

Registration decision: The Vision Manawatu Trust

The facts

1. The trustees of The Vision Manawatu Trust (the Applicant) were incorporated as a board under the Charitable Trusts Act 1957 on 9 February 1999.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 1 February 2008.
3. Clause 4.1 (2) of the Applicant's Trust Deed states that the Trust Fund shall be held upon trust to be applied as the trustees "may in their absolute discretion think fit for all or any ... of the Charitable Objects".
4. "Charitable Objects" are defined in clause 1.1 of the Trust Deed as being those contained in Background A:

"1 Any purpose or purposes within the Manawatu whether such purpose or purposes relates to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community which in accordance with the laws of New Zealand is or are charitable.

2 All such acts matters and things and arrangements as are incidental or conducive to the attainment of any of the objects of the Trust including but not by way of limitation the following:

(i) Encouraging and assisting in the establishment and development of sustainable new and existing businesses in the Manawatu area;

(ii) Promoting new investments and developing viable employment opportunities within the Manawatu area;

(iii) Working with local, regional and central government and other providers of services within the Manawatu area to ensure that services and facilities in the Manawatu area will enhance economic growth;

(iv) Working with local and regional government to develop a sophisticated marketing initiative designed to retain, expand and attract businesses and investment capital to the Manawatu area;

(v) Acquiring, updating and monitoring a data base containing information on businesses and investment opportunities in the Manawatu area;

(vi) Identifying the requirements of businesses in the Manawatu area to assist in achieving the foregoing objects and ensuring those requirements are met or exceeded;

(vii) Co-operating with any other person or persons, body, service, institution, company, corporation, clubs, societies, statutory body or government department in order to promote, achieve, support or maintain any of the foregoing activities;.

- (viii) *Publishing books manuscripts journals bulletins circulars newspapers or any other publications in order to promote support or maintain any of the foregoing activities;*
- (ix) *The creation and implementation of a strategic profile for the Trust a draft of which is set out in Schedule IV or in such other form as the Trustees may from time to time determine;*
- (x) *Entering into contracts with local, regional and central government for the purposes of all or any of the foregoing objects;*
- (xi) *Maintaining recognition of Palmerston North and its environs as the knowledge centre of New Zealand and sustaining and developing Palmerston North as a leading national and international centre for excellence in education, research and technology;*
- (xii) *Maintaining a knowledge city image for Palmerston North and its environs promoting the philosophy inherent in the contract made between the Palmerston North City Council and Pancert Inc proposed to be assigned to the Trust;*
- (xiii) *Maintaining an environment within Palmerston North and its environs that supports knowledge industries;*
- (xiv) *Increasing investment in knowledge industries in Palmerston North and its environs;*

PROVIDED HOWEVER that if by reason of any alteration in the law relating to income tax it is at any time necessary to amend such purposes in order to preserve the right to exemption from income tax of the kind referred to in ss CB4(1)(c) and CB4(1)(e) of the Income Tax Act 1994 such purposes shall thereupon be deemed to be amended to the extent necessary."

5. The Commission analysed the application for registration and on 5 November 2008, sent the Applicant a letter advising that its application may be declined on the basis that the Trust was established for the purpose of generic economic growth and not directed at any identifiable need.
6. The Applicant responded in a letter dated 8 December 2008, stating that "the Trust does meet the requirement for registration under the Act as it is maintained exclusively for charitable purposes, particularly matters beneficial to the community." The Applicant also submitted:
 - there need not be a pre-existing social disadvantage or need which a Trust seeks to address before a Trust can be considered charitable;
 - the Trust's activities are directed towards the whole community, with programmes provided with the object of developing the local economy for the benefit of community members in general;
 - the ultimate goal of economic development is to improve the standard of living and quality of life of the citizens in the Manawatu region.

The issues

7. 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 Trust is 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:

- (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

8. 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.
9. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public. A purpose that is expressed to be for the benefit of private individuals will not qualify as charitable at law.
10. 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.
11. Section 5(3) of the Act provides that for an entity to have charitable purposes, any non-charitable purpose must be ancillary to a charitable purpose.
12. 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 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.

