

Registration decision: Tairua Information and Community Services Society Incorporated

The facts

1. The Tairua Information and Community Services Society Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 15 October 1997. The Applicant's original name was 'Tairua Tourism and Community Services Society Incorporated', but was changed to 'Tairua Information and Community Services Society Incorporated' on 19 August 2002.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 9 April 2008.
3. Clause 3 of the Applicant's Constitution states that its objects are:
 - A) *To establish and maintain in Tairua an organisation for charitable purposes only that will provide a wide range of information, visitor services, and advice to the public.*
 - B) *To be tourism, community and visitor oriented.*
 - C) *To encourage and assist in the establishment and operation of any associated community activity when applicable.*
 - D) *To assist in arranging training courses, meetings, seminars, and discussion groups on subjects of special interest to members and other interested parties.*
 - E) *To sell, obtain and or prepare and distribute circulars, brochures, promotional material, merchandise and various printed matter.*
 - F) *To collect and disseminate statistical data and foster and undertake research into any aspects of the Centre and its interests.*
 - G) *To liaise with and provide information and evidence for Government Departments, Local Authorities, Regional Tourism Bodies, the Visitor Information Network, Information Centres of the Coromandel Peninsula and other enquirers, on tourism, commerce, and community affairs.*
 - H) *To advise and assist with business practice, standards and concerns of members.*
 - I) *To maintain membership of or liaison with any body whose objectives and activities may assist the Society in its objectives.*
 - J) *To promote Tairua and the surrounding area as part of the Coromandel Peninsula region.*
 - K) *To be a representative voice for all businesses, trades and professions on all matters relevant to the Society."*
4. Clause 5(A) states that members of the Applicant are either: Direct Members, Secondary Members, Associate Members or Friends of the Society. Clause 5(G) states:

- “5.1 *Direct members are those individuals or organisations who are directly involved in tourism and who benefit directly from the visitor industry.*
- 5.2 *Secondary members are those individuals and organisations who indirectly involved in tourism ie Retailers, commercial activities and manufacturers, home stays, bed and breakfasts, or part-time operators.*
- 5.3 *Associate members are non-profit organisations, clubs and societies.*
- 5.4 *Friends of the Society may be any individual who wishes to have a personal affiliation with the Society, except where that person has a business that does not hold membership.”*
5. Membership is therefore primarily for individuals and organisations who are directly or indirectly involved in, and who benefit from, the tourism industry, although members may also include non-profit organisations, clubs and societies.
6. The Commission analysed the application for registration and on 12 January 2009 sent the Applicant a notice advising that its application may be declined on the basis that clauses 3(A), (E), (H), (J) and (K) of its Constitution were not charitable purposes according to law.
7. On 16 February 2009 the Applicant responded to the notice making the following submissions:
- the promotion of Tairua as a visitor destination and the promotion and support of local businesses, while important purposes, are not main purposes but ancillary ones; and not all clauses in the Constitution are of equal weight;
 - the Applicant’s non-charitable purposes are inevitable consequences of its primary purpose, which is to provide reliable information to the travelling public and the local community;
 - 27,000 visitors entered the Applicant’s centre in the 12 months ended December 2008 and therefore its purposes provide a benefit to a sufficient section of the public.

The issues

8. 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:
- (a) whether all of the Applicant’s purposes fall within the definition of charitable purpose in section 5(1) of the Act, and
 - (b) if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

The law on charitable purpose

9. Under section 13(1)(b(i)) of the Act, a society or institution must be established and maintained for exclusively charitable purposes.
10. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, 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.
11. 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. What is beneficial to the community is a dynamic concept that will be determined by reference to relevant matters existing at the time.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to:
 - (i) *the activities of the entity at the time at which the application was made; and*
 - (ii) *the proposed activities of the entity; and*
 - (iii) *any other information that it considers is relevant; ...”*

Charities Commission’s analysis

14. The Commission considers that the Applicant’s purposes, set out in clauses 3(D), (F) and (G) of the Constitution, are likely to advance education and are therefore charitable.
15. The Applicant’s purposes in clauses 3(C), (E) and (I) can be considered ancillary and the purpose in clause 3(B) is adverbial.

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.

16. The Commission considers that it is not possible to make an assessment of the charitable nature of clause 3(J) without further information.
17. The Applicant's remaining purposes, set out in clauses 3(A), (H) and (K) have been considered in relation to advancement of education and "any other matter beneficial to the community".

Advancement of education

18. In its letter of 16 February 2009 the Applicant stated that its primary purpose is to provide reliable information to the travelling public and the local community.
19. Providing information to the public will only be charitable if it amounts to providing some form of education and it ensures that learning is advanced. For example, in the case of *In Re Shaw (deceased)* the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."³
20. In *Travel Just v Canada Revenue Agency*⁴ the court held that it was doubtful that producing and disseminating materials that would provide travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.
21. The Commission concludes that providing information about local businesses and visitor services for the public, as set out in clause 3(A) of the Applicant's Constitution, does not amount to the advancement of education and is therefore not a charitable purpose.

Other matters beneficial to the community

22. As noted above, 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 Statute of Elizabeth.
23. As set out in clause 5, the Applicant's membership is primarily aimed at individuals and organisations who are directly or indirectly involved in, and who benefit from, the tourism industry. The Commission therefore considers that advising and assisting members with their business practices, standards and concerns, and being a representative voice for all businesses, trades and professions, as set out in clauses 3(H) and (K), will amount to promoting the private interests of local business owners. These purposes do not provide a benefit to the community and are not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

³ [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352.)

⁴ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

24. The Commission has also considered a number of relevant cases, including *Hadaway v Hadaway*⁵, *Crystal Palace Trustees v Minister of Town and Country Planning*⁶, and *Inland Revenue Commissioners v Oldham Training and Enterprise Council*⁷.
25. In *Hadaway v Hadaway*, the court held that assisting persons carrying on a particular trade or business or profession could not be charitable unless there was a condition that this assistance could only be made for a purpose that was itself charitable. In that case, any eventual benefit to the community was considered too remote from the purpose, which was to provide financial assistance to planters and agriculturalists.
26. In *Crystal Palace Trustees v Minister of Town and Country Planning*, the court held that providing a large park and amenities for public education and recreation were charitable purposes because there was no intention to further the interests of individuals engaged in trade or industry or commerce.
27. More recently, in *Inland Revenue Commissioners v Oldham Training and Enterprise Council*, the court held that promoting the interests of individuals engaged in trade, commerce and enterprise and support services for, and advice to, new businesses disqualified the organisation from having charitable status. In the event that there would be any benefit to the public, this would be too remote.
28. The Commission concludes that the purposes set out in clauses 3(A), (H), and (K) are not charitable purposes. These purposes are independent purposes that are not ancillary to the Applicant's charitable purposes.
29. As the Applicant has non-charitable purposes and therefore does not meet the criteria for registration, the Commission has not sought further information from the Applicant regarding clause 3(J).

Charities Commission's determination

30. 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). The Applicant has non-charitable purposes, and these non-charitable purposes are not ancillary to charitable purposes.

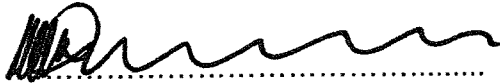
⁵ [1955] 1 WLR 16 (PC).

⁶ [1951] 1 Ch 132.

⁷ [1996] STC 1218.

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