

## Deregistration Decision: Rotary International District 9980 Incorporated (CC40639)

### The facts

1. Rotary International District 9980 Incorporated (the Society) is an incorporated society registered under the Incorporated Societies Act 1908 on 7 April 2008. The Society was registered as a charitable entity under the *Charities Act 2005* (the Act) by the Charities Commission (the Commission) on 8 June 2009.
2. Clause 4 of the Society's constitution outlines the purposes as:

*The objects of the District are to:*

  - a) *provide for the efficient administration of the Clubs within the District by RI, the Governor and the District Board.*
  - b) *assist Clubs within the District to advance the "Object of Rotary" as defined by the Constitutional Documents.*
  - c) *advance the service aspect of the "Object of Rotary" by undertaking, and/or encouraging Member clubs to undertake, through voluntary effort, a wide range of service activities as indicated by, but not limited to the following:*
    - *financial help to needy families*
    - *relief aid following natural disasters*
    - *health, education, immunisation programmes and clean water supply systems*
    - *sponsorships and scholarships for students and university teachers*
    - *support for life skills education in schools*
    - *vocational, group study and student exchanges*
    - *literacy programmes, speech competitions and youth leadership training*
    - *supporting communities by providing or enhancing facilities*
3. After the Commission declined an application for registration from another Rotary International District in October 2010, the Commission sent the Society a letter (dated 25 March 2011) requesting further information about the Society's activities.

4. On 2 May 2011, the Society responded to the request for information, stating:

**General**

*Rotary is an International **Service** Organisation comprising 33,901 Clubs split in to 538 Districts worldwide. While the emphasis is on the individual Club, each District has its own structure to oversee and facilitate the activities of the individual Clubs in its District.*

*Rotary Clubs essentially are organisations with the specific goal of helping others through direct physical assistance, providing funding, or enabling education of young people through participation in the many Rotary International youth and education programmes. Projects of great variety are carried out, not only by individual Clubs but also collectively, as a means of raising funds which will enable such participation. The prime purpose of the Clubs is the projects and work they do to assist others who would not otherwise get the opportunity or need support to maintain a worthwhile activity in the community. As an outcome of carrying out those projects for charitable purposes a culture within each Club and each District is developed of establishing friendship though working together on such projects, and a culture in which membership from any vocation is sought and encouraged thus recognising the value of that vocation but equally resulting a wider range of skills to be available for project activities is established as a secondary objective. The participation in projects and educational programmes with Clubs and Districts from other countries provides opportunities for good collaborative relationships to be developed between those from other cultures and countries both here and overseas. An outcome of such relationships, established through working together on projects and educational programmes, is better international understanding, goodwill and peace which is an object of Rotary.*

*Rotary District 9980 Incorporated is responsible for overseeing, coordinating and facilitating where appropriate the activities of the 30 Rotary Clubs located south of the Rangitata River. The Society is administered by a Board of 12 comprising the District Governor (appointed by Rotary International on recommendation from the District), the District Governor-Elect, the District Governor-Nominee, Immediate Past District Governor, seven Assistant Governors (each responsible for a group of Clubs within the District) and a Secretary/Treasurer. The District Governor is responsible to Rotary International for activities in the District. In addition there are a number of District Committees in place each with specific responsibilities but in the end accountable to the Board and District Governor. All of the specific Rotary International and Rotary Foundation programmes with which the District is involved have a committee charged with the responsibility of making the arrangements for and facilitating the programme activities which are carried out by the Clubs within the District. . . .*

*The areas where the Society provides for the efficient administration of Rotary Clubs in the District are:*

### **Forward Planning and Collective Decision Making**

*At each Annual General Meeting of the Society a Strategic Plan, with the goals for the coming year, is adopted, That plan sets out the goals on activities which are common to all Clubs and provides a mechanism for collective decision making with regard to special programmes.*

*For example the Clubs in the District have had a special project over the last three years of raising additional funds towards the International Polio Eradication Project and agreed collectively to provide \$20NZ per Rotarian per year. In addition each Club is asked by the Rotary Foundation (which is the Charitable Fund of Rotary International from which funding for Rotary projects and programmes comes) to make a donation to the Annual Programme Fund. Collectively the Clubs in the District agreed to a target donation of \$125NZ per Rotarian. Collection of those donations is coordinated by the Society and the funds forwarded through the Rotary Clubs of New Zealand Charitable Trust administered by NZ Guardian to the Rotary Foundation. NZ Guardian require a single point of contact within the District as a way of streamlining overseas payments and the Secretary/Treasurer for the Society is that person in District 9980.*