13. In order to be a valid trust at law, a trust that is for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the Charitable Trusts Act 1957 will operate to 'save' trusts that have both charitable and "non-charitable and invalid" purposes. In such a case, the law directs that the trust is to be interpreted and given effect to as if the invalid and non-charitable purposes did not apply.
14. The Courts have held that there must be a substantial charitable content or character for section 61B of the Charitable Trusts Act 1957 to apply.³
15. There have been a number of Court decisions relating to the issue of whether purposes are "beneficial to the community".
16. In *Commissioner of Inland Revenue v Medical Council*,⁴ the Court held that the correct approach was to determine whether the purpose fell within the spirit and intendment of the Preamble to the Statute of Elizabeth. This involved seeking an analogy with purposes mentioned in the Preamble itself.
17. The Court of Appeal in *Latimer v Commissioner of Inland Revenue*⁵ agreed with the approach in the *Medical Council* case, stating that it was important to be guided by principle rather than a detailed analysis of decisions on particular cases when determining whether purposes fell within the spirit and intendment of the Preamble to the Statute of Elizabeth.
18. Not all organisations which 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."*⁶

Charities Commission's analysis

19. Clause 4.1 (2) of the Applicant's Trust Deed states that the capital and income remaining after payment of fees, costs and disbursements will be applied to the charitable objects as defined in clause 1.1.
20. The Commission does not consider that the inclusion of the proviso following Background A 2 (xiv) provides conclusive evidence that the

³ *Re Beckbessinger* [1993] 2 NZLR 362; *Re Ashton* [1955] NZLR 192 (CA); *Re Howey* [1991] 2 NZLR 16 (CA).

⁴ [1997] 2 NZLR 297.

⁵ [2002] 3 NZLR 147.

⁶ 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.

foregoing purposes are actually charitable or requires that the purposes must always be charitable at law.⁷

21. The Commission considers that the purposes in Background A 2 (vii) to (x), (xi) and (xii) are ancillary to the purposes in (i) to (vi) and (xiii) to (xiv). Eligibility for registration under section 13(1)(a) of the Act will therefore depend on whether the purposes in Background A 2 (i) to (vi) and (xiii) to (xiv) are charitable.
22. The Commission considers that the purposes in Background A (2) (xiii) to (xiv) may be charitable under the advancement of education head, as they seek to maintain an environment conducive to knowledge industries, such as Massey University, a settlor of the Trust. It is noted that the Applicant's activities include running a 'Tools for Schools' initiative that encourages young people to study trades and applied technology training. The Applicant also supports the Young Enterprise Scheme at secondary schools in the Manawatu area.
23. The Applicant also runs Enterprise Training Programmes for motivated owners and managers of businesses that have potential to grow. This could fall within the advancement of education head, although it prima facie confers a private benefit on the business owners.
24. The remaining charitable objects (Background A 2 (i) to (vi)) have been considered in relation to the fourth head of charity, "other matters beneficial to the community". As earlier noted, in order to be charitable under this head a purpose must be beneficial to the community and be within the spirit and intent of the Preamble to the Statute of Elizabeth. This involves seeking an analogy with the purposes listed in the Preamble.

Beneficial to the community

25. In order to fall within the fourth head, the benefits must be aimed at 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.⁸ 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.⁹
26. The Commission considers that the Applicant's purposes in Background A 2 (i) to (vi) will promote the private interests of current and future business owners in the Manawatu region, and that any benefits conferred on the remainder of the community by these purposes will be too remote and uncertain to confer a public benefit as required by the fourth head.

⁷ See also *McGovern v Attorney-General* [1982] 1 Ch 321, 344 and 353 where Slade J held that a similar proviso could not save the preceding invalid and non-charitable purpose.

⁸ *Inland Revenue Commissioners v Oldham Training and Enterprise Council* (1986) STC 1218; *Travel Just v Canada Revenue Agency* 2006 FCA 343, [2007] 1 CTC 294.

⁹ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

Within the spirit and intendment of the Preamble

27. The Commission does not consider that the Applicant's purposes fall within the spirit and intendment of the Preamble to the Statute of Elizabeth by being analogous to the purposes listed in the Preamble.
28. Courts have found the following to be charitable under the fourth head:
- beautification of a locality;¹⁰
 - preservation of a locality;¹¹
 - maintenance of public parks and gardens;¹²
 - improvement of public safety;¹³
 - maintenance of public buildings and facilities.¹⁴
29. The Commission has considered whether there is any analogy between those purposes and the Applicant's purposes.
30. The Commission has also considered whether the following cases could assist the Applicant: *Inland Revenue Commissioners v Yorkshire Agricultural Society*¹⁵, *Re Tennant*¹⁶ and *Lysons v Commissioner of Stamp Duties*.¹⁷
31. *Inland Revenue Commissioners v Yorkshire Agricultural Society* is authority for the proposition that the general improvement of agriculture is charitable. However, as with any other potentially charitable purpose, the promotion of agriculture for private profit or benefit will not be charitable. For example in *Hadaway v Hadaway* the Court held:

"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."¹⁸

32. *Re Tennant* relates to a rural community and the provision of a creamery. In that case, the Court applied other cases that had held agriculture generally to be charitable such as *Inland Revenue Commissioners v Yorkshire Agricultural Society*. The Court 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

¹⁰ *Re Pleasants* (1923) 39 TLR 675.

