

Registration decision: Te Awe (Wellington Maori Business Network) Incorporated

The facts

1. Te Awe (Wellington Maori Business Network) Incorporated (“the Applicant”) was incorporated under the *Incorporated Societies Act 1908* on 9 July 2001.
2. The Applicant applied to the Charities Commission (“the Commission”) for registration as a charitable entity on 18 July 2008.
3. Clause 3.1 of the Applicant’s original rules document set out the purposes of the society as:

The Kaupapa of Te Awe is to promote, assist and encourage Maori in business, particularly in the greater Wellington region and to undertake and do all such things as may be incidental or conducive to the Kaupapa and to exercise all or any powers contained in these Rules.

4. The application was analysed by the Commission and on 7 April 2009, the Applicant was sent a notice that may lead to a decline on the basis that the promotion and support of business in clause 3.1 was not a charitable purpose.
5. On 11 May 2009, the Applicant was granted an extension to respond to the notice to 8 June 2009.
6. On 17 September 2009, the Commission sent a notice of decline letter, as the Applicant had not responded to the Commission’s letter.
7. On 1 June 2010, the Applicant’s solicitor emailed the Commission, advising that the rules had been amended and asking for advice on the application process. On 16 June 2010, the application was reactivated after a review of the evidence provided by the Applicant, as a conclusion was reached that the Applicant believed they had no deadline by which to make the changes.
8. On 18 June 2010, the Applicant submitted amended rules, with the purpose clause now reading:

2.1 The Kaupapa of Te Awe being principle objects and purposes for which Te Awe exists are wholly charitable and focus on the encouragement and facilitation of economic independence through enterprise education, primarily for Maori living in the greater Wellington region (“Wellington Maori”). To this end the principal charitable purposes of Te Awe include:

- (a) *The advancement of education through the:*
- (i) *Provision of meaningful information designed to promote learning and education relevant to increasing the participation of Wellington Maori in business and industry;*
 - (ii) *Promotion, facilitation and encouragement of educational and training programmes, courses and schemes for Wellington Maori with a view to assisting Wellington Maori in business and industry;*
 - (iii) *Facilitation, fostering and promotion of research and development in business and best practices for Wellington Maori;*
 - (iv) *Promotion and facilitation of access for Wellington Maori to:*
 - a. *Networking opportunities for the purpose of sharing information;*
 - b. *Business mentors and similar services;*
 - c. *Education training services;*
 - d. *Conferences;*
 - e. *Presentations, workshops and other learning experiences; and*
 - f. *Any other practical enterprise education opportunities available.*
 - (v) *Promotion and facilitation of enterprise training to Maori Business students through participation in a summer internship programme supported by Te Awe members and providing:*
 - a. *Mentoring and similar services; and*
 - b. *Any other practical enterprise education opportunities available; and*
- (b) *The relief of poverty through:*
- (i) *Facilitation of economic independence through provision of education and skills to Wellington Maori primarily by:*
 - a. *Providing networking opportunities for the purpose of enabling the establishment or continuation of Maori businesses;*
 - b. *Providing mentoring, information, training and other practical enterprise education necessary to enable the establishment or continuation of Maori businesses; and*
 - c. *Facilitating where possible, and assessing and providing mentoring advice in relation to, business opportunities and activities with a view to assisting Wellington Maori to enter into, or sustain existing, businesses or industry; and*

- (c) *Benefiting the community by:*
- (i) *promoting and facilitating Wellington Maori in business generally with a view to encouraging economic independence and sustainability;*
 - (ii) *promoting excellence in Wellington Maori business people and excellent Maori businesses in the Wellington region;*
 - (iii) *generally pursuing and attaining all acts, matters and things that promote the wholly charitable purposes set out in the preceding clauses with a commitment to ensuring that benefits are made available as widely as possible to Maori throughout the Wellington region.*

