

**Registration decision: Sustain Our Sounds Incorporated
(SUS43548)**

Executive Summary

1. The Charities Registration Board (the Board) has determined to decline the application for registration of the Sustain Our Sounds Incorporated (the Applicant) under the *Charities Act 2005* (the Act).¹ The Applicant is not established and maintained for exclusively charitable purposes as required by section 13 of the Act because it has a (non-charitable) political purpose that is not ancillary to any valid charitable purpose of the Applicant.
2. The Applicant's purposes relate in part to conservation of the environment and advancement of education, which are charitable purposes in New Zealand law. However, having considered the Applicant's rules document in light of its activities, the Board considers that the Applicant's main purpose is to procure specific governmental actions in relation to a resource consent application in the Marlborough Sounds. In New Zealand law, a purpose to procure governmental actions (including policies and tribunal or judicial decisions) is a "political" purpose which is not charitable.
3. An entity with a political purpose can qualify for registration under the Act if that purpose is ancillary to the entity's valid charitable purposes.² Here, however, the Applicant's political purpose constitutes almost all of its endeavour. As such, the Applicant's political purpose cannot be considered ancillary to any valid charitable purpose, and the Applicant cannot qualify for registration under the Act.
4. The Board's reasons for decision are organised as follows:
 - A. Background
 - B. Legal framework for registration decision
 - C. Applicant's purposes
 - D. Section 5(3) of the Act
 - E. Determination

A. Background

5. The Applicant was incorporated under the *Incorporated Societies Act 1908* on 3 February 2012, and applied for registration as a charitable entity under the Act on 10 May 2012.
6. The Applicant's rules state its objectives at clause 3:

¹ This decision is made under section 19 of the Act.

² Sections 13(1), read with sections 5(3) and 5(4) of the Act.

3.1 Encourage, advocate, undertake and co-ordinate activities for the future wellbeing of the people and the lands and the waters of the Marlborough Sounds environment.

3.2 Promote the recognition of the unique character of the Marlborough Sounds ecosystem and the importance of this system to the well-being of its people.

3.3 Encourage, undertake and coordinate activities for the sustainable and wise use of the Marlborough Sounds, including reserves to protect catchments and/or marine areas and rahui to restore environments and sustain communities.

3.4 Promote awareness to prevent habitat destruction. Identify and protect special habitat and nurseries for fish and marine mammals in the Marlborough Sounds.

3.5 Promote and implement evaluation and monitoring of cumulative and potential effects of activities on catchments and marine environment with:

3.5.1 Evaluation –of the Sounds' life supporting capacity, the state and pressures on its habitats and biota.

3.5.2. Monitoring – effects of activities on the Sounds' life supporting capacity and assess the health and sustainability of the ecosystem for future generations.

3.6 Promote a precautionary approach under the Resource Management Act when there is not enough scientific information or knowledge of the effects of activities on the Sounds' life-supporting capacity to ensure sustainable use of the resources.

3.7 Promote an understanding of how increasing pressures of exploitation are affecting the Sounds marine environment generally, and how those pressures should be managed.

3.8 Promote the co-ordinated management required to protect ecologically significant sites and restore their functional integrity.

3.9 Establish the principle that an industry is sustainable when

1) its operations sustain the life-supporting capacity of its environment and the community long-term;

2) the costs of actual, potential, cumulative and future effects on the environment and on the community are accounted for and mitigated

3.10 Promote the principle that an industry is ecologically sustainable if it maintains, or is part of a management system that maintains, the natural capital upon which it and other industries depend.

3.10.1 Promote management policies that ensure the sustainable water quality of the Sounds.

3.10.2 Guard against negative impacts from industries polluting through siltation, erosion, nitrogen enrichment, eutrophication, ballast water, oil & chemical spills and contamination through toxic spray drift.

3.10.3 An eco-system-wide strategy to sustain fish stocks and kaimoana beds for future generations. Management tools include

Marine Protected Areas, marine reserves, rahui (temporary prohibition) and mataitai (protected traditional fishing ground).

3.11 Promote the recognition that industrial scale exploitation of species or natural resources generally does not account for externalised costs to the environment through pollution, such as eutrophication, toxic chemicals, loss of systems' integrity or to community and society for infrastructure maintained to exploit the region's natural resources for corporate profitability.