*The Clubs in the District agreed in 2003-2004 to establish a Centurion Scheme whereby individuals could make an additional donation each year to the Rotary Foundation. This scheme is administered by the Society and donations, which for the last three years have also gone to the Polio Eradication Programme, are forwarded through the Rotary Clubs of New Zealand Charitable Trust to the Rotary Foundation.*

### **Training**

*The President of each Club changes every year, as does the administration within each Club, and this means there is an on-going need for education about the various Rotary programmes. An important part of the Society's role is to ensure that those who will be holding office in any particular year are fully familiar with the requirements to organise and manage a good club, are aware of the project opportunities available to them through the Rotary Foundation programmes, and that they are aware of projects carried out by others in fields that may be of interest to them. Further, Rotary International has asked Clubs to work on projects related to literacy, health and clean water supply, and has asked Clubs give particular emphasis on such projects both locally and overseas. Part of the training provided is to identify opportunities with the Clubs and support them should they wish to carry out projects in these fields. Funding is available from the Rotary Foundation to assist Clubs with these projects, either by way of grants (District Simplified Grants) available through the Society, or from the Rotary Foundation for projects undertaken overseas with another Club or District through a matching Grants the application for which is managed by the Society,*

*The training programme extends over a year and comprises:*

**Assembly (April-May)** where the President -Elects are introduced to their role and provided with background material on the various Rotary programmes with which the District as a whole is involved.

*(1 day in Dunedin)*

### **President-Elect Training Seminar 1 (November)**

*President-Elects and their wives receive more detailed training and education about the Rotary programmes and have the opportunity to share with each other (and the Assistant District Governors responsible for liaising with them) projects that their own Clubs have undertaken and discussing options where they could work together.*

*(1 and 1/2 days at Cromwell)*

### **President-Elect Training Seminar 2 (March)**

*President-Elects and their wives receive more training and education about the Rotary programmes and details of the Rotary International theme for the coming year and where particular emphasis is to be placed when identifying projects. President - elects formulate their Club goals for the coming year and identify in more detail where they may work with other clubs to undertake more extensive projects.*

*(1 and 1/2 days in Cromwell)*

### **Assembly (April-May)**

*President-elects approve the budget for their year and carry out more detailed planning for projects to be carried out. Incoming Club officers receive information about the Rotary programmes and possible projects in their areas of interest*

*Normally attended by 200 Rotarians.*

*(1 day duration in Dunedin)*

### **District Conference (May)**

*An opportunity for all Rotarians in the District to share details about what worked well in the preceding year and to learn more about the Rotary and in particular those that the Clubs will be concentrating on in the coming year.*

*(1 3/4 days - normally 350 to 400 attend)*

*The training programme is structured, is managed by a Committee of the Society and led by Rotarians from District 9980. Expertise from further afield is brought in if special emphasis is to be placed on a particular Rotary programme in any particular year. In 2010 it was the Shelterbox programme which most Clubs in the District are now supporting.*

### **Risk Management and Insurance**

*Risk management when carrying out projects is important for all Clubs particularly when those projects are carried out in public areas or adjacent to streets or roads. Similarly the Society when arranging programmes on behalf of the Clubs needs to have guidelines as to good practice particularly in the youth area. In conjunction with the other five Districts in New Zealand a Risk Management Plan was prepared for the District and is the Manual used by Clubs and Society Committees when considering and instigating projects. Preparation of the Manual is a real example of how the Society has aided Clubs – a single authoritative point of reference rather than 30 different and possibly inadequate ones.*

*A similar approach has been taken towards insurance protection for Clubs and their members with regard to insurance cover. A global policy has been arranged by the Society covering all Clubs when carrying out projects and normal Club activities as well as covering those projects and programmes which the Society arranges and facilitates on behalf of all Clubs in the District.*

### **Organising and Facilitation of Youth and Educational Programmes**

*The District as whole, through the Society, participates in a number of youth and educational programmes as part of the strategic plan for the District. By way of example:*

