

Registration decision: Te Kaporangi Charitable Trust

The facts

1. Te Kaporangi Charitable Trust ("the Applicant") applied to the Charities Commission ("the Commission") for registration as a charitable entity on 30 March 2011. The Applicant was incorporated as a board under the *Charitable Trusts Act 1957* on 13 June 2011.
2. Clause 4 of the Applicant's rules document sets out the purposes of the Applicant as:

The purposes and aims of the Trust are to use or employ both capital and income of the Trust fund for the furtherance of any charitable purposes in New Zealand which are from time to time selected by the Trustees or the charitable Trustees in accordance with the provisions of this deed. Without limiting this in any way such purposes may also include the ability:

- (a) *To assist movements, groups and organisations which are endeavoring to aid and assist in the wellbeing, health and development of families and communities;*
 - (b) *To assist movements, groups and organisations which are endeavoring to promote activities designed to assist the cultural, social and spiritual wellbeing of communities including the activity known as "providing education and social service delivery"; and*
 - (c) *To make gifts in for or towards the advancement of education, the relief of poverty and for such other charitable purposes in New Zealand as the Trustee shall, from time to time, determine. In this regard "charitable purposes" means every purpose which, in accordance with the law of New Zealand, is charitable.*
3. The application was analysed and on 27 April 2011, the Commission sent a letter requesting further information regarding the activities of the Applicant.
 4. On 9 May 2011, the Applicant sent a response providing an Output Plan, and stated:

Te Kaporangi Charitable Trust is a newly established entity. The Trust was set up because the Trustees had a passion for sport and the development of young Maori and Pacific athletes. The activities of the Trust in the Trust Deed were kept deliberately broad so that if these activities were successful then the Trust would have the scope to grow. However, at present, the Trust's focus is growing Maori and Pacific Island sporting potential.

Enclosed is a copy of the proposed Output Plan of the Trust. Also **enclosed** is a copy of the minutes where this Plan was adopted.

5. The Output Plan states:

Proposed Output Plan

Maori Potential Customised Program in Sporting Excellence

OBJECTIVE

To develop a customised high performance training program that will prepare Maori and Pacific Island athletes/rangatahi leaders to excel in their particular fields of endeavour in a way that will lift their profile and launch them into prospective professional sports careers.

SHORT TERM OUTCOME ONE

- 1) ***To plan and develop an elite training program that will prepare high performing Maori and Pacific Island athletes/rangatahi leaders to be elite sport ready***

Output 1.1

The Te Kaporangi Trust is to plan and develop a process to pilot from which 12 Maori and Pacific Island athletes/rangatahi leaders can be launched into professional or semi-professional sports careers.

Output 1.2

The Te Kaporangi Trust is to identify the 12 Maori and Pacific Island potential candidates to take part in the pilot program.

Output 1.3

The Te Kaporangi Trust is to identify and confirm a potential trainer with appropriate skill sets to meet the needs of the individuals to be included in the pilot program.

Output 1.4

Identify appropriate training facilities to undertake a physical assessment of each potential candidate.

Output 1.5

To design training and a periodisation plan through which the potential of each athlete will be developed.

Output 1.6

Develop a monitoring assessment tool customised individually to athletes to measure performance enhancements as the training progresses.

Output 1.7

Synchronise individual program plans of athletes with the seasonal needs in their fields of endeavour.

SHORT TERM OUTCOME TWO

- 2) ***Customised training pilot commences and progresses for a period 12 months***

Output 2.1

Identify appropriate training facilities or areas as required by the specific sports elements of identified participant athletes.

Output 2.2

Convene a series of hui with training institutes and the whanau of the individual participants to ensure an appropriate cost effective approach for the duration of the pilot.

Output 2.3

Pilot program training commences with quarterly monitoring assessments being developed.

SHORT TERM OUTCOME THREE

- 3) ***As a result of the successful pilot training, the successful participants to be profiled at a community event, convened in September.***

Output 3.1

Identify appropriate personnel and team to assist in the coordination and planning for the community event.

