

## Registration decision: Coromandel Information Centre Incorporated

### The facts

1. Coromandel Information Centre Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 12 March 1998.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 28 June 2008.
3. Clause 3 of the original constitution supplied by the Applicant contained the following purposes:
  - 3.1 *To establish and maintain in Coromandel, an organisation which will provide a wide range of impartial information and advice to the public, both local and visitors. This organisation is to be tourism oriented and available for membership to all business people and those with an interest in these areas, subject to a subscription being paid*
  - 3.2 *To encourage and assist any associated community activities*
  - 3.3 *To help arrange the holding of training courses, meetings, seminars and discussion groups on subjects of interest to organisers and interviewers and to the general public*
  - 3.4 *To obtain and/or prepare and distribute circulars, reports, pamphlets, brochures and other printed matter*
  - 3.5 *To collect and disseminate statistical data, foster and undertake research into any aspect of the Centre and its interests*
  - 3.6 *To provide evidence and information for Government and other inquirers on tourism and community activities*
  - 3.7 *To encourage members to maintain adequate standards of business practice*
  - 3.8 *To do all such other things as in the opinion of the CIC [Coromandel Information Centre Incorporated] may be conducive or incidental to the attainment of any foregoing objects or the exercise of any of the foregoing powers*
  - 3.9 *To further to welfare of the Business Community in Coromandel Town and North and undertake any activity considered to be in the interests of the CIC"*
4. The Commission analysed the application for registration and on 4 November 2008, sent the Applicant a notice advising that its application may be declined on the basis that the purposes in clauses 3.7 and 3.9 were not charitable purposes according to law. The Commission also

requested further information about activities undertaken pursuant to clause 3.2.

5. On 28 November 2008, the Applicant responded to the notice, providing an updated constitution (dated 17 June 2008) but did not provide any further information in response to the Commission's request.
6. Rule 2 of the updated constitution states:

***"The objects for which the CIC is established are:***

- a) *To establish and maintain in Coromandel, an organisation which will provide a wide range of impartial information and advice to the public, both local and visitors. This organisation is to be tourism and community orientated.*
- b) *To encourage and assist, where possible, any community activities of the Coromandel.*
- c) *To obtain and/or prepare and distribute circulars, reports, pamphlets, brochures and other printed matter in regard to tourism and community events.*
- d) *To collect and disseminate statistical data, foster and undertake research into any aspect of the CIC and its interests.*
- e) *To provide evidence and information for Government and other inquirers on tourism and community activities.*
- f) *To encourage members to maintain satisfactory standards of service to clients referred by the CIC.*
- g) *To help arrange the holding of training courses, meetings, seminars and discussion groups on subjects of interest for members of the CIC and the general public.*
- h) *To support the Coromandel Community and undertake any activity considered to be in the interests of the CIC and in keeping with its charitable purpose.*
- i) *To encourage paid employees and volunteers of the CIC to take appropriate tuition to assist them in their work. This tuition to be updated from time to time and paid by the CIC.*
- j) *To raise funds for the Society's activities and objects.*
- k) *To purchase, build, lease or to otherwise obtain the use or occupation of a building for the CIC's activities, and to manage, develop, maintain and repair, and to sell, lease, donate or otherwise dispose of real and personal property of every description.*
- l) *To borrow or raise or secure the payment of monies for the furtherance of the objects of the CIC with or without security.*
- m) *To invest a sum or any monies held by the CIC, which is not for the moment, required for the financial maintenance of the Centre, in an investment authorised by the members, with due regard to the law at that time.*
- n) *To institute and to take legal advice on any lawful proceedings involving the property of the CIC.*

- o) *To adopt such means as the members may determine for the purpose of raising money and to accept contributions, collections, donations, legacies, devices, gifts, grants and subsidies.*
- p) *To do such other acts as in the opinion of the Society further the objects of the Society."*

7. Rule 14(b) of the updated constitution states that upon winding up:

*"The remaining assets of the CIC shall be donated to some other body, group or organisation with similar objects to the CIC or if there is none then an appropriate charitable organisation in Thames/Coromandel Peninsula area, as the majority of the members shall approve."*

8. The Commission analysed the updated constitution and on 20 February 2009, sent the Applicant a second notice advising that its application may be declined on the basis that Rule 14(b) does not restrict distribution of surplus assets on winding up to charitable purposes. The Commission also requested further information about activities undertaken pursuant to Rules 2(b) and 2(f).

9. On 1 April 2009, the Applicant responded to the notice, providing a proposed amendment to Rule 14(b):

*"The Society shall resolve that such property shall not be paid to or distributed amongst the Members but shall be given or transferred, in the first instance to an appropriate organisation whose objects are for similar purposes to the Society; and*

*Where such property is not able to be paid or distributed to a similar organisation, that property shall be paid or distributed to or amongst any organisations whose objectives are for non-profit purposes within New Zealand."*

10. The Applicant also provided further information about its activities carried out pursuant to Rules 2(b) and 2(f):

- Rule 2(b): the Applicant provides free advertising for all community activities and local advice and information to members of the local community.
- Rule 2(f): the Applicant receives and actions comments and complaints from local residents and visitors to the town.