2.2 *Te Awe may carry out such other activities which in the opinion of the Board further the wholly charitable purposes outlined in clause 2.1 above, including but not limited to affiliating and/or working with other organisations to further those purposes, provided that no such activities would be in conflict with the charitable status of Te Awe.*

2.3 *In addition, Te Awe may do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them provided always that they fall within the charitable purposes of Te Awe.*

2.4 *None of the purposes of Te Awe will be:*

- (a) *in any way limited or restricted by reference to or inference from the terms of any other clause or the name of Te Awe, except where the context specifically or expressly requires it; and*
- (b) *treated as subsidiary or ancillary to any other object or aim of the Trust.*

2.5 *Notwithstanding any other provision, Te Awe shall not expend any money:*

- (a) *Other than to further charitable purposes recognised by law, nor*
- (b) *On any purposes out of New Zealand, nor*
- (c) *For the sole personal or individual benefit of any Member.*

9. The new rules were analysed by the Commission and on 5 August 2010, the Applicant was sent a notice that may lead to a decline on the basis that the purposes in clause 2.1 and the information on the Applicant's website, www.teawe.maori.nz, indicate that the main aim of the Applicant is to provide benefits for business owners.

10. The Applicant responded to the notice that may lead to a decline on 22 September 2010, stating:

Te Awe's website outlines its purpose as being to "promote, assist and encourage Maori in business through regular networking Hui where Maori Business owners meet and share their business successes and challenges.

This is the tangible activity performed by Te Awe. The description is often used for promotional purposes as it seems to resonate with members and potential members.

Underlying this tangible activity is Te Awe's ultimate aim which is to provide business development services to Maori. Te Awe aims to create an environment, particularly within the Wellington region, for successful business ventures and economic growth for Maori.

The activities that Te Awe undertakes are distinguishable from the types of activities of the organisations involved in the case law examples you provided. The organisations involved are either business and profit-driven (MK Hunt Foundation, Crystal Palace Trustees v Minister of Town and Country Planning, and Oldham Training and Enterprise Council) or specific to a narrow group of beneficiaries (CDC v Charities Commission, and White and Ors). Te Awe works with a minority group to benefit a larger community group. Te Awe educates and assists Maori to ensure they do not become welfare-dependant and a drain on society.

Te Awe assists existing businesses to grow within their particular cultural environment, addressing their specific cultural needs to ensure they succeed in sustaining a business and therefore their employment. Maori helping Maori. Its focus takes account of the varied needs of Maori businesses that are often whanau run. It does so through facilitating educational, mentoring and networking opportunities and setting member businesses on a path of sustainability.

Research shows that often micro-businesses (which are the majority of Te Awe member businesses) do not grow and ultimately fail. Te Awe assists businesses, through educational and mentoring possibilities, and through networking and referrals (Maori helping Maori) to get members through the difficult steps of developing and growing a business, and to ensure that as many as possible become self-sustaining and self-determining.

While the business success of individual members is a by-product of the activities that Te Awe undertakes, and therefore private profit may be achieved by some members, private pecuniary benefit is not sought nor achieved by Te Awe itself.

It is a charitable organisation operating solely for the benefit of its members relieving poverty, and dependence on the welfare system, providing education and mentoring, and benefiting the community by facilitating educational opportunities, a mentoring programme and other activities aimed at assisting business owners to avoid becoming unemployed and subsequently part of the welfare system. It fulfils a community need in the region in which it operates.

Te Awe carries out similar activities to other like organisations (both operating on a regional and national level) that are registered already with the Commission.

The issues

11. The issue the Commission must consider is 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 society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act. In particular, the issues are:
 - (a) whether the Applicant’s purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
 - (b) whether the Applicant provides a public benefit.

The law on charitable purposes

12. Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.
13. Section 5(1) of the Act states:

“charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.”
14. In addition to being within one of the categories of charitable purpose, to be charitable at law, a purpose must also be for the public benefit.¹ This means that the purpose must be directed to benefit the public or a sufficient section of the public.
15. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose.
16. 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.*

¹ Accepted as common ground in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195, para [32].