Output 3.2

Identify key stakeholders and agencies to assist in the coordination and planning for the community event

Output 3.2

Hold a community event in Rotorua in September

Output 3.3

Evaluate the pilot as the basis for the implementation of an ongoing three year integrated programme targeting Maori and Pacific Island youth who are either part of the Trans-Tasman drain of talent or who have floundered for want of support, training and mentoring assistance to secure their talents for the future sporting potential and wellbeing of our nation.

SHORT TERM OUTCOME FOUR

- 4) ***Deliver a full, final report and evaluation on the success of a customised high performance training program that had prepared Maori and Pacific Island athletes/rangatahi leaders to excel in their particular fields of endeavour in a way that has lifted their profile and launched them into prospective professional sports careers.***

6. The Commission analysed the further information, and sent the Applicant a notice that may lead to a decline on 13 May 2011 on the basis that the beneficiaries will be limited to a small number of elite athletes and therefore the purposes will not provide sufficient public benefit.

7. In a letter dated 3 June 2011, the Applicant responded to the notice that may lead to a decline. The Applicant stated:

With my letter dated 9 May 2011 I provided a Proposed Output Plan of the Trust. However, I apologize as I believe this plan was misleading and misrepresented the purpose of the Trust. The Plan and the outputs proposed are not the primary or direct purpose of the Trust, but is simply one of the activities and programmes it aims to engage in, in delivering its purpose (at 4(a) of the Trust Deed) to assist movements and groups which are endeavouring to promote the wellbeing, health and development of the community. This output plan is therefore a by-product of the Trusts purpose, not the purpose itself.

As indicated in my previous letter, the Trust was set up because the Trustees had a passion for sport and the development of Maori and Pacific athletes. They believe that sport not only benefits the individual but fosters the wellbeing of the entire community. The deeper purpose of the Trust (and perhaps this should be better reflected in the Trust Deed) is thus to advance the health and physical wellbeing of Maori and Pacific populations through sport. If necessary I am able to get a resolution from the Trustees or have the Trustees to amend the Trust Deed to this effect.

In regards to the Proposed Output Plan, which is the first initiative that the Trust plans on supporting, the initial project aims to take Maori and Pacific Island people that show potential in sports and take them that further step. These are people who have limited access to sports development and therefore although talented, would be unlikely to progress. This is in accordance with the charitable purpose of advancing the health and physical wellbeing of Maori and Pacific populations through sport. It promotes sporting achievement, it inspires others to achieve at a high level, it keeps youth engaged and out of trouble as well as promoting a healthy lifestyle for the broader family and community.

The Commission indicated that because the primary beneficiaries of the Trust are practically limited to elite athletes this constitutes an unreasonable restriction on who may benefit from the activities of the Trust. Firstly, as already stated, the Proposed Output Plan is not the only activity that the Trust plans on undertaking, it is simply the first. The Trust wants to support initiatives that promote the physical well being of Maori and Pacific populations through sport. They do not want to limit their activities to elite sportspeople.

Secondly, in regards to the Proposed Output Plan, we believe the project it is not aimed solely at elite athletes. It is for Maori and Pacific Islanders that show raw talent and do not have the means or the correct training to advance within their chosen sport. I guess, it is fair to say that this particular project aims at helping to create elite athletes however, one does not have to be an elite athlete to come through the program. Further, the Proposed Output Plan is also simply a pilot project, which, if successful will hopefully be expanded to include as many people as the funds received permit.

Finally, the Trust believes that the benefits of undertaking the Proposed Output Plan transcends beyond simply the individuals involved. It promotes a healthier lifestyle for their extended families, it inspires and motivates those around them as well as re-directing youth into positive careers.

The issues

8. 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 trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act. 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

9. Under section 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for 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 benefiting the public or a sufficient section of the public.
11. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,² Slade J states:

The third requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.

¹ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.
² [1982] 1 Ch. 321, 341.

