

## Registration decision: The Christ Circle Trust

### The facts

1. The Christ Circle Trust (the Applicant) was created by a deed of trust dated 13 June 2003, and was incorporated as a registered charitable trust on 3 July 2003.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the *Charities Act 2005* (the Act) on 18 June 2008.
3. The Applicant's objects are set out in clause 2 of its trust deed:

#### 2. AIMS

*The Board is established to carry out within New Zealand the following aims:*

- 2.1 *To free the individual from his or her preconditions and conclusions fashioned from society and the world.*
  - 2.2 *To provide a church of love and enlightenment.*
  - 2.3 *To engage in acts of charity and mercy in New Zealand.*
  - 2.4 *To provide education for the inculcating of basic skills and philosophies consistent with these aims.*
  - 2.5 *To inculcate attitudes consistent with these aims through education, example, and action, in society at large.*
  - 2.6 *To do anything else within New Zealand that will advance any of these aims.*
4. The Commission analysed the application for registration and on 2 December 2009 sent the Applicant a letter requested further information about its activities, especially under clause 2 of the trust deed.
  5. On 20 January 2009, the Applicant responded to the request for further information, as follows:

*"The Christ Circle Trust is the legal personality in New Zealand for The Christ Circle Community, an intentional community of men and women who seek to serve God and their fellow man in daily life. Members of the Community live in common, and perform work on behalf of the Christ Circle Trust, which in turn provides for their basic needs. Currently, the Trust is engaged in two principal activities in French Pass: the management of the DOC campground, and the operation of Steadfast Traditional Sail, a sail training and sailing charter business. Both of these businesses are operated with the principal aim of providing a service in a spirit of generosity and fellowship, and profitability is not the primary consideration. It is the principal aim of both of these business activities to promote well-being and a sense of community amongst all those who come into contact with the Trust through the members of the Community. Both the campground and the sailing charters have a retreat character, filling the needs of different segments of the wider population. It is anticipated that both campers and guests on our sailing cruises and students on our school trips will return to their work and family lives with a deeper sense of wonder*

*and a greater appreciation of life as a result of the experience gained, and in this way extend the benefit throughout the wider community.*

*In the 35 years since The Christ Circle Community was first established in California, USA, the community has consistently offered shelter to people in need of assistance through the provision of basic needs in an inclusive and supportive community environment. Members of the community are also active in local affairs, and seek to promote goodwill and harmony in the treatment of local issues that can otherwise be divisive. ...*

*The Christ Circle Trust can be compared with religious orders of the past, in which the individual commitment of the members of an order to serve God and their fellow man was recognized as the basis for doing works of mercy and charity, in whatever form they took. While the management of a DOC campground or the operation of a sailing charter vessel may not appear to constitute a charitable activity, it is our view that the spirit, or intention, that motivated these activities gives rise to an actual benefit, and that the Christ Circle and its members are faithful in their commitment to serving the wider community."*

6. The Commission analysed the information provided by the Applicant and on 26 June 2009, sent the Applicant a notice advising that its application may be declined. The basis for the notice was that while the purposes in clauses 2.2 to 2.6 appeared charitable, the Applicant had not provided sufficient evidence of how the two principal activities identified in its letter actually furthered those purposes. As such, the Commission considered that these activities were independent purposes of the trust which were not reflected in its stated purposes. It was also noted that the Applicant's website indicated that the Applicant offered one, two, three and six-day cruises and private and corporate charters where customers could "just relax and watch the whole world slip by." The Commission did not consider that this activity was charitable.
  