3.12 Adhere to the principles and spirit of the Treaty of Waitangi and acknowledge tangata whenua. Support customary rights and the kaupapa of kaitiakitanga – guardianship – of the Marlborough Sounds for all people.

3.13 To promote the integrity of the Marlborough Sounds Resource Management Plan ("the MS Plan"); recognize the body of past thinking and research that has been assimilated to identify areas that are to remain as "Public Common" and ensure that its review has SOS' vision and objectives integrated as a pivotal component to protect ecosystem services and ecosystem integrity and the Sounds life-supporting capacity of its environment and resident community.

7. The rules provide that membership is "open to people who sincerely support the objectives of SOS" (clause 4.1) and state that "SOS aims to be an umbrella group for organisations concerned about the future wellbeing and sustainable use of the Marlborough Sounds" (clause 4.3).
8. The Applicant is in its first financial year of operation and has not yet filed annual accounts with the Registrar of Incorporated Societies. However, the Applicant maintains a website³ and a facebook page⁴ and has made media statements which provide evidence of its activities. It has also provided information about its current and proposed activities to Charities Services.
9. On 16 July 2012, Charities Services wrote to the Applicant to notify that its application may be declined on the ground that the Applicant was not established for exclusively charitable purposes as required by the Act.⁵ The letter explained that political purposes are outside the scope of charity in New Zealand law, and that the Applicant's activities showed that it has such a purpose which was not within the saving provision set out in section 5(3) of the Act.
10. On 13 August 2012, the Applicant wrote to request an extension of time to the end of December 2012 to respond to the notice. Charities Services granted the extension of time to 31 December 2012.
11. On 28 December 2012, the Applicant submitted a written response to the notice sent on 16 July 2012. The Applicant stated that it is not

³ <http://www.sustainoursounds.org.nz> [accessed 14 February 2013].

⁴ <http://www.facebook.com/pages/Sustain-Our-Sounds/327124180662744> [accessed 14 February 2013].

⁵ Under section 18(3)(a) of the Act.

attempting to change the decisions of governmental authorities and advocate for law changes, but rather to “ensure that existing law and government regulations ... will be correctly applied when making decisions about the further use of New Zealand’s environment”; and that none of the Applicant’s purposes are politically motivated or intended to persuade people to a particular point of view. The Applicant also stated:

That New Zealand is heading towards an environmental disaster has been well established, in particular with regards to water quality. Communicating this to the public and reminding government authorities to this fact cannot be described as influencing people’s views or as political activity. Protecting the environment requires action. Running or participating in scientific research projects and representing the results of those to the public as well as other interested/involved parties is seen as encouragement and invitation to participate in a debate of issues relevant and important to members and the wider community.

Our core activity in 2012 was to defend, not to change, the Marlborough Sounds Resource Management Plan ... It has been established during a lengthy EPA process this year that there are no sufficient information and data available to make decisions about further developments in this area in a responsible way. It is the purpose of the Society to inform, educate, exchange, discuss and raise awareness by way of publications of their own findings, scientific papers including references from experts around the world ...

The importance of the Societies work has also been acknowledged by way of government funding to finance scientific research and legal representation (ELA Fund Sustain Our Sounds Inc No 787).

12. On 12 February 2013, Charities Services wrote to the Applicant advising that it did not qualify for registration on the basis that it had an independent political purpose. This email also advised that the next step was for the application to be referred to the Board for a final decision.

B. Legal framework for registration

13. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively purposes and not for private pecuniary profit.
14. 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 or religion, or any other matter beneficial to the community”. This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.⁶
15. To be charitable at law a purpose must be for the public benefit.⁷ Public benefit must be expressly shown where the claimed purpose is benefit to the community.⁸ Further, in every case, the direct benefit of the entity’s purposes must flow to the public or a sufficient sector of the public.⁹ Any private benefits arising from an entity’s activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.¹⁰

⁶ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsell* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 (“*Greenpeace, CA*”) at [42]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 (“*Education New Zealand Trust*”) at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] (“*Draco*”) at [11].

⁷ 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 (“*Accountants*”) at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 (“*Latimer, CA*”) at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) (“*Travis Trust*”) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 (“*Queenstown Lakes*”) at [30]; *Education New Zealand Trust* at [23].