12. In *Vancouver Society of Immigration and Visible Minority Women v. Minister of National Revenue*,³ Gonthier J states:

The first is the principle of exclusivity. To qualify as charitable, the purposes of an organisation or trust must be exclusively charitable...The primary reason for the exclusivity requirement is, as Slade J. observed in McGovern, supra, at p.340 that if charitable organizations were permitted to pursue a mixture of charitable and non-charitable purposes there could be no certainty that donations to them would be channelled to the pursuit of charitable purposes.

13. In *Molloy v Commissioner of Inland Revenue*,⁴ Somers J states:

To be charitable in law...an expressed purpose upon its true construction must be limited or confined to charitable purposes only.

14. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.

The law regarding activities

15. In considering an application, section 18(3)(a) of the *Charities Act 2005* 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.*

16. In *Canterbury Development Corporation v Charities Commission*,⁵ Ronald Young J states:

*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 (s 18(3)).*

The Charity Commission for England and Wales' approach to sport

17. In their guidance for charitable status and sport, the Charity Commission for England and Wales states:

Open membership

14. Open membership is essential if a club is to meet the requirement of public benefit that applies to all charities. A club that operates restrictions in its membership provisions (other than reasonable restrictions that are necessary to enable the club to operate effectively - see paragraphs 15-17 below) could not claim to be encouraging community participation.

³ (1999) 169 D.L.R. (4th) 34, 58.

⁴ [1981] 1 NZLR 688, 691.

⁵ HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

Legitimate restrictions on membership

15. *As far as is reasonably practical, a CASC [community amateur sports club] will need to provide facilities for all who wish to play. That said, there are some circumstances in which certain restrictions on membership are reasonable and justified.*

16. *We accept that the facilities of some clubs are quite limited and that it is not always possible to accommodate everyone who wishes to become a member, on practical or health and safety grounds for example. In those circumstances, it is perfectly reasonable for a club to establish a waiting list for membership where they are oversubscribed, provided that the next available membership is offered to the person at the top of the waiting list (on a first come, first served basis) and not offered to someone lower down the list on the basis that they are a better player. ...*

What sort of sports clubs could not be regarded as charitable?

35. *Our decision to recognise the promotion of community participation in healthy recreation as a charitable purpose does not mean that all sports bodies can be charitable. Those bodies which have a restricted membership (other than for the reasons set out in paragraphs 15 - 17 above), perhaps for social reasons or because they are concerned with professional or elite sport, for example, or which are not capable of improving physical health and fitness, would not be able to take advantage of our decision.⁶*

The New Zealand Charities Commission's approach to sport and recreation bodies

18. In *Travis Trust v Charities Commission*, Joseph Williams J states:

In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth.⁷

19. The Commission considers that the above case is authority for the proposition that sporting entities can be charitable if they are advancing a charitable purpose. Examples of other charitable purposes that sporting entities may advance include:

- relieving poverty;
- advancing education; or
- providing a purpose otherwise beneficial to the community, such as promoting health by providing opportunity for participation in amateur sports that involve the pursuit of physical fitness or providing community recreational facilities.

⁶ <http://www.charity-commission.gov.uk/Publications/rr11.aspx>
⁷ (2009) 24 NZTC 23,273, 23,281.

20. In addition, in order to be charitable, a sporting entity must provide a public benefit. Factors that may count against this include where:
- There are unreasonable or unjustifiable restrictions placed on who may benefit from the activity;
 - Prohibitive costs associated with the activity (including fees and equipment) will exclude the less well off;
 - There is an unreasonable risk of injury or harm associated with the activity which will outweigh any benefit to the public;
 - Providing amusement, entertainment, or social activities for members is a primary purpose.

Charities Commission's analysis

21. The Commission has analysed the purposes set out in clause 4 of the Applicant's rules and the information supplied by the Applicant.