7. On 29 October 2009, the Applicant responded to the notice making the following submissions:
  - In relation to the Steadfast Traditional Sail:
    - Steadfast was built using traditional methods and materials as a "labour of love" over a period of 16 years. Her service as a commercial passenger vessel enables her to share the experience of sailing a vessel of her type with members of the general public.
    - The sailing programme includes a regular service to schools at a subsidised rate.
    - The words "relax and watch the world slip by" means "freeing oneself from preconceptions and conclusions fashioned from society and the world, one of the trust's aims, and is intended in a therapeutic sense.
    - The Steadfast Traditional Sail website states that the purposes of the Steadfast are to offer guests an enjoyable and educational hands-on experience of sailing a traditional sailing ship.
    - The Commission has registered other organisations with similar sailing activities.

- Steadfast is a replica of a French pilot cutter from 1913, a style of vessel that was once common in Europe and New Zealand and can be compared to the provision of amenities.
  - The Applicant intends the sailing programme to be educational in nature.
- In relation to management of the French Pass Department of Conservation campground:
    - The management of the campground is ancillary to the main purpose.
    - The campground is a small "traditional Kiwi campground" with only basic facilities and no other infrastructure other than toilets and cold showers.
    - The campground is managed as a service to the general public.
    - In association with this, the Applicant's members assist with wildlife conservation in the French Pass Reserve, through management of stoat and possum traps.
- In relation to both Steadfast Traditional Sail and the DOC campground, the Applicant's activities are beneficial to the public because:
    - They provide public amenities and protect the environment.
    - Section 61A of the Charitable Trusts Act 1957 states that it is charitable to provide grounds and buildings to be used for recreation or leisure activities
    - They provide benefits to anyone who needs them.
- Steadfast Traditional Sail and management of the DOC campground are vehicles used by the Applicant to carry out its aims.
8. The Applicant also stated that it wished to withdraw its withholding request on the basis that it had nothing to hide.

### **The issues**

9. 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 the Applicant's stated purposes fall within the definition of charitable purpose in section 5(1) of the Act?
  - (b) whether the Applicant's main activities further any stated charitable purposes or indicate independent non-charitable purposes?

## The law on charitable purpose

10. Under section 13(1)(a) of the Act, a trust qualifies for registration if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
11. 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.
12. In order for a purpose to be charitable, it must fall within one of the four charitable purposes set out in section 5(1) of the Act and provide a public benefit.
13. 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.
14. 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.
15. In considering an application for registration, section 18(3)(a) of the Act requires the Commission 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 Commission considers relevant.

## Charities Commission's analysis

16. The Commission considers that clauses 2.4, 2.5 and 2.6 appear to be powers clauses. The Commission has considered whether the remaining purposes in clause 2.1, 2.2 and 2.3 could be held charitable under the relief of poverty, the advancement of religion, the advancement of education, or other matters beneficial to the community.

### Relief of poverty

17. To be charitable under the relief of poverty, a purpose must:
  - be directed at people who are poor, in need, aged or suffering genuine hardship, and
  - provide relief
18. "Poverty" is interpreted broadly in law and a person does not have to be destitute to qualify as "poor".<sup>2</sup> People who are in need, aged, or who are

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

<sup>2</sup> *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.

suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will include anyone who does not have access to the normal things of life which most people take for granted.<sup>3</sup>

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.<sup>4</sup>
20. Purposes that provide basic necessities, such as shelter, amenities and transport have, where the beneficiaries of these necessities are recognised as being in need of them, been upheld as charitable under the relief of poverty.<sup>5</sup> However, the Court will invalidate a gift the purpose of which extends beyond the relief of poverty.<sup>6</sup>
21. The Applicant's purpose in clause 2.3 is "to engage in acts of charity and mercy in New Zealand".
22. The Commission considers that the purpose stated in clause 2.3 could be charitable under the relief of poverty if the Applicant was providing relief for people who did not have access to the normal things of life which most people take for granted and who would have difficulty in alleviating their needs from their own resources.
23. The Applicant advised that the Christ Circle Community was first established in the United States, and the community "has consistently offered shelter to people in need of assistance though the provision of basic needs in an inclusive and supportive community environment." The only examples of its activities in New Zealand, however, are the management of a DOC campground and the operation of Steadfast Traditional Sail.
24. The Commission does not consider that the management of the campground provides shelter only for people in need. Rather, it provides a facility which is available to anyone, regardless of any particular need.
25. Similarly, there is no evidence that the Applicant's cruises and private and corporate charters are providing relief for people who do not have access to the normal things of life which most people take for granted.
26. Although the stated purpose in clause 2.3 could be charitable, the Applicant has not provided evidence that it is in fact relieving poverty. As such, the Commission is unable to conclude that clause 2.3 is charitable in terms of the relief of poverty.