Charities Commission's analysis

17. The Commission has analysed the purposes set out in clause 2.1 of the Applicant's rules document, the Applicant's activities as described on its website and the information supplied by the Applicant.
18. The Commission does not consider that the Applicant's purposes and the activities it undertakes will advance religion. Accordingly, they have been assessed under the relief of poverty, advancement of education and "any other matter beneficial to the community". First, however, the Commission has considered the effect of wording in clauses 2.1, 2.2, 2.3, and 2.5(a).

Effect of clauses purporting to limit purposes

19. Clause 2.1 of the rules document states:

The Kaupapa of Te Awe being principle objects and purposes for which Te Awe exists are wholly charitable ...

20. Clause 2.2 states:

Te Awe may carry out such other activities which in the opinion of the Board further the wholly charitable purposes outlined in clause 2.1...

21. Clause 2.3 states:

In addition, Te Awe may do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them provided always that they fall within the charitable purposes of Te Awe.

22. Clause 2.5 states:

...Te Awe shall not expend any money:

(a) Other than to further charitable purposes recognised by law...

23. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,² Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.³ 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".⁴ Hardie Boys J further wrote that:

*... in so holding, Lawrence L.J. makes it clear later 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.*⁵

² [1961] NZLR 405, 407-498.

³ [1932] 2 KB 465.

⁴ [1931] 2 KB 465, 481.

⁵ [1961] NZLR 405, 408.

24. In *Commissioner of Inland Revenue v White*,⁶ 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.*⁷

25. Finally, in *Canterbury Development Corporation v Charities Commission*,⁸ Young J wrote "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."⁹ 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."¹⁰ In that case, he concluded that they did not support a charitable purpose.
26. For these reasons, the Commission does not consider that the inclusion of the words "charitable purposes" in clauses 2.1, 2.2, 2.3 and 2.5(a) provides conclusive evidence that the Applicant's purposes are in fact exclusively charitable.

Relief of poverty

27. 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.
28. The law interprets "poverty" broadly so a person does not have to be destitute to qualify as poor.¹¹ People who are in need, aged,¹² 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 that most people take for granted.¹³ To provide

⁶ (1980) 55 TC 651.

⁷ (1980) 55 TC 651, 653.

⁸ HC WN CIV 2009-485-2133 [18 March 2010].

⁹ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

¹⁰ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

¹¹ *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.

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

¹³ *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.

“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.¹⁴

29. In relation to the relief of poverty, Ronald Young J in *Canterbury Development Corporation v Charities Commission*¹⁵ held:

The appellant submits that "the generation of jobs is a purpose that is entirely within the metes and bounds of the relief of poverty, head of charity". The appellant's case is that the work of the CDC creates jobs and therefore benefits the unemployed in two ways:

- (a) where there is a chain of employment the creation of a new job results in movement of employed persons thus leaving employment for the unemployed*
- (b) the creation of skilled jobs creates the needs for service jobs thus providing jobs for the unemployed*

I do not consider the purpose of CDC is to assist the unemployed and thereby relieve poverty. I accept the unemployed could be one of the ultimate beneficiaries of its work. The aim of the CDC is to assist businesses to prosper (within the criteria of those whom it will help). This in turn, it believes, will contribute to Christchurch and Canterbury's economic wellbeing. As a result jobs may be created and those who are unemployed may obtain some of those jobs.

In considering whether the purpose of the CDC is the relief of the unemployed it is appropriate to consider both the terms of the constitution and the activities of CDC (s18(3)). The only purpose which deals with unemployment is the initial part of cl 2.2(a). None of the activities of the CDC are directly focused on the creation of employment for the unemployed.

What is illustrated by this analysis is that the purpose of CDC is not relief of poverty through providing those who are unemployed with jobs. It is to improve the general economic wellbeing of the area. In that sense, therefore, CDC's purpose cannot be the relief of poverty. The possibility of helping someone who is unemployed is too remote for it to qualify as the charitable purpose of relief of poverty.¹⁶

30. The Applicant's purposes outlined in clause 2.1(b) are:

- (b) The relief of poverty through:*
 - (i) Facilitation of economic independence through provision of education and skills to Wellington Maori primarily by:*

¹⁴ *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.

