

Registration decision: Wainuiomata Pioneer Church Preservation Society Incorporated

The facts

1. The Wainuiomata Pioneer Church Preservation Society Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 24 October 2006.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 30 June 2008.
3. Clause 2 of the Applicant's Constitution states that its objects are:
 - (a) *The preservation, restoration and maintenance of the Church known as the 'Wainuiomata Pioneer Church' situated on the Coast Road, Wainuiomata, Lower Hutt for charitable purposes and for the benefit of the local community;*
 - (b) *The maintenance, improvement and upkeep of the Church's associated graveyard, grounds and burial ground for charitable purposes and for the benefit of the local community;*
 - (c) *To affiliate or cooperate with or become a member of any organisation having similar objects to the Society.*
 - (d) *The holding of endowments for the maintenance of the Wainuiomata Pioneer Church and the maintenance of any burial ground associated with the Church."*
4. Clause 26 relates to the disposal of surplus assets. It provides:

"In the event of the winding up of the Society, the Church, associated property and any surplus assets shall, subject to any trust affecting the same and after payment of all costs, debts and liabilities, be assigned, transferred or handed over to a body or institution with like or similar objects to the Society or to a body having as its principal objects the preservation of heritage property in New Zealand and no part of the income or other monies or property of the Society whatsoever shall be distributed to or be available for the private pecuniary gain of any member or friend."
5. The Commission analysed the application for registration and on 18 December 2008 sent the Applicant a notice advising that its application may be declined on the basis that, while the purposes of the Society were charitable, the Constitution did not provide for surplus assets to be distributed solely for charitable purposes upon winding up.
6. On 12 February 2009, the Applicant responded to the notice that may lead to a decline submitting that the Charities Act does not make any specific reference to the disposition of an entity's assets on winding up and therefore the Commission is not entitled to require distribution to be limited to charitable purposes before approving an application for registration.

The issues

7. 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 society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether, in the event of winding up, the Applicant is required to dispose of its surplus assets to charitable purposes.

The law on charitable purpose

8. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained for exclusively charitable purposes.
9. 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.

Charities Commission's analysis

10. The Commission considers that the Applicant's purposes set out in clauses 2(a) and (b) are charitable purposes, and the purposes set out in clauses 2(c) and (d) are ancillary to the charitable purposes.

"Established and maintained"

11. In assessing whether an applicant entity has been "established" for charitable purposes, the Commission analyses the objects clauses set out in the entity's rules. The Commission also has regard to the entity's activities and other relevant information, as required by section 18 of the Act.
12. In assessing whether an applicant entity will be "maintained" for charitable purposes, the Commission analyses the clauses in the entity's rules relating to winding up or dissolution.
13. In the event of an entity being wound up, its surplus assets will be distributed prior to the entity ceasing to exist. The Commission therefore considers that distribution of any surplus assets is included in the "maintenance" of that entity for charitable purposes and requires that any surplus assets are directed to charitable purposes.

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

Similar objects and the preservation of heritage property

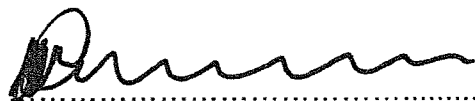
14. While the Applicant's specific purposes have been considered to be charitable, it cannot necessarily be concluded that an entity with "similar objects" will also be charitable. "Charitable purpose" has a special meaning in law and while two entities may have similar purposes, the specific nature of each may render one charitable and the other non-charitable.
15. Courts have held the preservation of certain buildings and areas of land to be charitable under the fourth head, "any other matter beneficial to the community". The preservation of heritage buildings, however, will not necessarily always be charitable – there must be permanent preservation of a building or area, which provides an overriding public benefit.² For example, it may not be charitable to preserve a building or area if:
- it is of no historical or architectural interest,
 - it is used for non-charitable purposes,
 - there is insufficient public access,
 - there are benefits to individuals (for example the owners) which outweigh any public benefit.
16. The Commission considers that "a body or institution with like or similar objects to the Society" or "a body having as its principal objects the preservation of heritage property in New Zealand" will not restrict the distribution of surplus assets to an entity with charitable purposes.

Charities Commission's determination

17. 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 society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) 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

22/4/09
Date

² *Re Verrall* [1916] 1 Ch 100 and *Re Bruce* [1918] NZLR 16.