

Registration decision: NZ Snowboardcross (NZS43490)

Summary

1. The Charities Registration Board (the Board) has determined to decline the application for registration of NZ Snowboardcross (Applicant) as the Applicant is not qualified to be registered as a charitable entity because its purposes fall outside the legal definition of a charitable purpose to relieve poverty, advance education or any other matter beneficial to the community.
2. As the Applicant does not derive income for charitable purposes, it does not qualify for registration.¹
3. The Board's reasons appear below, organised under the following headings:
 - A. Background
 - B. The issues
 - C. The law on charitable purposes
 - D. Charities Registration Board's analysis
 - D.1 Overview
 - D.2 Relief of Poverty
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 - D.4 Other matters beneficial to the community
 - D.5 Public benefit
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A. Background

4. The Applicant applied for registration as a charitable entity on 5 April 2012.
5. Clause 2 and 3 of the Applicant's original rules document sets out the principles and purposes of the Applicant as:

2 PRINCIPLES

- 2.1 *We are a trust founded by New Zealand based businesses.*

¹ Section 13(1)(a) of the *Charities Act 2005* provides, 'An entity qualifies for registration as a charitable entity if, in the case of the trustees of a trust, the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.'

- 2.2 *Our slogan is a quote of Sir Peter Blake: "At the end of the project we should all be able to look ourselves in the eye...in the mirror...and honestly say:" I gave it my very best shot.'."*
- 2.3 *The project is to form a Snowboardcross Team to represent New Zealand at the next Winter Olympics Games in Sochi, Russia in February 2014. Snowboarding in NZ is regulated by Snowsport, who do not have the budget to support these athletes with a competition-training program. Therefore we have taken up the challenge to meet or objectives of competing at the 2014 Sochi Olympics.*
- 2.4 *Snowboard cross (also Snowboarder X, SRB, Boardercross, Boarder-X or simultaneously atop an inclined course, the race to reach the finish line first. Snowboarding cross became an Olympic sport in 2006, and has been part of the Winter X games since the annual event began in 1997. Snowboard cross courses are typically quite narrow and includes cambered turns, gap jumps, berms, drops, and steep and flat sections designed to challenge the riders ability to stay in control.*

3. PURPOSE

The purpose of the trust is an advancement of education. As per "Charities Act": The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It also includes less formal education in the development of individual capabilities, competences, skills and understanding."

Our goal is to give young New Zealanders the opportunities to race in snowboardcross at the Sochi Olympic Games with the same conditions (training, preparation, gears, management...) as riders from other countries. As well, promote snowboardcross in NZ creating a dynamic around the sport and give young kiwis access to a world-class training regime.

The Trust will benefit young New Zealanders. It's a non-profit trust.

6. The application was analysed and on 22 May 2012, the registration analyst sent the Applicant a notice that may lead to a decline on the basis that the purposes are practically limited to elite sports athletes, and therefore the Applicant does not provide sufficient public benefit.
7. The Applicant responded to the notice that may lead to a decline with the following submissions:

Charitable Trust Purpose:

The purpose of the trust is to promote the sport of snowboarding in a manner which will offer young New Zealanders of limited means exposure to a sport that is otherwise beyond their means or out of reach. Ultimately the trust's goal is to enable any Olympic hopefuls to compete at the Winter Olympics.

- *To fund the entry of these amateur participants to compete on national and international circuits, where they would not normally have the budget to do so.*
- *Olympic hopefuls would also be required “give back” by mentoring other young people through workshops aimed at helping them develop their snowboarding skills.*
- *We emphasize the fact that the participants who will attend the Winter Olympic Games are amateur snow boarders who have never competed at a professional level and will remain amateur snowboarders.*
- *We also emphasize the fact that the Trust intends to, for example, have significant involvement with the local Raglan Area School, which, with a rating of four on the Ministry of Education Decile Rating Calculator is considered a low-decile school with a high percentage of the attending students coming from low socio-economic backgrounds.*
- *We intend to run these programmes in similar schools throughout New Zealand once the Trust is established and funding is available.*
- *The programmes would include transporting these young people to skislopes in the lower North Island.*
- *We submit that the combination of contributing to the sports skill-set of schools in New Zealand; encouraging and enabling young New Zealanders to participate in a sport which is quite often seen as a sport of privileged participants; along with the aim of transporting New Zealanders who otherwise could not afford to, to the Winter Olympics to represent New Zealand meets the public benefit test under the Charities Act 2005 (“The Act”).*
- *Under Section 5(1) of The Act, the Trust’s purpose can include 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.*
- *We submit that the purpose of the Trust in this case is a charitable purpose and relates directly to the advancement of education and the relief of poverty. It also clearly provides a benefit to the community, by benefitting young people of low socio-economic backgrounds. There is also enormous public benefit to be derived from sending a team of snow boarders to the Winter Olympics to represent New Zealand.*
- *We also submit that as the purpose of the Trust is to promote an amateur sport, this fits within the provision of Section 5(2)(A) which states that the promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection 5(1) is pursued.*

