane

Notice that the application of Omiha Welfare And Recreational Society Incorporated does not meet registration requirements

Thank you for the application received for Omiha Welfare And Recreational Society Incorporated to be registered as a charitable entity.

This notice is to advise you formally that the application for registration may be declined. This is because the purposes of the entity do not meet the requirements in section 13(1)(b)(i) of the *Charities Act 2005*.

Charitable purpose

Section 13(1)(b)(i) of the *Charities Act 2005* states that a society or institution will only qualify for registration if it is "established and maintained exclusively for charitable purposes". Section 5(1) of the *Charities Act 2005* states:

In this Act, unless the context otherwise requires, charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

To be established and maintained exclusively for charitable purposes, all of an applicant's purposes must be charitable in nature, or any non-charitable purposes must be ancillary to a charitable purpose.

Section 18(3)(a) of the *Charities Act 2005* states the Commission must 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 Society's purposes and activities

The Society's purposes set out in clause 3 of the Constitution are:

- a) *To provide healthy amusement and recreation for the Rocky Bay Community by the holding of entertainments, sports meetings and*

- functions of a similar nature for the benefit of the community or for charitable, philanthropic or patriotic objects.*
- b) *To prevent the spoliation of native forests, trees, ferns and other flora growing on the public reserves within the district....*
 - c) *Generally to improve the condition of the district and do all such things as are necessary to promote the welfare of Rocky Bay and its community.*

The Commission is not satisfied that these constitute exclusively charitable purposes.

In the Society's cover letter, it was stated:

All our functions and activities are either free or very low cost admission e.g. our quiz nights cost \$15 entry which includes a two course meal and entertainment.

...
One afternoon each week we m an open 'market' to which people bring items (from fruit and veges to crockery and books) for exchange or sale at very low prices and have 'one off cheap massage, haircut or other services.

...
We communicate with the local community through our free newsletter delivered monthly to every household in our village and to our rural community's catchment area. This provides the community with the opportunity to keep in touch with all local issues as well as advertising upcoming events at the hall.

For their social needs we run free gatherings on Thursday afternoons with tea/coffee and home-made baking with a small 'market' attached, Friday evenings 'happy hour' for commuters as well as the dances, quiz nights, and annual children's Christmas party and support the boating club's regatta day. The hall is also frequently hired at low cost for private functions such as birthdays, weddings and anniversaries.

...
We also provide a free venue for and often work in association with other local organizations such as the Rocky Bay Cruising Club and the local branch of Forest and Bird on local issues.

Social and entertainment activities

In *Royal Choral Society v Inland Revenue Commissioners*,¹ it was held that a society formed to promote music merely for the amusement of members is not charitable.

In *Inland Revenue Commissioners v Baddeley*,² the court held that providing amusement, entertainment or social activities for members of an entity are not primary purposes that will necessarily provide a public benefit.

Several years earlier, in *Williams Trustees v Inland Revenue Commissioners*, the Court had held that a trust intending to promote the moral, social, spiritual, and educational welfare of Welsh people in London by a variety of means, including the establishment of a social centre, lacked the requisite charitable character. Lord Normand held:

1 [1943] 2 All ER 101 at 106-107 per Lord Greene MR
 2 [1955] AC 572, 600. See also *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380, 394-396.

“while certain features of the Institute conformed to the idea of charity they were not so dominating, nor was the general character of the Institute such, as effectively to distinguish it from an ordinary social club.”³

Sporting or recreational activities may be charitable where they are advancing another charitable purpose such as the advancement of education or the promotion of health. Thus, in *Travis Trust v Charities Commission*,⁴ after looking at the case law on sports and leisure time activities, Joseph Williams J stated:

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.

The Commission considers that a main purpose of the entity is to provide social and entertainment activities, and that there is no evidence of any underlying, deeper purpose that may be charitable.

Furthermore, the Commission notes that a cruising club is unlikely to have exclusively charitable purposes, and therefore providing a free venue for and working in association with the Rocky Bay Cruising Club is unlikely to be a charitable activity.

Philanthropic and patriotic purposes (clause 3(a))

The courts have held that “philanthropic purposes” fall outside the scope of what the law recognises as charitable.⁵ Likewise, the courts have held that “patriotic purposes” are not limited to charitable purposes.⁶

Clause 3(c)

Clause 3(c) states as a purpose:

Generally to improve the condition of the district and do all such things as are necessary to promote the welfare of Rocky Bay and its community.