***the Group Study Exchange Programme** arranged worldwide by the Rotary Foundation whereby a team of five people between 25 and 40 (plus a Rotarian leader) are given the opportunity to spend four to five weeks in another country and study their own vocation while there. A team from that country subsequently visits our District and does the same thing in our District. The team tours the District and is supported by the Clubs who arrange the vocational experience for them. The whole of the travel cost is met by the Rotary Foundation out of funds provided to it by donations made by the Clubs to the Foundation Annual Programmes Fund each year. While in the host District all accommodation and vocational experiences of the visiting team costs are met by Rotarians and Clubs. The whole is arranged and facilitated by a Society Committee.*

***the Rotary Youth Exchange programme** whereby 6-8 students aged 16-18 from our District are given the opportunity responsible to work together thereby extending the scale of activity of a particular project or activity.*

### **Communications**

*The Society publishes a Directory each year which contains contact details of the Club Officers, Society Officers, Society Committees, a Calendar and details of the major parties with whom Rotarians in the District may have contact. It also contains details about individual Rotary programmes and advice as to where further information can be obtained. The Directory is distributed to all Rotarians in the District.*

*The Society also maintains its own Webpage and this is kept up to date regularly. It contains information about the various Rotary programmes operating in the District, a calendar of events (Rotary, Society, District, Club) and base documents which can be referred to by any Rotarian in the District. Clubs are linked to the Webpage and contact details for the Club are contained on it,*

### **Summary**

*The Society provides a great deal of support to the Clubs in the District and through its activities enables the Clubs to operate efficiently and get the greatest return from the activities they undertake to support charitable and educational activities in their communities and overseas. In addition it fills a charitable purpose and vehicle in its own right.*

*Rotary Club Charitable Trusts distribute the proceeds from Rotary Club projects but in essence Rotary Clubs exist to provide the resources for them to be able to do so. The principle object of Rotary Clubs is to provide a charitable service to the community and things like fellowship, maintaining high ethical standards so that the standing of the body is not compromised, recognition of all vocations and the development of International goodwill and understanding flow from providing and carrying out that service – in themselves they are not the prime reason for Rotary Clubs being. Similarly the Society supports the Clubs in its area and helps them to maximise their value and charitable contribution to their communities. The activities of the Society are therefore truly ancillary to the charitable purpose of Rotary Clubs and indeed the Society itself.*

5. On 17 May 2011, the Commission sent the Society a notice of intention to remove the Society from the register on the basis that the purposes set out in Clause 4 are not exclusively charitable purposes.
6. On 27 June 2011, the Society responded to the notice, submitting that:

*I wish to restate below the point I made in my letter of 2 May 20 11 since it is not clear from the Commission letter that they understand what Rotary is and how it goes about what it does.*

*"Rotary Clubs essentially are organisations with the specific goal of helping others through direct physical assistance, providing funding, or enabling education of young people through participation in the many Rotary International youth and education programmes – that is service. Projects of great variety are carried out, not only by individual Clubs but also collectively, as a means of raising funds which will enable such participation. The prime purpose of the Clubs is the projects and work they do to assist others who would not otherwise get the opportunity or need support to maintain a worthwhile activity in the community. As an outcome of carrying out those projects for charitable purposes a culture within each Club and each District is developed of establishing friendship through working together on such projects, and a culture in which membership from any vocation is sought and encouraged thus recognising the value of that vocation but equally resulting a wider range of skills to be available for project activities is established as a secondary objective. The participation in projects and educational programmes with Clubs and Districts from other countries provides opportunities for good collaborative relationships to be developed between those from other cultures and countries both here and overseas. An outcome of such*

*relationships, established through working together on projects and educational programmes, is better international understanding, goodwill and peace which is an outcome sought by Rotary.*

*The Society provides a great deal of support to the Clubs in the District and through its activities enables the Clubs to operate efficiently and get the greatest return from the activities they undertake to support charitable and educational activities in their communities and overseas. In addition it fills a charitable purpose and vehicle in its own right.*

*Rotary Club Charitable Trusts distribute the proceeds from Rotary Club projects but in essence Rotary Clubs exist to provide the resources for them to be able to do so. The principle object of Rotary Clubs is to provide a charitable service to the community and things like fellowship, maintaining high ethical standards so that the standing of the body is not compromised, recognition of all vocations and the development of International goodwill and understanding flow from providing and carrying out that service – in themselves they are not the prime reason for Rotary Clubs being. Similarly the Society supports the Clubs in its area and helps them to maximise their value and charitable contribution to their communities. The activities of the Society are therefore truly ancillary to the charitable purpose of Rotary Clubs and indeed the Society itself."*

*Dealing with the specific points raised in the letter from the Commission:*

1. The Commission considers that the encouragement of the general "ideal of service" as stated in the introduction to the Object of Rotary is too vague to be considered a charitable purpose.