Please note that the trust has already canvassed and established relationships with local schools with a view to putting this in place for winter 2012. I enclose a letter supporting this. Raglan Area School has a low decile score with a high level of students coming from low socio-economic background.

I therefore urge you to reconsider your decision not to grant charitable status in this case

B. The issues

8. The issue the Board 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 issue is:
- (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.

C. The law on charitable purposes

9. Section 13 of the Act sets out the essential requirements for registration. 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.² In addition, to be charitable at law, a purpose must be for the public benefit.³ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
11. A trust for charitable purposes will be void for uncertainty if it is not for exclusively charitable purposes:⁴

² This statutory definition does not alter the scope of charitable purposes recognised in New Zealand law but rather adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

³ Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 at [30]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23].

⁴ *McGovern v Attorney-General* [1982] 1 Ch. 321, 341. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691. See also the assumption evident in the provision at section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purposes.

...[A] 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.

12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.⁵
13. In considering an application for registration, section 18(3)(a) of the Act requires the Board to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Board considers relevant.
14. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an Applicant's rules document which purports to limit its objects to charitable purposes will not be determinative.⁶

D. Charities Registration Board's analysis

15. The Board has analysed the purposes set out in clause 2 and 3 of the Applicant's rules document and the submissions supplied by the Applicant.
16. The Board does not consider that the Applicant's purposes and the activities it undertakes indicate an intention to advance religion. Accordingly, they have been assessed under relief of poverty, advancement of education and "any other matter beneficial to the community".

D.1 Relief of poverty

17. In order to be charitable under 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.⁷
18. "Poverty" is interpreted broadly in law and a person does not have to be destitute to qualify as "poor".⁸ People who are in need, aged or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance.

⁵ Section 5(4) defines 'ancillary purpose'.

⁶ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

⁷ *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

⁸ *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.

Generally, this will include anyone who does not have access to the normal things of life that most people take for granted.⁹

19. To provide “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.¹⁰ Further, to provide “relief” is not the provision of benefit, but the provision of a necessity or quasi-necessity.¹¹
20. In the letter dated 22 June 2012 the Applicant stated:

Ultimately the trust's goal is to enable any Olympic hopefuls to compete on national and international circuits, where they would not normally have the budget to do so.

- *To fund the entry of these amateur participants to compete on national and international circuits, where they would not normally have the budget to do so...*
- *We also emphasis the fact that the Trust intends to, for example, have significant involvement with the local Raglan Area School, which, with a rating of four on the Ministry of Education Decile Rating calculator is considered a low-decile school with a high percentage of the attending students coming from a low socio-economic backgrounds....*
- *The programmes would include transporting these young people to ski-slopes in the lower North Island*
- *We submit that the combination of contributing to the sports skill-set of school in New Zealand; encouraging and enabling young New Zealanders to participate in a sport which is quite often seen as a sport of privileged participants; along with the aim of transporting New Zealanders who otherwise could not afford to, to the Winter Olympics to represent New Zealand meets the public benefit test under the Charities Act 2005 (“The Act”).*
- *[The Trust] clearly provides a benefit to the community, by benefitting young people of low socio-economic backgrounds*

21. The Board does not consider encouraging and enabling young New Zealanders to participate in one of the world’s most elite sports competitions will amount to relief for people who are suffering genuine hardship or who do not have access to the normal things of life that most people take for granted. Further, providing persons from a low decile school with an opportunity to learn about snowboarding is not the provision of a necessity or quasi-necessity. Therefore we concluded that the Applicant was not charitable under relief of poverty.

⁹ *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *Re Pettit* [1988] 2 NZLR 513 and *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325.

¹⁰ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch 159; [1983] 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹¹ *Inland Revenue Commissioner v Baddley* [1955] AC 572 at 585 per Viscount Simonds.