The Commission considers that this is too broadly worded to be an exclusively charitable purpose.

Provision of a newsletter

A community newspaper may not qualify as advancement of education, if it is deemed not to contain anything of educational value. In *Briar Patch Inc v The Queen*,⁷ a monthly newsletter failed this test.

3 [1947] UKHL 1.

4 (2009) 24 NZTC 23,273

5 Gino Dal Pont, *Law of Charity*, LexisNexis Butterworths, Australia, 2010 p311.

6 Gino Dal Pont, *Law of Charity*, LexisNexis Butterworths, Australia, 2010 p315.

7 (1996) 96 DTC 6294.

Market

Running a market is unlikely to qualify as a charitable purpose, as promotion of business and economic development have been held by the courts to be non-charitable purposes.⁸

Responding to this notice

In responding to this letter, you have the opportunity to submit to the Commission any facts or argument you wish the Commission to take into account in relation to the above issues. To assist you please find a fact sheet enclosed regarding charitable purpose. The Commission will fully consider any submission from you before it makes a final decision, which you will be notified of in writing.

You also have the ability to

- amend your application; or
- withdraw your application for registration.

Please note that if you are registered with the Companies Office, all rules changes must be accepted in the first instance by the Companies Office. Once approved by the Companies Office, the Charities Commission is then able to update your rules change. For further information, contact the Companies Office on 0508 762 438.

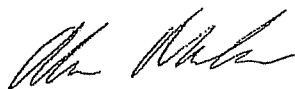
Please advise us in writing by **6 February 2012** what action you wish to take. In the event you do not advise us of your intention to follow up one of the above options by this date, the Charities Commission will begin steps to formally decline your current application. Please note that the initial advice about your intentions must be followed up with a formal response by any agreed time extension.

This information should be provided to Charities Commission, Processing Centre, PO Box 30112, Lower Hutt quoting the reference number at the top of this notice.

Alternatively, we have provided a facility, via our website www.charities.govt.nz, for you to upload the information if you wish. You will be required to log in to your account, using your Username and Password. When you have uploaded the required documents, please click the 'Submit Application' button, so we know you have taken this action. The button is located on the bottom right-hand section of your screen. For further guidance, please contact us on our free information line 0508 242 748.

