

Registration decision: Nature Coast Trust (NAT36100)

The facts

1. Nature Coast Trust ("the Applicant") was established as a trust on 14 December 2009 and was incorporated under *Charitable Trust Act 1957* on 18 December 2009. The Applicant applied for registration as a charitable entity on 18 December 2009.

2. The Applicant's objects are set out in clause 4 of its trust deed:

"4.1 Purposes: the Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund to, or for, such charitable purposes, in such amounts, at such times, and subject to such terms and conditions as the Trustees may decide

4.2 Means of achieving purposes: the Trustees may, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees:

- (a) respect and implement the dual heritage of the partners of Te Tiriti o Waitangi (the Treaty of Waitangi);*
- (b) respect the cultural diversity of people and encourage people from all nationalities to utilise the trust's facilities and services;*
- (c) inspire people to reach their full potential;*
- (d) work cooperatively with others in initiatives beneficial to the community;*
- (e) maintain the highest standards of professionalism and integrity;*
- (f) provide evaluation reports to any identified parties or agencies*
- (g) work for the financial security of the trust in order to provide long term support to the community;*
- (h) carry out such other charitable purposes within New Zealand as the Trustees shall determine*

4.3 In addition the Trust will:

- (a) develop, attract, maintain and encourage sustainable economic well being and business prosperity in the Kapiti Horowhenua Region;*
- (b) foster projects and initiatives which are employment rich;*
- (c) provide appropriate advice to the business community;*
- (d) promote the interests of the Kapiti and Horowhenua communities to local, regional, national and international agencies and organisations;*
- (e) co-ordinate business and tourism related community activities."*

3. The Commission analysed the application and on 11 January 2010 sent the Applicant a notice that may lead to decline on the basis that a

primary purpose of the trust is to promote economic growth and employment in the Kapiti Horowhenua region and this is not charitable. The notice also stated that the Commission does not consider that Applicant's purposes would provide sufficient public benefit because the primary beneficiaries appear to be private business owners in the Kapiti Horowhenua region.

4. The Applicant responded by letter on 4 March 2010 submitting that:
- We do not accept the Commission's position and are satisfied that the Trust meets the requirements of the Charities Act 2005;
 - The Trust's purposes align with the charitable purposes of: relief of poverty; the advancement of education and any other matter beneficial to the community;
 - The general promotion of economic development in the area is "beneficial to the community". Economic development, both by attraction of and retention of business collectively, leads to relief of poverty by increasing the numbers of positions available in the workforce;
 - As part of our activities we provide education in the furtherance of our objectives;
 - The purposes of the Nature Coast Trust are plural and collective. The goals and activities of the trust are not addressed to any singular business entity. Therefore, the trust is not comparable to the case law used in the notice that may lead to a decline;
 - The trust may well provide support to parties that fall within categories such as "promoting essential industry such as agricultural", "providing industry training facilities" and "promoting crafts which require special skills". However, their involvement will have come about because of their broader involvement in communities of interest. It will not be because we have targeted a particular industry group;
 - As the trust is not seeking to work with individual private business owners all benefits from our activities will accrue to the benefit of the wider community of which we are a part.

The issues

5. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* ("the Act"). In this case, the key issue for consideration is whether the Applicant is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

The law on charitable purposes

6. Under section 13(1)(a) of the Act, a trust qualifies for registration if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
7. In order to be a valid trust at law, a trust that is for charitable purposes must be exclusively charitable or it will be void for uncertainty.
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 benefiting the public or a sufficient section of the public.
9. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
10. 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; ...*

Charity Commission's analysis

11. The Commission considers that the Applicant's purpose set out in clause 4.1 is charitable and clauses 4.2(a), (b), (c), (d), (e), (f), (g) and (h) of the trust deed are powers.
12. The Commission notes that:
 - the purposes listed in clause 4.3 are the only specific purposes stated in the Applicant's deed,
 - the Applicant has identified "economic development" as its main sector of operation on its application form,
 - in its letter of 4 March 2010 the Applicant states that it undertakes general promotion economic development in the area between Paekakariki and Foxton/Shannon,
 - the Applicant has not provided evidence that it is undertaking any activities other than those listed in clause 4.3.
13. The Commission therefore considers that the purposes in clause 4.3 are primary independent purposes of the Applicant. In order to determine whether the Applicant's purposes set out in clauses 4.3(a), (b), (c), (d)

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

and (e) are charitable, the Commission has considered the wording of these clauses and the information provided by the Applicant.