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<sup>3</sup> *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.

<sup>4</sup> *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.

<sup>5</sup> *Flynn v Mamarika* (1996) 130 FLR 216 at 227-228 per Martin CJ.

<sup>6</sup> *Re Gwyon* [1930] 1 Ch 255; *Re Pieper (deceased)* [1951] VLR 42 at 44 per Smith J and *Re Blyth* [1997] 2 Qd R 567 at 581 per Thomas J.

## Advancement of religion

27. To advance religion, a purpose must:

- be for the benefit of a religion; and
- ensure a religious faith is passed on to others.

28. The relevant indicia of a religion was described by the High Court of Australia in *Church of New Faith v Commissioner of Pay-Roll Tax*<sup>7</sup>:

*The criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual's or group's freedom to profess and exercise the religion of his, or their, choices.*

29. To "advance" religion, the faith must be passed on to others by promoting it, spreading its message or taking positive steps to sustain and increase the religious belief.

30. In *Centrepont Community Growth Trust v CIR*,<sup>8</sup> the Court held that the trust was charitable as a religious organisation, applying the criteria described in the *Church of New Faith* case. The Centrepont religious community had 92 members who were residents of the community and who were provided with accommodation, food, clothing and \$1 a week. All children of members were clothed, housed and fed by the Trust. All proceeds from the commercial activities undertaken by members of the Trust were put into the general funds of the Trust.

31. In *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited*<sup>9</sup> the High Court of Australia held that an organisation which raised money for missionary and religious bodies by means of investments and a commercial funeral business, but which was not itself engaged in any religious activity, was a charitable institution because the revenues ultimately funded charitable and religious activities.

32. The Applicant's purpose in clause 2.2 is "to provide a church of love and enlightenment".

33. The Commission considers that the purpose stated in clause 2.2 could be charitable under the advancement of religion if:

<sup>5</sup> (1983) 154 CLR 120 at 126, which was accepted and applied in *New Zealand in Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 695-697 per Tompkins J.

<sup>8</sup> [1985] 1 NZLR 673.

<sup>9</sup> [2008] HCA 55.

- there is a belief in a supernatural being, thing, or principle and an acceptance of conduct in order to give effect to that belief
- the faith is passed on to others by promoting it, spreading its message, or taking positive steps to sustain and increase the religious belief.<sup>10</sup>

34. The Applicant, in its letter of 20 January 2009, states:

*"...the Christ Circle Trust can be compared with religious orders of the past, in which the individual commitment of the members of an order to serve God and their fellow man was recognized as the basis for doing works of mercy and charity, in whatever form they took. While the management of a DOC campground or the operation of a sailing charter vessel may not appear to constitute a charitable activity, it is our view that the spirit, or intention, that motivates these activities gives rise to an actual benefit, and that the Christ Circle Trust and its members are faithful in their commitment to serving the wider community."*

35. The Applicant, in its letter of 29 October 2009, states:

*"Steadfast Traditional Sail and management of the DOC campground each provide a vehicle for pursuing the stated purpose of the trust. The aims of the Trust are to be read as general aims that reflect the spirit of our intentions, which are carried out in the several activities. They are tangible, even if they are to all appearances small. They also represent the ultimate aims of the Trust, which are expected to manifest over time, the present stage of development being a step in that direction. The sailing and campground activities both lie within the meaning of clause 2.6 of the Deed of Trust."*

36. The Commission does not consider that the Applicant has provided sufficient evidence that either of its two main activities are advancing religion because it has not identified the religion it may be advancing or provided evidence that it has canons of conduct which give effect to a belief in a supernatural being.