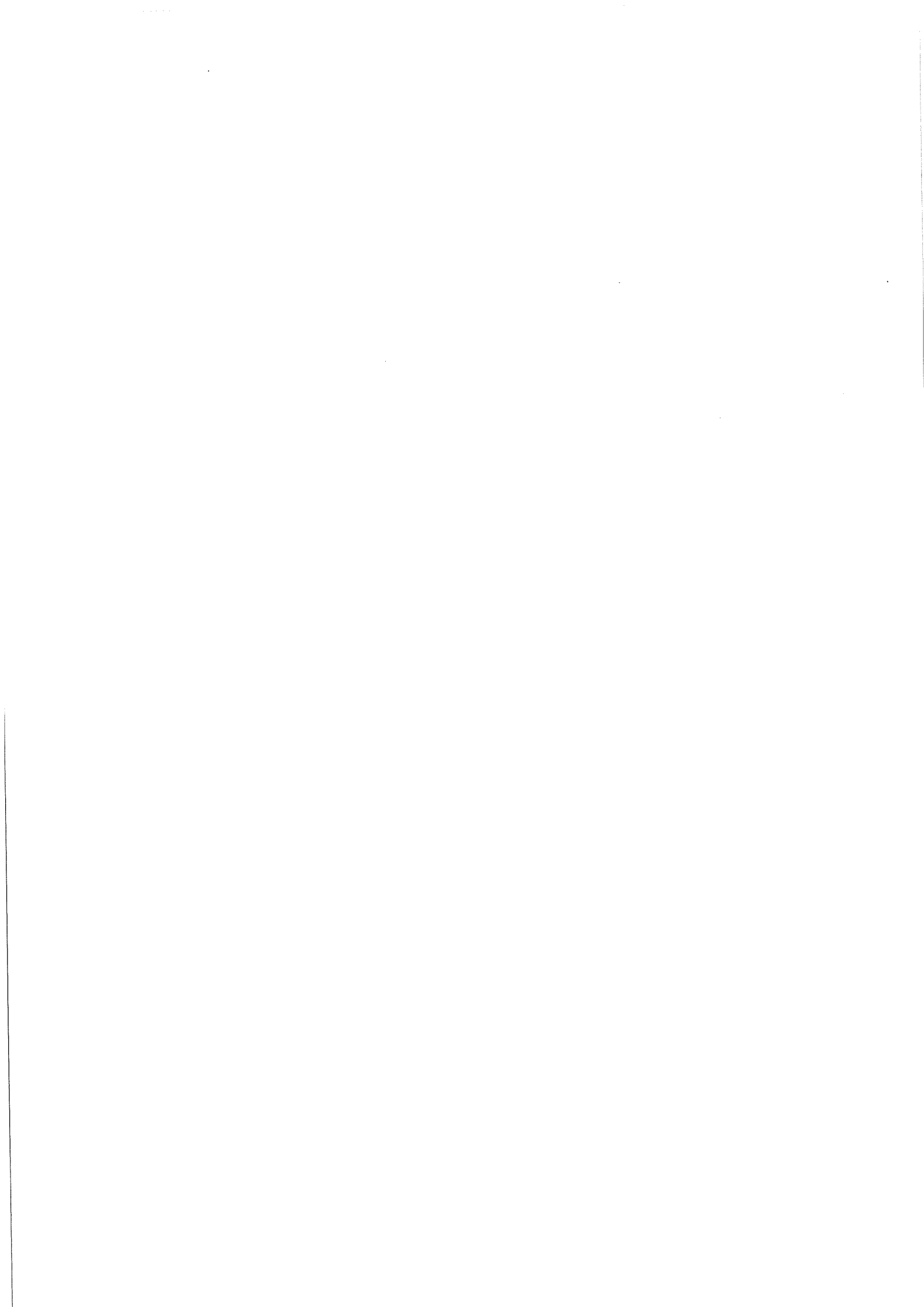
If you wish to speak to someone in relation to any of the detail in this letter, please contact me at alan.maciver@charities.govt.nz or phone 04 894 7574.

Yours sincerely



Al MacIver
Senior Registration Analyst

⁸ *Commissioners of Inland Revenue v. Oldham Training and Enterprise Council* [1996] STC 1218; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010].



12 MAR 2012

Omiha Welfare and Recreation Society Inc

2 Glen Brook Rd

Waiheke Island 1081

5th March, 2012

The Senior Registration Analyst

Charities Commission Processing Centre

P. O. Box 30112

Lower Hutt.

Dear Mr McIver

Ref number OMI 42237

Thank you for the detailed response to our organisation's application for charitable status and for carefully outlining the details why our application did not meet your requirements. Thank you also for the courtesy of a one month extension of our deadline in which to respond to your judgment.

I wish to take issue with a number of points raised in your judgment. I will address these issues in the sequence in which they are presented in your letter.

Charitable purpose.

Under section 13(1)(b)(i) our society will qualify if 'it is established and maintained exclusively for charitable purposes.'

Under section 5(1) of the Charities Act 2005 it states ... 'charitable purpose includes every charitable purpose.....or any other matter beneficial to the community.'

It is on the grounds that ALL our purposes are 'beneficial to the community' and that any purposes deemed by the Charities Commission to be non-charitable are either an error in the Commission's judgment or should be deemed ancillary to the charitable purpose of being 'beneficial to the community.'

If under section 5(1) of the Charities Act 2005 'a society providing 'matters beneficial to the community' is deemed to be charitable ,I find it hard to perceive that our society's purposes are not beneficial.

- a) 'To provide healthy amusement and recreation to the Rocky Bay community by the holding of entertainments, sports meetings and functions of a similar nature for the benefit of the community or for charitable, philanthropic or patriotic objects.' This object states that our purpose is purely for the benefit of our community. The term 'patriotic' has been retained from

our Society's original object when formed in 1932. Although the term may be deemed to be archaic it is important that our Society respects the original objects of our forebears. Its modern synonym would be 'lawful', 'respectful', 'law-abiding', 'having pride in our part of New Zealand society.'

