

Proposal to Establish an Animal Welfare Trust in Waitakere City

1. Introduction

This paper outlines the needs and processes required to form a charitable trust that could administer funds received for animal welfare and conservation work in Waitakere City and carry out activities in these fields.

2. Why?

For some years Waitakere City has gone beyond the concept of animal control by establishing Animal Welfare Services as a business unit.

This was enhanced by the commencement of a pilot programme in 1995 whereby Waitakere City animal welfare officers were appointed Inspectors under the Animals Protection Act 1960.

The work of Animal Welfare Services has expanded into areas that are more welfare than control, including education, re-homing animals and wildlife rehabilitation.

This fulfils Council's expectation that animal welfare services meets community needs.

This has been a low-key activity but nevertheless it generates a small level of donations that can be used to further community programmes.

It cannot be expected that members of the public will make donations to Waitakere City. The public would expect that rates should meet Council functions.

The establishment of a charitable trust will provide a focus that will attract donations, bequests from estates and funding from other funding organisations for specific projects. However, the activities of such a trust may be proactive.

3. Purpose of a charitable trust

Not all trusts will be considered to be charitable. Because a charitable trust is exempt from paying income tax and donors to that trust can claim tax deduction in their personal tax returns, the Inland Revenue Department determines in the end what is "charitable". However, there are certain purposes that are inherently "charitable".

They include:

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- purposes beneficial to the community.

It is only this last one that needs to be considered, although there is an element of "the advancement of education" that will be taken into consideration.

4. Name

The name of the trust needs to be approved by the Registrar of Charitable Trusts in the Ministry of Commerce.

The applicant has the responsibility for ensuring that the name does not breach any copyright or trademark.

There is no need to include the word "charitable" in the title. In fact there is no need to include the word "trust" in the title – it could be a "foundation" or "fund".

There is no reason why the following name cannot be registered:

Waitakere Animal Welfare Trust

However, some consideration might need to be given to the merits of not having a geographical location in the name.

5. Geographical boundaries

A charitable trust needs to have objects that limit its activities mainly to New Zealand. The phrase "principally in New Zealand" is sufficient.

In the case of Waitakere, the trust might be limited to "principally in Waitakere City, New Zealand", but this would require further discussion.

6. Promotion and Fund-raising

The establishment of a charitable trust opens up the potential for pro-active fund-raising.

Possibilities might include:

- fund-raising events such as galas;
- joint events with local animal or conservation related organisations;
- funding appeals with annual dog registration notices;
- lotteries;
- letter box drops;
- donation boxes in Council offices and veterinary clinics;
- information to all law offices in Waitakere for legacies;
- grants for specific purposes from grant organisations such as licensing trusts, ASB Trust, Lotteries Board.

Care would be needed to ensure that activities are not perceived to be in competition with the SPCA although this might be a challenge.

7. Funding Activities

Funding activities might include such things as:

- grants to community animal welfare and conservation organisations;
- setting up educational programmes on community involvement in animal welfare and conservation;
- funding animal welfare or conservation activities that would not normally be funded from Council revenue;
- building animal care and educational facilities that would not normally be funded by Council (consideration would need to be given to title of any building built on Council land);
- animal welfare and conservation promotion.

8. Contracting to a Trust

Section 8 of the Dog Control Act 1996 provides that the entire functions of dog control can be contracted out. Section 247D of the Local Government Act 1974 applies in that a territorial authority may "contract with ...any ... organisation" to carry out its works and perform its functions.

"Organisation" is not defined but its common meaning would include a company, incorporated society, or charitable trust.

Section 223C of the Local Government Act 1974 needs to be considered. This section deals with the conduct of affairs and includes matters such as:

- conducting business in a manner that is comprehensive and open to the public;
- clear objectives are established;
- regulatory functions are separated from other functions.

However, these matters are already part of Council functions and apply to the present arrangement whereby animal welfare services is a business unit. Applying these matters to the operation of a charitable trust would not be complex.

It follows that Animal Welfare Services could be operated entirely by a charitable trust that contracts to Council for the provision of dog control and impounding services.

The trust would have functions beyond just dog control and impounding – it would extend to other animal welfare, educational and conservation interests.

The major difference between operating as a business unit and operating as a charitable trust is that a business unit would be expected to make a financial return to its principals whereas in a charitable trust any surplus can only be expended within the objects of the trust.

9. Longer Term Strategies

There are no real limits to the long term strategies that might be considered as activities for the trust.