⁸ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 (“*CDC*”) at [45].

⁹ See discussion in *Latimer, CA* at [32] - [37]. The courts have held that the downstream benefits of an entity’s activities do not serve to characterise the purpose of the entity: see *Accountants* at 153 (the “generalised concept of benefit” identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients’ interests is too “nebulous and remote” to characterise the purpose of the fund); *Travis Trust* at [30] – [35] (holding that where the express purpose was to “support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes”, the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] – [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the “hope and belief” that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose).

¹⁰ See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (“*Professional Engineers*”) at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] (“*Computer Society*”) at [42]; *Education New Zealand Trust* at [23]; *Queenstown Lakes* at [68] – [76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham*

16. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Section 5(4) of the Act states that a non-charitable purpose is ancillary 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.

17. It is clear that determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.¹¹ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.¹²

Relevance of entity's activities in registration decision-making

18. Section 18(3)(a)(i) and (ii) of the Act mandate that the Board and Charities Services take activities into consideration when determining whether an entity qualifies for registration under the Act.¹³ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹⁴ Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established,¹⁵ and that this focus is justified in the broader scheme of the Act¹⁶ and the fiscal consequences of registration under the Act.¹⁷

Training and Enterprise Council (1996) STC 1218 ("Oldham"); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

¹¹ For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

¹² The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] ("*Greenpeace, HC*") at [68]; *Computer Society* at [16]; *Education New Zealand Trust* at [43]-[44]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) ("*Grand Lodge*") at [49]-[51]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

¹³ See also section 50(2)(a) of the Act.

¹⁴ *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68]; *Greenpeace HC* at [75].

¹⁵ *Greenpeace CA* at [40]. See to same effect *Institution of Mechanical Engineers v Cane* [1961] AC 696 (HL) at 723; *Guaranty Trust Company of Canada v Minister of National Revenue* [1967] SCR 133 at 144; *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 at [25] – [26] (Gummow, Hayne, Heydon and Crennan JJ) and [173] – [174] (Kirby J, dissenting); *Cronulla Sutherland Leagues Club Ltd v Commissioner of Taxation* (1990) 23 FCR 82 at 89.

¹⁶ Including the statutory functions set out in section 10 of the Act, "promote public trust and confidence in the charitable sector" and "encourage and promote the effective use of charitable resources".

¹⁷ Compare *Greenpeace, CA* at [34]. While the statutory criteria for eligibility for fiscal privileges are in tax legislation administered by Inland Revenue, one of the benefits of registration is that it qualifies entities to be eligible for tax exemption on charitable grounds.

19. Activities are not to be elevated to purposes,¹⁸ but reference to activities may assist, for example, to make a finding about:
- the meaning of stated purposes that are capable of more than one interpretation;¹⁹
 - whether the entity is acting for an unstated non-charitable purpose;²⁰
 - whether the entity's purposes are providing benefit to the public;²¹
 - whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.²²
20. Further, it is well established that the charitable status of an association is determined by construing its objects and powers in context as a whole, rather than construing objects and powers individually.²³

Characterisation of an entity's purposes

21. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.²⁴ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
22. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.²⁵ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁶

¹⁸ *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 ("*Public Trustee*") at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

¹⁹ See *Professional Engineers* at 575 (Tipping J).

²⁰ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 ("*Word Investments*") at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²¹ See for example *Glasgow Police Athletic Association*; *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68].

²² See for example *Greenpeace, CA* at [40], [48], and [87] - [92], [99] and [102], [103]. Earlier authorities to same effect include *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) ("*Molloy*") at 693 and the authorities cited there.

²³ Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. For example, in *Travis Trust* at [30] - [35], [58], Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor of a group race known as the Travis Stakes" was not charitable. His Honour rejected a submission that the purpose was to benefit the racing industry. Despite the opening words of the purpose clause, his Honour held that the purpose was to support a single group race. See to same effect: *Glasgow Police Athletic Association* (where machinery provisions in the association's rules were taken into account to identify the purposes of the Association); *Professional Engineers* (where Tipping J looked to the rules as a whole to resolve the uncertainty in the way in which the primary object was stated).