14. As the purposes in clause 4.3(a), (b), (c), (d) and (e), do not indicate an intention to advance religion they have been considered under the relief of poverty, the advancement of education, and “any other matter beneficial to the community”.

Relief of poverty

15. In order to be charitable under the relief of poverty, a purpose must:
- be directed at people who are poor, in need, aged, or suffering genuine hardship; and
 - provide relief.²
16. “Poverty” is interpreted broadly in law and a person does not have to be destitute to qualify as “poor”.³ People who are in need, aged, or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will include anyone who does not have access to the normal things of life which most people take for granted.⁴
17. To provide “relief”, the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.⁵
18. The Applicant’s purposes outlined in clause 4.3 do not show an intention to relieve poverty and are not directed at benefiting those who are unemployed or suffering some other form of hardship.
19. In its letter of 4 March 2010 the applicant has submitted that ‘economic development, both by the attraction and retention of business collectively, leads to the relief of poverty by increasing the number of positions available in the workforce’. In *Canterbury Development Corporation v Charities Commission* Young J stated;

“to improve the general economic wellbeing of the area...cannot be relief of poverty. The possibility of helping someone who is

² *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

³ *Re Bethel* (1971) 17 DLR (3d) 652 (Ont. CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *re Pettit* [1988] 2 NZLR 513.

⁴ *Inland Revenue Commissioners v Baddley* [1955] AC 572; [1955] 1 All ER 525, applied in *re Pettit* [1988] 2 NZLR 513 and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

⁵ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch 159; [1983] 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

*unemployed is too remote for it to qualify as the charitable purpose of relief of poverty.*⁶

20. Therefore, the Commission does not consider that the Applicant's purposes outlined in clause 4.3 are charitable under the relief of poverty.

Advancement of education

21. In order to be charitable under the advancement of education a purpose must provide some form of education and ensure that learning is advanced.
22. The Applicant submitted that part of their activities was, 'to provide education in the furtherance of [Nature Coast Trust's] objectives'. Moreover, clause 4.3(c) relates to "providing advice to the business community".
23. In *Canterbury Development Corporation v Charities Commission Young J*, in assessing whether providing a variety of services for businesses including financial, marketing, technical and counselling services, stated;

*"I do not consider this service comes within the provision of the enhancement of education as intended by the Act. To be a charitable purpose it must provide this opportunity to a broad section of the public. This could hardly be said to be the case here given the narrow way in which CDC has defined eligibility. **Nor in my view is supporting businesses by providing assistance to their proprietors, in such aspects as financial management or marketing, the support or advancement of education and learning.**"*⁷

24. Accordingly, the Commission is of the view that providing advice to the business community would not advance education and would not provide sufficient public benefit. Accordingly, the Commission does not consider the Applicant to be charitable under the advancement of education.

Other matters beneficial to the community

25. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and 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) namely:⁸
- relief of aged, impotent, and poor people

⁶ HC WN CIV 2009-485-2133 [18 March 2010] para 30

⁷ HC WN CIV 2009-485-2133 [18 March 2010] para 33

⁸ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

- 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.⁹

26. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

“ . . . it is not all objects of public utility that are charitable, ‘for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.’ Nor are essentially economic or commercial objects within the spirit of the Preamble.”¹⁰

27. In cases such as *Re Tennant*¹¹ and *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation*¹² economic development of a community has been held to be charitable under “other matters beneficial to the community” where essential services are provided or where the community is under a particular disadvantage.

28. In *Re Tennant* Hammond J stated:

*“Obviously, each case will turn on its own facts. I would not be prepared to say that there may not be cases which would fall on the other side of the line because of private profit making of some kind. But **here the settlor was attempting to achieve for a small new rural community what would then have been central to the life of that community**: a cluster complex of a school, public hall, church and creamery.”¹³ [Emphasis added]*

29. Similarly, in *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation*, the Australian Federal Court of Appeal considered that providing internet and communications infrastructure for a disadvantaged area such as Tasmania was charitable. Heeney J stated:

⁹ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

¹⁰ Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

¹¹ [1996] 2 NZLR 633.

¹² (2005) FCA 439.

¹³ [1996] 2 NZLR 633, 640.