The trust could:

- Simply be the recipient and administrator of unsolicited donations received as a consequence of animal welfare work;
- Operate animal welfare services under contract to Waitakere City;
- Generate funding for animal welfare activities from sources not usually open to Council, such as bequests, donations, grants, fund-raising activities;

Such a funding base could ease the burden on dog owners by holding down the level of dog registration fees, and for ratepayers by reducing the amount of top-up funding for animal welfare activities that comes from rates;

- Actively pursue animal welfare and animal control activities beyond Waitakere City, such as tendering for animal control contracts anywhere in New Zealand;

An animal welfare trust that is perceived not to be "Waitakere City" may be better placed to tender for animal control functions offered by other territorial authorities;

- Be a contender for the Ministry of Agriculture animal welfare compliance contract which is currently held by MAF Quality Management, but will be openly contestable next year. This contract is currently in excess of \$1m;
- Be involved in animal welfare compliance operations internationally. For instance, in 1996 the Singapore Government expressed an interest in adopting Waitakere City procedures in Singapore.

There is no precedent for this type of operation just as there was no precedent for a territorial authority to become involved in animal welfare compliance when Waitakere City made that bold step in 1995 – a move that has proven to be innovative, positive and which is continuing to have an impressive impact on the way that animal welfare is perceived and implemented in the City.

Imagination knows no bounds.

10. Objects of a charitable trust

It is the objects that will determine whether the purpose of the trust is "charitable".

The objects need to be couched in terms wide enough to encompass every activity that the trust might become involved in but narrow enough not to put the trust outside its intended "charitable" purposes.

The following might be the objects of a Waitakere Animal Welfare Trust.

The objects of the Trust are to promote principally in [Waitakere City,] New Zealand, effective means for the protection of animals, for the prevention of ill-treatment of and the relief of suffering to animals, and in furtherance of these purposes:

- a) To promote the welfare, protection and conservation of animals;
- b) To encourage and develop by humane education individual responsibility for the welfare, protection and conservation of animals;
- c) To provide animal welfare and veterinary services in Waitakere City [and elsewhere];
- d) To contract to the Waitakere City Council [and other territorial authorities] for the provision of dog control and impounding services;
- e) To establish a scientific institute to study animal protection and welfare problems;
- f) To seek reform of laws for the welfare, protection and conservation of animals;
- g) To advance the aims of the Trust by seeking the support and advice of all available moral, educational, legislative and scientific institutions;
- h) To maintain effective liaison and to seek co-operation with organisations in New Zealand and elsewhere having similar objectives.

The objects should anticipate any activity that the trust might wish to consider in the foreseeable future. This does not mean that the trust will actively pursue every object.

11. Trust Deed

A charitable trust is created by a trust deed that includes the following:

- Declaration of trust
- Office
- Objects
- Administration of the trust
- Structure of the Board of Trustees
- Term of office
- Termination of membership
- Power to appoint trustees
- Powers of Trustee
- Employment
- Income Tax Act 1976
- Proceedings of the Board
- Accounts
- Financial year
- Delegation of powers
- Limitation of liability
- Alteration of deed
- Common seal

- Distribution of surplus assets

12. Powers

Powers need to be broad enough to enable the trustees to carry out the objectives of the trust.

They would include the following:

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956 the powers which the Board may exercise in order to carry out its charitable objects are as follows:

- a) To incorporate as a Trust Board under the Charitable Trusts Act 1957; and
- b) To use the funds of the Trust as necessary or expedient for the purpose of attaining the objects of Trust; and
- c) To purchase, take on lease or licence, or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges as necessary or expedient for the purpose of attaining the objects of the Trust, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- d) To carry on any business in New Zealand or elsewhere; and
- e) To invest surplus funds in any way permitted by law for the investment of trust funds; and
- f) To seek any declaration or Court order or promote any Act of Parliament or initiate or participate in any similar proceedings for the enabling of the Board to carry any of its objects into effect, or to better achieve its objectives and to oppose any proceedings or application which may seem likely directly or indirectly to prejudice the interests of the Trust; and
- g) To provide funds for the Trust's objects or any of them and for that purpose to borrow or raise money from time to time without security and upon such terms as to priority and otherwise as the Board thinks fit, to give security by way of mortgage, debenture, guarantee or otherwise over the whole or part of the property of the Trust; and
- h) To employ staff or enter into contracts for the provision of services, for any purpose as necessary or expedient for the purpose of attaining the objects of the Trust and to manage, dismiss or terminate such contracts; and
- i) To effect insurances of whatever nature in respect of any property by whatever means for whatever consideration and upon terms and conditions as the Board thinks fit; and
- j) To do all things as may from time to time appear desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust.