*Service is defined in the Oxford Dictionary of Current English, inter alia, as doing work or work done for another or for a community etc., assistance or benefit given to another, readiness to perform this. An "ideal" is defined in the same document as "an actual thing as a standard for imitation". We would submit that the "ideal of Service" is not vague at all and in any event the "case law" of what it means in practice, based on the services provided to others by Rotary through its Clubs and Districts worldwide for more than a century clearly indicates what it means and what it is understood to mean. The Commission's argument is rejected.*

2. First Component of the Object of Rotary: The "development" of acquaintance as an opportunity for service is not a charitable purpose.

*Firstly it is not the first component of the Object of Rotary but rather the first of the things that Rotary wishes to encourage and **foster as a consequence of service**. It is clearly an ancillary purpose and a logical extension of doing things together – doing service together and recognising each other's skills is clearly an opportunity for the development of acquaintance. Nowhere do the Societies rules and objects indicate that the purpose is to provide social and entertainment activities for members and the case quoted in the Commission's letter is totally irrelevant. While Rotary Clubs meet once a week the purpose of meetings is not social and entertainment in the context that it is being used by the Commission. While there may be a small element of that, members meet each week to keep track of projects, hear reports on projects underway or completed, hear*

*speakers who are taking part in international programmes which the Clubs and Districts support, hear presentations from those working in areas that the Clubs may like to support and in fact raise money at each meeting for some specific social purpose. Social events if they are held often are part of a fund-raising activity – only once or twice a year would meetings be held which are purely social. The Commissions argument on this point has no validity.*

3. Second and Third components of the Objects of Rotary. The promotion of "high ethical standards in business and professions" and the application of the ideal of service in each Rotarian's personal, business, and Community life" are not charitable purposes beneficial to the community.

*As with point two above these two principles are not objects of Rotary but are things that Rotary wishes to encourage and **foster as a consequence of service**. They clearly are ancillary purposes to the main object since the carrying out of service projects for others must be seen to be carried out to high ethical standards by people of good standing if the organisation is to continue to get public and community support. Similarly the "ideal of service" in other areas of a Rotarians life is a way of encouraging by example others to participate and so enable Rotary to achieve more charitable activities. It is clearly an ancillary purpose.*

*Nowhere is there any indication that Rotary Clubs or Districts exist directly for the self-improvement of their members – the Object of Rotary is service and in performing those services personal attributes may be developed and enhanced. Any education is by way of informing Rotarians of where opportunities for service exist, both locally or overseas, and the procedures and structures which exist to enable them to do something in the best way should they choose to do so. That is exactly what any charitable organisation would do. The statement that the activities of Rotary Clubs and Districts are inward-looking rather than outward-looking is totally erroneous and has no validity or evidence to support it.*

4. Fourth Component of the Objects of Rotary. The advancement of "international understanding, goodwill, and peace" is not a charitable purpose.

*As with the point made under 2 and 3 above these outcomes are not the principle object of Rotary but are things that Rotary wishes to encourage and **foster as a consequence of service**. This it does by Clubs and Districts participating in projects overseas, sponsoring activities overseas, working with at-risk groups in New Zealand, sponsoring literacy programmes in lower decile schools and sponsoring young people to study their own vocational interests overseas and reciprocating by hosting similar teams which visit from overseas. It is by way of participation in these service projects carried out for charitable purposes that international peace, goodwill and peace are encouraged. They are clearly ancillary purposes or outcomes to the main avenues of service carried out by Rotary.*



*We do not see that the case involving The Grand Lodge of Ancient Free and Accepted Masons in New Zealand has any relevance to the situation with the Rotary District or Rotary Clubs. That organisation has a quite different focus from Rotary with fellowship and support of its members being major areas of activity. Their prime interest is not service to others outside the organisation although it is a significant part of what they do. In Rotary's case service to others outside Rotary is the core business and as a result of doing that things like acquaintance, high ethical standards, goodwill and peace both in New Zealand and overseas are promoted and encouraged. They are not objects in themselves but outcomes which are encouraged and fostered through carrying out service projects in the fields of literacy, health, poverty, water supply and community needs all of which are charitable.*

*We do not therefore believe that the grounds on which it is intended to remove the Society from the Register have been satisfied, and further that it would not be in the public interest to remove the Society from the Register.*

## **The issue**

7. The Commission must consider whether the Society is not, or is no longer, qualified for registration as a charitable entity under section 32(1)(a) of the Act because it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b) of the Act.