37. In addition, the Applicant has not indicated that it takes positive steps to pass on its religious beliefs to others. The Commission does not consider that operating businesses "with the principle aim of providing a service in a spirit of generosity and fellowship" and which "promote well-being and a sense of community amongst all those who come into contact with the Trust" will ensure that a religious faith is passed on to others.

38. In applying the reasoning in *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited*, the Commission considers that the Steadfast Traditional Sail and the management of the DOC campground could be means to achieve religious purposes if the Applicant had provided sufficient evidence that it is advancing religion. However, the Applicant has failed to show that it meets all the indicia of a

<sup>10</sup> *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080; [1957] 3 All ER 281, referred to in *Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673.

religious institution outlined in *Church of New Faith v Commissioner of Pay-roll Tax* and adopted in *Centrepont Community Growth Trust v CIR*, or that it is advancing religion.

#### Advancement of education

39. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services, promotion of a particular point of view, or the study of subjects that have no educational value.<sup>11</sup>

40. In *Re Collier (deceased)*<sup>12</sup>, Hammond J set out the test for determining whether the dissemination of information qualifies as charitable under the head of advancement of education in New Zealand:

*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.*<sup>13</sup>

41. The Applicant's purpose in clause 2.1 is "to free the individual from his or her preconditions and conclusions fashioned from society and the world".

42. Courts have held that to be charitable in law, an expressed purpose must be limited to charitable purposes only.<sup>14</sup> The Commission considers that the wording of clause 2.1 is so vague that it could allow for both charitable and non-charitable purposes.

43. The Applicant, in its letter of 29 October 2009, states:

*Our sailing program includes a regular service to schools at a subsidised rate. ... Steadfast takes these children on sailing trips in Admiralty Bay as part of their educational experience.*

44. The Commission considers that the activities involving school children could be charitable in terms of the advancement of education.

45. The Applicant advised that "it is the aim and purpose of Steadfast Traditional Sail to offer our guests an enjoyable and educational hands-on experience of sailing a traditional sailing ship" and submits that Steadfast is an "excellent resource for conducting outdoor educational experiences".

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<sup>11</sup> *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

<sup>12</sup> [1998] 1 NZLR 81

<sup>13</sup> [1998] 1 NZLR 81, 91-92.

<sup>14</sup> *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691.



46. Courts have established that in order to advance education, some form of teaching or training must be provided.<sup>15</sup> The Commission does not consider that the Applicant is necessarily advancing education because people can undertake activities such as cruising and private charters with Steadfast Traditional Sail which do not involve participation in the running of the boat or any other educational activity.

47. Furthermore, the Commission considers that the information on the Applicant's website shows that the cruises are leisure activities. On <http://steadfastsail.com/cruises.html> the Applicant states that:

*Our catered cruises in the Marlborough Sounds combine the charms of sailing a beautiful old gaff cutter with first class service. Meals are prepared from the very best ingredients, including organic produce from our garden at the Lighthouse Cottage, and Grace really puts out in the galley. A selection of fine wines are available to compliment the daily fare, and there seems to be always something fresh coming out of the oven.*

48. In *Inland Revenue Commissioners v Baddeley*,<sup>16</sup> the House of Lords decided that mere recreation, hospitality and entertainment are not charitable, for the provision of entertainment and amusement per se is inconsistent with accepted notions of charity.

49. Consequently, the Commission considers that while some of the activities undertaken by the Applicant may advance education, these are not reflected in the Applicant's purposes and the stated purpose in clause 2.1 will not necessarily amount to advancing education.

#### Other matters beneficial to the community

50. 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>17</sup>. The purposes in the Preamble are as follows:

- 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

<sup>15</sup> *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

<sup>16</sup> [1955] AC 572 at 600.

