

Registration decision: Runway Hawke's Bay Trust Board

The facts

1. Runway Hawke's Bay Trust Board (the Applicant) was incorporated as a board under the Charitable Trusts Act 1957 on 31 January 2007.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 22 April 2008.
3. The Applicant's purposes are set out in clause 2 of its Trust Deed:

"2 Objects of the trust

2.1 *The trust fund shall be held, protected, preserved and utilised for the benefit of the community of Hawke's Bay and for that purpose the objects of the trust are to:*

2.1.1 *Contribute to the economic development of the Hawke's Bay region through the establishment of a jet-capable airport runway;*

2.1.2 *Seek, accept and receive donations, subsidies, grants, endowments, gifts, legacies, loans and bequests either in money or in kind, or partly in money or partly in kind for all or any of the purposes or objects of the trust and to carry out any specified trust conditions or requirements attaching or relating to the same to the intent that the donations and grants made to the trust may be made for the benefit of the general purposes of the trust or may be made for some purposes within the general objects of the trust or may be made for some purposes within the general objects of the trust or on special conditions specified in the particular cases by the donor [sic] and lender or lenders;*

2.1.3 *Benefit or assist any other charitable objects directly or indirectly connected or associated with the trust or any other matter beneficial to the community;*

2.1.4 *Adopt such means as the trustees think fit to publicise and promote the trust and the benefits available through the trust."*

4. The Commission analysed the application for registration and on 16 December 2008 sent the Applicant a notice advising that its application may be declined because the Applicant's purpose set out in clause 2.1.1 was not charitable.
5. On 14 January 2009, the Applicant's solicitor responded to the notice submitting that the Applicant is charitable under the head "other purposes beneficial to the community". He referred to his letter to Inland Revenue dated 24 November 2006 relating to the Applicant's request at that time for preliminary approval of charitable status:

"It has long been held that [sic] the construction or building of roads is a charitable purpose: Morgan v Wellington City Corporation [1975] 1 NZLR 416. The expansion of a runway is analogous to the construction of a road because it improves and encourages movement of people within the community. Air traffic is a preferred mode of transportation for many and is

therefore beneficial to the community as a whole (and not private individuals or a specific class or sector of the community or a restricted group). In a similar fashion public services, libraries, public halls observatories and the means for public recreation have also been categorised as having charitable status: see Laws of New Zealand Charities para 45 and the cases cited there. For these reasons, the provision of a grandstand at a rugby ground was considered an amenity available to the general public (and not confined to rugby): see Re Chapman (High Court Napier CP 89/87, 17 October 1989, Grieg, J). Gifts in general terms for the inhabitants of a city are charitable. In order to be charitable it must embrace the whole of the community; see Laws of New Zealand Charities para 48."

The issues

6. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act. In particular, whether the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

7. Under section 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
8. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
9. 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 Statute of Charitable Uses 1601 (Statute of Elizabeth).² In determining what is within the "spirit and intendment" of the Preamble to the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases.

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

² *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.

10. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
11. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to:
 - (i) *the activities of the entity at the time at which the application was made; and*
 - (ii) *the proposed activities of the entity; and*
 - (iii) *any other information that it considers is relevant; ...*

Charities Commission's analysis

12. The Commission considers that the Applicant's primary purpose is set out in clause 2.1.1. Clause 2.1.3 is ancillary and clauses 2.1.2 and 2.1.4 are powers.
13. The Applicant's solicitor, in his letter to Inland Revenue of 24 November 2006, stated that the primary activity of the trust is to commission an independent economic impact report on the viability and downstream financial, social and strategic benefits of having a jet-capable runway.

"That report will be the main (if not exclusive) focus of any funds that the trust may raise pursuant to its objects. The trust is a single purpose community trust with the objective of encouraging the stakeholders to extend the existing runway and to make it jet capable. Once that task has been completed, it is envisaged that the trust would then be wound up."

14. The purpose in clause 2.1.1 is not aimed at relieving poverty, advancing education or religion. The Commission has therefore considered whether the purpose could be held to be charitable under "other matters beneficial to the community".