¹¹ *Re Verrall* [1916] 1 Ch 100; *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705; and *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325.

¹² *Morgan v Wellington City Corporation* [1975] 1 NZLR 416 and *Re Bruce* [1918] NZLR 16.

¹³ *Inland Revenue Commissioners v Baddeley* [1955] AC 572.

¹⁴ *Kjar v Mayor of Masterton* [1930] GLR 303; *Re Chapman* (High Court, Napier, CP89/87, 17 October 1989, Greig J); and *Guild v Inland Revenue Commissioners* [1992] 2 All ER 10 (HL).

¹⁵ [1928] 1 KB 611.

¹⁶ [1996] 2 NZLR 633.

¹⁷ [1945] NZLR 738.

¹⁸ [1955] 1 WLR 16 (PC).

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.” [Emphasis added]

33. The Commission acknowledges that, having regard to the above cases and using the principle-based approach referred to in *Medical Council and Latimer*, where economic development purposes are aimed at meeting identifiable community needs, these purposes may be charitable. However, this is not considered to be the case in relation to the Applicant’s purposes.
34. The Commission is of the view that the Applicant’s purposes are primarily to benefit private individuals and are not analogous to the purposes previously considered by the Courts to be charitable under the fourth head.

Benefit to a locality

35. While it is clear from *Re Carter (deceased)*¹⁹ that a trust for the benefit of the people of a defined area **may be** charitable, it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As stated in *The Law and Practice Relating to Charities* “[a] non-charitable purpose will not be rendered charitable by localising the benefits”.²⁰
36. Courts have reasoned that, where no purpose is defined, the fact that the gift is directed to a locality imports the necessary element of public benefit, and therefore a charitable purpose is implicit in the context. Conversely, where a donor actually specifies a purpose, as in the present case, the Court must determine whether or not that purpose is charitable.²¹
37. The Applicant argued that the UK case of *Guild v Inland Revenue Commissioners* supports the view that “there need not be a pre-existing disadvantage or need which a Trust seeks to address, before a Trust can be considered charitable”.²² That case related to a will directing that the residue of an estate be left to a town council for use in connection with a sports centre or similar purposes in connection with sport. The legislation at issue was the Recreational Charities Act 1958 (UK), the provisions of which are mirrored in section 61A of the Charitable Trusts Act 1957.
38. In *Guild*, the Court held that it was not necessary for a facility for recreation or other leisure time occupation to be provided with the object of improving the conditions of life for persons who suffered from some form of social deprivation. It was sufficient if the facilities were provided with the object of improving the conditions of life for members of the public at large, as required by the wording of section 1(2)(b)(ii) of the Recreational Charities Act.

¹⁹ (1897) 16 NZLR 431 (CA).

²⁰ Hubert Picarda, 1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, p 146.

²¹ Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

²² Letter from the Applicant’s solicitors, Fitzherbert Rowe, to the Commission dated 8 December 2008.

39. The Commission does not consider that the provisions in section 61A of the Charitable Trusts Act, or the Court's comments in *Guild*, are relevant to a determination of the Applicant's purposes, as the Applicant's purposes in Background A 2 (i) to (vi) do not relate to the provision of facilities for, or the organisation of, recreation or other leisure time occupations.
40. Therefore, the Commission concludes that the Applicant's purposes in Background A 2 (xiii) to (xiv) may be charitable, but that the purposes in Background A 2 (i) to (vi) are not charitable. These purposes do not amount to "other matters beneficial to the community" and they are not within the spirit and intendment of the Preamble to the Statute of Elizabeth.

Section 61B

41. The Commission has considered whether section 61B of the Charitable Trusts Act 1957 applies. Section 61B provides that if a trust is substantially charitable but would otherwise be rendered invalid by the presence of some actual or potential non-charitable purpose, the trust will be treated as valid and operate only in relation to the relevant charitable purposes.²³ The information supplied by the Applicant and the scope of the non-charitable purposes listed under the trust deed do not indicate that the Trust is substantially charitable. The Commission considers that the Trust does not have substantially charitable purposes, therefore section 61B of the Charitable Trusts Act cannot be used to validate the Trust.

Charities Commission's determination

42. 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 Trust is not of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act. The Applicant has non-charitable purposes, and these non-charitable purposes are not ancillary to charitable purposes. Furthermore, section 61B of the Charitable Trusts Act 1957 does not apply to validate the trust.

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

12/3/09
Date

²³ *Re Beckbessinger* [1993] 2 NZLR 362.