<sup>17</sup> *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

- 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.<sup>18</sup>
51. In relation to the first limb of this test (beneficial to the community), the Supreme Court of Canada has summarised what is meant by the public benefit requirement: "There must be an objectively measurable and socially useful **benefit** conferred; and it must be a benefit available to a sufficiently large section of the population to be considered a public benefit."<sup>19</sup>
52. Analysing further what is meant by that test, in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, Gonthier J wrote that although the public benefit requirement applies to all charitable purposes, it is of particular concern under the fourth head of Lord MacNaughten's scheme in *Pemsel*<sup>20</sup>. "This is so because under the first three heads, public benefit is essentially a rebuttable presumption, whereas under the fourth head it must be demonstrated".<sup>21</sup> In terms of purposes falling under the fourth head, the court does not assume or presume its existence as in the case of the other heads of charity – the benefit in issue must be affirmatively proved or clear to the court.<sup>22</sup>
53. The Applicant submits that its management of the campground is beneficial to the community because:
- "The Christ Circle Trust manages the campground as a service to the general public. ... When the trust took over management four years ago, there were incidents of alcohol and drug abuse, whereas it is now well known as family-friendly and great for children. ... members of the Christ Circle Trust assist with wildlife conservation in the French Pass Reserve, through management of stoat and possum traps. Bird numbers have increased noticeably over the past two yeas as a direct result of these efforts."*
54. The Commission considers that in relation to its management of the campground and its conservation activities, the Applicant meets the test imposed by the courts of proving that its activities provide an objectively measurable useful benefit to a sufficient portion of the public. However, this is not a stated purpose of the Applicant.

<sup>18</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.

<sup>19</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at para 41 per Gonthier J (dissenting). Gino Dal Pont, *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 174-175.

<sup>20</sup> *Commissioner for Special Purposes of Income Tax v Pemsel* [1981] AC 531

<sup>21</sup> [1999] 1 SCR 10 at para 41.

<sup>22</sup> *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

55. The Applicant further submits that the Steadfast Traditional Sail is beneficial to the community because it is similar to a museum and it provides facilities for other recreation or other leisure-time occupations as provided by section 61A of the *Charitable Trusts Act 1957*. In its letter of 29 October 2009, the Applicant states "the benefit that is provided by the Christ Circle Trust through Steadfast Traditional Sail is the provision of a unique experience that includes recreation, education, and the aesthetic appreciation of both the vessel and the sea environment".
56. The Commission considers that providing a museum could be a charitable purpose under the advancement of education. The Applicant's purposes, however, do not indicate an intention to provide a museum, instead the Applicant appears to be providing a form of recreation which is not necessarily charitable.
57. Concerning the second limb of the "beneficial to the public" category, courts have established that the purposes must also be within the spirit and intendment of the Preamble to the Statute of Elizabeth.<sup>23</sup> This requirement is cumulative in the sense that both requirements must be met before a purpose can be said to be charitable under the fourth head of charity.<sup>24</sup>
58. The Commission considers that the management of a camping ground is analogous to the provision of public facilities such as parks and recreational grounds that have been held to be charitable<sup>25</sup>. Accordingly, the Commission considers that the management of the camping ground is within the spirit and intendment of the Preamble. However, this is not a stated purpose of the Applicant.
59. The Commission does not consider that the Steadfast Traditional Sail is within the spirit and intendment of the Preamble.
60. In *Inland Revenue Commissioners v Baddeley*,<sup>26</sup> the House of Lords decided that mere recreation, hospitality and entertainment are not charitable, for the provision of entertainment and amusement per se is inconsistent with accepted notions of charity.
61. In more recent decisions, courts have held that participation in leisure activities does not generally provide sufficient public benefit. In the *Travis Trust*<sup>27</sup> case, Williams J made the following comments in relation to sports and recreation:

*"In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to*

<sup>23</sup> *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

<sup>24</sup> *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 41.

