

Registration decision: Tourism Catlins

The facts

1. Tourism Catlins (the Applicant) was established as a trust on 3 March 2005. The trustees were incorporated as a board under the Charitable Trusts Act 1957 on 15 March 2005. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 12 July 2007.
2. The Applicant's main purposes are set out in clauses 3 and 4 of the Trust Deed:

"3. Recitals

3.1 *The Trustees are desirous of establishing a trust for the implementation of the Catlins Tourism Strategy, to move development of tourism forward in a sustainable manner, and the promotion of the common good and well being of the people of the Catlins.*

3.2 *The Trustees intend that the Trust will be charitable at law.*

4. Objectives

The charitable purposes and objectives of [the] Trust are as follows:

- (i) *To promote the economic, social and physical well being of the residents of the Catlins through the support and implementation of the Catlins Tourism Strategy.*
- (ii) *To plan, manage and promote activities and initiatives that enhance the well being of the people of the Catlins.*
- (iii) *To encourage and promote broad-based active participation in the Trust's activities by the residents of the Catlins, irrespective of age, ability, ethnicity or gender."*

3. On 5 February 2008, the Commission sent the Applicant a letter requesting further information about the Applicant's activities and how these activities would provide a benefit to the community.¹
4. In September 2008, the Commission contacted the Applicant and was advised that the Applicant had not received the February 2008 letter. On 16 September 2008, the Commission re-sent its request for further information and the Applicant responded in an email of the same date.
5. The Commission analysed the additional information, and on 16 September 2008, sent the Applicant a notice that may lead to a

¹ No response was received to the Commission's letter.

decline, pursuant to section 18(3)(c)(i) of the Act, on the basis that the Applicant did not have exclusively charitable purposes.

6. On 20 September, the Applicant responded, advising that it was charged with implementing the *Catlins Tourism Strategy 2004* and provided a copy of this document. The Applicant asked the Commission to consider its Trust Deed "in the context of the *Strategy* and its recommendations. These recommendations are what Tourism Catlins is endeavouring to carry out."
7. The recommendations, also referred to as "strategic objectives" are set out below:

Strategic Objective 1: *To provide for the implementation of the Catlins Tourism Strategy through the development of an appropriate body (or bodies) with appropriate mandate, representation and funding.*

Strategic Objective 2: *To provide for the absolute protection of the natural and cultural resources that are integral to Catlins tourism from the negative physical impacts of tourism*

Strategic Objective 3: *To optimise the value of tourism for local residents, including social and economic benefits.*

Strategic Objective 4: *To develop opportunities to enhance the visitor experience, in terms of attractions and activities.*

Strategic Objective 5: *To optimise information flow to visitors in the Catlins through the provision of appropriate signage, information, interpretations and associated services.*

Strategic Objective 6: *To cater for the hospitality service needs of the Catlins tourist through provision of appropriate accommodation and food services.*

Strategic Objective 7: *To increase our knowledge of the visitor and their relationship with the community and the environment in the Catlins.*

Strategic Objective 8: *To ensure that the infrastructural requirements of the Catlins tourism industry are addressed.*

Strategic Objective 9: *To match the visitor with the Catlins tourism product through appropriate marketing and promotion.*

Strategic Objective 10: *To assist Catlins tourism operators (and associated services) to achieve an outstanding level of service to their clients.*

The issues

8. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the 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, the Commission has considered whether the Trust's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

9. Section 13(1)(a) of the Act requires that in the case of the trustees of a trust, the 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. In order for a purpose to be charitable, it must fall within the definition of charitable purpose set out in section 5(1) of the Act and it must provide a public benefit.
11. 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.
12. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and analogous to the spirit and intendment of the purposes set out in the Preamble to the Statute of Charitable Uses 1601 (Statute of Elizabeth I).
13. New Zealand law favours a principled approach in this regard, rather than a detailed analysis of the decisions in particular cases. There is also authority for the view that purposes that are considered to be beneficial to the community will, by implication, necessarily be analogous to the purposes in the Preamble, unless there are grounds for holding that they are not.²
14. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to:
 - (i) *the activities of the entity at the time at which the application was made; and*
 - (ii) *the proposed activities of the entity; and*
 - (iii) *any other information that it considers is relevant; ..."*

Charities Commission's analysis

15. The Commission considers that the statement in clause 3.2 of the Applicant's Trust Deed, that the "Trustees intend that the Trust will be charitable at law", cannot be used as conclusive evidence that the trust is in fact charitable.³

² *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297.

³ *Morice v Bishop of Durham* 1804 9 VES 399; *McGovern v Attorney-General* [1982] Ch 321, 343-4; *Keoppler's Will Trusts* [1984] Ch 243, 257-8.