## **The law on charitable purposes and deregistration**

8. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b) of the Act, a society or institution must be established and maintained exclusively for 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.<sup>1</sup> This means that the purpose must be directed to benefiting the public or a sufficient section of the public.
10. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
11. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.

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

12. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Act empowers the Commission to examine and enquire into matters in connection with charitable entities or persons, including:
- (a) *the activities and proposed activities of the charitable entity or person:*
  - (b) *the nature, objects, and purposes of the charitable entity:*
  - (c) *the management and administration of the charitable entity:*
  - (d) *the results and outcomes achieved by the charitable entity or person:*
  - (e) *the value, condition, management, and application of the property and income belonging to the charitable entity or person.*
13. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.

### **Charities Commission's analysis**

14. The Commission takes a case-by-case approach to each deregistration of an entity. The Commission considers the specific wording of each entity's rules document in the light of the activities of the entity.
15. The Commission has assessed the Society's stated purpose clauses drawing on information provided by the Society and the relevant case law. The Commission considers that the purposes in clause 4 do not indicate an intention to advance religion. These purposes have therefore been considered in relation to relief of poverty, advancement of education and other matters beneficial to the community. Firstly, however, the Commission has considered the effect of clause 12.

#### Effect of clause purporting to limit purposes

16. Clause 12 of the Society's constitution states:

*This District shall be a non-profit society. Its purpose shall be charitable and benevolent and to encourage, promote and extend the object of Rotary International and to maintain the relationship as a District of RI.*

17. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,<sup>2</sup> Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.<sup>3</sup> In that case, the statute there under consideration contained the phrase 'for charitable purposes only', and Lawrence LJ said in the Court of Appeal that "it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes."<sup>4</sup> Hardie Boys J further wrote that

<sup>2</sup> [1961] NZLR 405, 407.

<sup>3</sup> [1932] 2 KB 465.

<sup>4</sup> [1931] 2 KB 465, 481.

... in so holding, Lawrence L.J. makes it clear in his judgment that he had in mind, not merely the phrase 'charitable purposes only', but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.<sup>5</sup>

18. In *Commissioner of Inland Revenue v White*,<sup>6</sup> 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.*<sup>7</sup>

19. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>8</sup> Young J wrote that "the mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are".<sup>9</sup> 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."<sup>10</sup> Young J concluded that CDC's objects and activities did not support a charitable purpose.

20. The Commission does not consider that the inclusion of clause 12 provides conclusive evidence that the Society's specific purposes in clause 4 are, in fact, exclusively charitable.

#### Relevant case law

21. 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 it must provide relief.
22. The law interprets "poverty" broadly so a person does not have to be destitute to qualify as poor.<sup>11</sup> People who are in need, aged,<sup>12</sup> or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance.

<sup>5</sup> [1961] NZLR 405, 408.

<sup>6</sup> (1980) 55 TC 651.

<sup>7</sup> (1980) 55 TC 651, 653.

<sup>8</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>9</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>10</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>11</sup> *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.

<sup>12</sup> *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

Generally, this will include anyone who does not have access to the normal things of life that most people take for granted.<sup>13</sup> 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.<sup>14</sup>

23. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of “education” covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced and systematic process of instruction, training, and practice.<sup>15</sup> In order to advance education, learning must be passed on to others.
24. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth)<sup>16</sup>, which are as follows:
- 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.<sup>17</sup>

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<sup>13</sup> *Inland Revenue Commissioners v Baddeley* [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.

<sup>14</sup> *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch D 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

<sup>15</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>16</sup> *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.

<sup>17</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow*

25. 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.<sup>18</sup>

#### Clause 4(a)

26. Courts have held that promoting the efficiency of charities may be a charitable purpose.<sup>19</sup>

27. The object in clause 4(a) is:

*provide for the efficient administration of the Clubs within the District by RI, the Governor and the District Board.*

28. The Society's letter of 2 May 2011 states that the Society is responsible for overseeing, coordinating, and facilitating the activities of the 30 Rotary clubs located south of the Rangitata River.