Stated purposes

22. Clause 4 of the rules document states:

The purposes and aims of the Trust are to use or employ both capital and income of the Trust fund for the furtherance of any charitable purposes in New Zealand which are from time to time selected by the Trustees or the charitable Trustees in accordance with the provisions of this deed. Without limiting this in any way such purposes may also include the ability:

- (a) *To assist movements, groups and organisations which are endeavoring to aid and assist in the wellbeing, health and development of families and communities;*
- (b) *To assist movements, groups and organisations which are endeavoring to promote activities designed to assist the cultural, social and spiritual wellbeing of communities including the activity known as "providing education and social service delivery"; and*
- (c) *To make gifts in for or towards the advancement of education, the relief of poverty and for such other charitable purposes in New Zealand as the Trustee shall, from time to time, determine. In this regard "charitable purposes" means every purpose which, in accordance with the law of New Zealand, is charitable.*

23. The Applicant's objects set out in clause 4 appear to indicate that the Applicant will further a range of charitable purposes, including the relief of poverty, the advancement of education and "other matters beneficial to the community". The following case law shows, however, that in order to acquire charitable status, an entity must not only have charitable purposes stated in its governing documents, it must also undertake solely charitable purposes.

24. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,⁸ Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.⁹ 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”.¹⁰ 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.*¹¹

25. In *Commissioner of Inland Revenue v White*,¹² 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.*¹³

26. Finally, in *Canterbury Development Corporation v Charities Commission*,¹⁴ 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.”¹⁵ 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.”¹⁶ In that case, he concluded that they did not support a charitable purpose.

27. The cases cited above and section 18(3)(a) of the *Charities Act 2005* therefore require the Commission to undertake an assessment of the Applicant’s activities.

⁸ [1961] NZLR 405, 407-498.

⁹ [1932] 2 KB 465.

¹⁰ [1931] 2 KB 465, 481.

¹¹ [1961] NZLR 405, 408.

¹² (1980) 55 TC 651.

¹³ (1980) 55 TC 651, 653.

¹⁴ HC WN CIV 2009-485-2133 [18 March 2010].

¹⁵ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

¹⁶ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

Activities

28. When asked for further detail about the nature and extent of the Applicant's current and proposed activities, the Applicant provided the following information in its letter of 9 May 2011:

Te Kaporangi Charitable Trust is a newly established entity. The Trust was set up because the Trustees had a passion for sport and the development of young Maori and Pacific athletes. The activities of the Trust in the Trust Deed were kept deliberately broad so that if these activities were successful then the Trust would have the scope to grow. However, at present, the Trust's focus is growing Maori and Pacific Island sporting potential.

29. The enclosed Output Plan stated:

Proposed Output Plan
Maori Potential Customised Program in Sporting Excellence

OBJECTIVE

To develop a customised high performance training program that will prepare Maori and Pacific Island athletes/rangatahi leaders to excel in their particular fields of endeavour in a way that will lift their profile and launch them into prospective professional sports careers.

SHORT TERM OUTCOME ONE

- 1) ***To plan and develop an elite training program that will prepare high performing Maori and Pacific Island athletes/rangatahi leaders to be elite sport ready***

Output 1.1

The Te Kaporangi Trust is to plan and develop a process to pilot from which 12 Maori and Pacific Island athletes/rangatahi leaders can be launched into professional or semi-professional sports careers.

Output 1.2

The Te Kaporangi Trust is to identify the 12 Maori and Pacific Island potential candidates to take part in the pilot program.

...

SHORT TERM OUTCOME FOUR

- 4) *Deliver a full, final report and evaluation on the success of a customised high performance training program that had prepared Maori and Pacific Island athletes/rangatahi leaders to excel in their particular fields of endeavour in a way that has lifted their profile and launched them into prospective professional sports careers.*
30. As no evidence has been provided in relation to activities which will relieve poverty, advance education or advance religion, the Commission has considered whether the Applicant's activities are charitable under "other matters beneficial to the community".

31. 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):¹⁷
- 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.¹⁸
32. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. In particular, courts have found the promotion of public health to be charitable under this head where the benefit is available to a sufficient section of the public.¹⁹
33. The Commission notes that there may be some health benefits for the 12 Maori and Pacific Island athletes who will be assisted by the Applicant, however the Applicant has not provided any evidence to show how this will provide health benefits for the wider community. For the reasons set out below, the Commission does not consider that providing assistance to a limited number of elite athletes will amount to the promotion of public health and therefore this is not a charitable purpose under “other matters beneficial to the community”.