16. The objectives set out in clauses 4(i) and (ii) of the Trust Deed are worded in general terms. In order to determine whether these objectives are charitable, the Commission has considered the strategic objectives set out in the *Catlins Tourism Strategy 2004*. The Commission considers that the objective set out in clause 4(iii) is ancillary to the objectives set out in clauses 4(i) and (ii).
17. Strategic Objective 2 relates to the protection of the natural and cultural resources of the area. This could amount to protection of the environment, which has been considered charitable in a number of cases including *Re Verral*,⁴ *Scott v National Trust for Places of Historic Interest or Natural Beauty*,⁵ and *Re Centrepoint Community Growth Trust*.⁶
18. Some of the activities set out in Strategic Objective 4, such as developing attractions and activities along tourism themes including Maori, geology, colonial heritage, and arts and crafts, may advance education. Some of the other listed activities, such as developing food and wine activities, may not.
19. Strategic Objective 5, which relates to optimising the flow of information to visitors to the area, may advance education. However, it is noted that the Canadian Federal Court of Appeal, in *Travel Just v Canada Revenue Agency*,⁷ doubted that the dissemination of tourism information would qualify as either publication of research or an educational purpose.
20. The Commission considers that it is unlikely that Strategic Objective 7, to increase the Applicant's own knowledge about visitors, will advance education as this is likely to be primarily for the benefit of the trust itself.
21. The remaining strategic objectives (1, 3, 6, 8, 9 and 10) relate to the following purposes:
 - developing an appropriate body (the Applicant)
 - optimising the value of tourism for local residents
 - catering for the needs of tourists through providing accommodation and food services
 - ensuring the infrastructure requirements of the tourism industry are addressed
 - ensuring appropriate marketing and promotion
 - assisting tourism operators to achieve an outstanding service level to their clients.

⁴ [1916] 1 Ch 100 at 114-116.

⁵ [1998] 2 All ER 705 at 710.

⁶ [2000] 2 NZLR 325.

⁷ 2006 FCA 343, [2007] 1 CTC 294.

22. The Commission does not consider that these strategic objectives (1, 3, 6, 8, 9 and 10) relieve poverty, advance education or religion. These objectives would therefore only be charitable if they fell under the fourth head of charity, "other purposes beneficial to the community". In order to be charitable under this head, a purpose must benefit the community and be substantially similar to the spirit and intent of those purposes listed in the preamble to the Statute of Elizabeth 1 or substantially similar to a charitable purpose as decided by the courts.
23. In order to benefit a community, 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
24. None of the strategic objectives 1, 3, 6, 8, 9, and 10 expressly require a public benefit to be conferred nor is it necessarily implicit that a public benefit will result from them. The purposes simply appear to promote the interests of commercial tourist operators and associated businesses in the Catlins area. The Commission therefore considers that any benefits to the community conferred by such purposes will be too remote.
25. The Applicant's purposes can be distinguished from those set out in *Crystal Palace Trustees v Minister of Town and Country Planning*¹⁰ and *Re Tennant*.¹¹
26. In *Crystal Palace Trustees*, 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."*
27. In that case, the promotion of industry was found to be charitable because it provided education and facilities for the use of the general public. In the case of the Applicant, industry is being promoted through improving tourism and providing benefits to individual businesses in the hope that public benefit will result.

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 Coates* (1949) AC 26; see also Dal Pont, *Charity Law in Australia and New Zealand*, Oxford University Press, 2000 at page 175.

¹⁰ (1950) 1 Ch 132.

¹¹ [1996] 2 NZLR 633.

28. The case of *Re Tennant* related to a rural community and the provision of a creamery. In that case the court applied other cases, which had held agriculture generally to be charitable such as *Inland Revenue Commissioners v Yorkshire Agricultural Society*. 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."* [Emphasis added]

29. The Applicant has not satisfied the Commission that its purposes are essential to the life of its community. Its purposes can therefore be distinguished from those considered by the court in *Re Tennant*.

30. The Commission concludes that of the 10 strategic objectives listed in the *Catlins Tourism Strategy 2004*, only objectives 2, 4, and 5 are potentially charitable. The purposes contained in clauses 4(i) and (ii) of the Applicant's Trust Deed are therefore not necessarily charitable purposes.

31. 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.¹² As the Applicant does not have substantially charitable purposes, section 61B of the Charitable Trusts Act 1957 cannot be used to validate the trust.

Charities Commission's determination

32. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a 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

27/11/08
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Date

¹² *Re Beckbessinger* [1993] 2 NZLR 362.