29. The Commission has considered many applications from individual Rotary clubs and concluded that they did not meet registration requirements in relation to charitable purpose. However, the Commission has registered a number of charitable trusts set up by Rotary clubs that are solely focussed on carrying out service activities.

30. The Commission does not consider that providing for the efficient administration of 30 Rotary clubs, which do not have exclusively charitable purposes, can itself be a charitable purpose.

#### Clause 4(b)

31. The object in clause 4(b) is:

*assist Clubs within the District to advance the "Object of Rotary" as defined by the Constitutional Documents.*

32. Rotary International's website defines the "Object of Rotary" as:

*The Object of Rotary is to encourage and foster the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster:*

*FIRST. The development of acquaintance as an opportunity for service;*

*SECOND. High ethical standards in business and professions, the recognition of the worthiness of all useful occupations, and the dignifying of each Rotarian's occupation as an opportunity to serve society;*

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*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.

<sup>18</sup> *In Re Cumming* [1951] NZLR 498, 501.

<sup>19</sup> *Re White's Will Trusts* [1951] 1 A E R 518.

THIRD. *The application of the ideal of service in each Rotarian's personal, business, and community life;*

FOURTH. *The advancement of international understanding, goodwill, and peace through a world fellowship of business and professional persons united in the ideal of service.*<sup>20</sup>

### *Object of Rotary*

33. In its letter of 27 June 2011 the Society states:

*Service is defined in the Oxford Dictionary of Current English, inter alia, as doing work or work done for another or for a community etc., assistance or benefit given to another, readiness to perform this. An "ideal" is defined in the same document as "an actual thing as a standard for imitation". We would submit that the "ideal of Service" is not vague at all and in any event the "case law" of what it means in practice, based on the services provided to others by Rotary through its Clubs and Districts worldwide for more than a century clearly indicates what it means and what it is understood to mean.*

34. The Commission considers that encouraging and fostering "the ideal of service" is likely to promote altruism. However, this extends beyond purposes that are solely charitable under relief of poverty, advancement of education or other matters beneficial to the community.

### *First principle*

35. In its letter of 27 June the Society states:

*Firstly it is not the first component of the Object of Rotary but rather the first of the things that Rotary wishes to encourage and **foster as a consequence of service**. It is clearly an ancillary purpose and a logical extension of doing things together – doing service together and recognising each other's skills is clearly an opportunity for the development of acquaintance. Nowhere do the Societies rules and objects indicate that the purpose is to provide social and entertainment activities for members and the case quoted in the Commissions letter is totally irrelevant. While Rotary Clubs meet once a week the purpose of meetings is not social and entertainment in the context that it is being used by the Commission. While there may be a small element of that, members meet each week to keep track of projects, hear reports on projects underway or completed, hear speakers who are taking part in international programmes which the Clubs and Districts support, hear presentations from those working in areas that the Clubs may like to support and in fact raise money at each meeting for some specific social purpose. Social events if they are held often are part of a fund-raising activity – only once or twice a year would meetings be held which are purely social.*

36. The Commission considers that the "development of acquaintance as an opportunity for service" is likely to promote contact between people who are performing services for others, but this extends beyond purposes that are solely charitable.

<sup>20</sup>

<http://www.rotary.org/en/AboutUs/RotaryInternational/GuidingPrinciples/Pages/ridefault.aspx>

## *Second and third principles*

37. In its letter of 27 June the Society states:

*As with point two above these two principles are not objects of Rotary but are things that Rotary wishes to encourage and **foster as a consequence of service**. They clearly are ancillary purposes to the main object since the carrying out of service projects for others must be seen to be carried out to high ethical standards by people of good standing if the organisation is to continue to get public and community support. Similarly the "ideal of service" in other areas of a Rotarians life is a way of encouraging by example others to participate and so enable Rotary to achieve more charitable activities. It is clearly an ancillary purpose.*

*Nowhere is there any indication that Rotary Clubs or Districts exist directly for the self-improvement of their members – the Object of Rotary is service and in performing those services personal attributes may be developed and enhanced. Any education is by way of informing Rotarians of where opportunities for service exist, both locally or overseas, and the procedures and structures which exist to enable them to do something in the best way should they chose to do so. That is exactly what any charitable organisation would do. The statement that the activities of Rotary Clubs and Districts are inward-looking rather than outward-looking is totally erroneous and has no validity or evidence to support it.*

38. The Commission considers the encouragement of "high ethical standards in business and professions, the recognition of the worthiness of all useful occupations, and the dignifying of each Rotarian's occupation" to be worthy aims, but these are not charitable purposes. Similarly, for the reasons cited above, the Commission does not consider that applying "the ideal of service in each Rotarian's personal, business, and community life" will amount to a charitable purpose.