²⁴ *Molloy* at 693.

²⁵ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²⁶ *Dal Pont* at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer, PC* at 168 (PC) ("whether the purposes of the trust are charitable does not

C. Applicant's purposes

23. The Applicant's purposes do not relate to the relief of poverty or the advancement of religion. The Applicant's stated purposes (particularly clause 3.5 and 3.7) may relate to the advancement of education. Further, the stated purposes relate to the promotion of environmental conservation, which is a charitable purpose "beneficial to the community" in New Zealand law.²⁷ However, for the reasons that follow, the Board finds that the Applicant does not qualify for registration because it has an independent non-charitable purpose, being a political purpose to procure governmental actions.
24. In New Zealand law, a "political" purpose lies outside the scope of charity. An entity that has a political purpose will only qualify for registration if that purpose falls within the savings provision set out in section 5(3) of the Act, i.e. if that purpose is "ancillary, secondary, or subordinate to" a valid charitable purpose of the entity and is "not an independent purpose of" the entity. If the purpose is independent (more than ancillary), the entity cannot qualify for registration under the Act.

Political purposes not charitable in New Zealand law

25. The position that political purposes lie outside the scope of charity derives from English authorities,²⁸ approved and applied in New Zealand by the Court of Appeal²⁹ and the High Court.³⁰
26. The general law position is recognised in section 5(3) of the Act, which specifically provides that advocacy is an example of a non-charitable purpose, which will disqualify an entity from registration under the Act unless it is ancillary to the valid charitable purposes of the entity.³¹
27. The case law and legislation in New Zealand makes a distinction between "political" and "charitable" purposes that is similar to the distinction drawn in Canadian legislation and case law³² and English case law; and dissimilar to the position in Australian law.³³

depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not, what was the settlor's purpose in establishing the trust? But, what are the purposes for which trust money may be applied?"; *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

²⁷ *Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 763.

²⁸ *Bowman v Secular Society Ltd* [1917] AC 406 (HL) ("*Bowman*") at 442; *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (HL) ("*Anti-Vivisection*"); *McGovern* at 340; *Southwood v Attorney-General* [2000] EWCA Civ 204 ("*Southwood*") at [29].

²⁹ *Molloy, Greenpeace, CA* esp at [63] (note leave to appeal granted by Supreme Court).

³⁰ *Re Wilkinson (deceased)* [1941] NZLR 1065 (HC) ("*Wilkinson*"); *Re Collier (Deceased)* [1998] 1 NZLR 81 ("*Collier*") at 90; *Draco* at [58]-[60]; *Greenpeace, HC* at [44] – [59].

³¹ Compare *Greenpeace, CA* at [45].

³² See Income Tax Act RSC 1985 c 1 (5th Supp) ss 149.1(6.1) and 149.1(6.2); *Vancouver Society* at [169], and see also *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 ("*Human Life*").

³³ See *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539.

28. New Zealand law's position on "political" purposes and charity is conceptually tied to the public benefit requirement for charity:³⁴

[T]he prohibition on political objects is based on the inability of the Court to determine where the public good lies as between competing views of a contentious political nature ... there is also no doubt an underlying concern that taxation benefits should not be available to a society pursuing one side of a political debate.

29. The public benefit requirement is a general requirement for charitable status, applicable to all heads of charity. Thus, even if a "political" purpose otherwise appears to fall within an established head of charity, it cannot qualify as a charitable purpose because it can never be regarded as being for the public benefit in a manner that the law regards as charitable.³⁵

Categories of political purpose in New Zealand law

30. The courts have recognised three categories of political purposes excluded from the scope of charity.³⁶ First, purposes to further the interests of a particular political party or representative;³⁷ secondly, purposes to procure governmental actions, including through legislation,³⁸ and other regulatory, administrative and/or judicial actions;³⁹ and thirdly, purposes to promote a point of view, the public benefit of which is not self-evident as a matter of law.⁴⁰

Scope of second category

31. The position in New Zealand law is that the *second* mentioned category of "political purpose" includes any purpose to procure governmental actions, even if the governmental actions are to advance a valid charitable purpose. So, for example, in *Greenpeace New Zealand Incorporated*, the Court of Appeal held that a purpose to "promote legislation, policies, rules, regulations and plans which further [specified objects] and support their enforcement or implementation through political or judicial processes as necessary" was a political purpose, notwithstanding that the objects referred to were exclusively charitable.⁴¹

³⁴ *Greenpeace, CA* at [63].