It will be seen that the powers are very wide and even include carrying on a business. Any profits generated from such a business must become trust funds and not for the benefit of any individual.

13. Income Tax

The Inland Revenue Department will be the final arbiter as to whether or not a trust is "charitable" as it is they who approve exemption from taxation and approve the tax deductibility of donations in the donors' tax returns.

Apart from the objects the IRD will also be looking for strict rules on dealing with individuals. In other words if trustees are able to benefit personally from the trust it would no longer be charitable. However, trustees can carry out business with the trust so long as the transactions are transparent and seen to be arms-length transactions.

An appropriate clause is:

Notwithstanding anything to the contrary contained or implied in these rules in relation to any business carried on by the Board no payments (other than the reimbursement of expenses) shall be made to any person:

- a) who is a member of the Board: or
- b) who has an interest as a shareholder (either legally or beneficially) or is a director of the company carrying on business; or
- c) where that person and that member of the Board are associated persons (as the term is defined in the Income Tax Act 1976):

for work done or services rendered in connection with any such business nor shall, in carrying on of any such business, any benefit or advantage, whether or not convertible into money, or any income of any of the kinds referred to in section 65(2) of the Income Tax Act 1976 be afforded to or received, gained, achieved or derived by any such person where that person is able, by virtue of that capacity as a Trustee or associated person in any way whether directly or indirectly, to determine or to materially influence in any way the determination of, the nature or the amount of that payment, benefit or advantage or that income or the circumstances in which it is or is to be so received, gained, achieved, afforded or derived. Any such income paid shall be reasonable and relative to that which would have been paid in an arms length transaction.

"Charitable purposes" shall have the meaning given to it in the Income Tax Act 1976 and the Charitable Trusts Act 1957 and if necessary shall be restricted notwithstanding any expression herein to the contrary to such objects and powers to preserve the right to exemptions from tax on income.

14. Registration

Registration of the trust deed with the Ministry of Commerce would be required.

Approval of the Inland Revenue Department would also be needed to obtain exemption from income tax and to have donations approved as tax deductions in the personal tax returns of the donors.

15. Trustees

With some exceptions such as minors, incapacity or ineligibility because of criminal convictions, anyone can be appointed a trustee.

It is acceptable for a body corporate to appoint trustees who will hold office as long as the appointing body wishes. Should a trustee resign the appointing body appoints the replacement.

It might also be useful, but not essential, if the trustees were able to appoint additional trustees.

The signatories of the trust deed would be deemed to be the initial trustees and would form the board of trustees.

The trust deed might specify who those trustees are by their positions – for instance:

- The Chairman of the ... Committee of Council;
- The Manager of City Enterprises;
- The Manager of Animal Welfare Services;
- The Manager of Regulatory Services;

The trust deed could specify who will be the chairman of the trust or it could leave the trustees to appoint their own chairman.

The trust deed would also set the minimum and maximum number of trustees and provide for the proceedings of the Board.

The Ministry of Commerce requires that a charitable trust has a settlor. That is, a person or body corporate that settles on the trust a sum (a token of \$10 is sufficient) that becomes that initial trust fund.

16. Administration of Trust

A trust is administered by a Board of Trustees. Each trustee is bound by the fiduciary obligations set out of the Trustee Act 1956.

Where trustees hold that position by virtue of some Council office, whether elected or staff, there might need to be some indemnity provided by Council.

Before being approved as a trust for charitable purposes the Inland Revenue Department would need to approve the objects and grant exemption from income tax. Without that exemption the trust would be obliged to file tax returns as a trust.

However, given the precedents and the objects drafted in paragraph 10 it is likely that Inland Revenue would grant exemption.

A charitable trust would have statutory functions to:

- produce annual accounts;
- audit those accounts;
- make annual returns to the Ministry of Commerce;
- make an annual report to its nominating organisations.

17. Costs

The major cost in setting up a charitable trust would be legal fees for drafting the deed of trust, obtaining approval from Inland Revenue Department for exemption from filing tax returns, and registering the trust.

There are no fees to register the trust with the Ministry of Commerce.

A budget of up to \$4000 may be needed for the legal work. However, there are precedents for this type of deed so the actual cost could be much less, provided there are no hidden challenges.

18. Winding up

A charitable trust needs to be able to wind itself up and also needs to state how surplus funds will be disposed of. The disposition also needs to be charitable, for instance surplus funds cannot be distributed to individuals or commercial organisations for personal gain. A usual clause is:

On the winding up of the Trust or on its dissolution by the Registrar all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation or organisations within New Zealand of a similar nature to the Trust as the Board decides or if the Board is unable to make such a decision shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

19. Incorporated Society

An alternative to a charitable trust would be the formation of an incorporated society.