“As has been seen, the genesis of TECC was the provision of large amounts of Federal funding to assist ‘regional, rural and remote communities’ a current euphemism for whose parts of Australia which are economically disadvantaged or, put more bluntly, poor, compared with the rest of the nation . . . Tasmania is a particular case in point. The combination of small population and long distances from markets and raw materials meant that conventional manufacturing industry was always to be at a disadvantage.”¹⁴

30. In *Canterbury Development Corporation v Charities Commission*, in discussing whether economic development can fall within the “spirit and intendment of the Statue of Elizabeth”, Young J states:

“What must be kept in mind is that the charitable purpose of benefit to the community is a community benefit to assuage need. In cases such as Re Tennant [1996] 2 NZLR 633 and Tasmanian Electronic Commerce Centre v Commissioner of Taxation [2005] FCA 439 focus is on providing community benefit where an identified need is established. Save for advancement of religion all charitable purpose can be seen as meeting a need.”¹⁵

31. The Applicant has not provided any evidence that it is either providing essential services or assisting an area that is under any particular disadvantage. Therefore, the Commission considers that the Applicant's purposes set out in clause 4.3 are not within the spirit and intent of the preamble to the Statute of Elizabeth and accordingly are not charitable under “any other matters beneficial to the community”.

Public or private benefit?

32. In addition, in order for a purpose to be regarded as “beneficial to the community”, the benefits must be to the community rather than to private individuals. Any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.¹⁶ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.¹⁷

33. The Commission has considered the courts' decisions in *Commissioners of Inland Revenue v Yorkshire Agricultural Society*¹⁸, *Crystal Palace Trustees v Minister of Town, Country Planning*¹⁹, *Hadaway v Hadaway*²⁰,

¹⁴ (2005) FCA 439 at paras 59-60.

¹⁵ HC WN CIV 2009-485-2133 [18 March 2010] para 42

¹⁶ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* 69 TC 231; *Travel Just v Canada Revenue Agency* 2006 FCA 343 [2007] 1 CTC 294.

¹⁷ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹⁸ [1928] 1 KB 611

¹⁹ [1951] 1 Ch 132

²⁰ [1955] 1 WLR 16 (PC)

*Commissioners of Inland Revenue v White*²¹, *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*²², *Commissioner of Taxation v Triton Foundation*²³ and *Canterbury Development Corporation v Charities Commission*²⁴.

34. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*,²⁵ the improvement of agriculture was held to be charitable where it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit will not be charitable.

35. In *Crystal Palace Trustees v Minister of Town and Country Planning* a body of trustees was entrusted with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art. Danckwerts J stated:

*“it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and **is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees.**”*²⁶ [Emphasis added]

36. In *Hadaway v Hadaway* the Privy Council held that assisting persons carrying on a particular trade, business or profession would not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case the court held that any eventual benefit to the community was too remote:

*“between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative.”*²⁷

37. In *Commissioners of Inland Revenue v White Fox* J stated:

*“the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object **provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interest of those engaged in the manufacture and sale of their particular products.**”*²⁸ [Emphasis added]

38. In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*, the Court held:

²¹ (1980) 55 TC 651
²² (1996) 69 Tax Cases 231
²³ (2005) 147 FCR 362.
²⁴ HC WN CIV 2009-485-2133 [18 March 2010]
²⁵ [1928] 1 KB 611.
²⁶ [1951] 1 Ch 132, 142.
²⁷ [1955] 1 WLR 16, 20 (PC).
²⁸ (1980) 55 TC 651, 659.

*"[T]he second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, on any fair reading must extend to enabling Oldham TEC to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them . . . **Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But the existence of these objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote.**"*

²⁹ [Emphasis added].

39. In *Commissioner of Taxation v Triton Foundation*³⁰ the Federal Court of Australia held that a foundation set up to assist inventors provided sufficient public benefit. In reaching this conclusion, the court noted that the foundation's purposes were particularly directed at young people, but were also available to "any member of the community who had the desire or inclination to use them", and a number of the resulting inventions had been of benefit to the community.

