



16 September 2013

The Trustees
Primary Focus Trust
PO Box 324
PUKEKOHE

Dear Trustees

Primary Focus Trust
Our Ref: TRU002/33

1. The purpose of this letter is to advise you that I have decided not to commence an investigation into the Primary Focus Trust under s 58 of the Charitable Trusts Act 1957, following receipt of a complaint about the activities of the trust, and to thank you for your assistance in resolving the matter. I regret the time it has taken to reach this point but the issues raised by the complaint were complex.
2. The complaint alleged the trustees had misdirected themselves as to the kinds of organisations to which they were permitted to distribute the remaining trust funds on winding up. I have considered the substance of the complaint in light of the trust deed and the information you provided and have decided not to commence an investigation under s 58. The principal reason for this is that it does not appear the trust is in fact charitable and hence the Attorney-General does not have jurisdiction to initiate an inquiry.
3. The purpose of the trust (as with the Enterprise Franklin Development Trust before it) is regional economic development. It is not clear the Franklin region is economically disadvantaged so as to bring the economic development purposes within the fourth head of charity “other purposes beneficial to the community” as required by the prevailing legal authorities.¹ Although the Board is registered as a board under the Charitable Trusts Act 1957, I note the Charities Commission has declined its charitable status under the Charities Act 2005 on the basis its purposes are insufficiently charitable. I agree with the Commission’s assessment that the trust is not charitable and hence the Attorney lacks the jurisdiction to commence any investigation in terms of s 58. Accordingly, I do not propose to take any further action on this matter.
4. In the course of arriving at this conclusion, however, I have considered the information you provided, the winding up provisions of the deed, and the methodology you adopted to determine the final distributions and do not consider there has been any misapplication of funds that would, if the trust was charitable,

¹ *Re Tennant* [1996] 2 NZLR 633 and *Canterbury Development Corporation v Charities Commission* [2010] 2 NZLR 707.

warrant further investigation. All of the entities to which funds were distributed on winding up appear to be charitable (including those whose purposes appear to be to promote amateur sporting activities). Further, the clause 28 requirement necessarily envisages an exercise of judgment by the trustees in respect of which reasonable minds may differ. This is particularly so where the objects of the trust concern regional economic development. With that in mind, and when regard is had to the relatively small sums involved, it would unlikely be in the public interest to commence an inquiry even if the trust was (contrary to the findings of the Charities Commission and my own view) charitable.

5. Thank you for your assistance with this matter.

Yours sincerely
Crown Law



Sean Kinsler
Crown Counsel