D.2 Advancement of Education

22. 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 balance, systematic process of instruction, training and practice.¹² In order to advance education, learning must be passed on to a broad section of the public.¹³
23. In New Zealand in the case of *Re Collier (deceased)*,¹⁴ 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 with 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 [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.¹⁵

24. The principles and purpose in clause 2 and 3 state:

The project is to form a Snowboardcross Team to represent New Zealand at the next Winter Olympics Games In Sochi, Russia in February 2014. Snowboarding in NZ is regulated by Snowsport, who do not have the budget to support these athletes with a competition-training program. Therefore we have taken up the challenge to meet or objectives of competing at the 2014 Sochi Olympics.....

The purpose of the trust is an advancement of education. As per "Charitable Act": The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It also includes less formal education in the development of individual capabilities, competences, skills and understanding."

Our goal is to give young New Zealanders the opportunities to race in snowboardcross at the Sochi Olympic Games with the same conditions (training, preparation, gears, management..) as riders from other countries. As well, promote snowboardcross in NZ creating a dynamic around the sport and give young kiwis access to a world-class training regime.

25. In the letter dated 22 June 2012 the Applicant stated:

¹² *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.

¹³ See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

¹⁴ [1998] 1 NZLR 81.

¹⁵ [1998] 1 NZLR 81, 91-92.

- *Olympic hopefuls would also be required “give back” by mentoring other young people through workshops aimed at helping them develop their snowboarding skills.*
- *To fund the entry of these amateur participants to compete on national and international circuits, where they would not normally have the budget to do so...*
- *We also emphasize the fact that the Trust intends to, for example, have significant involvement with the local Raglan Area School, which, with a rating of four on the Ministry of Education Decile Rating calculator is considered a low- decile school with a high percentage of the attending students coming from a low socio-economic backgrounds*
- *We intend to run these programmes in similar schools throughout New Zealand once the Trust is established and funding is available.*
- *The programmes would include transporting these young people to ski-slopes in the lower North Island*
- *We submit that the combination of contributing to the sports skill-set of school in New Zealand; encouraging and enabling young New Zealanders to participate in a sport which is quite often seen as a sport of privileged participants; along with the aim of transporting New Zealanders who otherwise could not afford to, to the Winter Olympics to represent New Zealand meets the public benefit test under the Charities Act 2005 (“The Act”).*

26. The Board considers providing programmes and workshops to schools may advance education if the Applicant provides a systematic process of instruction, training and practice that is required in order to advance education. However, the principals and purpose in the Trust deed indicate the main objective of the Applicant is to form a Snowboardcross Team to represent New Zealand at the Sochi Olympic Games in 2014.
27. For the reasons set out in the “Public Benefit” section below, we do not consider providing elite snowboarders the opportunity to partake in a competitive-training program in order to form a Snowboardcross Team provides benefits to a sufficiently broad section of the public. As the purpose in clause 3 is focused on giving young New Zealanders the opportunity to race in snowboardcross at the Sochi Olympic Games, it is not charitable under advancement of education.

D.3 Other matters beneficial to the community

28. 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):¹⁶

¹⁶ *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.

- 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.¹⁷
29. 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.*¹⁸
30. 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
31. Section 5(2A) of the Act provides that the promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.
32. Examples of the charitable purposes that sporting entities may advance include:
- Providing community recreational facilities “in the interests of social welfare”;
 - Relieving poverty;
 - Advancing education; or

¹⁷ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

¹⁸ 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.

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

- Providing a purpose otherwise beneficial to the community, such as promoting health by providing opportunities for participation in amateur sports that involve the pursuit of physical fitness.

33. In addition, in order to be charitable, a sporting entity must provide a public benefit. Factors that may count against this include where:

- a. There are unreasonable or unjustifiable restrictions placed on who may benefit from the activity;
- b. There are prohibitive costs associated with the activity (including fees and equipment) which will exclude the less well off;
- c. There is an unreasonable risk of injury or harm associated with the activity which will outweigh any benefit to the public;
- d. Providing amusement, entertainment, or social activities for members is a primary purpose.

34. In the letter dated 22 June 2012 the Applicant stated:

The Trust intends to...have significant involvement with the local Raglan Area School....We intend to run these programmes in similar schools....The programmes would include transporting these young people to ski-slopes in the lower North Island....

We also submit that as the purpose of the Trust is to promote an amateur sport, this fits within the provision of Section 5(2)(A) which states that the promotion of amateur sport may be a charitable purpose referred to in subsection 5(1) is pursued.

35. The Board considers providing programmes and mentoring school pupils in Snowboardcross may provide them with some health benefits. A school community has also been considered by the courts to form a sufficient sector of the public.