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

¹⁶ HC WN CIV 2009-485-2133 [18 March 2010], paras 27-30.

- a. *Providing networking opportunities for the purpose of enabling the establishment or continuation of Maori businesses;*
 - b. *Providing mentoring, information, training and other practical enterprise education necessary to enable the establishment or continuation of Maori businesses; and*
 - c. *Facilitating where possible, and assessing and providing mentoring advice in relation to business opportunities and activities with a view to assisting Wellington Maori to enter into, or sustain existing, businesses or industry;*
31. The purposes in clause 2.1(b) are not limited to or directed towards people who are in need of relief, such as the unemployed. In addition, the Applicant has not provided any evidence that the people it assists have an identifiable need that requires alleviating and that they would have difficulty in alleviating that need from their own resources.
32. The Applicant, in its letter of 22 September 2010, stated:
- It [the Applicant] is a charitable organisation operating solely for the benefit of its members relieving poverty, and dependence on the welfare system, providing education and mentoring, and benefiting the community by facilitating educational opportunities, a mentoring programme and other activities aimed at assisting business owners to avoid becoming unemployed and subsequently part of the welfare system.*
33. In the Commission’s view, to assist those already in business to “avoid becoming unemployed” is not analogous to assisting those in need such as assisting the unemployed into paid employment. Although the purposes of the Applicant refer to “economic independence”, they do not specifically refer to the relief of a need such as unemployment.
34. In light of the above, the Commission does not consider that the purposes of the Applicant are charitable under relief of poverty.

Advancement of education

35. 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.¹⁷ In order to advance education, learning must be passed on to others.

¹⁷ *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.

36. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹⁸ If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.

37. In New Zealand in the case of *Re Collier (deceased)*,¹⁹ Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*It must first confer a public benefit, in that it somehow assists in the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore, deceased [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.*²⁰

38. In addition, in *Canterbury Development Corporation v Charities Commission*,²¹ Justice Ronald Young J stated:

*I do not consider this service [business training] 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. ... **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.***²² [Emphasis added]

39. The Applicant's rules, at clause 2.1(a), state as a purpose:

(a) *the advancement of education through the:*

- (i) *Provision of meaningful information designed to promote learning and education relevant to increasing the participation of Wellington Maori in business and industry;*
- (ii) *Promotion, facilitation and encouragement of educational and training programmes, courses and schemes for Wellington Maori with a view to assisting Wellington Maori in business and industry;*
- (iii) *Facilitation, fostering and promotion of research and development in business and best practices for Wellington Maori;*
- (iv) *Promotion and facilitation of access for Wellington Maori to:*

¹⁸ *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

¹⁹ [1998] 1 NZLR 81.

²⁰ [1998] 1 NZLR 81, 91-92.

²¹ HC WN CIV 2009-485-2133 [18 March 2010].

²² HC WN CIV 2009-485-2133 [18 March 2010], para 33.

- a. *Networking opportunities for the purpose of sharing information;*
 - b. *Business mentors and similar services;*
 - c. *Education training services;*
 - d. *Conferences;*
 - e. *Presentations, workshops and other learning experiences; and*
 - f. *Any other practical enterprise education opportunities available.*
- (v) *Promotion and facilitation of enterprise training to Maori Business students through participation in a summer internship programme supported by Te Awe members and providing:*
- a. *Mentoring and similar services; and*
 - b. *Any other practical enterprise education opportunities available; and*
40. The Commission considers that the purposes set in clause 2.1(a)(i), (ii), and (iv) may be charitable if they involve a balanced and systematic process of instruction, training and practice and they provide benefits for a sufficient section of the public. In addition, the Commission considers that the purpose set out in clause 2.1(iii), in so far as it relates to research, may be charitable under the advancement of education if the results of the research are disseminated to the public.
41. However, based on the case law cited above, the Commission considers that the facilitation, fostering and promotion of development in business for Wellington Maori, the promotion and facilitation of access for Wellington Maori to networking opportunities for the purpose of sharing information, and the promotion and facilitation of access for Wellington Maori to business mentors and similar services, are unlikely to be charitable under the advancement of education.
42. Moreover, the Applicant, in its letter of 22 September 2010, stated:
- Te Awe's website outlines its purpose as being to "promote, assist and encourage Maori in business through regular networking Hui where Maori Business owners meet and share their business successes and challenges".*
- This is the tangible activity performed by Te Awe.*
43. The Commission does not consider that the promotion, assistance and encouragement of Maori in business through regular networking Hui is charitable under the advancement of education.