## *Fourth principle*

39. In its letter of 27 June the Society states:

*As with the point made under 2 and 3 above these outcomes are not the principle object of Rotary but are things that Rotary wishes to encourage and **foster as a consequence of service**. This it does by Clubs and Districts participating in projects overseas, sponsoring activities overseas, working with at-risk groups in New Zealand, sponsoring literacy programmes in lower decile schools and sponsoring young people to study their own vocational interests overseas and reciprocating by hosting similar teams which visit from overseas. It is by way of participation in these service projects carried out for charitable purposes that international peace, goodwill and peace are encouraged. They are clearly ancillary purposes or outcomes to the main avenues of service carried out by Rotary.*

40. There have been a number of cases where Courts have held that purposes such as the promotion of international friendship or understanding are not charitable.<sup>21</sup> The Commission therefore considers that “the advancement of international understanding, goodwill, and peace through a world fellowship of business and professional persons united in service” is not a charitable purpose.
41. The Commission therefore considers that assisting clubs to advance the “Object of Rotary” in clause 4(b) will not limit the Society to undertaking solely charitable purposes.

#### Clause 4(c)

42. The object in clause 4(c) is:

*Advance the service aspect of the “Object of Rotary” by undertaking, and/or encouraging Member clubs to undertake, through voluntary effort, a wide range of service activities as indicated by, but not limited to the following:*

- *financial help to needy families*
- *relief aid following natural disasters*
- *health, education, immunisation programmes and clean water supply systems*
- *sponsorships and scholarships for students and university teachers*
- *support for life skills education in schools*
- *vocational, group study and student exchanges*
- *literacy programmes, speech competitions and youth leadership training*
- *supporting communities by providing or enhancing facilities*

43. The Commission considers that providing “financial help to needy families”, “relief aid following natural disasters”, and “health, education, immunisation programmes and clean water supply systems” are charitable activities under the relief of poverty and “other matters beneficial to the community”.
44. Providing “sponsorships and scholarships for students and university teachers”, “support for life skills education in schools”, “vocational, group study and student exchanges”, and “literacy programmes, speech competitions and youth leadership training” are likely to be charitable activities under the advancement of education and “other matters beneficial to the community”.

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<sup>21</sup> See for example: *Anglo-Swedish Society v Inland Revenue Commissioners* [1931] 47 TLR 295; *Buxton v Public Trustee* [1962] 41 TC 235; *Taxation Review Authority Case 46* [1980] 3 TRNZ 665; *Toronto Volgograd Committee v Minister of National Revenue* [1988] 30 ETR 159.



45. As indicated in the section above, however, the Commission considers that the “service aspect of the ‘Object of Rotary’” is too broad to be considered a charitable purpose because the term “service” has a wide-reaching meaning that is not restricted to charitable activities. In addition, the Commission notes that the Society is not limited to undertaking the activities listed in clause 4(c).
46. The Commission therefore considers that while the Society will be carrying out some charitable activities under clause 4(c), the Society is not limited to carrying out charitable purposes under this clause.

#### Society’s submission

47. In its letters of 2 May 2011 and 27 June 2011, the Society has submitted that its activities are “truly ancillary to the charitable purpose of Rotary Clubs and indeed the Society itself”.
48. As the purposes stated in the Society’s constitution are not limited to those that are charitable, the Commission cannot consider that any non-charitable activities of the Society are ancillary to a charitable purpose.

#### Conclusion

49. The Commission concludes that the purposes set out in Clause 4 of the Society’s constitution are non-charitable purposes that are not ancillary to any charitable purpose.

#### Public interest


50. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register.

### **Charity Commission’s determination**

51. The Commission determines that the Society is not, or is no longer, qualified for registration as a charitable entity because it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b) of the Act.
52. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Society’s removal from the register and that one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.
53. The decision of the Commission is therefore to remove the Society from the Register, pursuant to section 31 of the Act, with effect from **26 October 2011**.

**For the above reasons, the Commission determines to deregister the Society as a charitable entity by removing the Society from the Register.**

Signed for and on behalf of the Charities Commission



Trevor Garrett  
Chief Executive

28/9/11

Date