³⁵ See *McGovern* at 333G-334B and 340B-E. See also *Southwood* at [5], [6].

³⁶ The categorization follows *Collier* at 89-90. Slade J's influential non-exhaustive categorization in *McGovern* at 340 is similar, but expands on the second category and omits the third category.

³⁷ *Collier* at 90, and see also *McGovern* at 337.

³⁸ See e.g. *Bowman* at 441-442 (Lord Parker of Waddington); *Anti-Vivisection* at 49 – 51 (Lord Wright) 62-63 (Lord Simonds; Viscount Simon concurring), 76-77 (Lord Normand); and note the extension to purposes to maintain current legislation against calls for reform in *Molloy* at 695-698.

³⁹ See e.g. *McGovern* at 339; *Anti-Vivisection* at 77; *Re Hopkinson* [1949] 1 All ER 346 at 352; *Wilkinson* at 1076; *Draco* at [54].

⁴⁰ *Collier* at 90. See also *Molloy* at 697 and *Greenpeace, CA* at [61], [72], [76]. Compare judicial recognition of this category of "political" purpose in Canada: *Positive Action Against Pornography* [1998] 2 FC 340 at 350; *Human Life* at 217.

⁴¹ *Greenpeace, CA* at [84], [91]. See also *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (purpose to promote temperance charitable but purpose to promote legislation banning sale of liquor not charitable).

32. The Board recognises that qualification for registration depends on the *purposes* of an entity and that purposes are not to be conflated with activities. Thus, an entity that is established for exclusively charitable purposes may engage in *political* activities provided that those activities are not elevated to an independent political purpose of the entity. Further, not all communication with political actors is ‘political’ activity: For example, if a charity conducts genuinely educational research and publishes the results of its research without linking it to a call to political action, it may then send its research to all governmental decision-makers (without favouring one candidate or party over another); and may present its research findings in governmental fora such as parliamentary committee hearings, government advisory panels and international policy development working groups.⁴² However, the essential point remains that, if an entity has or adopts a political purpose, then the entity can only qualify for registration if that purpose lies within the savings provision set out in section 5(3) of the Act.
33. Bearing the above observations in mind, the Board considers that a purpose to procure government actions (including legislation, policies and other governmental decisions) *may be indicated* by actions such as:⁴³
- communicating to the public that government policy on an issue should be changed – this may be by newsletters, advertisements, media releases or similar;
 - organising petitions to parliament or members of parliament calling for governmental actions;
 - organising marches, rallies and petitions to highlight support for (or opposition to) proposed governmental actions;
 - organising or encouraging supporters and members of the public to send letters or postcards to governmental officials to support (or oppose) proposed governmental actions;
 - organising conferences and workshops to gain support for the entity’s efforts to procure governmental actions.
34. Further, the Board notes that the cases make it clear that a purpose to secure governmental action by mobilising public support for that governmental action is a political purpose.⁴⁴

⁴² See *Vancouver Society; Southwood*. The scope for communication with governmental actors would be limited to communications that are based on work by the charity that itself qualifies as advancing education, i.e. that is well reasoned and researched and not intended to persuade the audience to a particular point of view. The Board considers that the administrative interpretation of the law provided by the Canada Revenue Agency is useful in this regard, see: *Policy Statement CPS-022, Political Activities*, published at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html> [accessed 14 February 2013].

⁴³ Compare Canada Revenue Agency, *Policy Statement CPS-022, Political Activities*, published at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html> [accessed 14 February 2013].

⁴⁴ See *McGovern* at 346; *Wilkinson* at 1076; *Draco* at [65]. Compare to same effect *Action by Christians for the Abolition of Torture v Canada* (2003) 225 DLR (4th) 99 at [19], [52], [53], [67].