¹⁷ *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.

¹⁸ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

¹⁹ *McGregor v Commissioner of Stamp Duties* [1942] NZLR 164; *Re Laidlaw Foundation* (1984) 13 DLR (4th) 491.

Public benefit

34. In order to be charitable, the benefits from an Applicant's purposes must be available to a sufficient section of the community. Any private benefits arising from the Applicant's purposes 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.²⁰ 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.²¹

35. There are two aspects to the public benefit test, that is:

- there must be an identifiable benefit, assessed in the light of modern conditions and
- the benefit must be to the general public or to a sufficient section of the public.²²

36. In *Inland Revenue Commissioners v Baddeley*,²³ Viscount Simonds stated:

Somewhat different considerations arise if the form, which the purporting charity takes, is something of general utility which is nevertheless made available not to the whole public but only to a selected body of the public – an important class of the public it may be. For example, a bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. But confine its use to a selected number of persons, however numerous and important: it is then clearly not a charity. It is not of general public utility: for it does not serve the public purpose which its nature qualifies it to serve.

37. Hubert Picarda, in *The Law and Practice Relating to Charities*, states:

There is, as Viscount Simonds pointed out in IRC v Baddeley, a distinction

'between a form of relief extended to the whole community yet, by its very nature, advantageous only to the few, and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it'.²⁴

38. As set out in the case law cited above, the Commission has considered whether there are unreasonable or unjustifiable restrictions placed on who may benefit from the activities specified by the Applicant in order to determine whether these will provide a public benefit.

²⁰ *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.

²¹ *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.

²² See Tudor on Charities, 9th edition, London, Sweet & Maxwell, 2003, at 7.

²³ [1955] AC 572, 592.

²⁴ Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd Ed., London, Butterworths, 1999 at 21.

39. In the Proposed Output Plan, it is stated:

Proposed Output Plan

Maori Potential Customised Program in Sporting Excellence

OBJECTIVE

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SHORT TERM OUTCOME FOUR

- 4) *Deliver a full, final report and evaluation on the success of a customised high performance training program that had prepared Maori and Pacific Island athletes/rangatahi leaders to excel in their particular fields of endeavour in a way that has lifted their profile and launched them into prospective professional sports careers.*

40. In its letter of 3 June 2011, the Applicant states:

In regards to the Proposed Output Plan, which is the first initiative that the Trust plans on supporting, the initial project aims to take Maori and Pacific Island people that show potential in sports and take them that further step.

...

Secondly, in regards to the Proposed Output Plan, we believe the project it is not aimed solely at elite athletes. It is for Maori and Pacific Islanders that show raw talent and do not have the means or the correct training to advance within their chosen sport. I guess, it is fair to say that this particular project aims at helping to create elite athletes however, one does not have to be an elite athlete to come through the program.

41. The Commission considers that providing the assistance set out above for 12 Maori and Pacific Island athletes to "lift their profile and launch them into prospective professional sports careers" will amount to a private benefit for these individuals, rather than a public benefit. Participation in such a programme is restricted to a small number of

athletes based on their skill or ability and it will not be open to anyone who wishes to participate.

42. Although the skills and competencies and the health and fitness of the 12 athletes who are selected to participate in the programme are likely to be developed, the Commission considers that this is unlikely to provide sufficient public benefit to be considered charitable.

Applicant's submissions

43. In its letter of 3 June 2011, the Applicant states:

With my letter dated 9 May 2011 I provided a Proposed Output Plan of the Trust. However, I apologize as I believe this plan was misleading and misrepresented the purpose of the Trust. The Plan and the outputs proposed are not the primary or direct purpose of the Trust, but is simply one of the activities and programmes it aims to engage in, in delivering its purpose (at 4(a) of the Trust Deed) to assist movements and groups which are endeavouring to promote the wellbeing, health and development of the community. This output plan is therefore a by-product of the Trusts purpose, not the purpose itself.