This is not a practicable option for charitable animal welfare work in Waitakere City.

The disadvantage of this is that an incorporated society has membership that has independent control of the activities of the society including the amendment of rules and the expenditure of funds as the membership sees fit.

20. Benefits

An animal welfare trust would have the following benefits:

- It presents a holistic approach to animal welfare;
- It is independent of main-stream Council activities.
- It enables donations and funds generated by animal welfare activities to be received and administered;
- It generates funds not normally available to territorial authorities;
- It would be a pioneer in the way that animal welfare and animal control is integrated, not only in Waitakere City, but anywhere in New Zealand;
- It creates opportunities for community involvement;
- It creates opportunities for humane education. It is now well established that structured humane education in schools results in a caring society, not just for animals, but for society as a whole. This can have a flow-on effect for every resident and ratepayer of the City

Neil Wells

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NEW Publishing, NEW Animal Welfare Information Services

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WAITAKERE CITY

TAX INVOICE

GST No. 63-681-237

Invoice No: 97248

DATE:	31 December 1997	Ref:	28.1005
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Particulars	Amount
re: Staff training re Charitable trust Drafting proposal to establish animal welfare trust in Waitakere City Forward draft proposal for comments, make editorial changes, Discuss with City officials, make further editorial changes Your order number 199853	700.00
	\$ 700.00
	\$ 87.50
	\$ 787.50

GST

o.n. 199-853
[Signature]
13/1/98

Tom Didovich

From: Tom Didovich
Sent: Tuesday, 18 August 1998 8:37 AM
To: Allan Rutledge
Subject: RE: stratop trust

How about 3 or 4 founding trustees to get it going. Say:
Catherine Smith ex president NZVet Association
Michael Scott Director of Operations Telecom
Neil Wells LLB Animal Welfare legal specialist

Objects, Structure, Role of Trust needs to accompany any approach to these people and it would be a good idea set up an informal meeting with all involved, say you, me and prospective trustees so that all involved can get a feel for it and are all on the same wavelength. This meeting could also explore the possibility of other suitable trustees.

Further on the trust could look at patrons/sponsors (e.g. Bob Jones, David Beattie, Gail Spencer,) to enhance status/credibility.

cheers tom d

From: Allan Rutledge
Sent: Tuesday, 18 August 1998 8:16 AM
To: Tom Didovich
Subject: RE: stratop trust

Tom

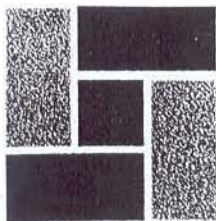
I agree lets assume its a national trust and identify likely trustees and then use them to reinforce

-----Original Message-----

From: Tom Didovich
Sent: Monday, 17 August 1998 16:25
To: Allan Rutledge
Subject: stratop trust

Allan, any progress on scope. i still maintain it needs to be national or international with allowance for local branches if we are to see it benefit from national opportunities (e.g. training and accreditation of Animal welfare Inspectors).....

cheers tom d



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Attention Tom Didovich

Animal Welfare Services

Waitakere City Council

Private Bag 93019

Henderson

WAITAKERE CITY 1231

TAX INVOICE

GST No. 63-681-237

Invoice No: 98220

DATE:	30 November 1998	Ref:	28.5046
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Particulars	Amount
re: Strategic Options Development [WCC Order # 500362]	
Meeting with Chief Veterinary Officer to discuss options; various discussions with Tom Didovich re development of trust; making contact with and meeting Jenny Giltrap re potential trustees; meeting with Peter Blomkamp and Graeme Coutts; making contact with and meeting with Nuala Grove and Sarah Amos re establishing trust; further meeting with trustees; meeting with Geoff Herkt at Effem Foods re potential sponsorships; writing draft proposal to MAF and obtaining preliminary comment from MAF Reg and MAF Policy; researching policy areas and writing detailed proposal to MAF Rge for further comments; discuss with MAF Reg; write draft animal welfare policies and forms.	
equivalent 7½ days	3,825.00
<div data-bbox="467 1590 1036 1863"><p>- Approved for payment <i>ZSL</i></p><p>- Cleared by Purchasing</p><p>- Cleared by AP</p></div> <div data-bbox="1031 1809 1096 1841">GST</div>	\$3,825.00
	\$ 478.13
	\$4,303.13

oh 500362

11.12.98