<sup>25</sup> *City of Burnside v Attorney-General* (1993) 61 SASR 107; *Morgan v Wellington City Corporation* [1975] 1 NZLR 416.

<sup>26</sup> [1955] AC 572 at 600.

<sup>27</sup> *Travis Trust v Charities Commission* (High Court, Wellington, 3 December 2008, Joseph Williams J, CIV-2008-485-1689) para 52.

*be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth. In the areas of sport, the deeper purpose is usually health or education."*

62. As identified in the *Travis Trust* case, leisure and entertainment for its own sake is not charitable, unless these are the means by which charitable purposes are achieved. The Commission is of the view that Steadfast Traditional Sail provides recreation or leisure activities and it does not advance a charitable purpose.

#### Section 61A of the Charitable Trusts Act 1957

63. The Applicant has submitted that the activities of Steadfast Traditional Sail fall within the criteria outlined in section 61A of the *Charitable Trusts Act 1957*. Section 61A of the *Charitable Trusts Act 1957* states:

##### **61A Trusts for recreational and similar purposes**

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:*

*Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.*

- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
- (b) *Either—*
- (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
- (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

64. Providing a sailing boat could be considered to be a "facility" that is provided for "recreation or other leisure time occupation". While these facilities are capable of making life more enjoyable, the Commission does not consider that these facilities meet a need of the community which as a

matter of social ethics ought to be met nor are they provided with the purpose of improving the condition of life for the persons for whom the facilities are primarily intended.

65. The Commission therefore concludes that the activities of the Steadfast Traditional Sail do not meet the "social welfare" requirement of section 61A of the *Charitable Trusts Act 1957*.

### Conclusion

66. The Commission concludes that the purposes set out in clauses 2.4, 2.5 and 2.6 of the trust deed are powers clauses and the remaining purposes in clauses 2.1, 2.2 and 2.3, when viewed in light of the activities undertaken by the Applicant, are non-charitable.

### Section 61B of the Charitable Trusts Act

67. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to "save" a trust that has both charitable and "non-charitable and invalid" purposes.
68. The first is where the entity's stated purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"). The second is where the stated purposes are capable of both a charitable and a non-charitable interpretation and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).<sup>28</sup>
69. The Commission considers that the main purposes in clauses 2.1 to 2.3 are non-charitable for the reasons given above. If the purposes in these clauses were "blue-pencilled" out, the Applicant would be left with no specific purposes. The Commission therefore concludes that the Applicant does not have substantially charitable purposes.
70. In *Re Beckbessinger*, Tipping J held:

*"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, ... that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."*<sup>29</sup>

71. The Commission has analysed the wording of the Applicant's purposes, surrounding context, and activities (as directed by section 18 of the Charities Act). The Commission does not consider that these provide evidence of "a substantially charitable mind" with an intention to create a

<sup>28</sup> *Re Beckbessinger* [1993] 2 NZLR 362 at 373.

<sup>29</sup> *Re Beckbessinger* [1993] 2 NZLR 362 at 376.

charitable trust, but which was not conveyed by the drafting. Accordingly, the Commission does not consider that the purposes indicate an intention to create a substantially charitable trust.

72. On these bases, the Commission considers that the Applicant's purposes are not substantially charitable and therefore section 61B of the Charitable Trusts Act cannot operate to validate the trust.

Applicant's submissions

73. The Applicant has submitted that the Steadfast Traditional Sail conducts similar activities to a number of other entities which have been registered by the Commission.
74. The Commission takes a case-by-case approach to each application for registration as a charitable entity. The Commission considers the specific wording of each Applicant's rules document and has regard to the current and future activities of each applicant as required by section 18(3)(a) of the Act. The fact that other entities carrying out similar activities have been registered by the Commission does not affect the Applicant's eligibility for registration.

**Charities Commission's determination**

75. The Commission therefore determines 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.

**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

3/2/10.....  
Date