Other matters beneficial to the community

44. 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):²³
- 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.²⁴
45. 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.*²⁵
46. Courts have sometimes found the promotion of business, industry or commerce to be charitable under the fourth head, where essential services are provided or when the community or beneficiaries are under a particular disadvantage.

²³ *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.

²⁴ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

²⁵ 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.

47. *Re Tennant*²⁶ related to a rural community and the provision of a creamery. In that case, 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.*²⁷ [Emphasis added]

48. Similarly, in *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation*,²⁸ the Australian Federal Court of Appeal decided that the entity was charitable because it was created to provide internet and communications infrastructure for Tasmania, a particularly economically disadvantaged area. Heeney J stated:

*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 those 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*²⁹. [Emphasis added]

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

*The first question in this case, therefore, is whether the CDC’s constitution and function is sufficiently of that “spirit and intendment” to be charitable purpose. 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.*³¹

50. Clause 2.1(c) states a purpose of the Applicant as:

(d) *Benefiting the community by:*

(i) *promoting and facilitating Wellington Maori in business generally with a view to encouraging economic independence and sustainability;*

²⁶ *Re Tennant* [1996] 2 NZLR 633.

²⁷ *Re Tennant* [1996] 2 NZLR 633, 640.

²⁸ (2005) 142 FCR 371.

²⁹ (2005) 142 FCR 371, 389.

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

³¹ HC WN CIV 2009-485-2133 [18 March 2010], para 42.

- (ii) *promoting excellence in Wellington Maori business people and excellent Maori businesses in the Wellington region;*
- (iii) *generally pursuing and attaining all acts, matters and things that promote the wholly charitable purposes set out in the preceding clauses with a commitment to ensuring that benefits are made available as widely as possible to Maori throughout the Wellington region.*

51. The Commission does not consider that the Applicant has provided sufficient evidence to show that its purposes and activities will assuage a need. In this case, the benefit can go to people who are well established in their chosen trade, business or profession and may not be in need of such help. Accordingly, the Applicant's purposes are not within the spirit and intendment of the Statute of Elizabeth and therefore are not charitable under "other matters beneficial to the community".

Public Benefit

52. In order to be charitable, the benefits from the Applicant's activities 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.³² 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.³³

53. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*,³⁴ the improvement of agriculture was held to be charitable when 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 would not be charitable.

54. In *Crystal Palace Trustees v Minister of Town and Country Planning*,³⁵ 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.*³⁶

³² *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

³³ *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

³⁴ [1928] 1 KB 611.

³⁵ [1951] 1 Ch 132.

³⁶ [1951] 1 Ch 132, 142.

55. In *Hadaway v Hadaway*,³⁷ the Privy Council held that assisting persons carrying on a particular trade or 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:

*The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: 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.*³⁸

56. In *Commissioners of Inland Revenue v White and Others and Attorney General*,³⁹ it was held that the entity's purpose to "promote any charitable purpose which will encourage the exercise and maintain the standards of crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest of the public therein" was charitable. However, in that case, Fox J stated:

*The three cases which I have last mentioned seem to me to establish that 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 interests of those engaged in the manufacture and sale of their particular products. ... The charitable nature of the object of promoting a particular industry depends upon the existence of a benefit to the public from the promotion of the object.*⁴⁰ [Emphasis added].