D. Applicant's political purpose

35. The Board considers that it is a purpose of the Applicant to procure particular governmental actions, predominantly actions on the applications by New Zealand King Salmon to amend the Marlborough Sounds Resource Management Plan to allow salmon farming in an area previously closed to farming, and for resource consents for salmon farming sites in that area.⁴⁵
36. The Applicant's *stated* purposes are not exclusively political, but the Board considers that they contemplate and authorise activities to procure governmental actions. For instance:
- clause 3.6 refers to promotion of a precautionary approach “under the Resource Management Act” which assumes promotion to governmental actors under that Act;
 - clause 3.8 refers to the promotion of “co-ordinated management”, which would seem apt to refer to promotion of management by government actors and agencies, such as through the promulgation of resource management plans;
 - clause 13.3 refers to “[promoting] the integrity of the Marlborough Sounds Resource Management Plan” and “[ensuring] that its review has SOS vision and objectives integrated as a pivotal component”, which clearly contemplates engagement with governmental decision-making in relation to the management plan.
37. In addition, the Board considers that the Applicant's activities indicate its purpose to procure governmental actions. In particular, the Board notes that the Applicant presents itself to the public as an umbrella organisation formed to oppose New Zealand King Salmon's application for consent for more intensive salmon farming in the Marlborough Sounds.⁴⁶

Sustain our Sounds (SOS) is an incorporated society set up by people who use and love the Marlborough Sounds and want to protect this special part of New Zealand for future generations.

We have formed SOS to oppose the further expansion of aquaculture in the Marlborough Sounds. NZ King Salmon has applied for eight more salmon farms, all in scenic areas where marine farming is currently prohibited.

SOS supporters include residents, fishermen, tourism operators, bach owners, kayakers, walkers and boaties. We believe salmon farming on this scale will pollute the clean waters of the Marlborough Sounds, damage fish habitat and affect public enjoyment of this unique landscape. It will impact on our tourism industry and clean, green image.

⁴⁵ See consideration of the New Zealand King Salmon proposal by the Environmental Protection Authority's New Zealand King Salmon Board of Inquiry: <http://www.epa.govt.nz/Resource-management/king-salmon/Pages/default.aspx> [accessed 14 February 2013].

⁴⁶ <http://www.sustainoursounds.org.nz/> [accessed 15 February 2013].

SOS opposes recreational areas in the Marlborough Sounds being cordoned off for private profit. NZ King Salmon is a Malaysian-owned company and the New Zealand Government has brought in legislation and a fast-track planning process to make it easier for overseas companies like this to use our waters for aquaculture.

This is a big battle for a community group like us. Please join SOS, support and donate so we can put up a strong legal case to protect the Marlborough Sounds.

38. The Applicant seeks donations from the public “to support the case against New Zealand King Salmon”,⁴⁷ and is identified by affiliated organisations as the entity co-ordinating opposition to King Salmon’s applications in the Marlborough Sounds.⁴⁸
39. The activities of the Applicant would seem to be wholly focused on opposition to the New Zealand King Salmon application. First, the Applicant has acted as a party in the Environmental Protection Authority proceedings, and has received funding from the Environment Legal Assistance Fund to cover costs of expert evidence and legal representation in the Environmental Protection Authority proceedings.⁴⁹ It prepared and filed evidence from seven witnesses, five of whom presented evidence on the ecological and environmental effects of the proposed salmon farms.⁵⁰
40. The Applicant has criticised the Environmental Protection Authority Board of Inquiry’s draft decision in the media⁵¹ and on its web-site:⁵²

Sustain Our Sounds is immensely disappointed by the decision to approve 4 of the proposed farms planned for the Marlborough Sounds ...

Submitters delivered an enormous amount of evidence of the highest quality. Sustain our Sounds’ members contributed months of time for free and at the expense of family and business. Our science was robust and well presented by many experts. It is disappointing to see

⁴⁷ <http://www.sustainoursounds.org.nz/support-us/> [accessed 14 February 2013].

⁴⁸ See for example, statements on the website maintained by Guardians of the Sounds Incorporated (CC36951), <http://www.guardiansofthesounds.co.nz/> [accessed 15 February 2013]: “For the latest news about the EPA hearing into King Salmon’s applications in the Marlborough Sounds please visit the Sustain Our Sounds site through which we are coordinating the opposition in partnership with other groups who share our concerns.”