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In regards to the Proposed Output Plan, which is the first initiative that the Trust plans on supporting, the initial project aims to take Maori and Pacific Island people that show potential in sports and take them that further step. These are people who have limited access to sports development and therefore although talented, would be unlikely to progress. This is in accordance with the charitable purpose of advancing the health and physical wellbeing of Maori and Pacific populations through sport. It promotes sporting achievement, it inspires others to achieve at a high level, it keeps youth engaged and out of trouble as well as promoting a healthy lifestyle for the broader family and community.

The Commission indicated that because the primary beneficiaries of the Trust are practically limited to elite athletes this constitutes an unreasonable restriction on who may benefit from the activities of the Trust. Firstly, as already stated, the Proposed Output Plan is not the only activity that the Trust plans on undertaking, it is simply the first. The Trust wants to support initiatives that promote the physical well being of Maori and Pacific populations through sport. They do not want to limit their activities to elite sportspeople.

Secondly, in regards to the Proposed Output Plan, we believe the project it is not aimed solely at elite athletes. It is for Maori and Pacific Islanders that show raw talent and do not have the means or the correct training to advance within their chosen sport. I guess, it is fair to say that this particular project aims at helping to create elite athletes however, one does not have to be an elite athlete to come through the program. Further, the Proposed Output Plan is also simply a pilot project, which, if successful will hopefully be expanded to include as many people as the funds received permit.

Finally, the Trust believes that the benefits of undertaking the Proposed Output Plan transcends beyond simply the individuals involved. It promotes a healthier lifestyle for their extended families, it inspires and motivates those around them as well as re-directing youth into positive careers.

44. The Commission does not consider that the Applicant has demonstrated how assisting 12 people will deliver the purpose in clause 4(a), “[t]o assist movements, groups and organisations which are endeavouring to aid and assist in the wellbeing, health and development of families and communities”. Nor has the Applicant provided any evidence to show how launching the professional sports careers of these 12 individuals will “advance the health and physical well-being of Maori and Pacific Island populations”, “keep youth engaged and out of trouble”, or “promote a healthy lifestyle for the broader family and community”.
45. The Commission notes that courts have expressed a great deal of scepticism about the appropriateness of defining the purpose of a trust by reference to alleged downstream benefits. For example, in *Amateur Youth Soccer Association v Canada (Revenue Agency)*,²⁵ Rothstein J held:

The fact that an activity or purpose happens to have a beneficial by-product is not enough to make it charitable. If every organisation that might have beneficial by-products, regardless of its purposes, were found to be charitable, the definition of charity would be much broader than what has hereto for been recognised in the common law.²⁶

46. The non-charitable activities in the Output Plan were the only activities identified by the Applicant when originally asked for further detail about the nature and extent of its current and proposed activities. As the Applicant does not appear to have any other activities that have been planned in detail, the Commission is not of the view that these non-charitable activities are a “by-product of the Trust’s purpose”. Instead, they appear to be independent purposes that are not ancillary to any charitable purpose.

²⁵ (2007) 287 DLR (4th) 4 (SCC).

²⁶ (2007) 287 DLR (4th) 4 (SCC) at 22; quoted with approval by Joseph Williams J in *Travis Trust v Charities Commission* HC Wellington CIV-2008-485-1689 3 December 2008 at para 32.

47. To be eligible for registration an applicant must have exclusively charitable purposes, therefore even if this activity is "simply the first", the Applicant will not meet registration requirements. The Commission notes that the Applicant hopes to be able to expand this programme if funds permit, therefore if the requisite funding is not found, the Applicant will only be carrying out a non-charitable purpose.

Conclusion


48. The Commission concludes that the Applicant is not undertaking exclusively charitable purposes which will provide a benefit for a sufficient section of the public.

Charities Commission's determination

49. 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 a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

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

16/8/11
Date