57. In that case, Fox J found that the purposes of the Association were capable of providing a public benefit and that any private benefit of individual craftsmen was not an object of the Association.

58. In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*,⁴¹ the Court held:

*[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.***⁴² [Emphasis added].

³⁷ [1955] 1 WLR 16.

³⁸ [1955] 1 WLR 16, 20 (PC).

³⁹ (1980) 55 TC 651.

⁴⁰ (1980) 55 TC 651, 659-660.

⁴¹ 1996) 69 Tax Cases 231.

⁴² (1996) 69 Tax Cases 231, 251.

59. In *Commissioner of Taxation v Triton Foundation*,⁴³ 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.
60. In *Travel Just v Canada (Revenue Agency)*,⁴⁴ the Canadian Federal Court of Appeal considered a case relating to an entity whose purposes were the creating of model tourism development projects and the production and dissemination of tourism information. The Court found that promoting commercial activity with a strong flavour of private benefit was not a purpose beneficial to the public and expressed doubt that the dissemination of information as described would qualify as either publication of research or an educational purpose.
61. In *Canterbury Development v Charities Commission*,⁴⁵ Ronald Young J held:

*The important point in this case is that CDC's assistance to business is not collateral to its purposes but central to it. The purpose of CDC's assistance to businesses is, as the constitution identifies, and the operation confirms, to make the businesses more profitable. CDC believes this assistance will, in turn, result in benefit to the Canterbury community. The **central focus however remains on increasing the profitability of businesses not public benefit.**⁴⁶ [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 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.** Public benefit is not at the core of CDC's operation.⁴⁷ [Emphasis added]*

62. Applying the Court's reasoning in the above cases, promoting, assisting and encouraging Maori in business would only be charitable if the private benefits which result from this purpose were ancillary to any public benefit, through for example, the increase in employment.

⁴³ (2005) 147 FCR 362.

⁴⁴ 2006 FCA 343, [2007] 1 CTC 294.

⁴⁵ HC WN CIV 2009-485-2133 [18 March 2010]

⁴⁶ HC WN CIV 2009-485-2133 [18 March 2010], para 60.

⁴⁷ HC WN CIV 2009-485-2133 [18 March 2010], para 67.

63. The Chairperson's Welcome in the Winter Newsletter 2009 states:

'The benefits that business networks such as Te Awe can provide to business owners have become increasingly apparent in these current economic conditions. Networks such as Te Awe can be great for your business. Members have told us how the network has helped them to:

- *Get more and better clients*
- *Improve sales and conversions, and*
- *Increase profits.*

One of the secrets to the success of Te Awe is that members are provided with opportunities to profile their business and to obtain new business from other members both directly and by way of referrals.'

64. The webpage <http://www.teawe.maori.nz/events.php> states:

July 2010

"How can you help my business?" was the question in the minds of Te Awe members at the networking event held in Wellington recently.'

May 2010

'Te Awe was pleased to host a post budget breakfast for its members and members of the Wellington Maori business community recently....Te Awe Chair Peter Johnston said that Te Awe was delighted to host the breakfast which provided an opportunity for the Wellington Maori Business community to hear from and engage with Government leaders.'

'Te Awe was pleased to host a highly successful evening business expo with the Wellington City Council in Wellington recently.

The expo provided opportunities for the Wellington City Council to showcase initiatives to support Maori Business in Wellington.

Initiatives showcased included:

- *Rugby Events*
- *City Events*
- *Wellington 2040*
- *Wellington museums Trust*
- *Wellington convention centre*
- *Community grants*
- *Grow Wellington; and*
- *Positively Wellington Tourism Attendees were also treated by a spectacular performance by acclaimed violinist Elena and friends.*

The expo was well attended and brought together Te Awe Wellington Maori Business Network members and leaders in Maori business.'