11. The Commission analysed the proposed amendment to Rule 14(b) and the information about the Applicant's activities. On 15 April 2009, the Applicant was sent a third notice advising that its application may be declined on the basis that the purposes in Rule 2 are not exclusively charitable according to law. The Commission also advised that the proposed amendment to Rule 14(b) would not meet registration requirements, as it would not restrict distribution of surplus assets on winding up to charitable purposes.

12. On 25 May 2009, the Applicant responded to the third notice, but did not provide any further amendments to its constitution or any further information in relation to its purposes.

### **The issues**

13. 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 Applicant is a society or institution established and maintained exclusively for charitable purposes, and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act. In particular:
  - (a) whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act and, if there are any non-charitable purposes, whether these are ancillary to a charitable purpose; and
  - (b) whether the Applicant's winding up clause restricts distribution of surplus assets on winding up to charitable purposes.

### **The law on charitable purpose**

14. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained for exclusively charitable purposes and is not carried on for the private pecuniary profit of any individual.
15. 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.<sup>1</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
16. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
17. 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; ..."*

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<sup>1</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

## Charities Commission's analysis

18. The Commission considers that the Applicant's purposes, set out in Rules 2(d) and (g) of the updated constitution are likely to advance education and are therefore charitable.
19. The Applicant's purposes in Rules 2(b), (f), (h) and (i) can be considered ancillary. Rules 2(j) to (p) can be considered powers.
20. The Applicant's remaining purposes, set out in Rules 2(a), (c) and (e) have been considered in relation to advancement of education and "any other matter beneficial to the community".

### Advancement of education

21. Providing information to the public will only be charitable if it amounts to providing some form of education and it ensures that learning is advanced. For example, in the case of *In Re Shaw (deceased)*, the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."<sup>2</sup>
22. In *Travel Just v Canada Revenue Agency*<sup>3</sup>, the court held that it was doubtful that producing and disseminating materials that would provide travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.
23. The Commission concludes that providing information to locals and visitors as set out in Rules 2(a), (c) and (e) does not amount to advancement of education.

### Other matters beneficial to the community

24. 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).<sup>4</sup> In determining what is within the "spirit and intendment" of the Preamble to

<sup>2</sup> [1957] 1 WLR 729. See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352.

<sup>3</sup> 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

<sup>4</sup> *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.

the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases.

25. The Commission considers that the Applicant is promoting tourism in the region through providing information to tourists and that this amounts to promoting the private interests of tourist operators and local business owners. These purposes do not provide a benefit to the community and are not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.
26. This conclusion is supported by a number of relevant cases: *Hadaway v Hadaway*<sup>5</sup>; *Crystal Palace Trustees v Minister of Town and Country Planning*<sup>6</sup>; and *Inland Revenue Commissioners v Oldham Training and Enterprise Council*<sup>7</sup>.
27. In *Hadaway v Hadaway*, the court held that assisting persons carrying on a particular trade or business or profession could not be charitable unless there was a condition that this assistance could only be made for a purpose that was itself charitable. In that case, any eventual benefit to the community was considered too remote from the purpose, which was to provide financial assistance to planters and agriculturalists.
28. In *Crystal Palace Trustees v Minister of Town and Country Planning*, the court held that providing a large park and amenities for public education and recreation were charitable purposes because there was no intention to further the interests of individuals engaged in trade or industry or commerce.
29. More recently, in *Inland Revenue Commissioners v Oldham Training and Enterprise Council*, the court held that promoting the interests of individuals engaged in trade, commerce and enterprise and support services for, and advice to, new businesses disqualified the organisation from having charitable status. In the event that there would be any benefit to the public, this would be too remote.
30. The Commission therefore concludes that the purposes set out in Rules 2(a), (c) and (e) are not charitable purposes.

#### Winding up

31. Rule 14(b) of the updated constitution does not restrict distribution of surplus assets on winding up to charitable purposes for two reasons. Firstly, as outlined above, it is unlikely that an organisation with similar purposes to those of the Applicant would be considered charitable. Second, even if the Applicant did have exclusively charitable purposes, Rule 14(b) could still allow for distribution to non-charitable purposes, because while two organisations may have similar purposes, the specific nature of each may render one charitable and the other non-charitable.

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<sup>5</sup> [1955] 1 WLR 16 (PC).

<sup>6</sup> [1951] 1 Ch 132.

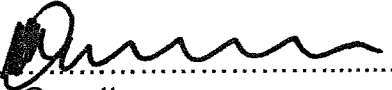
<sup>7</sup> [1996] STC 1218.

## 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 society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act.

**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

  
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Trevor Garrett  
Chief Executive

9/8/09  
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Date