- b) 'To prevent the spoliation of native forests, trees, ferns, and other flora growing on the public reserves within the district.' The Charities Commission has not objected to this so I assume it meets your requirement of being 'beneficial to the community.'
- c) Generally improve the condition of the district and do such things as are necessary to promote the welfare of Rocky Bay and its community. Surely once again this object meets the requirement of 'being beneficial to the community.'

The Commission (your letter 9 Jan 2012) deems that these three objects are not exclusively for charitable purposes. Our Society would argue that all are 'beneficial to the community' and therefore have charitable purposes.

Your letter 9 Jan 2012 states that a number of the events that the OWRS organises are not deemed to be charitable. I would state that most 'charitable organizations' perform some functions that are not specifically charitable. I would argue that all the activities that the OWRS organises have aspects that are beneficial to the community.

Your letter argues that social and entertainment activities are deemed to be not charitable. To equate/compare our society's fundraising socials with the Royal Choral Society applying for charitable status seems to me somewhat farcical. Our objective in organizing these events is for the benefit of the community. Our funds go to maintaining our hall as the social hub of our community and to maintain the local tennis courts for the community's benefit which we have done since 1932.

Inland Revenue vs Baddeley argued that social activities which do not necessarily provide social benefit. Perhaps the City of Glasgow in 1955 was different to Rocky Bay, Waiheke Island in 2012. I would argue that social activities are what bring individuals and communities together. It is the building of social capital that unites communities in the 21st century, is of benefit to the community, and it therefore of charitable purpose.

Williams Trustees vs Inland Revenue Commissioners (Wales 1947) it was argued that the package offered by the Williams Trustees was very similar to an 'ordinary social club.' I would argue that gatherings that bring together a community in the 21st century are beneficial to the social interactions of that community and hence are consistently 'beneficial to that community.' Travis Trust vs Charities Commission argued that sport, leisure and entertainment for its own sake is not charitable. I can accept that if you considered these three things in isolation from their community base it could be so. However, if the entertainment brings the community together, if leisure activities bring the community together, if the sporting facility which the OWRS maintains is provided for the community's benefit, then these three activities can be deemed charitable.

The 'underlying ,deeper purpose' of the OWRS running entertainment, sport and leisure activities is indeed charitable. All are established for the benefit of our community.

Your letter (9 Jan 2012) states that the OWRS providing free facilities to the local Rocky Bay Memorial Cruising Club is not charitable. Is The Commission's argument that it is charitable for us to offer free facilities to the local branch of Forest and Bird but is not charitable to offer free services to the local Cruising Club. Has the benefit to the community suddenly evaporated because the Cruising Club may not have exclusively charitable objectives. Taking your argument a step further, would it then not be charitable to offer our facility to a group who are victims of domestic violence, or to a local playgroup because they have no officially stated charitable objectives.

Provision of a Newsletter. Our monthly newsletter is criticized/condemned unseen as it 'may not qualify as an advancement of education.' I will not attempt to convince you that communicating with our total community is an advancement of their education, but it is nevertheless of 'benefit to the community.' It keeps them informed (not necessarily 'educated') about a range of events within their community.

Market. Our Thursday gathering is where the community comes together to relax with a cup of tea/coffee and meet up with other members of our community. There is some fresh produce available and a recycling stall but it is not a 'market.' It has been realistically called a 'drop in centre for adults, though mothers and toddlers are often there. There is no concept of business and economic development in our weekly Thursday gathering. Its sole purpose is to bring the community together. To label it as a 'market' and to ignore the social aspect of the gathering is inappropriate, and seems like an intentional misinterpretation of the original OWRS submission.

Your letter dated 9 Jan 2012 states that the OWRS has two options: to amend the application OR to withdraw the application. I appreciate I have done neither. I believe that you have overlooked the benefit of the OWRS to our community, you have to a large extent ignored the charitable 'benefit to the community' which our Society provides and I therefore request that you review your decision.

I appreciate that the Commission is being restructured and there may be pressure to reduce the number of approvals given to organizations applying for charitable status, I nevertheless ask you to reconsider your appraisal of our application and, if you genuinely treat every application on as case by case basis, a trip to Rocky Bay to confirm or adjust your opinion may be appropriate,
Yours sincerely

Dave Malan

(President Omiha Welfare and Recreation Society Inc.)

Dave Malan

*NARD COPY - emailed copy sent 5/3/12.
D.F.M.*