April 2010

'Connecting Maori in Business was the theme for the Te Awe and Te Puni Kokiri Maori Business Showcase held in Wellington recently. The event brought together over 100 Members from Te Awe Wellington Maori Business Network and Te Puni Kokiri Business Facilitation Service and provided opportunities for participants to meet, share information and obtain business referrals.'

65. Clauses 2.1(a)(iv) and 2.1(b)(i) of the Applicant's rules state as purposes to provide "networking opportunities for the purpose of sharing information" and "networking opportunities for the purpose of enabling the establishment or continuation of Maori businesses" respectively. The Applicant's website states that the primary aim of the Applicant is to provide business networking.
66. The Commission considers that the benefits resulting from the Applicant's purposes and activities will accrue to private individuals and business owners without regard to the wider benefit to the public. Any benefits conferred on the community at large are too remote to give the purposes a charitable nature.
67. Furthermore, in its response letter of 22 September 2010, the Applicant stated that the Applicant "is a charitable organisation operating solely for the benefit of its members".

68. The Applicant's website, <http://www.teawe.maori.nz/about.php>, states:

Te Awe has a strong membership base representing small to medium sized businesses through to large corporates. Non-Maori Business people can also take advantage of our Associate Membership option. Te Awe's purpose is to promote, assist and encourage Maori in business through regular networking Hui where Maori Business owners meet and share their business successes and challenges.

69. There is a business directory on the page <http://www.teawe.maori.nz/sunny/bdirectory.php>, which includes BDO Spicers, Deloitte, Kiwibank, Meridian Energy, and Rainey Collins Lawyers.

70. In *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*,⁴⁸ Tipping J stated:

I consider that the following words of Lord Normand at page 396 in the Glasgow Police Association case are highly material:-

" . . . what the respondents must show in the circumstances of this case, is that so viewed objectively, the association is established for a public purpose and that the private benefits to members are unsought consequences of the pursuit of the public purpose, and can therefore be disregarded as incidental. That is a view which I cannot take. The private benefits to members are essential."

*While there can be no doubt that there are distinct public benefits from the objects and functions of IPENZ it is my view, after careful consideration of both the oral and documentary evidence, that the private benefits cannot be disregarded as incidental.*⁴⁹

⁴⁸ [1992] 1 NZLR 570.

⁴⁹ [1992] 1 NZLR 570, 582.

71. In this case, the Commission considers that the private benefits to members are essential to the Applicant and are not incidental to any wider public benefit.

Applicant's submissions

72. The Applicant has stated in its response letter of 22 September 2010 that Te Awe is distinguishable from the cases cited in the Commission's letter of 5 August 2010 because:

[T]he organisations involved are either business and profit-driven (MK Hunt Foundation, Crystal Palace Trustees v Minister of Town and Country Planning, and Oldham Training and Enterprise Council) or specific to a narrow group of beneficiaries (CDC v Charities Commission, and White and Ors). Te Awe works with a minority group to benefit a larger community group. Te Awe educates and assists Maori to ensure they do not become welfare dependant and a drain on society.

73. The Applicant has not provided any evidence to the Commission of how it has assisted anyone to avoid welfare dependence, and the Applicant's website makes no reference to any such assistance.

74. The Applicant, in its letter of 22 September 2010, stated:

While the business success of individual members is a by-product of the activities that Te Awe undertakes, and therefore private profit may be achieved by some members, private pecuniary benefit is not sought nor achieved by Te Awe itself.

75. The Commission does not consider that the fact that the Applicant itself is not making private pecuniary profit prevents the Applicant failing the public benefit test. In the *Oldham* and *CDC* cases, the Enterprise Council and the three CDC organisations all had provisions in their rules preventing private pecuniary profit, yet all failed the test, as they were allowing others to profit.

Conclusion

76. The Commission considers that the Applicant's purposes set out in clause 2.1, and its activities, are non-charitable for the reasons stated above.

Charities Commission’s determination

77. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b) 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

.....
Date