⁴⁹ <http://www.mfe.govt.nz/withyou/funding/ela-outcomes-from-jul-2010.xls> [accessed 15 February 2013]

⁵⁰ <http://www.sustainoursounds.org.nz/sustain-our-sounds-evidence/> [accessed 15 February 2013]. Two witnesses gave evidence on the tourism and recreational impacts of the proposed farms.

⁵¹ <http://www.stuff.co.nz/marlborough-express/news/8142460/Salmon-farm-approval-bemoaned> [accessed 15 February 2013] and <http://www.scoop.co.nz/stories/PO1212/S00316/sustain-our-sounds-response-to-board-of-inquiry-decision.htm> [accessed 15 February 2013]

⁵² <http://www.scoop.co.nz/stories/PO1212/S00316/sustain-our-sounds-response-to-board-of-inquiry-decision.htm> [accessed 15 February 2013]

this had not been fully regarded by the Commissioner and Board of Inquiry.

With this decision, the Board has unfortunately missed the opportunity to set a high standard and show guardianship of our environment and public rights to use water space. The Board made the decision to be in favour of big business and short-term gain and as such has compromised opportunities for future generations. Our '100% Pure' image, which all businesses trade off, is once again being eroded.

Our group is now going to read the drafted decision in detail, after which we will be better prepared to think about our next steps.

41. The Applicant has also published criticism by one of its witnesses of the specific principles adopted by the Board of Inquiry,⁵³ and promoted a petition to a Member of Parliament to oppose the new salmon farms.⁵⁴
42. The Board notes that the Applicant's submissions to the Environmental Protection Authority's Board of Inquiry included expert evidence on various technical topics, including its submissions on international best practice for monitoring the environmental effects of the salmon farms. As noted above, the Board considers that communicating the results of educational research conducted by an entity to relevant governmental actors may fall within the scope of charity and may not be a "political" activity indicative of a political purpose. However, the Board considers that viewed as a whole, the Applicant's activities show that it has been formed for the purpose of procuring government action to prevent New Zealand King Salmon commencing more intensive salmon farming in the Marlborough Sounds. The Board considers that the Applicant has not been established for exclusively charitable purposes as required by section 13(1)(b)(i) of the Act. Further, the Board considers that the Applicant is established for a political purpose, of the kind that lies outside the scope of charity in New Zealand law.

E. Section 5(3) of the Act

43. The Board has also considered whether the Applicant's political (non-charitable) purpose falls within the savings provision set out in section 5(3) of the Act. The Board considers that there is a prima facie case that the Applicant's actions to oppose the New Zealand King Salmon application for consent for more intensive farming in the Marlborough Sounds is qualitatively ancillary to its charitable purposes to advance protection of the environment.⁵⁵ However, the Board considers that the Applicant's political purpose is clearly more than ancillary in quantitative terms. The Board considers that the purpose to oppose

⁵³ <http://www.sustainoursounds.org.nz/news/> [accessed 15 February 2013].

⁵⁴ <http://www.sustainoursounds.org.nz/news/> [accessed 15 February 2013].

⁵⁵ The Board notes, however, that the stated purposes at clause 3.1 go wider than environmental conservation, and that the Applicant has itself stated its objection to the adverse effects of the salmon farm proposal on tourism and recreation in the Marlborough Sounds.

government actions to allow more intensive salmon farming by New Zealand King Salmon in the Marlborough Sounds is fairly described as the Applicant's primary and dominant purpose. Certainly, it would seem that the purpose to procure such government action has constituted close to 100% of the Applicant's overall endeavour since its establishment in early 2012. Therefore, the political purpose cannot be considered ancillary to a charitable purpose and does not fall within the savings provision set out in section 5(3) of the Act.

F. Determination

44. The Board's determination is that the Applicant does not qualify for registration under the Act and the application for registration should be declined. We consider that the Applicant has a purpose to procure government actions which is a political purpose outside the scope of charity in New Zealand law; and that this purpose does not fall within the savings provision set out in section 5(3) of the Act. The Applicant's political purpose is not "ancillary, secondary, subordinate to" a valid charitable purpose of the Applicant, and is "not an independent purpose of" the Applicant. As such, the Applicant is not established for exclusively charitable purposes and does not meet the requirement for registration under section 13(1)(b) 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

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Roger Holmes Miller

15/04/2013
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Date