36. However, the main purpose of the Applicant is to form a Snowboardcross Team to represent New Zealand at the Sochi Olympic Games in 2014. The Board notes that while there may be some health benefits for the limited number of those chosen for the Snowboardcross Team, the Applicant has not provided any evidence of a wider public benefit that would outweigh the private benefit gained by the elite athletes taking part in the programme. For the reasons set out below, the Board does not consider that providing assistance to a limited number of elite performers can amount to the promotion of public health and therefore this is not a charitable purpose under "other matters beneficial to the community".

D.4 Public benefit

37. 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

38. 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
39. In relation to the first aspect, the Board considers that some benefits will result from the Applicant's purposes.
40. In relation to the second aspect, in *Travis Trust v Charities Commission*,²³ Joseph Williams J stated:

An excellent exposition on the nature of community or public benefit can, with respect, be found in the decision of Bleby J in the South Australian Supreme Court case of Strathalbyn Show Jumping Club Inc. v Mayes.²⁴ In that case, the question was whether the members of two separate polo clubs and a polo grounds association were a sufficient section of the public.

...
[I]n the Strathalbyn case, Bleby J found that the rules of admission in each of the three polo clubs rendered them essentially private. He said:

*Although the membership rule of each of the three clubs are quite different, they have a common feature, namely, that admission to membership and exclusion from membership is vested in the relatively small Board of Directors or committee of management. It is not open to any member of the public who wishes to join. Such provisions are not surprising. They are common to great many sporting and other associations of persons who have a common interest. ... **It indicates, however, that those who may benefit from the provisions of the first limb of Trust Deed constitute a highly restricted class ... It is not a class which is open to members of the public or any significant section of it. The class of persons on whom the benefit is conferred is a group or groups of individuals who have a common interest in the playing of polo and who have been admitted to membership by the controlling body of the organisation.** Even if there were less stringent restrictions on or qualifications for membership, I doubt whether the class or beneficiaries would meet the necessary public interest test.²⁵*

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 (2009) 24 NZTC 23,273.

²⁴ (2001) SASC 73.

²⁵ (2009) 24 NZTC 23,273, 23,281-2.

41. In *Inland Revenue Commissioners v Baddeley*,²⁶ 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.

42. 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'.²⁷

43. Later he states:

If membership is open to all persons (other than disorderly or other self-disqualifying persons) there should be held to be a sufficient public benefit.²⁸

44. The UK Charity Commission has provided the following advice for amateur sporting bodies, in relation to public benefit:

Generally speaking, any restrictions on who may benefit from a charity must be legitimate, proportionate, rational and justifiable given the nature of its charitable aims. As far as reasonably practical, an organisation established to advance amateur sports or games would be expected to provide facilities for all who wish to participate and be available to the public. Open membership is usually essentially if a charity that advances amateur sports or games is to meet the public requirement.²⁹

45. In line with the references cited above, the Board will consider whether there are unreasonable or unjustifiable restrictions placed on who may benefit from the activity in determining whether sport and recreation bodies provide a public benefit.

46. The principles and projects in clause 2 and 3 reflect the focus of the Trust, these state:

²⁶ [1955] AC 572, 592.

²⁷ Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd Ed., London, Butterworths, 1999 at 21.

²⁸ *Ibid*, at 134.

²⁹ http://www.charity-commission.gov.uk/charity_requirements_guidance/charity_essentials/public_benefit/advancing_amateur_sport.aspx at A 16

The project is to form a Snowboardcross Team to represent New Zealand at the next winter Olympics Games in Sochi, Russia in February 2014. Snowboarding in NZ is regulated by Snowsport, who do not have the budget to support these athletes with a competition-training program. Therefore we have taken up the challenge to meet our objectives of competing at the 2014 Sochi Olympics.....

Our Goal is to give young New Zealanders the opportunity to race in snowboardcross at the Sochi Olympic Games with the same conditions (training, preparation, gears, management...) as riders from other countries.

47. We consider that the purposes and principles indicate the majority of its resources will be directed to a limited group of elite snowboarders that have been selected for the competition-training program in order to form the New Zealand Snowboardcross Team. These resources appear to include providing them with training, preparation, gears, management and travel costs.³⁰ Participation in such a programme appears restricted to a limited number of people based on their skill or ability and it will not be open to anyone who wishes to participate.
48. Although the skills and competencies of the elite snowboarders are likely to be developed we consider this is unlikely to provide sufficient public benefit to be considered charitable under either the advancement of education or "other matters beneficial to the community." Accordingly, we do not consider that the benefits from the Applicant's purposes will be available to a significant sector of the public.