40. In *Canterbury Development v Charities Commission*, Young J held:

*"CDC's assistance to business is not collateral to its purposes but central to it. The purposes of CDC's assistance to business is, as the constitution identifies, and the operation confirms is to make businesses more profitable. CDC believes that this assistance will, in turn, result in benefits to the Canterbury Community. The central focus however remains on increasing the profitability of businesses not public benefit."*³¹ [emphasis added]

*"Any public benefit therefore from CDC's purpose and operation's is in my view too remote to establish CDC as a charity. Public purpose is not the primary purpose of CDC's objects or operation. Its primary purpose is the assistance of individual businesses. The creation of jobs for the unemployed, as opposed to jobs for those who are employed and not in need, is hoped for, but remote and uncertain, result of the way in which CDC approaches its task. The relief of unemployment is certainly not a direct object of purpose of CDC's function. The public benefit is hoped for but ancillary. In the same way the general economic lift for the Canterbury region from CDC's work is the hoped for result of helping individual businesses. It is remote from the purpose and operation of CDC."*³² [Emphasis added]

²⁹ (1996) 69 Tax Cases 231, 251.

³⁰ (2005) 147 FCR 362.

³¹ *Canterbury Development v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] para 60

³² *Canterbury Development v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] para 67

41. In its letter of 4 March 2010 the Applicant states that the Commission has relied on case law that is not relevant to Nature Coast Trust as their purposes are ‘talking in a plural or collective sense’ and their “goals and activities are not addressed to any singular business entity.”
42. The Commission considers that the case law relied on is relevant to the Applicant as the Applicant’s purposes outlined in clause 4.3 are focused on economic wellbeing, business prosperity, creating employment, providing advice to the business community and co-ordinating business and tourism related community activities. These purposes are not limited to activities directed towards the community generally. Rather, the Commission considers that the direct benefits of these purposes will be to private businesses or individuals. Any benefit to the wider public is too remote to render these purposes charitable.

Conclusion

43. For the reasons set out above the Commission concludes that the Applicant’s main purposes are outlined in clauses 4.3(a), (b), (c), (d) and (e) and these are non-charitable. Moreover, the Commission considers that these purposes do not provide sufficient public benefit. The direct benefits of the Applicant’s purposes are to business owners or individuals in the Kapiti–Horowhenua region. Any benefits conferred on the remainder of the community from such purposes are too remote.

Section 61B of the Charitable Trusts Act 1957

44. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to “save” a trust that has both charitable and “non-charitable and invalid” purposes.
45. The first is where the entity’s stated purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be “blue pencilled out”). The second is where the stated purposes are capable of both a charitable and a non-charitable interpretation and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).³³
46. In *Canterbury Development Corporation v Charities Commission*³⁴, Ronald Young in discussing section 61B of the *Charitable Trusts Act 1957* states:

“As I have identified a significant portion of CDCT’s objects and purposes is non charitable. The non charitable portions are primarily the operative clauses carrying out the objects of the trust. Without the operative clauses the deed is little more than a

³³ *Re Beckbessinger* [1993] 2 NZLR 362, 373.
³⁴ HC WN CIV 2009-485-2133 [18 March 2010]

recitation of the standard charitable objects with little or no instruction as to how the trust will operate to give effect to the objects. Given that conclusion I do not consider that proposed deletions come within the intent of s 61B.”

47. The Commission considers that the purposes in clause 4.3 are non-charitable for the reasons given above. If the purposes in these clauses were “blue-pencilled” out, the Applicant would be left with “little more than a recitation of the standard charitable objects with little or no instruction as to how the trust will operate to give effect to the objects”. The Commission therefore concludes that the Applicant does not have substantially charitable purposes.

48. In *Re Beckbessinger*, Tipping J held:

“In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, . . . that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose.”³⁵

49. The Commission has analysed the wording of the Applicant’s purposes, surrounding context, and activities (as directed by section 18 of the Act). The Commission does not consider that these provide evidence of “a substantially charitable mind” with an intention to create a charitable trust, but which was not conveyed by the drafting. Accordingly, the Commission does not consider that the purposes indicate an intention to create a substantially charitable trust.
50. On these bases, the Commission considers that the Applicant’s purposes are not substantially charitable and therefore section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

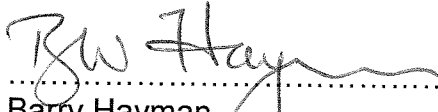
Charity Commission’s determination

51. 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 *Charities Act 2005*.

³⁵ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

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


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Barry Hayman
Acting Chief Executive

10/5/10
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Date