Other matters beneficial to the community

15. As noted above, in order for a purpose to qualify as "any other matter beneficial to the community" (the fourth head), the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Statute of Elizabeth. Proof is required that public benefit will necessarily flow from each of the stated purposes, not merely a belief that it will or may occur.³
16. The Commission has considered, first, whether the Applicant's purposes are beneficial to the community. Currently, daily services using turbo-prop aircraft are provided from Hawke's Bay Airport in Napier to Auckland, Wellington and Christchurch. Other passenger services are provided to Gisborne, Tauranga, Hamilton and the Chatham Islands, and primarily

³ *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.

freight services are available between Paraparaumu, Palmerston North, Napier, Wairoa and Gisborne.⁴

17. The Commission has been unable to identify any particular benefit for the community arising from the Applicant's primary purpose, and the Applicant has not provided any evidence of such a benefit. The Commission is therefore unable to conclude that the community will necessarily benefit from the establishment of a jet capable airport runway.
18. The Commission has considered whether the Applicant's purposes are within the spirit and intendment of the Preamble to the Statute of Elizabeth. The public will not have access as of right to the runway extension as they would have had to "bridges, ports, havens, causeways, churches, sea banks, and highways" in the time of Elizabeth I or, in more modern times, to public roads.
19. Courts have held the provision of public amenities and recreational facilities such as public halls, libraries, museums, playing fields, swimming pools and botanical gardens to be charitable under the fourth head. The Commission does not consider that the runway extension is a public amenity or recreational facility that has an identifiable public benefit. While many people use air travel to get to recreation destinations, many more people fly for business purposes or use air freight to transport their products – these are not charitable purposes.
20. Courts have held the economic development of a region to be charitable under "other matters beneficial to the community", but only where the people of that region have a particular need.⁵ It is difficult to conclude that Hawke's Bay is an area that is in need of assistance because, for example, between 2000 and 2006 employment increased by 26% (nationwide employment increased by only 24%)⁶ and the region's share of GDP rose from 3.5% to 4% in 2006.⁷
21. Assisting people to carry on a particular trade or business will only be charitable if there is a condition that this assistance is made for a purpose which is itself charitable.⁸
22. The Commission does not consider that establishing a jet-capable airport runway is analogous to "the repair of bridges, ports, havens, causeways, churches, sea banks, and highways", as set out in the Statute of Elizabeth, the construction of a public road, as set out in *Morgan v Wellington City*

⁴ http://www.hawkesbay-airport.co.nz/Hawkes_Bay_Airport_Stats_27.aspx (accessed 24/03/2009).

⁵ *Re Tennant* [1996] 2 NZLR 633.

⁶ <http://www.investhawkesbay.com/data/media/documents/2006-07%20Regional%20Statistics.pdf> (accessed 20/04/2009).

⁷ *A Compendium of Key Economic Statistics for Hawke's Bay*, Hawke's Bay Incorporated, December 2006.

⁸ *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* (1982) 55 TC 651; *Inland Revenue Commissioners v Oldham Training and Enterprise Council* [1996] STC 1218.

Council, or any other purpose which has been held to be charitable under the fourth head.⁹

Benefit to a locality

23. While it is clear that gifts in general terms for the inhabitants of a defined area **may be** charitable,¹⁰ it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As set out in *The Law and Practice Relating to Charities*, “[a] non-charitable purpose will not be rendered charitable by localising the benefits”.¹¹
24. Courts have reasoned that, where no purpose is defined, the fact that the gift is directed to a locality imports the necessary element of public benefit, and therefore a charitable purpose is implicit in the context. Conversely, where a donor actually specifies a purpose, as in the present case, the court must determine whether or not that purpose is charitable.¹²

Political purpose

25. Hawke’s Bay Bay Airport is currently jointly owned by Napier City (26%), Hastings District Council (24%), and the Crown (50%).¹³ The Commission also considers that “encouraging stakeholders to extend the existing runway” will amount to a political purpose because it is seeking a change to central or local government policy.¹⁴

Section 61B of the Charitable Trusts Act

26. 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 will operate to “save” a trust that has charitable and “non-charitable and invalid” purposes. In such a case, the law directs that the trust is to be interpreted and given effect to as if the invalid and non-charitable purposes did not apply. In order for section 61B to apply, the trust must have a substantially charitable content or be of a substantially charitable character.¹⁵
27. The Commission does not consider that the Applicant has substantially charitable purposes, taking into account in particular the stated primary purpose of the trust referred to at paragraph 13 above, therefore section 61B of the Charitable Trusts Act 1957 cannot operate to validate the trust.

⁹ [1975] 1 NZLR 416.

¹⁰ *Re Carter (deceased)* (1897) 16 NZLR 431 (CA).

¹¹ Hubert Picarda, 1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, p 146.

¹² Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

¹³ http://www.hawkesbay-airport.co.nz/Hawkes_Bay_Airport_Stats_27.aspx (accessed 23/03/2009).

¹⁴ *Re Collier (deceased)* [1998] 1 NZLR 81.

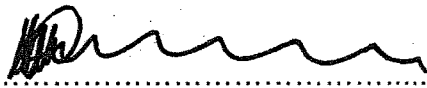
¹⁵ *Re Beckbessinger* [1993] 2 NZLR 362; *Re Ashton* [1955] NZLR 192 (CA); *Re Howey* [1991] 2 NZLR 16 (CA).

Charities Commission's determination

28. 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



Trevor Garrett
Chief Executive

18/5/09
Date