D.5 Ancillary Purpose

49. Section 5(3) and 5(4) of the Charities Act 2005 states:

(3) To avoid doubt, if the purpose of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

(4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is-

- a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and*
- b) not an independent purpose of the trust, society, or institution*

50. In the recent decision *Re Greenpeace of New Zealand Incorporated*³¹ Heath J stated in relation to ancillary purposes:

³⁰ This small number is emphasised by the fact that in the 2010 Winter Olympics there were only 5 Snowboarders selected to represent New Zealand

³¹ HC WN CIV 2010-485-829 [6 May 2011].

[66] I agree with Simon France in Re Grand Lodge of Antient Free and Accepted Masons in New Zealand, that both qualitative and quantitative assessment is required to determine whether the non-charitable purpose is “ancillary.” In conducting that analysis, it is necessary to evaluate whether the non-charitable purpose are truly incidental or independent.

....
[68] A quantitative assessment is one designed to measure the extent to which one purpose might have a greater or lesser significance than the another. That assessment is a question of degree. On the other hand, a qualitative assessment has regard to the particular function in issue. A qualitative assessment helps to determine whether the function is capable of standing alone or is one that is merely incidental to a primary purpose.

... .
*[73] On a quantitative assessment, the question of degree involved cannot be measured by the number of pages in a book or website. Rather, it is a way in which the philosophy is championed that must be measured against the relevant charitable purpose to determine whether, as a matter of degree, it is merely ancillary. Ultimately, that is an exercise of judgment, on the facts of any particular case*³²

51. The principles and purposes of the Applicant’s Trust deed repeatedly indicate that the main purpose of the Applicant is to form a Snowboardcross Team to represent New Zealand at the Sochi Olympic Games in 2014. Further in the letter dated 22 June 2012 the Applicant states:

Ultimately, the Trust’s goal is to enable any Olympic hopeful to compete at the Winter Olympics.

52. On a quantitative and qualitative assessment of clause 3 it is apparent that providing the competition-training programme and forming the Snowboardcross Team is not ancillary to any charitable purpose. As this purpose does not provide a sufficient public benefit, it precludes the Applicant from being held exclusively charitable.

D.6 Applicant’s submissions

53. In the dated 22 June 2012 the Applicant stated:

Olympic hopefuls would also be required “give back” by mentoring other young people through workshops aimed at helping them develop their snowboarding skills.....

There is....enormous public benefit to be derived from sending a team of snow boarders to the Winter Olympics to represent New Zealand.

54. The courts have expressed a great deal of scepticism about the appropriateness of defining the purpose of a trust by reference to alleged

³² HC WN CIV 2010-485-829 [6 May 2011] at [66]-[73]

downstream benefits. For example, in *Amateur Youth Soccer Association v Canada (Revenue Agency)*,³³ 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.*³⁴

55. Therefore the Applicant's requirement for Olympic hopefuls to mentor other young people at workshops appears to be a beneficial by-product of the Applicant's main purpose of forming a Snowboardcross Team, it is not enough to make the Applicant charitable.
56. Another argument elite sports bodies often put forward is that having teams represent New Zealand in international competitions promotes national prestige and pride and may encourage others to partake in sport. However, the Board does not accept this argument and has adopted the reasoning of the England and Wales Charity Commission.
57. In its guidance, '*Analysis of law underpinning advancement of amateur for the public benefit*'³⁵ the Charity Commission for England and Wales states:

*The court has identified the benefit to the public from the viewing of high quality art or listening to performances of high quality. However there is no legal authority which suggests that being a spectator of high quality sport promotes a charitable purpose for the public benefit. ... it is argued that international sporting achievement promotes national prestige and pride. The court does not appear to have a recognised this as a benefit to the public for the purpose of charity law.*³⁶

58. The Board does not consider that the Applicant has demonstrated sufficient evidence on how assisting elite snowboarders will achieve any charitable purpose. Further, any beneficial by-product that may occur from the Applicant's activities as stated in their letter dated 22 June 2012, is not sufficient to make it charitable.

D.7 Conclusion

59. The Board concludes that the Applicant's purposes set out in clause 3 of its rules and its activities are not exclusively charitable for the reasons stated above.

³³ (2007) 287 DLR (4th) 4 (SCC).

³⁴ (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.

³⁵ http://www.charity-commission.gov.uk/library/guidance/analysis_sport.pdf [accessed 1].


³⁶ *IRC v McMullen* [1981] AC 1.

E. Charities Registration Board's determination

60. The finding of the Board 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 Board declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Board



.....
Brendon Ward
General Manager – Charities

..... 1/11/12

Date